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

COUNCIL DECISION

of 9 November 1998

adopted on the basis of Article J.3 of the Treaty on European Union concerning a specific action of the Union in the field of assistance for mine clearance

(98/627/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles J.3 and J.11(2) thereof,

Whereas the Council adopted on 1 October 1996 Joint Action 96/588/CFSP⁽¹⁾ on anti-personnel landmines; whereas the Council adopted on 28 November 1997 a new Joint Action 97/817/CFSP⁽²⁾ on anti-personnel landmines with a view to updating and further developing the initiatives carried out by the European Union under the first joint action;

Whereas these joint actions provide for the possibility of specific actions of the Union in the field of mine clearance and indicate that such actions could take the form of training of mine clearance specialists and mine clearance instructors;

Whereas an action consisting of coordinating, supervising and training mine clearance specialists and instructors is particularly needed in Croatia and could usefully complement international efforts in the field of mine clearance assistance,

HAS DECIDED AS FOLLOWS:

Article 1

A specific action of the European Union in the field of mine clearance shall consist of coordinating, supervising and training mine clearance specialists and mine clearance instructors in Croatia.

Article 2

1. An amount of up to ECU 435 000 to cover the operational expenditure to which the implementation of the Decision gives rise shall be charged to the budget of the European Communities.

2. The expenditure financed by the amount stipulated above shall be managed in compliance with the European Community procedures and rules applicable to the budget.

Article 3

This Decision shall be notified to the Western European Union (WEU) in accordance with the conclusions adopted by the Council on 14 May 1996 on the transmission to the WEU of documents of the European Union.

Article 4

This Decision shall enter into force on the date of its adoption.

Article 5

This Decision shall be published in the Official Journal.

Done at Brussels, 9 November 1998.

For the Council

The President

W. SCHÜSSEL

⁽¹⁾ OJ L 260, 12. 10. 1996, p. 1.

⁽²⁾ OJ L 338, 9. 12. 1997, p. 1.

COUNCIL DECISION**of 9 November 1998****adopted on the basis of Article J.4(2) of the Treaty on European Union on the
implementation of a Council Decision concerning a specific action of the Union
in the field of assistance for mine clearance**

(98/628/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article J.4(2) thereof,

Having regard to the Declaration on the Western European Union (WEU) included in the Final Act signed upon the adoption of the Treaty,

Whereas the Council today adopted on the basis of Article J.3 of the Treaty a Decision concerning a specific action of the Union in the field of assistance for mine clearance⁽¹⁾;

Whereas such an action would require staff having military expertise; whereas under these conditions the Union should have recourse to the WEU;

Whereas the institutions of the WEU have given their agreement to the practical arrangements set out in the Annex hereto,

HAS DECIDED AS FOLLOWS:

Article 1

1. The European Union requests the WEU to implement its action consisting in coordinating, supervising and training mine clearance specialists and mine clear-

ance instructors in Croatia, as set out in Council Decision 98/627/CFSP⁽¹⁾.

2. The implementation of the action referred to in paragraph 1 shall be conducted in accordance with the practical arrangements set out in the Annex hereto.

Article 2

This Decision shall be notified to the WEU in accordance with the conclusions adopted by the Council on 14 May 1996 on the transmission to the WEU of documents of the European Union.

Article 3

This Decision shall enter into force on the date of its adoption.

Article 4

This Decision shall be published in the Official Journal.

Done at Brussels, 9 November 1998.

For the Council

The President

W. SCHÜSSEL

⁽¹⁾ See page 1 of this Official Journal.

*ANNEX***Practical arrangements**

1. The WEU mission will carry out its task under the responsibility of the WEU.
2. During the course of the operation it is expected that:
 - the WEU mission will report on a monthly basis to the WEU which will transmit full reports to the EU,
 - the WEU mission will submit an intermediate report drawing up a first assessment of the operation and suggesting, as required, possible adjustments to the modalities of the operation,
 - should an emergency occur, a report will immediately be submitted to the WEU which will transmit it to the EU. The situation will be assessed and the need for submitting it to EU and WEU bodies considered.
3. On completion of the operation, the WEU will produce a 'lessons learned' paper, which will be transmitted to the EU.
4. The principal channels of communication will be:
 - the existing points of contact between the EU and WEU Secretariats and between the Commission and the WEU Secretariat,
 - the points of contact designated by the two Presidencies.
5. The possibility of coordinated meetings of working groups should be kept in mind.
6. The diplomatic representation of the EU Presidency will provide the WEU mission, if required, with political and diplomatic support.
7. Public information on this operation will be coordinated.
8. Disbursements for the payment of the operation will be made according to the financial arrangements to be established between the Commission and the WEU in compliance with the European Community procedures and rules applicable to the budget.

The abovementioned practical arrangements do not affect in any way the internal procedures of each organisation or the further contacts that may be necessary between them.

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 2419/98
of 10 November 1998
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,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽³⁾, as last amended by Regulation (EC) No 150/95 ⁽⁴⁾, and in particular Article 3 (3) thereof,

Whereas 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;

Whereas, 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 11 November 1998.

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

Done at Brussels, 10 November 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ L 198, 15. 7. 1998, p. 4.

⁽³⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 10 November 1998 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	99,6
	204	53,8
	999	76,7
0709 90 70	052	66,7
	204	37,7
	999	52,2
0805 20 10	204	52,6
	999	52,6
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	57,7
	999	57,7
0805 30 10	052	52,6
	388	41,8
	528	39,4
	999	44,6
0806 10 10	052	135,5
	400	265,3
	999	200,4
0808 10 20, 0808 10 50, 0808 10 90	060	31,8
	064	43,4
	388	30,5
	400	78,8
	404	60,7
	800	143,6
	999	64,8
0808 20 50	052	86,0
	064	60,0
	400	84,0
	720	54,6
	728	126,7
	999	82,3

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2317/97 (OJ L 321, 22. 11. 1997, p. 19). Code '999' stands for 'of other origin'.

**COMMISSION REGULATION (EC) No 2420/98
of 10 November 1998**

**fixing the representative prices and the additional import duties for molasses in
the sugar sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the market in sugar⁽¹⁾, as last amended by Regulation (EC) No 1148/98⁽²⁾,

Having regard to Commission Regulation (EC) No 1422/95 of 23 June 1995 laying down detailed rules of application for imports of molasses in the sugar sector and amending Regulation (EEC) No 785/68⁽³⁾, and in particular Articles 1 (2) and 3 (1) thereof,

Whereas Regulation (EC) No 1422/95 stipulates that the cif import price for molasses, hereinafter referred to as the 'representative price', should be set in accordance with Commission Regulation (EEC) No 785/68⁽⁴⁾; whereas that price should be fixed for the standard quality defined in Article 1 of the above Regulation;

Whereas the representative price for molasses is calculated at the frontier crossing point into the Community, in this case Amsterdam; whereas that price must be based on the most favourable purchasing opportunities on the world market established on the basis of the quotations or prices on that market adjusted for any deviations from the standard quality; whereas the standard quality for molasses is defined in Regulation (EEC) No 785/68;

Whereas, when the most favourable purchasing opportunities on the world market are being established, account must be taken of all available information on offers on the world market, on the prices recorded on important third-country markets and on sales concluded in international trade of which the Commission is aware, either directly or through the Member States; whereas, under Article 7 of Regulation (EEC) No 785/68, the Commission may for this purpose take an average of several prices as a basis, provided that this average is representative of actual market trends;

Whereas the information must be disregarded if the goods concerned are not of sound and fair marketable quality or if the price quoted in the offer relates only to a small quantity that is not representative of the market;

whereas offer prices which can be regarded as not representative of actual market trends must also be disregarded;

Whereas, if information on molasses of the standard quality is to be comparable, prices must, depending on the quality of the molasses offered, be increased or reduced in the light of the results achieved by applying Article 6 of Regulation (EEC) No 785/68;

Whereas a representative price may be left unchanged by way of exception for a limited period if the offer price which served as a basis for the previous calculation of the representative price is not available to the Commission and if the offer prices which are available and which appear not to be sufficiently representative of actual market trends would entail sudden and considerable changes in the representative price;

Whereas where there is a difference between the trigger price for the product in question and the representative price, additional import duties should be fixed under the conditions set out in Article 3 of Regulation (EC) No 1422/95; whereas should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed;

Whereas application of these provisions will have the effect of fixing the representative prices and the additional import duties for the products in question as set out in the Annex to this Regulation;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and the additional duties applying to imports of the products referred to in Article 1 of Regulation (EC) No 1422/95 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 11 November 1998.

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 159, 3. 6. 1998, p. 38.

⁽³⁾ OJ L 141, 24. 6. 1995, p. 12.

⁽⁴⁾ OJ L 145, 27. 6. 1968, p. 12.

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

Done at Brussels, 10 November 1998.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

fixing the representative prices and additional import duties applying to imports of molasses in the sugar sector

CN code	Amount of the representative price in ECU per 100 kg net of the product in question	Amount of the additional duty in ECU per 100 kg net of the product in question	Amount of the duty to be applied to imports in ECU per 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	6,47	0,19	—
1703 90 00 ⁽¹⁾	7,80	0,00	—

⁽¹⁾ For the standard quality as defined in Article 1 of amended Regulation (EEC) No 785/68.

⁽²⁾ This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

COMMISSION REGULATION (EC) No 2421/98**of 10 November 1998****fixing the export refunds on white sugar and raw sugar exported in its unaltered state**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 1 June 1981 on the common organization of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EC) No 1148/98 ⁽²⁾, and in particular point (a) of the first subparagraph of Article 19 (4) thereof,

Whereas Article 19 of Regulation (EEC) No 1785/81 provides that the difference between quotations or prices on the world market for the products listed in Article 1 (1) (a) of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Regulation (EEC) No 1785/81 provides that when refunds on white and raw sugar, undenatured and exported in its unaltered state, are being fixed account must be taken of the situation on the Community and world markets in sugar and in particular of the price and cost factors set out in Article 17a of that Regulation; whereas the same Article provides that the economic aspect of the proposed exports should also be taken into account;

Whereas the refund on raw sugar must be fixed in respect of the standard quality; whereas the latter is defined in Article 1 of Council Regulation (EEC) No 431/68 of 9 April 1968 determining the standard quality for raw sugar and fixing the Community frontier crossing point for calculating cif prices for sugar ⁽³⁾, as amended by Regulation (EC) No 3290/94 ⁽⁴⁾; whereas, furthermore, this refund should be fixed in accordance with Article 17a (4) of Regulation (EEC) No 1785/81; whereas candy sugar is defined in Commission Regulation (EC) No 2135/95 of 7 September 1995 laying down detailed rules of application for the grant of export refunds in the sugar sector ⁽⁵⁾; whereas the refund thus calculated for sugar containing added flavouring or colouring matter must apply to their

sucrose content and, accordingly, be fixed per 1 % of the said content;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the refund for sugar according to destination;

Whereas, in special cases, the amount of the refund may be fixed by other legal instruments;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92 ⁽⁶⁾, as last amended by Regulation (EC) No 150/95 ⁽⁷⁾, are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93 ⁽⁸⁾, as last amended by Regulation (EC) No 961/98 ⁽⁹⁾;

Whereas the refund must be fixed every two weeks; whereas it may be altered in the intervening period;

Whereas it follows from applying the rules set out above to the present situation on the market in sugar and in particular to quotations or prices for sugar within the Community and on the world market that the refund should be as set out in the Annex hereto;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (1) (a) of Regulation (EEC) No 1785/81, undenatured and exported in the natural state, are hereby fixed to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 11 November 1998.

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 159, 3. 6. 1998, p. 38.

⁽³⁾ OJ L 89, 10. 4. 1968, p. 3.

⁽⁴⁾ OJ L 349, 31. 12. 1994, p. 105.

⁽⁵⁾ OJ L 214, 8. 9. 1995, p. 16.

⁽⁶⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁷⁾ OJ L 22, 31. 1. 1995, p. 1.

⁽⁸⁾ OJ L 108, 1. 5. 1993, p. 106.

⁽⁹⁾ OJ L 135, 8. 5. 1998, p. 5.

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

Done at Brussels, 10 November 1998.

For the Commission
 Franz FISCHLER
Member of the Commission

ANNEX

to the Commission Regulation of 10 November 1998 fixing the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund
	— ECU/100 kg —
1701 11 90 9100	44,15 ⁽¹⁾
1701 11 90 9910	41,80 ⁽¹⁾
1701 11 90 9950	⁽²⁾
1701 12 90 9100	44,15 ⁽¹⁾
1701 12 90 9910	41,80 ⁽¹⁾
1701 12 90 9950	⁽²⁾
	— ECU/1 % of sucrose × 100 kg —
1701 91 00 9000	0,4799
	— ECU/100 kg —
1701 99 10 9100	47,99
1701 99 10 9910	46,92
1701 99 10 9950	46,92
	— ECU/1 % of sucrose × 100 kg —
1701 99 90 9100	0,4799

⁽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 17a (4) of Regulation (EEC) No 1785/81.

⁽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).

**COMMISSION REGULATION (EC) No 2422/98
of 10 November 1998**

**fixing the maximum export refund for white sugar for the 15th partial invitation
to tender issued within the framework of the standing invitation to tender
provided for in Regulation (EC) No 1574/98**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EC) No 1148/98 ⁽²⁾, and in particular the second subparagraph of Article 17 (5) (b) thereof,

Whereas Commission Regulation (EC) No 1574/98 of 22 July 1998 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar ⁽³⁾, requires partial invitations to tender to be issued for the export of this sugar;

Whereas, pursuant to Article 9 (1) of Regulation (EC) No 1574/98 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question;

Whereas, following an examination of the tenders submitted in response to the 15th partial invitation to tender, the provisions set out in Article 1 should be adopted;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

For the 15th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1574/98 the maximum amount of the export refund is fixed at ECU 50,060 per 100 kilograms.

Article 2

This Regulation shall enter into force on 11 November 1998.

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

Done at Brussels, 10 November 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 159, 3. 6. 1998, p. 38.

⁽³⁾ OJ L 206, 23. 7. 1998, p. 7.

COMMISSION REGULATION (EC) No 2423/98
of 10 November 1998
on the issue of import licences for high-quality fresh, chilled or frozen beef and veal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 936/97 of 27 May 1997 opening and providing for the administration of tariff quotas for high-quality fresh, chilled and frozen beef and for frozen buffalo meat⁽¹⁾, as last amended by Regulation (EC) No 1680/98⁽²⁾,

Whereas Regulation (EC) No 936/97 provides in Articles 4 and 5 the conditions for applications and for the issue of import licences for meat referred to in Article 2(f);

Whereas Article 2(f) of Regulation (EC) No 936/97 fixes the amount of high-quality fresh, chilled or frozen beef and veal originating in and imported from the United States of America and Canada which may be imported on special terms for the period 1 July 1998 to 30 June 1999 at 11 500 tonnes;

Whereas it should be recalled that licences issued pursuant to this Regulation will, throughout the period of

validity, be open for use only in so far as provisions on health protection in force permit,

HAS ADOPTED THIS REGULATION:

Article 1

1. All applications for import licences from 1 to 5 November 1998 for high-quality fresh, chilled or frozen beef and veal as referred to in Article 2(f) of Regulation (EC) No 936/97 shall be granted in full.

2. Applications for licences may be submitted, in accordance with Article 5 of Regulation (EC) No 936/97, during the first five days of December 1998 for 2 213,438 tonnes.

Article 2

This Regulation shall enter into force on 11 November 1998.

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

Done at Brussels, 10 November 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 137, 28. 5. 1997, p. 10.

⁽²⁾ OJ L 212, 30. 7. 1998, p. 36.

COMMISSION REGULATION (EC) No 2424/98
of 10 November 1998

concerning applications for import licences for quality common wheat and durum wheat under tariff quotas provided for in Regulations (EC) No 529/97 and (EC) No 2228/96

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas Commission Regulation (EC) No 529/97 of 21 March 1997 opening and administering a tariff quota of 300 000 tonnes of quality wheat and repealing Regulation (EC) No 1854/94⁽²⁾, as amended by Regulation (EC) No 850/97⁽³⁾, lays down special provisions on the organisation of imports under the quota opened by Regulation (EC) No 1095/96; whereas Article 3(2) of Regulation (EC) No 529/97 provides that the Commission is to fix a uniform percentage reduction in the quantities if applications for import licences exceed the quantities that may be imported; whereas applications for licences submitted between 5 October and 4 November 1998 relate to 7 570 120 tonnes of quality wheat; whereas the maximum quantity to be allocated is 200 000 tonnes; whereas the appropriate percentage of reduction for import licence applications submitted between 5 October and 4 November 1998 qualifying for the conditions provided for in Regulation (EC) No 1095/96 must therefore be set;

Whereas Commission Regulation (EC) No 2228/96 of 21 November 1996 opening and administering a tariff quota of 50 000 tonnes of durum wheat falling within CN code 1001 10 00⁽⁴⁾, as amended by Regulation (EC) No 2410/98⁽⁵⁾, lays down special provisions on the organisation of imports under the quota opened by Regulation (EC) No 1095/96; whereas Article 3(3) of Regulation (EC) No 2228/96 provides that the Commission is to fix a uniform

percentage reduction in the quantities if applications for import licences exceed the quantities that may be imported; whereas applications for licences submitted between 5 October and 4 November 1998 relate to 810 985,831 tonnes of durum wheat; whereas the maximum quantity to be allocated is 50 000 tonnes; whereas the appropriate percentage of reduction for import licence applications submitted between 5 October and 4 November 1998 qualifying for the conditions provided for in Regulation (EC) No 1095/96 must therefore be set,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for import licences for quality common wheat qualifying for the conditions provided for in Regulation (EC) No 1095/96 submitted between 5 October and 4 November 1998 and notified to the Commission shall be accepted for the tonnages indicated therein multiplied by a coefficient of 0,0264. Applications not notified to the Commission shall be refused.

Article 2

Applications for import licences for durum wheat qualifying for the conditions provided for in Regulation (EC) No 1095/96 submitted between 5 October and 4 November 1998 and notified to the Commission shall be accepted for the tonnages indicated therein multiplied by a coefficient of 0,0616. Applications not notified to the Commission shall be refused.

Article 3

This Regulation shall enter into force on 11 November 1998.

⁽¹⁾ OJ L 146, 20. 6. 1996, p. 1.

⁽²⁾ OJ L 82, 22. 3. 1997, p. 44.

⁽³⁾ OJ L 122, 14. 5. 1997, p. 10.

⁽⁴⁾ OJ L 298, 22. 11. 1996, p. 8.

⁽⁵⁾ OJ L 298, 7. 11. 1998, p. 45.

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

Done at Brussels, 10 November 1998.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 2425/98**of 10 November 1998****on the issue of system B export licences in the fruit and vegetables sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 2190/96 of 14 November 1996 on detailed rules for implementing Council Regulation (EC) No 2200/96 as regards export refunds on fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1287/98 ⁽²⁾, and in particular Article 5(5) thereof,

Whereas Commission Regulation (EC) No 1875/98 ⁽³⁾, fixes the indicative quantities for system B export licences other than those sought in the context of food aid;

Whereas, in the light of the information available to the Commission today, there is a risk that the indicative quantities laid down for the current export period for lemons will shortly be exceeded; whereas this overrun will prejudice the proper working of the export refund scheme in the fruit and vegetables sector;

Whereas, to avoid this situation, applications for system B licences for lemons exported after 10 November 1998 should be rejected until the end of the current export period,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for system B export licences for lemons submitted pursuant to Article 1 of Regulation (EC) No 1875/98, export declarations for which are accepted after 10 November 1998 and before 16 November 1998, are hereby rejected.

Article 2

This Regulation shall enter into force on 11 November 1998.

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

Done at Brussels, 10 November 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 292, 15. 11. 1996, p. 12.

⁽²⁾ OJ L 178, 23. 6. 1998, p. 11.

⁽³⁾ OJ L 243, 2. 9. 1998, p. 3.

COMMISSION REGULATION (EC) No 2426/98
of 10 November 1998
fixing the export refunds on olive oil

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EC) No 1638/98⁽²⁾, and in particular Article 3 (3) thereof,

Whereas Article 3 of Regulation No 136/66/EEC provides that, where prices within the Community are higher than world market prices, the difference between these prices may be covered by a refund when olive oil is exported to third countries;

Whereas the detailed rules for fixing and granting export refunds on olive oil are contained in Commission Regulation (EEC) No 616/72⁽³⁾, as last amended by Regulation (EEC) No 2962/77⁽⁴⁾;

Whereas Article 3 (3) of Regulation No 136/66/EEC provides that the refund must be the same for the whole Community;

Whereas, in accordance with Article 3 (4) of Regulation No 136/66/EEC, the refund for olive oil must be fixed in the light of the existing situation and outlook in relation to olive oil prices and availability on the Community market and olive oil prices on the world market; whereas, however, where the world market situation is such that the most favourable olive oil prices cannot be determined, account may be taken of the price of the main competing vegetable oils on the world market and the difference recorded between that price and the price of olive oil during a representative period; whereas the amount of the refund may not exceed the difference between the price of olive oil in the Community and that on the world market, adjusted, where appropriate, to take account of export costs for the products on the world market;

Whereas, in accordance with Article 3 (3) third indent, point (b) of Regulation No 136/66/EEC, it may be decided that the refund shall be fixed by tender; whereas the tendering procedure should cover the amount of the

refund and may be limited to certain countries of destination, quantities, qualities and presentations;

Whereas the second indent of Article 3 (3) of Regulation No 136/66/EEC provides that the refund on olive oil may be varied according to destination where the world market situation or the specific requirements of certain markets make this necessary;

Whereas the refund must be fixed at least once every month; whereas it may, if necessary, be altered in the intervening period;

Whereas it follows from applying these detailed rules to the present situation on the market in olive oil and in particular to olive oil prices within the Community and on the markets of third countries that the refund should be as set out in the Annex hereto;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽⁵⁾, as last amended by Regulation (EC) No 150/95⁽⁶⁾, are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93⁽⁷⁾, as last amended by Regulation (EC) No 961/98⁽⁸⁾;

Whereas the Management Committee for Oils and Fats has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (2) (c) of Regulation No 136/66/EEC shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 11 November 1998.

⁽¹⁾ OJ 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ L 210, 28. 7. 1998, p. 32.

⁽³⁾ OJ L 78, 31. 3. 1972, p. 1.

⁽⁴⁾ OJ L 348, 30. 12. 1977, p. 53.

⁽⁵⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁶⁾ OJ L 22, 31. 1. 1995, p. 1.

⁽⁷⁾ OJ L 108, 1. 5. 1993, p. 106.

⁽⁸⁾ OJ L 135, 8. 5. 1998, p. 5.

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

Done at Brussels, 10 November 1998.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

to the Commission Regulation of 10 November 1998 fixing the export refunds on olive oil
(*ECU/100 kg*)

Product code	Amount of refund ⁽¹⁾
1509 10 90 9100	0,00
1509 10 90 9900	0,00
1509 90 00 9100	0,00
1509 90 00 9900	0,00
1510 00 90 9100	0,00
1510 00 90 9900	0,00

⁽¹⁾ For destinations mentioned in Article 34 of amended Commission Regulation (EEC) No 3665/87 (OJ L 351, 14. 12. 1987, p 1), as well as for exports to third countries.

NB: The product codes and the footnotes are defined in amended Commission Regulation (EEC) No 3846/87.

COMMISSION REGULATION (EC) No 2427/98
of 10 November 1998

fixing the maximum export refunds for olive oil for the first partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2269/98

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats⁽¹⁾, as last amended by Regulation (EC) No 1638/98⁽²⁾, and in particular Article 3 thereof,

Whereas Commission Regulation (EC) No 2269/98⁽³⁾ issued a standing invitation to tender with a view to determining the export refunds on olive oil;

Whereas Article 6 of Regulation (EC) No 2269/98 provides that maximum amounts are to be fixed for the export refunds in the light in particular of the current situation and foreseeable developments on the Community and world olive-oil markets and on the basis of the tenders received; whereas contracts are awarded to any tenderer who submits a tender at the level of the maximum refund or at a lower level;

Whereas, for the purposes of applying the abovementioned provisions, the maximum export refunds should be set at the levels specified in the Annex;

Whereas the Management Committee for Oils and Fats has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refunds for olive oil for the first partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2269/98 are hereby fixed in the Annex, on the basis of the tenders submitted by 6 November 1998.

Article 2

This Regulation shall enter into force on 11 November 1998.

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

Done at Brussels, 10 November 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ L 210, 28. 7. 1998, p. 32.

⁽³⁾ OJ L 284, 22. 10. 1998, p. 25.

ANNEX

**to the Commission Regulation of 10 November 1998 fixing the maximum export refunds
for olive oil for the first partial invitation to tender under the standing invitation to tender
issued by Regulation (EC) No 1978/97**

(ECU/100 kg)

Product code	Amount of refund
1509 10 90 9100	—
1509 10 90 9900	—
1509 90 00 9100	—
1509 90 00 9900	—
1510 00 90 9100	—
1510 00 90 9900	—

NB: The product codes and the footnotes are defined in amended
Commission Regulation (EEC) No 3846/87.

COMMISSION REGULATION (EC) No 2428/98
of 10 November 1998
on the issue of import licences for garlic originating in China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables ⁽¹⁾, as amended by Commission Regulation (EC) No 2520/97 ⁽²⁾,

Having regard to Council Regulation (EC) No 1137/98 of 29 May 1998 concerning a protective measure applicable to imports of garlic from China ⁽³⁾, and in particular Article 1(3) thereof,

Whereas pursuant to Commission Regulation (EEC) No 1859/93 ⁽⁴⁾, as amended by Regulation (EC) No 1662/94 ⁽⁵⁾, the release for free circulation in the Community of garlic imported from third countries is subject to presentation of an import licence;

Whereas Article 1(1) of Regulation (EC) No 1137/98, restricts the issue of import licences for garlic originating in China to a maximum monthly quantity in the case of applications lodged from 1 June 1998 to 31 May 1999;

Whereas, given the criteria laid down in Article 1(2) of that Regulation and the import licences already issued, the quantity applied for on 6 November 1998 is in excess of the maximum monthly quantity given in the Annex to

that Regulation for the month of November 1998; whereas it is therefore necessary to determine to what extent import licences may be issued in response to these applications; whereas the issue of licences in response to applications lodged after 6 November 1998 and before 3 December 1998 should be refused,

HAS ADOPTED THIS REGULATION:

Article 1

Import licences applied for on 6 November 1998 pursuant to Article 1 of Regulation (EEC) No 1859/93 for garlic falling within CN code 0703 20 00 originating in China shall be issued for 1,12685 % of the quantity applied for, having regard to the information available to the Commission on 10 November 1998.

For the abovementioned products applications for import licences lodged after 6 November 1998 and before 3 December 1998 shall be refused.

Article 2

This Regulation shall enter into force on 11 November 1998.

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

Done at Brussels, 10 November 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 297, 21. 11. 1996, p. 1.

⁽²⁾ OJ L 346, 17. 12. 1997, p. 41.

⁽³⁾ OJ L 157, 30. 5. 1998, p. 107.

⁽⁴⁾ OJ L 170, 13. 7. 1993, p. 10.

⁽⁵⁾ OJ L 176, 9. 7. 1994, p. 1.

II

(Acts whose publication is not obligatory)

COUNCIL

DECISION No 1/98 OF THE ASSOCIATION COUNCIL

between the European Communities and their Member States, of the one part,
and the Republic of Tunisia, of the other part

of 14 July 1998

adopting its rules of procedure

(98/629/EC)

THE ASSOCIATION COUNCIL,

Having regard to the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and Tunisia, of the other part, and in particular Articles 78 to 86 thereof,

Whereas that Agreement entered into force on 1 March 1998,

HAS DECIDED AS FOLLOWS:

Article 1

Presidency

The Association Council shall be presided over alternately for periods of 12 months by a representative of the Presidency of the Council of the European Union, on behalf of the Community and its Member States, and a representative of the Government of Tunisia. The first period shall begin on the date of the first Association Council meeting and end on 31 December 1998.

Article 2

Meetings

The Association Council shall meet regularly at ministerial level once a year. Special sessions of the Association Council may be held if the Parties so agree, at the request of either Party.

Unless otherwise agreed by the Parties, each session of the Association Council shall be held at the usual venue for meetings of the Council of the European Union at a date agreed by both Parties.

The meetings of the Association Council shall be jointly convened by the secretaries of the Association Council in agreement with the President.

Article 3

Representation

The members of the Association Council may be represented if unable to attend. If a member wishes to be so represented, he must notify the President of the name of his representative before the meeting at which he is to be so represented.

The representative of a member of the Association Council shall exercise all the rights of that member.

Article 4

Delegations

The members of the Association Council may be accompanied by officials.

Before each meeting, the President shall be informed of the intended composition of the delegation of each Party.

A representative of the European Investment Bank shall attend the meetings of the Association Council as an observer when matters which concern the Bank appear on the agenda.

The Association Council may invite, by agreement between the Parties, non-members to attend its meetings in order to provide information on particular subjects.

Article 5

Secretariat

An official of the General Secretariat of the Council of the European Union and an official of the Tunisian Mission in Brussels shall act jointly as secretaries of the Association Council.

Article 6

Correspondence

Correspondence addressed to the Association Council shall be sent to the President of the Association Council at the address of the General Secretariat of the Council of the European Union.

The two secretaries shall ensure that correspondence is forwarded to the President of the Association Council and, where appropriate, circulated to the other members of the Association Council. Correspondence circulated shall be sent to the Secretariat-General of the Commission, the Permanent Representations of the Member States and the Tunisian Mission in Brussels.

Communications from the President of the Association Council shall be sent to the addressees by the two secretaries and circulated, where appropriate, to the other members of the Association Council at the addresses indicated in the second paragraph.

Article 7

Publicity

Unless otherwise decided, the meetings of the Association Council shall not be public.

Article 8

Agendas for meetings

1. The President shall draw up a provisional agenda for each meeting. It shall be forwarded by the secretaries of the Association Council to the addressees referred to in Article 6 not later than 15 days before the beginning of the meeting.

The provisional agenda shall include the items in respect of which the President has received a request for inclusion in the agenda not later than 21 days before the beginning of the meeting, save that such items shall not be written into the provisional agenda unless the supporting documentation has been forwarded to the secretaries not later than the date of dispatch of the agenda.

The agenda shall be adopted by the Association Council at the beginning of each meeting. An item other than

those appearing on the provisional agenda may be placed on the agenda if the Parties so agree.

2. The President may, in agreement with the Parties, shorten the periods specified in paragraph 1 in order to take account of the requirements of a particular case.

Article 9

Minutes

Draft minutes of each meeting shall be drawn up by the two secretaries.

The minutes shall, as a general rule, indicate in respect of each item on the agenda:

- the documentation submitted to the Association Council,
- statements which a member of the Association Council has asked to be entered,
- the decisions taken, the statements agreed upon and the conclusions adopted.

The draft minutes shall be submitted to the Association Council for approval. They shall be approved within three months after each Association Council meeting. When approved, the minutes shall be signed by the President and the two secretaries. The minutes shall be filed in the archives of the General Secretariat of the Council of the European Union; a certified true copy shall be forwarded to each of the addressees referred to in Article 6.

Article 10

Decisions and recommendations

1. The Association Council shall adopt its decisions and recommendations by mutual agreement of the Parties.

In the period between meetings, the Association Council may adopt decisions or recommendations by written procedure if both Parties so agree.

2. The decisions and recommendations of the Association Council within the meaning of Article 80 of the Euro-Mediterranean Agreement shall be entitled respectively 'Decision' and 'Recommendation' followed by a serial number, by the date of their adoption and by a description of their subject.

The decisions and recommendations of the Association Council shall be signed by the President and authenticated by the two secretaries.

Decisions and recommendations shall be forwarded to each of the addressees referred to in Article 6.

The Association Council may decide to order publication of its decisions and recommendations in the *Official Journal of the European Communities* and the *Official Journal of the Republic of Tunisia*.

*Article 11***Languages**

The official languages of the Association Council shall be the official languages of the two Parties.

Unless otherwise decided, the Association Council shall base its deliberations on documentation prepared in those languages.

*Article 12***Expenses**

The Community and Tunisia shall each defray the expenses they incur by reason of their participation in the meetings of the Association Council, both with regard to staff, travel and subsistence expenditure and to postal and telecommunications expenditure.

Expenditure in connection with interpreting at meetings, translation and reproduction of documents shall be borne by the Community, with the exception of expenditure in connection with interpreting or translation into or from Arabic, which shall be borne by Tunisia.

Other expenditure relating to the material organisation of meetings shall be borne by the Party which hosts the meetings.

*Article 13***Association Committee**

1. The Association Council shall be assisted in carrying out its duties by the Association Committee. The Committee shall be composed of representatives of the members of the Council of the European Union and of

representatives of the Commission of the European Communities, on the one hand, and of representatives of the Tunisian Government on the other hand.

2. The Association Committee shall prepare the meetings and the deliberations of the Association Council, implement the decisions of the Association Council where appropriate and, in general, ensure continuity of the association relationship and the proper functioning of the Euro-Mediterranean Agreement. It shall consider any matter referred to it by the Association Council as well as any other matter which may arise in the course of the day-to-day implementation of the Euro-Mediterranean Agreement. It shall submit proposals or any draft decisions/recommendations to the Association Council for its approval.

3. In cases where the Euro-Mediterranean Agreement refers to an obligation to consult or a possibility of consultation, such consultation may take place within the Association Committee. The consultation may continue in the Association Council if the two Parties so agree.

4. The draft rules of procedure of the Association Committee are annexed to this Decision.

Done at Brussels, 14 July 1998.

For the Association Council
The President
W. SCHÜSSEL

*ANNEX***RULES OF PROCEDURE**

of the Association Committee, Association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part

*Article 1***Chairmanship**

The Association Committee shall be presided over alternately for periods of twelve months by a representative of the Presidency of the Council of the European Union and a representative of the Government of Tunisia. The first period shall begin on the date of the first Association Council meeting and end on 31 December 1998.

*Article 2***Meetings**

The Association Committee shall meet when circumstances require with the agreement of both Parties. Each meeting of the Association Committee shall be held at a time and place agreed by both Parties. The meetings of the Association Committee shall be convened by the Chairman.

*Article 3***Delegations**

Before each meeting, the Chairman shall be informed of the intended composition of the delegation of each Party.

*Article 4***Secretariat**

An official of the Secretariat General of the Council of the European Union and an official of the Tunisian Government shall act jointly as secretaries of the Association Committee.

All communications to or from the Chairman of the Association Committee in the framework of this Decision shall be addressed to the secretaries of the Association Committee and the secretaries and President of the Association Council.

*Article 5***Publicity**

Unless otherwise decided, the meetings of the Association Committee shall not be public.

*Article 6***Agendas for meetings**

1. The Chairman shall draw up a provisional agenda for each meeting. It shall be forwarded by the secretaries of the Association Committee to the addressees referred to in Article 4 not later than 15 days before the beginning of the meeting.

The provisional agenda shall include the items in respect of which the Chairman has received a request for inclusion in the agenda not later than 21 days before the beginning of the meeting, save that such items shall not be written into the provisional agenda unless the supporting documentation has been forwarded to the secretaries not later than the date of dispatch of the agenda.

The Association Committee may ask experts to attend its meetings in order to provide information on particular subjects.

The agenda shall be adopted by the Association Committee at the beginning of each meeting. An item other than those appearing on the provisional agenda may be placed on the agenda if the two Parties so agree.

2. The Chairman may, in agreement with the two Parties, shorten the periods specified in paragraph 1 in order to take account of the requirements of a particular case.

*Article 7***Minutes**

Minutes shall be taken for each meeting and shall be based on a summing-up by the Chairman of the conclusions arrived at by the Association Committee.

When approved by the Association Committee, the minutes shall be signed by the Chairman and by the secretaries and filed by each of the Parties. A copy of the minutes shall be forwarded to each of the addressees referred to in Article 4.

*Article 8***Deliberations**

In the specific cases where the Association Committee is empowered by the Association Council under the Euro-Mediterranean Agreement to adopt decisions/recommendations, those acts shall be entitled respectively 'Decision' and 'Recommendation', followed by a serial number, by the date of their adoption and by a description of their subject.

Whenever the Association Committee takes a decision, Articles 10 and 11 of Decision No 1/98 of the Association Council adopting its rules of procedure shall be applied *mutatis mutandis*.

Decisions and recommendations of the Association Committee shall be forwarded to the addressees referred to in Article 4 of these rules of procedure.

*Article 9***Expenses**

Each Party shall defray the expenses related to its participation in the meetings of the Association Committee and of any working groups or bodies which might be set up in accordance with Article 84 of the Euro-Mediterranean Agreement, both with regard to staff, travel and subsistence expenditure and to postal and telecommunications expenditure.

Expenditure in connection with interpreting at meetings, translation and reproduction of documents shall be borne by the Community, with the exception of expenditure in connection with interpreting and/or translation into or from Arabic, which shall be borne by Tunisia.

Other expenditure relating to the material organisation of meetings shall be borne by the Party which hosts the meetings.

COMMISSION

COMMISSION DECISION

of 30 October 1998

on the application of Article 9 of Council Directive 96/67/EC to Stuttgart airport
(Flughafen Stuttgart GmbH)

(notified under document number C(1998) 3335)

(Only the German text is authentic)

(Text with EEA relevance)

(98/630/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports⁽¹⁾, and in particular Article 9(5) thereof,

Having regard to the request for approval of the decision of the German authorities of 30 July 1998 and after consultation of those authorities,

After consulting the Advisory Committee,

Whereas:

I. SCOPE OF THE EXEMPTION NOTIFIED BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

1. The notification presented by the German authorities

By letter of 30 July 1998, received by the Commission on 3 August 1998, the German authorities notified a request to approve the decision of the Government of the Federal Republic of Germany of 23 July 1998 to grant to Stuttgart airport (Flughafen Stuttgart GmbH) an exemption to:

- ban self-handling for the categories of services listed under point 4, with regard to the physical handling of freight and mail, whether incoming, outgoing or

being transferred, between the air terminal and the aircraft, and points 5.4 (excluding the transport of crew), 5.5 and 5.6 of the Annex to the Directive. This exemption is granted, on the basis of Article 9(1)(d) of the Directive, until 31 December 2000.

Pursuant to Article 9(3) of the Directive, the Commission published an extract from the said notification in the *Official Journal of the European Communities*⁽²⁾ and invited interested parties to submit comments.

In accordance with Article 9(5) of the Directive, the German Government was consulted by the Commission on the Commission's draft evaluation on 24 September 1998. The German authorities responded to this consultation with written comments forwarded by a letter dated 1 October 1998.

Basis of the exemption

The general rules for access to the groundhandling services market are set out in Articles 6 and 7 of the Directive. These rules clearly state the principle that most categories of groundhandling services should be opened up to the maximum possible extent. For an airport with a volume of traffic like that of Stuttgart the Directive provides for recognition of the right to self-handle as from 1 January 1998 and opens up the handling market to third parties as from 1 January 1999. However, because of the specific situation and role of an airport, and in

⁽¹⁾ OJ L 272, 25. 10. 1996, p. 36.

⁽²⁾ OJ C 267, 26. 8. 1998, p. 11.

particular constraints of safety and security, but also space and capacity, which can arise in certain parts of most airports, the Directive does not impose total freedom but requires a minimum degree of opening up of both self-handling and services to third parties for four categories of services located air-side, i.e. in a particularly sensitive area of the airport. These categories concern ramp handling, baggage handling, fuel handling and certain freight and mail handling operations.

Article 9 of Directive 96/67/EC also takes account of the fact that, in certain very special cases, severe space and capacity problems prevent the opening-up of the market to the degree provided for. In such cases, exemptions may be granted on a temporary basis to give the airports the time to overcome the constraints. These exemptions can therefore be only exceptional in nature and are not intended to automatically give airports an extra transitional period in addition to that already provided for in Article 1 of the Directive.

An exemption can be granted only on the basis of specific space or capacity constraints. This is the basis on which the German authorities have granted the above-mentioned exemption in accordance with Article 3 of the German *Verordnung über Bodenabfertigungsdienste auf Flugplätzen und zur Änderung weiterer luftrechtlicher Vorschriften*⁽³⁾ transposing Directive 96/67/EC into national law.

2. Situation regarding handling at Stuttgart airport

2.1. Presentation of the airport

Half of the company running Stuttgart airport (Flughafen Stuttgart GmbH) is owned by the Land of Baden-Württemberg, the other shareholder being the city of Stuttgart.

The airport is completely surrounded to the north by the motorway linking Karlsruhe to Munich, and by housing on the other sides. Part of the site to the south is reserved for American military installations.

The airport has a single runway (east-west). The 1996 renovation and extension now enable it to receive long-haul traffic. The development work has enabled it to become the region's main airport, where 29 scheduled and 2 charter airlines operate. In 1997 it handled traffic of 6.9 million passengers, up 7.7 % on the previous year. With estimated growth of 5 % for the coming years, the

airport should double its traffic by 2010. Much work has been done to prepare for this growth, including the realisation of an additional car park, and the current construction of an Office Centre, and the on-going extension of Terminal 1. The building of the new Terminal 3 to replace the old terminal installations, Terminal 4, new cargo installations, general aviation areas and a rail link to the Hamburg-Stuttgart-Munich line are at the planning stage. The southern part will also be completely altered, with a DEM 20 million project to redesign and regroup part of the US army installations. The airport should then be able to make use of some space in that area. Lack of space forces the airport to plan the work very carefully, so as to ensure continuity of service by transferring passengers and freight to the various installations as the building work progresses.

The changes should help to cater for demand and double the number of gate parking positions for Terminal 1.

2.2. Groundhandling services at the airport

When the German authorities made the decision, the groundhandling market was, in practice, open as regards services to third parties and self-handling for all the activities mentioned in the Annex to the Directive, apart from those covered by points 3 (baggage handling), 4 (physical handling of mail and freight), and 5 (air-side operations).

At Stuttgart, operations concerning aircraft guidance (point 5.1) and parking assistance (point 5.2) may not be opened up to competition; these operations are carried out solely by means of the radio guidance system.

The decision of the German authorities concerns operations between the airport and the aircraft relating to the physical handling of mail and freight (point 4 of the Annex to the Directive), the loading and unloading of the aircraft and the transport of passengers and baggage (part of point 5.4), aircraft take-off (point 5.5) and the moving of the aircraft (point 5.6).

The aim of the exemption is therefore to preserve the status quo regarding self-handling. On the other hand, from 1 January 1999, a second supplier will be allowed to provide services to third parties where the airport managing body was the sole supplier for those services on the date of notification, so ensuring the minimum choice required by Article 6 of the Directive as regards groundhandling services to third parties.

⁽³⁾ *Bundesgesetzblatt 1997 Teil I Nr. 82, 16 Dezember 1997; 2885.*

II. CONSTRAINTS REFERRED TO BY THE GERMAN AUTHORITIES

The exemption is based on the airport's current space problems which will be aggravated by the substantial works to be carried out in the coming years and the particular difficulties to be expected with the arrival of new baggage handling operators. According to the German authorities, the available space should be sufficient for a second service provider but not also for additional self-handling users.

It is based mainly on the dossier prepared by the airport and presented by Gleiss, Lutz, Hootz & Hirsch as well as the study by Professor Heimerl '*Kapazität der Anlagen des Flughafen Stuttgart*' (Capacity of facilities at Stuttgart airport).

1. Problems with equipment parking

According to the German authorities, these problems are serious in two areas.

1.1. Available space

Firstly, only four of the 39 aircraft positions allow gate parking. A fifth should be added when the extension to Terminal 1 is complete. Of the many remaining positions, 18 require pusher tugs to be used to move the aircraft (point 5.6 of the Annex to the Directive). These are the positions located along the installations on the north side of the airport. These tugs are heavy, quite difficult to park, and must stay near the positions.

Similarly, the large number of distant positions require the use of many shuttle buses to carry passengers and sufficient trolleys to ensure that baggage is moved fast enough over long distances (point 5.4 of the Annex).

While equipment can be parked at the head of aircraft for positions located along the installations on the north side, the German authorities consider that this cannot be done for positions on the tarmac on the south side, since they are already very close to taxiway N, at the minimum safety distance. Moreover, at night, nearly all the positions would be used to park aircraft, thus preventing their temporary use as equipment parking areas.

1.2. Safety

The free parking procedure with radio guidance as practised in Stuttgart — i.e. with no guiding vehicle on the tarmac — would make it dangerous to park any equip-

ment too close to the aircraft positions, thus ruling out many potential parking positions.

Traffic on the tarmac is considered to be very dense, especially since all aircraft have to access the runway via the same point (K) ⁽⁴⁾.

Taking account of the number of aircraft needed to handle peaks in freight and passenger demand, including charters (Stuttgart is an important centre for holiday flights to southern Europe), the airport currently occupies an estimated 11 000 m² for groundhandling equipment. This calculation is based on the 'dynamic' area of the necessary equipment ('static' space occupied on the ground + 50 % for aircraft movements).

The German authorities nevertheless consider that account must be taken of the changes due to competition regarding the market shares of the current monopoly operator and the repercussions on its own equipment needs and hence the space required to park it.

Moreover, according to the German authorities, it is possible to release new space in the short term, namely:

- a triangular space of some 200 m² in the eastern area near the new fire station, which could be used for parking light equipment,
- certain spaces in the southern area which are or will shortly be freed by the US army, along with the associated grassed areas. Some of this space is currently used to park vehicles and store building materials. The space occupied by these materials will gradually become available as work progresses,
- finally, additional space may be released in June 1999 when taxiway M is moved.

2. Baggage handling problems

According to the dossier prepared by the airport and presented by Gleiss, Lutz, Hootz and Hirsch, partly rejected by the German authorities, baggage handling requires staff of eight drivers for Terminal 1, three for Terminal 2, and the following equipment: 165 trolleys, 21 tractors and 80 loaders. The study claims that the arrival of other operators would cause serious problems for the baggage sorting system. It is difficult to estimate how much equipment a new arrival would need, since it would depend on how many aircraft he had to handle. The study is based on a requirement, according to the type of aircraft, varying from one to 15, and an estimate of five to 10 therefore seems reasonable. The study makes no estimate, however, of the needs of new operator(s) according

⁽⁴⁾ Plan S 21 Flughafen Stuttgart GmbH 27/02/98.

to their customers — considering that to be impossible — only of transport equipment needs. A distinction is made according to whether the new operator uses only his own facilities (variant 1), his own drivers and tractors but rents trolleys from the airport (variant 2) or his own drivers but with airport tractors and trolleys (variant 3).

According to the indications in the presented dossier it would not be possible to allow several operators to use the baggage sorting building. The new operator(s) would therefore have to park outside at all times or at least be ready to receive baggage delivered by airport personnel. There is very little space at the outlet of the system as any waiting trolleys would block bus traffic on the service road. This would also reduce the space currently used by the airport and prevent proper handling of special (non-standard) and last-minute baggage.

Despite the study, the German authorities consider that in spite of the resulting problems for managing trolley traffic near the terminal, it would not be impossible to allow a second operator for baggage handling.

Therefore, according to the German authorities, in view of the space freed and the loss of market share by the current monopoly operator, sufficient space for a new services provider could be made available at the airport by 1 January 1999 without affecting quality of service or the expansion potential of the airport installations. The German authorities have also expressed a preference for a new service provider, advantageous for all carriers at the airport, rather than a user who would serve his own aircraft only.

III. REACTIONS OF THE INTERESTED PARTIES

The various interested parties have been asked to express their opinions following the publication of the notification from the German authorities in accordance with Article 9(3) of the Directive.

The airline associations tend to refute the German authorities' arguments. These associations state that increasing the number of operators would not necessarily increase requirements for parking space or buildings, since this

would depend mainly on the volume of traffic, and consider that better use of current space and a reduction in equipment used by the airport would allow parking space to be provided for the equipment. They add that space is still available in empty hangars and where winter equipment is currently stored. As regards baggage operations, the airlines acknowledge that there may be space problems in the baggage hall and say that they have accepted that trolley loading and unloading operations in the hall should be carried out by the airport. They do consider, however, that where there are no space problems for transport to or from aircraft, these operations should be opened up in accordance with the Directive.

IV. EVALUATION OF THE EXEMPTION IN THE LIGHT OF THE PROVISIONS OF DIRECTIVE 96/67/EC

1. The rules in force concerning groundhandling

1.1. *The scope for limiting access to the market*

Council Directive 96/67/EC provides for the market to be opened up to different extents as a function of the way groundhandling services that are provided (self-handling or service suppliers) and the level of traffic at the airport. With annual traffic of 6,4 million passengers in 1997, Stuttgart airport must, in accordance with Annex 5 to the *Verordnung über Bodenabfertigungsdienste auf Flugplätzen und zur Änderung weiterer luftrechtlicher Vorschriften*⁽⁵⁾ of 10 December 1997 transposing Directive 96/67/EC into national law, open up the market for groundhandling services for third parties to two users from 1 January 1998.

The general rules governing self-handling for the service categories listed in the German authorities' notification are set out in Article 7(2) of the Directive. Those rules have been incorporated into the provisions of paragraph 3(2) of the German regulations transposing the Directive. Under the terms of those various articles a Member State may restrict self-handling to two users. The latter must therefore be selected on the basis of relevant, objective, transparent and non-discriminatory criteria.

However, where specific space or capacity constraints, arising in particular from the rate of utilisation or of space occupation make it impossible to authorise self-handling to the extent provided for by the Directive, the Member State concerned may, on the basis of Article 9(1)(d), abolish that right or restrict it to a single user.

However, under Article 9(2) any such exemption must:

⁽⁵⁾ See footnote (3).

- specify the category or categories of ground handling services for which the exemption is granted and the specific constraints of available space or capacity which justify it,
- be accompanied by a plan of appropriate measures to overcome the constraints.

Moreover, pursuant to Article 9(2), it must not:

- unduly prejudice the aims of the Directive,
- give rise to distortions of competition,
- extend further than necessary.

Thus, as again pointed out by the Commission in its Decisions of 14 January 1998 on Frankfurt and Düsseldorf airports ⁽⁶⁾, the main aim of the Directive is to liberalise the groundhandling services market. The restrictions imposed on third parties consist of restrictions of freedom of such parties to provide such services. By analogy with the State measures restricting the freedom to provide services ⁽⁷⁾, the measures likely to exclude or prohibit the activities of service providers or, in the present instance, those of users wishing to self-handle, even if they apply without distinction to national service providers or users and to those in other Member States, must be justified by overriding public-interest requirements and not by economic factors and must, moreover, be in proportion to the aims pursued.

1.2. Procedure

The German authorities undertook to make the entry into force of the exemption decision subject to the Commission's decision.

As pointed out in its two decisions on the airports at Frankfurt and Düsseldorf ⁽⁸⁾, the Commission's examination must address:

- the existence and scope of the constraints justifying the exemption and the inability to provide openings to the extent provided for by the Directive; only space and/or capacity constraints may be taken into account;
- the plan of the appropriate action that is intended to overcome those constraints; that plan must be credible and unconditional and include a timetable for the implementation of those measures;

⁽⁶⁾ Commission Decisions 98/387/EC and 98/388/EC of 14 January 1998, OJ L 173, 18. 6. 1998, p. 32.

⁽⁷⁾ Judgments of 25 July 1991, *Médiateur*, [1991] ECR p. 4007 and C-76/90, *Säger*; *Dennemeyer*, [1991] ECR, p. 4221.

⁽⁸⁾ See Footnote (6).

- conformity with the principles of compliance with the aims of the Directive, absence of distortions of competition, and the extent of the measure referred to in Article 9(2) of the Directive.

Thus an exemption may not be granted with the objective of allowing the airport a further general adaptation period in addition to that already granted by Article 1 of the Directive. It must permit the airport to overcome the specific constraints which it may encounter when the market is opened up. Any exemption must therefore be examined in the light of the specific constraints put forward in justification of the impossibility of opening up the market within the time allowed. In addition, in accordance with the case law of the Court of Justice of the European Communities, any exception must be interpreted strictly and when the scope of an exemption is determined this must take account of the purpose of the measure in question.

It is in the light of these considerations that this exemption has to be examined.

In accordance with Article 9(4) of the Directive, the Commission has made a detailed analysis of the alleged space and capacity constraints, whether the decision taken is appropriate to those constraints, and the measures put forward to overcome them. Its examination drew upon the studies provided by the German authorities, and upon the visit that it made to Stuttgart airport on 24 August 1998 and, finally, benefited from the technical assessment made at its request by Symonds Travers Morgan.

2. Examination of the constraints referred to by the German authorities

2.1. Available space

Stuttgart airport currently has 39 aircraft parking positions, 18 of which require the use of pusher tugs (TIPO positions). The Commission experts observed that it was quite feasible to park equipment at the head of aircraft in these positions. The airport's argument that radio guidance of aircraft to their positions prevents parking of equipment for safety reasons is unacceptable since this is common in many international airports and poses no particular problem. This problem can be solved by clear marking of parking places and supervision to ensure proper safety of the aircraft position when the aircraft arrives — normal safety procedures at many airports with nose-in parking.

The standards and recommended practices of the International Civil Aviation organisation — and mainly Annex 14 of the Convention on international civil aviation — on which are based the national recommendations concerning aircraft stands provide, for the various types of aircraft, the space to be reserved as safety areas, but also for the purpose of parking the equipment. According to the expertise requested by the Commission, because of the type of aircraft to be accommodated, a space of 10m by 6m could be freed on either side of the nose of the aircraft. On this basis, on the 18 stands located on the northern side of the airport (stands TYPO), a surface of 2 100 m² could accommodate the equipment for these stands alone.

In 21 positions, however, aircraft can manoeuvre alone without assistance from pusher tugs. It is not therefore possible to park equipment around these positions. On the other hand, operations require less equipment; besides buses for passengers, only gangways and starter units are needed.

It is also acknowledged that many aircraft park on the tarmac overnight and that this contributes to some congestion early in the morning. The aircraft take a relatively short time to leave the airport, however, and all groundhandling equipment is in use during this peak period. It does not therefore seem impossible to part equipment overnight near the aircraft positions.

It should also be noted that, from late 1998, the airport will gain an additional gate parking position, followed, but not before the end of the works, by a further four, which should allow space to be freed for parking equipment on remote positions, even temporarily during the day, without adversely affecting the airport's current capacity.

As regards the claim that it was not possible to estimate the impact of the arrival of new operators, most airports have done so, and especially those which have been the subject of an exemption decision, on the basis of various possible scenarios regarding potential operators. Furthermore, the airport has provided quite detailed information regarding the consequences of opening up the baggage system. Thus there is no reason why the same exercise should not be carried out for other groundhandling operations.

Again, comparison with other airports experiencing overcrowding problems shows that the fact that the airport is coordinated at presented does not automatically mean that the market cannot be opened up to the extent provided for by the Directive.

Since, in application of the German authorities' decision, a second service provider will be allowed to operate in the airport from 1 January 1999, the survey requested by the Commission assessed the potential impact of the arrival of a self-handling user.

The German regulation transposing the Directive has adopted the size, in decreasing order, of the traffic volume — whether passengers or freight — handled by the user at the airport as one of its objective criteria for selecting users who could be authorised to self-handle if they were limited in number.

If Lufthansa, the main airline at the airport, were to opt for self-handling, there would be a major impact on groundhandling owing to the number of Lufthansa flights using the airport, as it could handle its own aircraft and those of its subsidiary, Condor. The amount of additional equipment required can be estimated by examining the flight timetable. Account must be taken of the fact that, in general terms, operator proliferation causes an increase in equipment requirements since each operator then has to cater for its own peaks, which do not necessarily coincide with those of the airport as in the case of a single operator. On the other hand, the monopoly operator needs less equipment due to the loss of some of his customers.

In view of the number of Lufthansa flights using the airport, it can be estimated that if Lufthansa were to self-handle, the airport would need almost 30 % less equipment. However, taking as a basis the busiest time of day, 10 of the 18 flights handled simultaneously at the airport are Lufthansa flights. Lufthansa would need the equivalent of almost 55 % of all the equipment used on the airport at that time. It would therefore seem that 25 % (55 %-30 %) more space would be needed, in view of Lufthansa's flight timetables, ignoring the fact that a new service provider could also be operating from January.

Given the needs set out in the study supporting the German authorities' dossier, this would correspond to additional space of almost 2 750 m². This need could be satisfied with the available space referred to above, in addition to that mentioned by the German authorities, combined with better use of space at the head of aircraft.

Were a carrier other than Lufthansa, such as Deutsche BA, the second biggest carrier in terms of traffic, to apply for self-handling, some 15 % extra would be needed at the busiest time of its flight timetable. It should not be impossible to meet this need with the space identified above.

The German authorities have not therefore demonstrated that no user wishing to self-handle can be allowed in the airport. On the other hand, it does not seem to be possible to accept a second user and thus satisfy in full the requirements of the Directive and the German regulation on self-handling.

2.2. *Baggage handling*

Baggage routing is one of the main points of the exemption and the companies that reacted to the notification acknowledge the difficulties with the baggage delivery system. An association of carriers refers to an agreement between carriers to the effect that, owing to the limited space in the baggage sorting room, loading and unloading between the belt and the trolleys should be carried out only by the airport.

It has to be acknowledged that this room is small and, at times, congested. The same applies to the requirement to limit incoming traffic owing to capacity problems.

Baggage is recovered manually from the conveyor belt, and not by chutes with automatic baggage recognition. It is placed on waiting trolleys destined for particular flights. This is the task that carriers have decided to leave to the airport personnel owing to the lack of space along the belt and the manual baggage recognition system.

On the other hand, it does not matter very much how many operators handle the carriage of baggage from the system to the aircraft as long as the flow of trolleys is carefully controlled. Within the baggage handling hall the total number of trolleys needed at any particular moment depends not on the number of operators but rather on the number of flights to be serviced. Strict control of trolley flow and of the number of trolleys allowed into the areas, accepting only the number of trolleys required for handling operations at that time, would avoid congesting the baggage transfer hall. Baggage is managed in this way at airports already open to competition, as the airport is naturally entitled to impose administrative and supervisory rules on all operators in order to ensure that the system operates smoothly. It has not therefore been shown that it is impossible to allow another operator into the baggage sorting building.

It must nevertheless be acknowledged that the proliferation of operators makes it harder to manage them and the movements of their trolleys. Such flow control is fundamental and any weakness in its operation could reduce the overall efficiency of the airport. Efficient flow control can only be achieved if there are no problems upstream or downstream of the baggage sorting system. Yet, in the

case of Stuttgart airport, the problem is caused by the lack of space for waiting trolleys in front of the doors of the system. The entrance to the baggage system is actually located between the doors where passengers arrive, along the bus lanes. Moreover, these doors are very close together and front-loading buses have to be used. Trolleys cannot therefore be allowed to wait here in large numbers and they could not be parked nearby for another user in addition to the second service provider allowed for in the German authorities' decision.

It is because of this problem of parking near the system, rather than because of a problem inside the building, that we acknowledge that a self-handling user could not be allowed in addition to two operators providing ground-handling services for third parties from January 1999.

However, as stated above, it has not been demonstrated that a self-handling user could not be allowed to operate on the other parts of the airport, especially for aircraft-side operations. The refusal to accept a user loading and unloading his own baggage at the aircraft cannot therefore be accepted.

3. **Measures planned**

In accordance with the provisions of Article 9(2) of the Directive, the German authorities must present a schedule of appropriate measures designed to overcome the constraints cited.

An expansion and renovation plan has been adopted by the airport management body, involving extending Terminal 1 and rebuilding Terminal 3; this work will allow four new gate parking positions to be created in place of the present hangar, which will serve as a terminal as soon as work begins on Terminal 3. A rail link to ICE train services is also planned. Finally, the freight area is to be completely reorganised.

A plan to extend the airport site has also been presented but has aroused considerable controversy.

There are plans for a new hall to park groundhandling equipment.

Moreover, there will be space for groundhandling equipment in the new freight centre to be built on land in the southern area to be freed by the US army. The dossier presented in support of the German authorities' notification includes an assurance that enough space will be cleared there to enable the groundhandling services market to be fully opened up by early 2001.

The work should be completed by the end of 2000 and the airport will in any case open the hall for storing groundhandling equipment by that date. Similarly, the construction of the new terminals will allow baggage handling operations to begin in accordance with the provisions of the Directive.

4. Compliance with the criteria of Article 9(2) of the Directive

As regards the conformity of the exemption with the principles set out in the Directive, Article 9(2) states that the exemption must not extend further than necessary.

As regards the duration of the exemption, the work schedule shows that it will not be possible to open up the market to the minimum extent required by the Directive, i.e. to two service providers and two self-handling users, before the work is completed, namely at the end of 2000. The duration requested therefore seems to be proportional to the applicable constraints. Regarding the extent of the measure, on the other hand, the notification contains an exemption that is broader than necessary, firstly for prohibiting any self-handling users and secondly for extending the prohibition to operations for which the necessary space could be allocated.

V. CONCLUSION

Stuttgart airport does not have structural space and capacity problems that prevent any opening-up of the groundhandling services market. The decision of the German authorities also limits exemption to the prohibition of self-handling operations. However, with the exception of operations involving the transport of baggage between the aircraft and the airport, the German authorities have not demonstrated that no user wishing to self-handle can be admitted at the airport. On the other hand, the space available means that no more than one self-handling user can be admitted for the other operations covered by the exemption.

The exemption presented by the German authorities should therefore:

- prohibit self-handling solely for baggage-handling operations between the aircraft and the air terminal (part of point 5.4 of the Annex to the Directive),
- limit self-handling to a single user for all the other operations mentioned in the notification received by the Commission on 3 August 1998,

HAS ADOPTED THIS DECISION:

Article 1

The Decision of 23 July 1998 to grant an exemption to Stuttgart airport, as notified to the Commission on 3 August 1998, is hereby approved by the Commission provided that the Federal Republic of Germany amends it as follows:

- prohibit self-handling until 31 December 2000 for baggage transport between the air terminal and the aircraft as defined in point 5.4 of the Annex to the Directive,
- limit self-handling to a single user until 31 December 2000 for the activities referred to in points 4, 5.5, 5.6 and 5.4 of the Annex to the Directive with regard to loading and unloading the aircraft and the transport of passengers between the air terminal and the aircraft.

Article 2

The Federal Republic of Germany shall notify the Commission of the exemption decision amended in accordance with Article 1, before it enters into force.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 30 October 1998.

For the Commission

Neil KINNOCK

Member of the Commission

COMMISSION DECISION

of 30 October 1998

on the application of Article 9 of Council Directive 96/67/EC to Cologne/Bonn airport (Flughafen Köln/Bonn GmbH)

(notified under document number C(1998) 3336)

(Only the German text is authentic)

(Text with EEA relevance)

(98/631/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports⁽¹⁾, and in particular Article 9(5) thereof,

Having regard to the request for approval of the decision of the German authorities of 30 July 1998, and after consultation of those authorities,

After consulting the Advisory Committee,

Whereas:

I. SCOPE OF THE EXEMPTION NOTIFIED BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

1. The notification presented by the German authorities

By letter of 30 July 1998, received by the Commission on 3 August 1998, the German authorities notified a request to approve the decision of the Government of the Federal Republic of Germany of 23 July 1998 to grant to Cologne/Bonn airport (Flughafen Köln/Bonn GmbH) an exemption to:

- limit self-handling to a single user for the categories of services listed under points 3 and 4, with regard to the physical handling of freight and mail whether incoming, outgoing or being transferred, between the air terminal and the aircraft, and point 5.4 (excluding the transport of crew) of the Annex to the Directive. This exemption is granted, on the basis of Article 9(1)(d) of the Directive, until 31 December 1999.

Pursuant to Article 9(3) of the Directive, the Commission published an extract from the said notification in the

Official Journal of the European Communities⁽²⁾ and invited interested parties to submit comments.

In accordance with Article 9(5) of the Directive, the German Government was consulted by the Commission on the Commission's draft evaluation on 24 September 1998. The German authorities responded to this consultation with written comments dated 30 September and 1 October 1998.

Basis of the exemption

The general rules for access to the groundhandling services market are set out in Articles 6 and 7 of the Directive. These provisions clearly state the principle that most categories of groundhandling services should be opened up to the maximum possible extent. For an airport with a volume of traffic like that of Cologne/Bonn the Directive provides for recognition of the right to self-handle as from 1 January 1998 and opens up the handling market to third parties as from 1 January 1999. However, because of the specific situation and role of an airport, and in particular constraints of safety and security, but also space and capacity, which can arise in certain parts of most airports, the Directive does not impose total freedom but requires a minimum degree of opening up of both self-handling and services to third parties for four categories of services located air-side, i.e. in a particularly sensitive area of the airport. These categories concern ramp handling, baggage handling, fuel handling and certain freight and mail handling operations.

Council Directive 96/67/EC also takes account of the fact that, in certain very special cases, severe space and capacity problems prevent the opening-up of the market to the degree provided for. In such cases, exemptions may be granted on a temporary basis to give the airports the time to overcome the constraints. These exemptions can therefore be only exceptional in nature and are not intended to automatically give airports an extra transitional period in addition to that already provided for in Article 1 of the Directive.

⁽¹⁾ OJ L 272, 25. 10. 1996, p. 36.

⁽²⁾ OJ C 267, 26. 8. 1998.

An exemption can be granted only on the basis of specific space or capacity constraints. This is the basis on which the German authorities have granted the above-mentioned exemption in accordance with Article 3 of the German *Verordnung über Bodenabfertigungsdienste auf Flugplätzen und zur Änderung weiterer luftrechtlicher Vorschriften*⁽³⁾ of 10 December 1997 transposing Directive 96/67/EC into national law.

2. Situation regarding handling at Cologne/Bonn airport

2.1. Presentation of the airport

Cologne/Bonn airport is 15 km to the south of Cologne. It has three runways (two parallel ones and a transversal one, the longest being 3 800 metres in length) and can receive long-haul traffic. It is owned and operated by Flughafen Köln/Bonn GmbH.

The airport has:

- a passenger terminal with two piers (B and C) each with six gate parking positions. Traffic is increasing rapidly, with 5,3 million passengers in 1996, 5,6 million in 1997 and 8,3 million forecast for 2000. The terminal was built in the 1960s and opened to traffic in 1970 for a capacity of 4 million passengers. Several extensions and adaptations of the buildings have been necessary to deal with the increase in traffic. In 1996 the decision was taken to build a new terminal (Terminal 2) as an extension of the present terminal, which should make possible an additional capacity of 6 million passengers per year; this will bring the total capacity to 14 million when the new terminal is opened in 2000, making it possible to cope with demand up to and beyond 2010;
- a large freight area parallel to the main runway which has seen an appreciable growth in the amount of freight handled, with 351 000 tonnes in 1996 (freight and mail), 400 000 tonnes in 1997 and nearly 640 000 tonnes forecast for 2000.

The airport has been fully coordinated since 1997, in particular due to capacity problems in the passenger terminal, and its runway capacity is currently 52 movements per hour during the day and 36 during the night. With alterations to the runways and taxiways this should make it possible to meet demand at least up to 2005. The airport is, however, having problems with the local population as regards noise and imposes very high taxes on aircraft that are not classified as Chapter 3.

⁽³⁾ Bundesgesetzblatt 1997 Teil I Nr 82, 16 Dezember 1997, 2885.

2.2. Groundhandling services at the airport

Some groundhandling operations are already open to competition with several service suppliers and users self-handling. This applies to ground administration (point 1 in the Annex to the Directive) (12 users and seven service suppliers self-handling), passenger handling (point 2) (five users and seven service suppliers), freight handling (point 4.1) other than operations between the aircraft and the terminal, certain air-side operations (points 5.3 and 5.7) and crew transport (part of point 5.4), aircraft services (point 6), fuel and oil handling (point 7), aircraft maintenance (point 8) and flight operations (point 9).

Surface transport as described in point 10 of the Annex does not apply since there is only one terminal, and catering services (point 11) are open to two service suppliers.

On 1 January 1999 all services will be opened up in accordance with the Directive and German legislation on services to third parties. The exemption granted by the German authorities therefore concerns self-handling only and allows only one user to be present and not a minimum of two as the Directive requires. It is also limited to baggage handling (point 3), the loading and unloading of the aircraft, the transport of passengers and baggage between the aircraft and the terminal (part of point 5.4) and freight and mail handling (point 4).

II. CONSTRAINTS REFERRED TO BY THE GERMAN AUTHORITIES

The exemption granted by the German Government is based principally on the space problems which the airport will face when the groundhandling market is opened up on 1 January 1999. This opening up of the market will coincide with the extension work planned for the airport, consisting in the construction of a rail link and Terminal 2. The German authorities consider that the space available on 1 January 1999 will allow for a second service supplier, in line with the German legislation transposing the Directive, as well as the user's right to self-handling, but will not permit the presence of a second self-handling user because of the extension work.

They base their arguments in particular on the study 'Kapazitätsauswirkungen für den Flughafen Köln/Bonn bei Zulassung weiterer Abfertiger auf dem Vorfeld für den Zeitraum von 1997 bis 2003' of 30 May 1997 conducted by the Fraunhofer Institut für Materialfluss und Logistik at the request of the Cologne/Bonn airport managing body.

1. The Fraunhofer study

Generally speaking, the study carried out by the Fraunhofer Institut highlights the fact that despite the airport's fairly large total area of nearly 1000 ha the operational area available is quite small due to statutory building restrictions. The study shows that groundhandling operations are already difficult to carry out satisfactorily with only the airport managing body supplying the services concerned to third parties.

With the large amount of equipment and number of vehicles required the airport is already obliged to use the groundhandling areas to their capacity.

According to this study it will no longer be possible to use the airport's aircraft parking areas for parking groundhandling equipment. Not only are there a large number of aircraft using the tarmac for overnight parking - particularly around the passenger terminal as a stopover area and near the cargo buildings for the night time operations of groupage services with peak times between 2 and 3 a.m. — but it is also necessary to extend handling operations to cargo aircraft on spaces normally used for groundhandling services for passenger aircraft close to the passenger terminal. In addition, the airport has to close runway 14R32L (a short parallel runway to the south) for parking and servicing a dozen Fokker-type aircraft.

During the day, on the other hand, part of this runway has to be used for parking groundhandling equipment.

According to the Fraunhofer Institut study the current shortfall in parking space for groundhandling equipment is estimated at 3 172 m² static area (for parking alone) and 4 346 m² dynamic area (including the area needed for manoeuvring the equipment) if the groundhandling services are supplied on areas reserved for this type of operation. The shortfall will therefore be filled, according to the Fraunhofer study, only by using a large number of aircraft spaces. This general overloading, which is likely to persist until the completion of the work on the tarmac of the future Terminal 2, i.e. in principle by mid-1999 and certainly by the End of 1999 for opening to passengers in March 2000, means that the areas in question can only be used to the limit of what is tolerable and acceptable under the safety standards.

The simulations made by the Fraunhofer Institut in the context of opening up the market take account of the close connection between the number of operators — suppliers or self-handling users — and the amount of equipment and the number of vehicles needed. The study

stresses that each operator must have equipment in sufficient quantities for his own needs, including during peak periods, and to meet the requirements of his contract and that these peaks vary over time as a function of the customers handled and do not therefore necessarily correspond with the airport's peaks: According to the study, admitting suppliers or self handling users under the conditions required by the Directive would mean a shortage of space of 9 420 m² static area and 12 908 m² dynamic area and an area of this size could only be freed up by closing aircraft spaces.

2. Position of the German authorities

In their notification of 3 August 1998, the German authorities stated that the amount of handling equipment at the airport was both necessary and sufficient to meet the needs of the carriers and thought that it was none the less possible to free up an area of around 2 600 m² currently used to store unused equipment. On the other hand, the reduced area needed by the airport for its own handling operations due to its loss of market share as a result of opening up to competition should also be taken into account. Added to that, according to the German authorities, is the area freed by TNT when the airline left Cologne/Bonn for Liège at the end of February 1998. This area of around 8 000 m² in office space and 2 000 m² in handling area should, according to the airport authorities, be distributed between the other two groupage services, DHL and UPS, although the airport is aware of liberalisation measures and all that these entail. The German authorities point out, in contrast, that priority for this area must go to the minimum opening-up of the market required by the regulation. They also take the view that it is possible to build or organise parking areas for the handling equipment at least on the periphery of the new west freight area which will be ready in its initial phase as from the autumn of 1998. This area is intended for freight operations whose peak periods are in the middle of the night. The handling equipment could thus be parked on the area itself during the day.

According to the German authorities, the C area, which has five aircraft spaces, is only half used, and even though the use of this C area is temporarily restricted by work on the future Terminal 2, the German authorities still feel that it is possible to park equipment or vehicles there at least until Terminal 2 is opened. By then new areas will have been freed and parking handling equipment should no longer pose any problems.

Finally, a parking area could be used for light equipment, at least temporarily, near the area for parking small aircraft (GAT 3) next to the area reserved for buses.

All this temporary allocation of space can be regularised once the area for the future Terminal 2 is ready, i.e. from the summer of 1999 if everything goes to plan and at the end of 1999 whatever the event.

The German authorities therefore take the view that, given the areas mentioned above, which can be freed up immediately by the airport, a second supplier can be admitted and the conditions concerning groundhandling services for third parties met, as imposed by the German regulation '*Verordnung über Bodenabfertigungsdienste auf Flugplätzen und zur Änderung weiterer luftrechtlicher Vorschriften*' transposing the Directive and in particular the annex giving the number of service providers authorised at the airport for the operations covered by this notification.

This freed space also allows for the arrival of a new self handling user, but, according to the German authorities, it would not allow for the installation of a second user for the same type of activities before the end of 1999 when the end of work on the area around the future Terminal 2 will free up sufficient space for opening up in line with the requirements of the Directive.

III. REACTIONS OF THE INTERESTED PARTIES

The various interested parties have been asked to give their opinions following the publication of the notification from the German authorities in accordance with Article 9(3) of the Directive. The airlines that have submitted their opinions refute the claims of the German authorities, contesting in particular the requirements set out in the Fraunhofer study for the arrival of an extra supplier or user. The airlines are particularly critical of the estimate made in this study of 9 420 m² static area for the requirements of each new operator, given that at London Heathrow KLM Groundservices handle 19 flights a day with 6 000 m² and at Frankfurt Delta self handles 15 flights a day, most of them over a short period, with 6 000 m² for equipment and 2 000 m² for personnel. They also point out that in preparing for the increase in traffic in the years ahead, especially with the construction of new terminals, the airport is bound to have included the organisation of ancillary services in its projects and thus room for proper handling management, the need for space being measured as a function of requirements, not the number of parties involved. These airlines take the view, finally, that grouping general aviation together and optimising equipment parking areas would free up the extra space. Similarly, according to these airlines, the

configuration of baggage-handling areas permits the arrival of new operators.

IV. EVALUATION OF THE EXEMPTION IN THE LIGHT OF THE PROVISIONS OF DIRECTIVES 96/67/EC

1. The rules in force concerning groundhandling

1.1. The scope for restricting access to the market

Council Directive 96/67/EC provides for the market to be opened up to different extents as a function of the way groundhandling services that are provided (self-handling or service suppliers) and the level of traffic at the airport. With an annual throughput of 5.4 million passengers in 1997 Cologne/Bonn airport must, in pursuance of Annex 5 to the '*Verordnung über Bodenabfertigungsdienste auf Flugplätzen und zur Änderung weiterer luftrechtlicher Vorschriften*' of 10 December 1997 transposing the Directive into German law, open up the groundhandling market for third parties to a second supplier from 1 January 1999 and permit two users to self-handle from 1 January 1998.

The general rules governing self-handling for the service categories listed in the German authorities' notification are set out in Article 7(2) of the Directive. Those rules have been incorporated into the provisions of paragraph 3(2) of the German regulations transposing the Directive. Under the terms of those various articles a Member State may restrict self-handling to two users. The latter must therefore be selected on the basis of relevant, objective, transparent and non-discriminatory criteria.

However, where specific space or available capacity constraints, arising in particular from the rate of utilisation or of space occupation make it impossible to authorise self-handling to the extent provided for by the Directive, the Member State concerned may, on the basis of Article 9(1)(d), abolish that right or restrict it to a single user.

However, under Article 9(2) any such exemption must:

- specify the category or categories of groundhandling services for which the exemption is granted and the specific constraints of available space or capacity which justify it,
- be accompanied by a plan of appropriate measures to overcome the restraints.

Moreover, pursuant to Article 9(2), it must not:

- unduly prejudice the aims of the Directive,
- give rise to distortions of competition,
- extend further than necessary.

Thus, as again pointed out by the Commission in its Decisions of 14 January 1998 on Frankfurt and Düsseldorf airports ⁽⁴⁾ the main aim of the Directive is to liberalise groundhandling services in transit. The restrictions imposed on third parties consist of restrictions of freedom of such parties to provide such services. By analogy with the State measures restricting the freedom to provide services ⁽⁵⁾, the measures likely to exclude or prohibit the activities of service providers or, in the present instance, those of users wishing to self-handle, even if they apply without distinction to national service providers or users and to those in other Member States, must be justified by over-riding public-interest requirements and not by economic factors and must, moreover, be in proportion to the aims pursued.

1.2. Procedure

The German authorities undertook to make the entry into force of the exemption decision subject to the Commission's decision.

As again stated in its two decisions on the airports at Frankfurt and Düsseldorf ⁽⁶⁾, the Commission must have its examination directed towards:

- the existence and scope of the constraints justifying the exemption and the inability to provide openings to the extent provided for by the Directive; only space and/or capacity constraints may be taken into account,
- the plan of the appropriate action that is intended to overcome those constraints; that plan must be credible and unconditional and include a timetable for the implementation of those measures,
- conformity with the principles of compliance with the aims of the Directive, absence of distortions of competition, and the extent of the measure referred to in Article 9(2) of the Directive.

Thus an exemption may not be granted with the objective of allowing the airport a further general adaptation period in addition to that already granted by Article 1 of the Directive. It must permit the airport to overcome the specific constraints which it may encounter when the market is opened up. Any exemption must therefore be examined in the light of the specific constraints put forward in justification of the impossibility of opening up the market within the time allowed. In addition, in accordance with the case law of the Court of Justice of the European Communities, any exception must be interpreted strictly and when the scope of an exemption is

determined this must take account of the purpose of the measure in question.

It is in the light of these considerations that this exemption has to be examined.

In accordance with Article 9(4) of the Directive, the Commission has made a detailed analysis of the alleged space and capacity constraints, whether the decision taken is appropriate to those constraints, and the measures put forward to overcome them. Its examination drew upon the file provided by the German authorities, and upon the visit that it made to Cologne/Bonn airport after the notification and, finally, benefited from the technical assessment made at its request by Symonds Travers Morgan.

2. Constraints referred to by the German authorities

2.1. Introduction

The on-the-spot inspection by the Commission's departments and the expert assessment carried out at its request confirm that Cologne/Bonn airport is the location of two clearly distinct types of operation. During the day these concern the carriage of passengers from the passenger terminal and from some positions on the freight tarmac. During the night several aircraft are parked on those various positions. The freight tarmac is thus almost entirely occupied for freight and mail operations.

Aircraft link up with the two passenger terminal piers via a multi-position system which enables various types of aircraft to be received. It also enables certain types of equipment such as airport tugs to be dispensed with. Conversely the space available for receiving the other types of handling equipment is limited.

The apron in front of the freight terminal also permits quasi-contact (nose-in) parking which requires the use of pusher tugs on departure, and also several distant positions where the aircraft themselves may manoeuvre, when departing.

It is clear that, where possible, the search for space for handling equipment and operations must, first and foremost, be made close to the aircraft, i.e. near the terminals. However, this is only a matter of priority. The Directive provides that the Member-State authorities must show that it is impossible to open up the market to the level required. The Member State must demonstrate the lack of space for parking equipment and carrying out the operations intended without specifically setting quality criteria for each of the positions.

⁽⁴⁾ Commission Decisions 98/387/EC and 98/388/EC of 14 January 1998, OJ L 173, 18. 6. 1998, p. 32.

⁽⁵⁾ Judgments of 25 July 1991, Médiawet, [1991] ECR p. 4007 and C-76/90, Sager: Denemeyer, [1991] ECR, p. 4221.

⁽⁶⁾ See in particular judgments of 20 April 1978, joined cases 804 81/77 (1978) ECR 927, p. 945, and of 25 June 1992, British Gas, C 116/91 REC PI-4071, point 12.

2.2. *Space and capacity constraints*

While being aware that there are significant peak periods at the airport (in the morning and in the late afternoon as regards passengers and between 10 p.m. and 3 a.m. for freight operations) the Commission nevertheless feels that the German authorities did not demonstrate that all of the space currently available was in use.

(a) The available space

It is true that during the night-time peak period around 1 or 2 a.m. in the morning the number of aircraft parked for the night exceeds the number of parking positions at the airport. Indeed, for the last two years runway 14L32R has been closed at night in order to enable a dozen Fokker aircraft to park there. However, it has not been proven that, although unsatisfactory, that closure constituted a major operating obstacle for the airport, and nor did it make it impossible to open the market up to the extent provided for by the Directive. That system could, moreover, be maintained throughout the work on the airport, i.e. during the period corresponding to the exemptions. If the air transport authorities were to prohibit the use of the runway for parking aircraft, in the opinion of the German authorities the positions would be transferred to the west freight tarmac. Even in this case, such use of the tarmac would not prevent equipment from being parked around the area itself or on its extension.

The standards and practices recommended by the International Civil Aviation Organisation (ICAO) provide for the provision of space on aircraft positions reserved for safety requirements and equipment, depending on the type of aircraft in question. The inspection visit to the facilities while all of the aircraft positions were occupied i.e. around 1.30 a.m. showed that even at that time a substantial amount of space was still available for parking handling equipment around point F02 (Lageplan (layout plan) 04/11/97) near the DHL company's hangers and also ahead of the large-capacity aircraft in zone F. In addition, during the peak period most of the handling equipment is in use and thus does not need to be parked.

The same applies around the passenger terminal which receives aircraft for the night. It may be felt that parking equipment close to the aircraft was not a problem during the stopover periods, since in addition that equipment had to be used during the early-morning departures.

Furthermore the freight area is almost deserted during the day and certain aircraft positions could be used for handling equipment. Those places could be made avail-

able during the evening since the equipment is then in operation.

It can be seen from these inspections that the space additional to that mentioned by the German authorities in the notification received by the Commission can be made available for parking handling equipment close to the aircraft positions in zone F, in front of the aircraft and, at night, close to the passenger terminal.

Furthermore, as shown by the file handed over by the German authorities, the new west freight area must be ready for use from the autumn of 1998. That 40 000 m² area was planned to receive Fokker aircraft and equipment. The planning also involves the building, in the medium term, of additional freight facilities along that area. The same applies to the back-up areas extending from the new west freight area.

As pointed out in its decision on Frankfurt airport (7), the Commission feels that the aim of the Directive means that only the constraints mentioned in Article 9, which in themselves are barriers to opening up the market, may form a basis for an exemption in that this cannot include the constraints produced by the airport itself. In the decision of 23 July 1998 the German authorities themselves applied that rule by pointing out that the airport could not reduce the available amount of space that was needed to implement the Directive by assigning the premises and spaces left vacant by the departure of the TNT company to other purposes. It was thus pointed out as regards Frankfurt that it was not the lack of space in itself that would make the market opening impossible, but it was in the main the use to which the airport decided to put the areas which were to become available that could cause problems if any further operator were to arrive. This would depend upon the extent to which the additional space identified by the Commission's inspection, and referred to above, proved to be inadequate.

(b) Space requirements

The scope of the German authorities' exemption is restricted to self handling by a second user.

The size of the traffic volume handled by the user at the airport, whether passengers or freight, and in decreasing order, is one of the objective criteria for selecting users who could be authorised to self-handle if they were limited in number. In view of the German authorities' decision of 23 July 1998, of which the Commission has been notified, it can thus be considered that the biggest user in terms of traffic volume already has the right to self-handle and that, when examining the exemption introduced by the German authorities, account must be taken of the impact on equipment and space needs arising from the self-handling by the second biggest user at the airport, or by the third or fourth if the preceding users are not interested.

(7) See footnote 5.

On the basis of the flight schedules passed on by the airport authorities it emerges that if that second user were a passenger carrier it would, as part of its self-handling, deal with almost 17 flights per day with a single peak of four simultaneous flights. Basing oneself on the fact that this carrier will continue to use small-capacity aircraft during 1999 — the period intended to be covered by the exemption — the equipment needed for that number of flights could easily be parked in the positions referred to above. The equipment needs at passenger-terminal level are indeed often limited to light equipment (trolleys, starter units), and mobile equipment (gangways and buses for distant positions); most of these positions do not need any pusher tugs. However, if the carrier were to use larger aircraft with more substantial equipment the additional appliances could be parked ahead of the freight positions or by transferring some of the trolleys to the approaches to area D.

If the second operator were one of the groupage operators at the airport the extra space requirement would be minimal since the equipment could be parked on the tarmac apron allocated to it, which is free during the day and would be in use during the night.

The German authorities' notification does not point to any particular problem as regards the need for premises. Moreover, a user who is self-handling generally has premises available at the airport and could make do with those already allotted to him. This could more particularly apply to the groupage operators at the airport. If there were any extra need use, even if only temporary, could be made, in particular, of certain premises in the freight area which are currently empty.

Finally, the part of the exemption relating to item 3 of the Annex to the Directive, namely baggage handling, requires special attention. At that level, indeed, the proliferation of operators could have a major impact on the proper functioning of the airport as a whole. It is true that, in general terms, operator proliferation causes an increase in equipment and space requirements. However those requirements do not correspond to those during the airport's peak periods — as is the case where there is an operations monopoly — but to those during the peak periods of each of the operators in order that these may meet their customers' needs. However, that increase is offset by the monopoly holder's loss of market share, or that of the other operators and thus of equipment and space for parking that equipment, as in any case pointed

out by the German authorities in their decision of 23 July 1998.

In this particular case it was pointed out that the airport had enough spaces available to receive a second user. Equipment parking is thus not a barrier to the implementation of the Directive. Moreover some of the baggage trolleys are already parked on standby outside the distribution building behind positions A11 — A15⁽⁸⁾. Extra space behind positions A17 — A25 may be allotted to empty trolleys that are parked on standby. As it happens that space was completely unoccupied during the Commission experts' inspection during a part of the day when the lack of activity should have left the trolleys parked together and when the positions should normally have been occupied.

The baggage-handling system consists of automatic chutes where one or several chutes are allocated in the light of the flights handled, and of trolleys parked in front of those chutes. In general terms the number of trolleys standing before the chutes at a given point in time varies not as a function of the number of operators — i.e. service providers or self-handling users — but of the number of flights handled, namely about 50 per day. Conversely the problem may arise from the management of those trolleys within the building. The latter has a central baggage arrival point discharging into the chutes that are arranged in two parallel lines. The trolleys are guided along two parallel lines, each in one direction only. A comparison with other airports and the number of flights handled per day shows that the operators monopoly does not seem essential. Tight management of the trolley flows, such as takes place in airports that are already open to competition, would enable an excessive number of trolleys waiting in the building to be avoided since, as already stated above, these could be placed outside. It is one of the functions of the airport management to ensure that all airport activities are carried out properly. The airport possesses the powers to ensure compliance with certain rules of conduct and in particular to ensure that the number of trolleys present does not exceed requirements at a given moment. The airport may not cite constraints arising from its own management. As the Commission pointed out in its decision on Frankfurt airport the inability to open up the market must be due to a factor that is independent of the one cited.

The German authorities have thus not demonstrated that it is impossible to open the market up to the extent required by the Directive.

3. Measures planned

Article 9(2) of the Directive provides that all Member-State decisions must be accompanied by a schedule of appropriate measures that are intended to overcome the constraints cited. In 1996 the airport decided to build a new passenger terminal (Terminal 2), with the corresponding aircraft handling areas which will enable the

⁽⁸⁾ Lageplan 04/11/97 Abbildung 3 (Layout plan 04/11/97, Figure 3).

demand in the years ahead to be met via an additional capacity of six million passengers. A railway line passing under the future terminal, with a stop at that point, is also planned. The new terminal should be open to the public in the spring of 2000. This work is accompanied by the building of new parking areas enabling operating and equipment-storage areas amounting to almost 15 000 m² to be released. The airport would reserve these in order fully to meet the needs of the new service providers from the beginning of 2000 onwards.

However, since in terms of this exemption the constraints cited by the German authorities have not been proven, it is not necessary to examine in closer detail the action described by the airport in order to overcome those constraints.

Likewise, the absence of genuine constraints makes any examination of the proportionate nature of the action, as specified by Article 9(2) of the Directive, pointless.

V. CONCLUSION

The increase in traffic and the resultant extension of the airport's installations and capacity have caused Cologne/Bonn airport, quite naturally, to construct new check-in installations and thereby to reduce the areas available at certain points, including that for the groundhandling equipment. However, the available areas referred to in this decision, which are additional to those described by the German authorities, have proved to be adequate for the self-handling needs of a second user at the airport. Conse-

quently, the German authorities have not demonstrated that it was necessary to delay the arrival of a second user until 1 January 2000. They have therefore failed to demonstrate that it is impossible to open up the market to the extent provided for by the Directive for the operations referred to in the notification recorded by the Commission on 3 August 1998,

HAS ADOPTED THIS DECISION:

Article 1

The exemption decision granted to Cologne/Bonn airport on the basis of Article 9(1)(d) of the Directive, as notified to the Commission on 3 August 1998 does not meet the conditions of Article 9 of the Directive. Consequently, the Federal Republic of Germany may not implement that decision.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 30 October 1998.

For the Commission

Neil KINNOCK

Member of the Commission

COMMISSION DECISION

of 30 October 1998

on the application of Article 9 of Council Directive 96/67/EC to Hamburg Airport (Flughafen Hamburg GmbH)

(notified under document number C(1998) 3338)

(Only the German text is authentic)

(Text with EEA relevance)

(98/632/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports⁽¹⁾, and in particular Article 9(5) thereof,

Having regard to the request for approval of the decision of the German authorities of 30 July 1998 and after consultation of those authorities,

After consulting the Advisory Committee,

Whereas:

I. SCOPE OF THE EXEMPTION NOTIFIED BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

1. The notification presented by the German authorities

By letter of 30 July 1998, received by the Commission on 3 August 1998, the German authorities notified a request to approve the decision of the Government of the Federal Republic of Germany of 23 July 1998 to grant to Hamburg airport (Flughafen Hamburg GmbH) an exemption to:

- limit self-handling to a single user, and
- reserve for Hamburg Airport (Flughafen Hamburg GmbH) the provision of services to third parties,

for the categories of service listed under point 5.4 of the Annex to the Directive. This exemption is granted, on the basis of Article 9(1)(d) and (b) of the Directive, until 31 December 2000.

The notification specifies that in the event of no user asking to be self-handling, a service provider will be admitted, but only for a limited number of operations.

Pursuant to Article 9(3) of the Directive, the Commission published an extract from the said notification in the

Official Journal of the European Communities⁽²⁾ and invited interested parties to submit comments.

In accordance with Article 9(5) of the Directive, the German Government was consulted by the Commission on the Commission's draft evaluation on 24 September 1998. The German authorities responded to this consultation with written comments dated 1 October 1998.

Basis of the exemption

The general rules for access to the groundhandling services market are set out in Articles 6 and 7 of the Directive. These provisions clearly state the principle that most categories of groundhandling services should be opened up to the maximum possible extent. For an airport with a volume of traffic like that of Hamburg the Directive provides for recognition of the right to self-handle as from 1 January 1998 and opens up the handling market to third parties as from 1 January 1999. However, because of the specific situation and role of an airport, and in particular constraints of safety and security, but also space and capacity, which can arise in certain parts of most airports, the Directive does not impose total freedom but requires a minimum degree of opening up of both self-handling and services to third parties for four categories of services located air-side, i.e. in a particularly sensitive area of the airport. These categories concern ramp handling, baggage handling, fuel handling and certain freight and mail handling operations.

Council Directive 96/67/EC also takes account of the fact that, in certain very special cases, severe space and capacity problems prevent the opening-up of the market to the degree provided for. In such cases, exemptions may be granted on a temporary basis to give the airports the time to overcome the constraints. These exemptions can therefore be only exceptional in nature and are not intended to automatically give airports an extra transitional period in addition to that already provided for in Article 1 of the Directive.

⁽¹⁾ OJ L 272, 25. 10. 1996, p. 36.

⁽²⁾ OJ C 267, 26. 8. 1998.

An exemption can be granted only on the basis of specific space or capacity constraints. This is the basis on which the German authorities have granted the above-mentioned exemption in accordance with Article 3 of the German *'Verordnung über Bodenabfertigungsdienste auf Flugplätzen und zur Änderung weiterer luftrechtlicher Vorschriften'* transposing Directive 96/67/EC into national law.

2. Situation regarding handling at Hamburg airport

2.1. Presentation of the airport

Hamburg Airport is 64 % owned by the *Land* of Hamburg, 26 % by the Federal State and 10 % by the *Land* of Schleswig-Holstein. The situation of the airport so close to the city poses many environmental problems, and the immediate proximity of residential areas and motorway infrastructure rules out any extension of the airport beyond its current limits. Between 1990 and 1997, the number of movements increased by 12,5 % and the number of passengers by 27,7 %. With 9 million passengers in 1997, 5 % up on the previous year, the airport will have to find a solution to its expansion problems. It currently has 42 parking positions, 11 of which are gate positions. Almost all of these positions are occupied during the night. Modifications which the airport is proposing to make in order to cope with the increase in its traffic within its own limits (the construction of a new Terminal 2 and the extension of an area for handling) were the subject of a plan which was approved on 26 May 1998 and could therefore be implemented without further formality. However, as has been the case with previous modifications, those measures are currently being challenged by local residents, and no definitive schedule has yet been agreed for the work on the new terminal. The only work in progress is on the site of the future tarmac (Vorfeld 2).

2.2. Groundhandling services at the airport

On the date of decision of the German authorities, most groundhandling services were open to competition, the services being provided either by independent providers or by carriers serving both themselves and third parties.

The notification relates to point 5.4, i.e. the loading and unloading of the aircraft and the transport of crew, passengers and baggage between the aircraft and the terminal, and sets out, for such operations, to prohibit self-handling and to reserve the provision of services to third parties solely to the airport.

Other services, namely baggage, freight and mail handling (points 3 and 4 of the Annex to the Directive) and certain air-side operations (points 5.1 and 5.2) should be open, in conformity with the provisions of the Directive, as from 1 January 1999. Self-handling, which is recognised by the

Directive from 1 January 1998, has not been requested by any carrier since that date.

Handling services employ around 700 staff at the airport, around 200 of whom work for sub-contractors. Some of the operations covered by the notification, such as pusher tugs or the transport of passengers, are carried out by subsidiaries of the airport.

II. CONSTRAINTS REFERRED TO BY THE GERMAN AUTHORITIES

The file presented in support of the German authorities' notification stated that the airport has already taken measures to deal with the overcrowding created by increased traffic by optimising equipment parking space and creating around 1 500 m². An extra 2 750 m² has also been found at buildings level. The use of shuttles with greater capacities has allowed their number to be reduced from 20 to 14, and the number of baggage trolleys to be reduced to 100.

Functional areas serve as storage for containers and pallets which have greatly increased in number since 1995, in parallel with the growth in the number of aircraft adapted for containers.

These measures have made it possible to cope with the space problems for the time being. The file also states, however, that the number of movements rose from 2 500 to 2 750 per week during the same period, with the attendant increase in the amount of groundhandling equipment.

Referring in particular to the study commissioned by the airport and carried out in 1996 by the Fraunhofer Institut für Materialfluss und Logistik, *'Kapazitive und räumliche Situation auf dem Flughafen Hamburg bezüglich der vorfeldseitigen Abfertigung'*, the German authorities take the view that the space available would accommodate a user who is self-handling but would not permit the market to be opened to any greater extent, in particular regarding providers of services for third parties. They go on to state that if no users were to be interested in self-handling at Hamburg, the available space could be allocated to an operator providing a limited number of services to third parties, the space not being sufficient to permit the full range of operations covered by the notification to be carried out.

According to the German authorities, the main constraint is the lack of space for parking groundhandling equipment; the premises necessary for the personnel of new operators, on the other hand, posed no particular problem.

The Fraunhofer study was based on an area of 19 869 m² being available for groundhandling; this area would be slightly reduced in the coming years as a result of the closure of three aircraft positions during the construction work on the new terminal (19 056 m²). Moreover, in the

current situation with the airport as the sole provider, and on the basis of 2 750 movements per week, the space requirement was 19 799 m². Consequently, as things now stood, almost all the available space would be occupied and a space shortfall would become apparent during the construction work.

The arrival of each additional operator would require an extra 2 230 m² of space, to which would have to be added 600 m² for the transfer of baggage on their trolleys.

However, the German authorities took the view that there were various ways of meeting at least a part of the new requirements. Firstly, by freeing around 400 m² currently used to store old groundhandling equipment which was no longer used. This area could become available in the very short term. Secondly, by finding ways of parking equipment around the noses of aircraft for positions 21 to 23 which are used 'nose in', this already being the practice at gate positions 10 to 20, even though frontloading certain aircraft can sometimes pose problems. The same use of space around aircraft could be made for positions 31 to 42, which were soon to become gate positions. Finally, the airport should take into account the loss of some of its own market share as a consequence of opening to competition. According to the German authorities, the airport should be able to accept one self-handling user. In their decision of 23 July 1998, however, the estimate that the amount of freed space would not be sufficient to allow all the services mentioned in point 5.4 of the Annex to the Directive to be provided to third parties, and that the provision of such services should thus be reserved for the airport.

III. POSITIONS OF THE INTERESTED PARTIES

The various interested parties have been asked to comment on the publication of the notification from the German authorities in accordance with Article 9(3) of the Directive.

After stating that self-handling did not necessarily require additional space for equipment, or premises for personnel, as this need was based on traffic and not on the number of operators, the airlines and airline associations that expressed their opinions took the view that a more rational use of the space for groundhandling and a reduction in the equipment currently used by monopoly provider should make it possible to find space for the equipment of new operators. These measures, together

with the removal of old equipment, especially containers no longer used, should make up for a large part of the shortfall of available space. Certain airlines felt that the need for baggage transport was dependent on traffic and not on the number of operators, and that the short distance between aircraft and terminal made additional equipment unnecessary. These airlines also stress the importance of real opening-up of the market and the need, where there are problems of space, to give priority to the arrival of a service provider that can provide services to third parties which are not limited to a single airline.

IV. EVALUATION OF THE EXEMPTION IN THE LIGHT OF THE PROVISIONS OF DIRECTIVE 96/67/EC

1. The rules in force concerning ground handling

1.1. *The scope for limiting access to the market*

Council Directive 96/67/EC provides for the market to be opened up to different extents as a function of the way groundhandling services are provided (self-handling or service suppliers) and the level of traffic at the airport. With annual traffic of almost 9 million passengers in 1997, Hamburg airport must, in accordance with Annex 5 to the *'Verordnung über Bodenabfertigungsdienste auf Flugplätzen und zur Änderung weiterer luftrechtlicher Vorschriften'*⁽³⁾ of 10 December 1997 transposing the Directive into national law, open up the market for groundhandling services for third parties to two users from 1 January 1998.

The general rules governing self-handling and the provision to third parties of the categories of service listed in the German authorities' notification are set out in Articles 6(2) and 7(2) of the Directive. Those rules have been incorporated into the provisions of Article 3(2) of the German regulations transposing the Directive. Under the terms of these various articles a Member State may restrict self-handling to a minimum of two providers or self-handling users.

However, where specific space or available-capacity constraints, arising in particular from the rate of utilisation or of space occupation, make it impossible to admit a new service provider and/or to authorise self-handling to the extent provided for by the Directive, the Member State concerned may, on the basis of Article 9(1)(b) and/or 9(1)(d), restrict that right to a single provider and/or prohibit self-handling or limit it to a single user.

However, under Article 9(2) any such exemption must:

- specify the category or categories of groundhandling services for which the exemption is granted and the specific constraints of available space or capacity which justify it,
- be accompanied by a plan of appropriate measures to overcome the constraints.

⁽³⁾ *Bundesgesetzblatt 1997 Teil 1 Nr. 82, 16. 12. 1997; 2885.*

Moreover, pursuant to Article 9(2), it must not:

- unduly prejudice the aims of the Directive,
- give rise to distortions of competition,
- extend further than necessary.

As the Commission pointed out in its Decisions of 14 January 1998 on Frankfurt and Dusseldorf airports ⁽⁴⁾, the main aim of the Directive is to liberalise groundhandling services. The restrictions imposed on third parties are restrictions on the freedom of such parties to provide such services. By analogy with the State measures restricting the freedom to provide services ⁽⁵⁾, the measures likely to exclude or prohibit the activities of service providers or, in the present instance, those of users wishing to self-handle, even if they apply without distinction both to national service providers or users and to those in other Member States, must be justified by overriding public-interest requirements and not by economic factors and must, moreover, be in proportion to the aims pursued.

1.2. Procedure

The German authorities have undertaken to make the entry into force of the exemption decision subject to the Commissions's decision.

As stated in its two decisions on the airports at Frankfurt and Dusseldorf ⁽⁶⁾, the Commission must focus its examination on:

- the existence and scope of the constraints justifying the exemption and the inability to provide openings to the extent provided for by the Directive; only space and/or capacity constraints may be taken into account,
- the plan of appropriate measures intended to overcome those constraints; that plan must be credible and unconditional and include a timetable for the implementation of those measures,
- conformity with the principles of compliance with the aims of the Directive, absence of distortions of competition, and the extent of the measure, as referred to in Article 9(2) of the Directive.

The aim of granting an exemption is not to give the airport a further adaptation period in addition to that already granted by Article 1 of the Directive. It must permit the airport to overcome the specific constraints which it may encounter when the market is opened up. Any exemption must therefore be examined in the light of the specific constraints put forward in justification of the impossibility of opening up the market within the time allowed. In addition, in accordance with the case law

of the Court of Justice of the European Communities, any exception must be interpreted strictly and the scope of any exemption must be determined on the basis of the purpose of the measure in question ⁽⁷⁾.

It is in the light of these considerations that this exemption has to be examined.

In accordance with Article 9(4) of the Directive, the Commission has made a detailed analysis of the alleged space and capacity constraints, whether the decision taken is appropriate to those constraints, and the measures put forward to overcome them. Its examination was based on the dossier provided by the German authorities, its visit to Hamburg airport after the notification by the German authorities and, finally, the technical assessment made at its request by Symonds Travers Morgan.

2. Space constraints referred to by the German authorities

With almost 9 million passengers in 1997, Hamburg airport is an important regional hub which accommodates 85 airlines serving 124 destinations. Situated very close to the city of Hamburg and surrounded by residential buildings, the airport cannot easily expand beyond its current boundaries. Internal development and optimum use of space will be required to cope with the increase in traffic. In order to achieve this, the airport plans to develop its capacity by rebuilding Terminal 2 and creating 11 additional aircraft positions — this number being increased to 14 in the second phase of work. Although the work is currently well advanced, the spaces have not yet been officially designated as aircraft positions.

At present, the tarmac has 42 parking positions, 32 of which are for category C aircraft. The majority of these positions are occupied during the night. The dossier provided by the German authorities states that the lack of space for parking handling equipment is particularly due to the large number of aircraft parked overnight.

2.1. The space available

During their visit made after the notification by the German authorities, the experts appointed by the Commission noted that the space around the noses of aircraft parked 'nose in' was not fully utilised. The airport authorities explained that the proximity of the traffic lane prevented equipment being parked there for safety reasons. This argument is unsatisfactory as the space in question is used for parking in many international airports in the same situation, and even at certain positions at Hamburg airport itself. Clear demarcation of

⁽⁴⁾ Commission Decisions 98/387/EC and 98/388/EC of 14 January 1998, OJ No I, 173, 18. 6. 1998, p. 32.

⁽⁵⁾ Judgments of 25 July 1991, *Médiawet*, [1991] ECR p. 4007 and C-76/90, *Säger*: *Dennemeyer*, [1991] ECR, p. 4221.

⁽⁶⁾ See point 3 below.

⁽⁷⁾ See in particular the Judgment in case C116/91 *British Gas* [1992] ECR I-4071, point 12.

the spaces for parking equipment and an inspection by the supervisor, as is the practice at other airports, would solve any problems. Some airports use concrete or plastic blocks to protect the traffic lane. The standards and practices recommended by the International Civil Aviation Organisation (ICAO) — and in particular Annex 14 to the Convention on international civil aviation — which form the basis for national recommendations on aircraft positions, provide for the provision of marked spaces as safety areas but also for parking equipment, for different types of aircraft. It does not therefore seem impossible to use the space in question. According to the report requested by the Commission, and depending on the type of aircraft to be received, an area 20m by 6m can be freed on either side of the nose of the aircraft. This area of twice 120 m² per position means that over 2 100 m² could be used for equipment just on the 9 positions along the service road in front of the freight section.

The use of a large number of parking positions during the night does indeed make for intensive use of the tarmac and a certain amount of congestion early in the morning. Nevertheless, as stated by the German authorities, the period of congestion which occurs when the aircraft parked overnight are departing is relatively short, as most of the aircraft leave first thing in the morning (which makes the congestion worse). At that time, the handling equipment used to prepare aircraft for departure is also in full use in the area in question. Using the area around the aircraft positions for parking equipment, some of which was used the night before when the aircraft arrived, consequently poses no problem during the night.

The dossier attached to the decision of the German authorities also highlights the need for 20 000 m² of space to park equipment for around 230 flights per day. The number of flights handled is 29 % more than at Stuttgart airport, for example, which handles 180 flights a day. The amount of additional space required is estimated as being 60 % greater. Even taking into account the fact that larger aircraft need larger equipment which in turn requires more space, and that the type of equipment may have different characteristics, the difference still seems excessive. In the figures, the difference is explained by the

50 % coefficient between the static area of the equipment (floor surface occupied by the equipment) and its dynamic area (static area + area required to move the equipment): this coefficient is only 37 % in the study carried out by the Fraunhofer Institute in the context of the exemption granted to Cologne/Bonn airport. Once again, even though a certain difference can be explained according to whether the material is parked in line or regrouped in square spaces, which mean that more space is required to move the equipment, the difference is still too great.

The dossier attached to the decision also refers to a slight reduction in the available space (around 800 m²) during the work on Terminal 2 because of the closure of three positions. The plan of works⁽⁸⁾, however, indicates the closure of the aircraft positions and a diversion of the traffic lane around them, but it does not show any space for parking material at the nose-end of the positions. This loss of space is not therefore justified.

The derogation is for the reservation for Hamburg airport only of all forms of handling for the activities listed under point 5.4 of the Annex to the Directive, i.e. for loading and unloading the aircraft and transporting passengers, crew and baggage between the aircraft and the terminal. One of the arguments used as a basis for the derogation relates to problems experienced when transporting baggage and loading it in the baggage distribution room.

The baggage distribution room is very small and extremely congested at certain peak times.

The distribution system comprises a sorting system with automatic chutes down onto the trolleys for different destinations. Inside the baggage distribution building, the number of trolleys required is dependent on the number of flights to be handled at any given moment, and not on the number of operators. Strict control of trolley flow and of the number of trolleys allowed into the area, accepting only the number of trolleys required, would avoid congesting the baggage distribution room. Baggage is managed in this way at airports already open to competition, as the airport administration and supervision can impose the observance of certain rules on all operators in order to ensure that the system operates smoothly. It has not therefore been shown that it is impossible to allow other operators into the baggage sorting building. It should nevertheless be recognised that an increase in the number of operators can complicate the management of trolley movements where waiting space would be too restricted.

The problem is therefore linked to the general lack of space at the airport.

⁽⁸⁾ Annex 5 to the dossier provided by the German authorities.

The decision of the German authorities includes the possibility of freeing sufficient space to accommodate another operator. Improving the use of the existing space and freeing space used for old equipment would provide an additional area in the southern part of the airport. This area would not be sufficient to accommodate a third operator, however, whether as a service provider or a self-handling user.

2.2. *The choice of the German authorities*

In their decision of 23 July 1998, the German authorities expressed a preference for a self-handling user rather than a provider of handling services to third parties because of the lower space requirements of a user. They also said that where there were no requests from users for self-handling a service-provider would be admitted, but for limited operations due to the lack of space.

In the light of these points and given the fact that no user has requested self-handling since that possibility was recognised by the Directive as from 1 January 1998 and the opening of the market to a provider will enable the latter to provide services for all users at the airport, it is worth looking at whether opening-up to a provider is impossible, as the German authorities allege.

The volume of traffic handled by the user at the airport, whether passengers or freight, and in decreasing order, is one of the objective criteria for selecting users who could be authorised to self-handle if they are limited in number.

If Lufthansa, the main airline at the airport, were to opt for this right to self-handling for its own fleet and the fleet of the carriers in its group, in accordance with the Directive, there would be a major impact on space requirements owing to the number of flights involved. The amount of additional equipment required can be estimated by examining the flight timetable.

Account must be taken of the fact that, in general terms, operator proliferation causes an increase in total equipment requirements since each operator then has to cater for its own peaks, which do not necessarily coincide with those of the airport, as in the case of a single operator. On the other hand, the monopoly operator needs less equipment due to the loss of some of his customers.

Given the estimate made by the German authorities of an extra 2 300 m² needed per additional operator and self-handling operations by the main user, Lufthansa, the

number of flights at the airport and the timetable of those flights would mean that the latter's needs amount to almost 45 % of equipment, currently used by the monopoly operator. In its capacity as a sole service provider, the airport uses an area of almost 22 000 m². Lufthansa would thus need around 9 000 m². The effect on the needs of the monopoly operator, given the flight timetable, can be estimated at a reduction of close to 24 %, i.e. 4 800 m². The additional space needed due to the arrival of Lufthansa would thus be around 4 200 m², i.e. 21 %.

An analysis of the data in the event of the arrival of a provider of services for third parties indicates that the largest number of aircraft that can be serviced without impacting on the peaks of the airport as the provider of groundhandling services is put at 10 % of traffic. Handling additional flights would mean a lesser need of equipment, and hence space, on the part of the monopoly operator.

The total space need would be around 10 %. Even taking an additional 15 % as the figure, the greater need for space is less than in the case of a user self-handling. Should this provider also receive clientele from Lufthansa, requirements would be less because of the effect on the needs of the current monopoly operator.

The German authorities have not therefore demonstrated that the arrival of a service provider is impossible.

3. Measures planned

In accordance with the provisions of Article 9(2) of the Directive, the German authorities must present a schedule of appropriate measures designed to overcome the constraints cited.

The plan to expand the airport provides for the demolition in 1998 and rebuilding of Terminal 2, which should be open by the beginning of 2001. This work will accompany the construction of a new tarmac ('Vorfeld 2')⁽⁹⁾ which should make for 11 aircraft positions initially, in 2001, and 14 subsequently. This tarmac will be linked to the terminal area by a new road.

This work should free a total area of 46 000 m², 13 000 m² of which would be reserved for groundhandling.

However, these projects are encountering legal and administrative problems and there is still some uncertainty as to when work on terminal 2 will commence and be completed and as regards the number of aircraft positions on the 'Vorfeld 2' tarmac.

⁽⁹⁾ Ausbaustufe Vorfeld 2 (Tarmac 2 extension) — Plan 16/12/96, Annex 7.

However, Article 9 of the Directive requires the planned measures to surmount the constraints encountered to be credible and irrevocable. Given the uncertainty surrounding the projects submitted, therefore, the Commission cannot consider them to be planned measures as defined by Article 9 of the Directive.

That said, the dossier presented shows that in any event the airport undertakes to free the space needed to open up the market to the degree provided for by the Directive and the German regulation transposing it by the end of the period mentioned in the exemption by organising, in particular, the areas needed to park the groundhandling equipment on the 'Vorfeld 2' tarmac, whether or not it has received the requisite licenses for use as aircraft positions. The Commission therefore takes the view that such undertakings amount to planned measures to overcome the constraints referred to and encountered within the meaning of Article 9(2) of the Directive.

4. Compliance with the criteria of Article 9(2) of the Directive

Under Article 9(2) exemptions must not:

- '(i) unduly prejudice the aims of this Directive;
- (ii) give rise to distortions of competition between suppliers of groundhandling services and/or self-handling airport users;
- (iii) extend further than necessary.'

As regards the aims of the Directive as mentioned in (i), the very title of the Directive explains that the aim is access to the market. The point of the Directive implies, however, that this access should be real. The fifth recital states that 'the opening-up of access to the groundhandling market should help reduce the operating costs of airlines and improve the quality of service provided to airport users'. Opening-up in theory, without actually happening in fact, as has been the case for self-handling since 1 January this year, would thus detract from the aims of the Directive. In contrast, opening-up which also helps to improve the services provided to, and the prices paid by, many users, as referred to in the fifth recital, will help to achieve the aims of the Directive by introducing competition between providers.

Subparagraph (iii) stipulates that an exemption must not extend further than necessary. The exemption granted by the German authorities excludes all providers of services to third parties up to 31 December 2000, even though the

German authorities have themselves stated that a provider would be admitted where there are no requests from users for self-handling. Since the exemption provides for the admission of a provider only in the event of no requests for self-handling, this could be until the end of the period set for the exemption. The very wording of the exemption thus indicates that it extends further than is necessary.

As regards the duration of the restriction on a second operator over and above the airport, whether this operator be a provider or self-handling user, the exemption covers the period of the work at the airport and concerns loading, unloading and the transport of passengers, crew and baggage. The current problems of space at the airport affecting the parking of groundhandling equipment until completion of the work justify the proportionality of the measure in terms of its duration and scope.

The Commission finds that an exemption which, in the absence of any actual self-handling, excludes the arrival of any new provider of groundhandling services after 1 January 1999, the date set by the Directive for the opening-up of this market, does not meet the conditions of Article 9(2).

V. CONCLUSION

The limited space available at Hamburg airport means that only one new operator can be admitted for the operations referred to in point 5.4 of the Annex to the Directive.

Since:

- the German authorities have not shown that it is impossible to admit the arrival of a provider instead of a user, and as
- no user has requested self-handling at Hamburg airport since such a possibility has existed,

and in order:

- not to unduly prejudice the aims of the Directive, and
- to ensure that the exemption does not extend further than necessary,

the German authorities must, insofar as no user begins self-handling, in any of the space available at Hamburg airport, by 31 December 1998, allow the arrival of a provider of services to third parties as from 1 January 1999 and consequently prohibit self-handling as from that date and up to 31 December 2000,

HAS ADOPTED THIS DECISION:

The exemption is granted until 31 December 2000.

Article 1

The decision to grant an exemption to Hamburg airport, as notified to the Commission on 3 August 1998, is hereby approved by the Commission provided that the Federal Republic of Germany amends it as follows:

For the activities referred to in point 5.4 of the Annex to the Directive:

- limiting self-handling to a single user and reserving the provision of services to third parties for Hamburg airport on condition that a user begins self-handling, using the space available, before 31 December 1998 and that the German authorities have notified the Commission beforehand;
- prohibiting self-handling as from 1 January 1999 where the German authorities have not notified the Commission by that date that a user has begun self-handling operations in the space available by 31 December 1998.

Article 2

The Federal Republic of Germany shall notify the Commission of the exemption decision amended in accordance with Article 1, before it enters into force.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 30 October 1998.

For the Commission

Neil KINNOCK

Member of the Commission
