# Official Journal
## of the European Communities

ISSN 0378-6986

C 263

Volume 38

10 October 1995

English edition


# Information and Notices



(1) Text with EEA relevance

(Continued overleaf)

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*(Information)*

# COMMISSION

## Ecu (1)

**9 October 1995**

(95/C 263/01)

Currency amount for one unit:

| | | | |
|---|---|---|---|
| Belgian and Luxembourg franc | 38,4659 | Finnish markka | 5,65078 |
| Danish krone | 7,26764 | Swedish krona | 9,21951 |
| German mark | 1,86835 | Pound sterling | 0,834287 |
| Greek drachma | 307,542 | United States dollar | 1,32151 |
| Spanish peseta | 162,348 | Canadian dollar | 1,76316 |
| French franc | 6,55865 | Japanese yen | 132,442 |
| Irish pound | 0,818830 | Swiss franc | 1,51128 |
| Italian lira | 2122,46 | Norwegian krone | 8,25679 |
| Dutch guilder | 2,09327 | Icelandic krona | 85,3431 |
| Austrian schilling | 13,1464 | Australian dollar | 1,73018 |
| Portuguese escudo | 196,575 | New Zealand dollar | 1,99323 |
| | | South African rand | 4,82622 |

The Commission has installed a telex with an automatic answering device which gives the conversion rates in a number of currencies. This service is available every day from 3.30 p.m. until 1 p.m. the following day.

Users of the service should do as follows:

— call telex number Brussels 23789;

— give their own telex code;

— type the code 'cccc' which puts the automatic system into operation resulting in the transmission of the conversion rates of the ecu;

— the transmission should not be interrupted until the end of the message, which is marked by the code 'ffff'.

*Note:* The Commission also has an automatic telex answering service (No 21791) and an automatic fax answering service (No 296 10 97) providing daily data concerning calculation of the conversion rates applicable for the purposes of the common agricultural policy.

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(1) Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ No L 379, 30. 12. 1978, p. 1), as last amended by Regulation (EEC) No 1971/89 (OJ No L 189, 4. 7. 1989, p. 1).

Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ No L 349, 23. 12. 1980, p. 34).

Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ No L 349, 23. 12. 1980, p. 27).

Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ No L 345, 20. 12. 1980, p. 23).

Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ No L 345, 20. 12. 1980, p. 1).

Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ No L 311, 30. 10. 1981, p. 1).

# LIST OF DOCUMENTS FORWARDED BY THE COMMISSION TO THE COUNCIL DURING THE PERIOD 25 TO 29. 9. 1995

(95/C 263/02)

*These documents may be obtained from the Sales Offices, the addresses of which are given on the back cover*

| Code | Catalogue No | Title | Date adopted by the Commission | Date forwarded to the Council | Number of pages |
|---|---|---|---|---|---|
| COM(95) 438 | CB-CO-95-479-EN-C | Proposal for a Council Decision on the Community position in relation to the establishment of a Joint Consultative Committee to be decided on by the Association Council established by the Europe Agreement between the European Communities and Hungary | 22. 9. 1995 | 25. 9. 1995 | 6 |
| COM(95) 442 | CB-CO-95-483-EN-C | Proposal for a Council Decision authorizing the Commission to rectify the product description of 'Pizza cheese' contained in the schedule LXXX — European Communities annexed to the Marrakesh Protocol to the GATT 1994 | 22. 9. 1995 | 25. 9. 1995 | 5 |
| COM(95) 439 | CB-CO-95-480-EN-C | Proposal for a Council Decision reducing the transfers to be paid to the OCT under the system for stabilizing export earnings set up by the Council Decision of 25 July 1991 on the association of the OCT with the European Economic Community | 22. 9. 1995 | 25. 9. 1995 | 5 |
| COM(95) 436 | CB-CO-95-476-EN-C | Amended proposal for a Council Decision adopting a multiannual Community programme to support the implementation of trans-European networks for the interchange of data between administrations (IDA) (2) (3) | 27. 9. 1995 | 27. 9. 1995 | 6 |
| COM(95) 444 | CB-CO-95-485-EN-C | Proposal for a Council Decision on the signature by the European Community of the Agreement on the Conservation of African-Eurasian Migratory Waterbirds | 26. 9. 1995 | 27. 9. 1995 | 58 |
| COM(95) 445 | CB-CO-95-488-EN-C | Commission communication to the Council and the European Parliament on the establishment of a European Centre for Industrial Relations (ECIR) (3) | 25. 9. 1995 | 27. 9. 1995 | 7 |
| COM(95) 446 | CB-CO-95-486-EN-C | Amended proposal for a European Parliament and Council Decision on a series of guidelines for trans-European data communications networks between administrations (2) (3) | 27. 9. 1995 | 27. 9. 1995 | 8 |
| COM(95) 422 | CB-CO-95-499-EN-C | Proposal for a Council Decision on the recognition of the British Standard BS7750: 1994, establishing specification for environmental management systems, in accordance with Article 12 of Council Regulation (EEC) No 1836/93 of 29 June 1993, allowing voluntary participation by companies in the industrial sector in a Community eco-management and audit scheme | 27. 9. 1995 | 28. 9. 1995 | 12 |

| Code | Catalogue No | Title | Date adopted by the Commission | Date forwarded to the Council | Number of pages |
|---|---|---|---|---|---|
| | | Proposal for a Council Decision on the recognition of Irish Standard IS310: First Edition, establishing specification for environmental management systems, in accordance with Article 12 of Council Regulation (EEC) No 1836/93 of 29 June 1993, allowing voluntary participation by companies in the industrial sector in a Community eco-management and audit scheme<br><br>Proposal for a Council Decision on the recognition of Spanish Standard UNE 77-801(2)-94: establishing specification for environmental management systems, in accordance with Article 12 of Council Regulation (EEC) No 1836/93 of 29 June 1993, allowing voluntary participation by companies in the industrial sector in a Community eco-management and audit scheme | | | |
| COM(95) 443 | CB-CO-95-484-EN-C | Research and technological development activities of the European Union — Annual report 1995 (3) | 28. 9. 1995 | 28. 9. 1995 | 120 |

(1) This document contains an impact assessment on business, and in particular on SME's.

(2) This document will be published in the *Official Journal of the European Communities.*

(3) Text with EEA relevance.

*NB:* COM documents are available by subscription, either for all editions or for specific subject areas, and by single copy, in which case the price is based pro rata on the number of pages.

## Non-opposition to a notified concentration

## (Case No IV/M.586 — Generali/Comit/R. Flemings)

(95/C 263/03)

**(Text with EEA relevance)**

On 15 June 1995, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6 (1) (b) of Council Regulation (EEC) No 4064/89 (1). Third parties showing a sufficient interest can obtain a copy of the decision by making a written request to:

Commission of the European Communities,
Directorate-General for Competition (DG IV),
Merger Task Force,
Avenue de Cortenberg/Kortenberglaan 150,
B-1049 Brussels,
fax number: (32 2) 296 43 01.

(1) OJ No L 395, 30. 12. 1989. Corrigendum: OJ No L 257, 21. 9. 1990, p. 13.

## Non-opposition to a notified concentration

## (Case No IV/M.606 — Generali/Comit/Previnet)

(95/C 263/04)

**(Text with EEA relevance)**

On 26 July 1995, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6 (1) (b) of Council Regulation (EEC) No 4064/89 [1]. Third parties showing a sufficient interest can obtain a copy of the decision by making a written request to:

Commission of the European Communities,
Directorate-General for Competition (DG IV),
Merger Task Force,
Avenue de Cortenberg 150/Kortenberglaan 150,
B-1049 Brussels,
fax number: (32 2) 296 43 01.

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[1] OJ No L 395, 30. 12. 1989. Corrigendum: OJ No L 257, 21. 9. 1990, p. 13.

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## Non-opposition to a notified concentration

## (Case No IV/M.632 — Rhône Poulenc/Fisons)

(95/C 263/05)

**(Text with EEA relevance)**

On 21 September 1995, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6 (1) (b) of Council Regulation (EEC) No 4064/89 [1]. Third parties showing a sufficient interest can obtain a copy of the decision by making a written request to:

Commission of the European Communities,
Directorate-General for Competition (DG IV),
Merger Task Force,
Avenue de Cortenberg 150/Kortenberglaan 150,
B-1049 Brussels,
fax number: (32 2) 296 43 01.

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[1] OJ No L 395, 30. 12. 1989. Corrigendum: OJ No L 257, 21. 9. 1990, p. 13.

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## Prior notification of a concentration

## (Case No IV/M.544 — Unisource/Telefónica)

(95/C 263/06)

**(Text with EEA relevance)**

1. On 29 September 1995, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 4064/89 [1] by which the undertaking Unisource NV (controlled by Telia AB, PTT Telecom BV and Schweizerische PTT-Betriebe) and Telefónica de España SA acquire within the meaning of Article 3 (1) b of the Regulation joint control of the undertaking Unisource International NV by way of purchase of shares in a newly created company constituting a joint venture.

2. The business activities of the undertakings concerned are:

— Unisource NV: provision of international and value-added telecommunications services in Europe,

— Telefónica: provision of national and international telecommunications services in Spain.

3. Upon preliminary examination, the Commission finds that the notified concentration could fall within the scope of Council Regulation (EC) No 4064/89. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (fax No (32 2) 296 43 01) or by post, under reference No number IV/M.544 — Unisource/Telefónica, to the following address:

Commission of the European Communities,
Directorate-General for Competition (DG IV),
Merger Task Force,
Avenue de Cortenberg/Kortenberglaan 150,
B-1049 Brussels.

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[1] OJ No L 395, 30. 12. 1989. Corrigendum: OJ No L 257, 21. 9. 1990, p. 13.

## Notice by the Commission concerning a draft Directive amending Commission Directive 90/388/EEC regarding the implementation of full competition in telecommunications markets

(95/C 263/07)

The Commission approved a draft Directive amending Commission Directive 90/388/EEC regarding the implementation of full competition in telecommunications markets.

The Commission intends to adopt the Directive after having heard the possible comments of all parties concerned.

The Commission invites interested third parties to submit their possible observations on the draft Directive published hereunder.

Observations must reach the Commission not later than two months following the date of this publication. Observations may be sent to the Commission by fax (fax No (32 2) 296 98 19) or by mail to the following address:

European Commission,
Directorate-General for Competition (DG IV),
Directorate C,
Office 1/93,
Avenue de Cortenberg/Kortenberglaan 150,
B-1049 Brussels.

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## Draft Commission Directive amending Commission Directive 90/388/EEC regarding the implementation of full competition in telecommunications markets

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 90 (3) thereof,

Whereas:

(1) According to Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services, telecommunications services, with the exception of voice telephony to the general public and those services specifically excluded from scope of the Directive [1], must be open to competition. Under the Directive Member States must take the measures necessary to ensure that any operator is entitled to supply such services [2].

(2) Subsequent to the public consultation organized by the Commission in 1992 on the situation in the telecommunications sector [3], the Council unanimously called for the liberalization of all public voice telephony services by 1 January 1998, subject to additional transition periods of up to five years to allow Member States with less developed networks, i. e. Spain, Ireland, Greece and Portugal, to achieve the necessary adjustments, in particular tariff adjustments. Moreover, very small networks should according to the Council, also be granted an

[1] The telex service, mobile communications and radio and television broadcasting to the public. Satellite communications were included in the scope of the Directive through Commission Directive 94/46/EC of 13 October 1994. (Cable television networks were included in the scope of the Directive through Commission Directive . . . and mobile and personal communications were included in the scope of the Directive through Commission Directive . . .).

[2] OJ No L 192, 24. 7. 1990, p. 10.

[3] Following the Communication by the Commission of 21 October 1992 'on the 1992 Review of the situation in the telecommunications sector' (SEC(92) 1048).

adjustment period of up to two years (1) where so justified. The Council subsequently unanimously recognized that the provision of telecommunications infrastructure should also be liberalized by 1 January 1998, subject to the same transition periods as agreed for the liberalization of voice telephony (2). Furthermore, the Council established basic guidelines for the future regulatory environment (3).

(3) Directive 90/388/EEC of 28 June 1990 as amended by Directive 94/46/EC, establishes that the granting of special or exclusive rights to telecommunications services to telecommunications organizations is in breach of Article 90 in conjunction with Article 59 of the Treaty, since they limit the provision of cross-border services. According to the Directive exclusive rights granted for the provision of such services are also incompatible with Article 90 (1) in conjunction with Article 86 of the Treaty, where they are granted to telecommunications organizations which also enjoy exclusive or special rights for the establishment and the provision of telecommunications networks since their grant amounts to the reinforcement or the extension of a dominant position or necessarily leads to other abuses of such position.

(4) In 1990, the Commission, however, granted a temporary exception under Article 90 (2) in respect of exclusive and special rights for the provision of voice telephony, since the financial resources for the development of the network still derived mainly from the operation of the telephony service and the opening-up of that service could, at that time, threaten the financial stability of the telecommunications organizations and obstruct the performance of the task of general economic interest assigned to them, consisting in the provision and exploitation of a universal network, i. e. one having general geographic coverage, and that connection to it is being provided to any service provider or user upon request within a reasonable period of time. The Council has in the mean-time unanimously recognized that there are less restrictive means than the granting of special or exclusive rights to ensure this task of general economic interest (4).

Moreover, at the time of the adoption of the Directive, all telecommunications organizations were also in the course of digitalizing their network to increase the range of services which could be provided to the final customers. Today, coverage and digitalization are already achieved in a number of Member States. Taking into account the progress in radiofrequency applications and the on-going heavy investment programmes, the optic fibre-coverage and network penetration are expected to improve significantly in the other countries and regions in the coming years. In 1990, concerns were also expressed against immediate introduction of competition in voice telephony while price structures of the telecommunications organizations were substantially out of line with costs, because competing operators could target highly profitable services such as international telephony and gain market share merely on the basis of existing substantially distorted tariff structures. In the meantime efforts have been made to balance differences in pricing and cost structures in preparation for liberalization.

(5) For these reasons, and in accordance with the Council resolutions of 22 July 1993 and of 22 December 1994, the continuation of the exception granted with respect to voice telephony is no longer justified. The exception granted by Directive 90/388/EEC should be ended and the Directive, including the definitions used, amended accordingly. In order to allow telecommunications organizations to complete their preparation for competition and in particular the necessary rebalancing of tariffs, Member States may continue the current special and exclusive rights regarding the provision of voice telephony until 1 January 1998. As called for in the Council resolutions of 22 July 1993 and of 22 December 1994, Member States with less developed networks and with very small networks shall be granted, upon request, additional transitional periods of up to five and two years respectively in order to achieve the necessary structural adjustments. The Member States which may request such an exception are Spain, Ireland, Greece and Portugal with regard to less developed networks and Luxembourg with regard to very small networks.

(6) The abolition of exclusive and special rights as regards the provision of voice telephony will in particular allow the current telecommunications organizations from one Member State as from 1 January 1998 to directly provide their service in other Member States. These organizations currently possess the skills and the experience required to enter into the markets opened to competition.

(1) Council Resolution of 22 July 1993 on the review of the situation in the telecommunications sector and the need for further development in that market (OJ No C 213, 6. 8. 1993, p. 1).

(2) Council Resolution of 22 December 1994 on the principales and timetable for the liberalization of telecommunications infrastructures (OJ No 379, 31. 12. 1994, p. 4).

(3) Council Resolution of ... July 1995 on the future regulatory framework in telecommunications (OJ No C ..., ... 1995, p. ...).

(4) Council Resolution of 22 July 1993 on the review of the situation in the telecommunications sector and the need for further development in that market (OJ No C 213, 6. 8. 1993, p. 1).

However, in almost all Member States, they will compete with the national telecommunications organizations which are granted the exclusive or special right to provide not only voice telephony but also the underlying infrastructure, including the acquisition of indefeasible rights of use in international circuits. The flexibility and the economies of scope which this allows would put the incumbent national telecommunications organizations, in a much more favourable competitive position in their home markets *vis-à-vis* the new entrants in the voice telephony market, if the latter were not entitled to the same rights and obligations. The fact that the restriction on establishing own infrastructure would apparently apply in the Member State concerned without distinction to all companies providing voice telephony other than the national telecommunications organizations would not be sufficient to remove the preferential treatment of the latter from the scope of Article 59 of the Treaty. Given the fact that it is likely that most new entrants will originate from other Member States such a measure, would in practice affect foreign companies to a larger extent than national undertakings. On the other hand, while no justification for these restrictions appears to exist, less restrictive means such as licensing procedures would in any event be available to ensure general interests of a non-economic nature. Consequently such restrictions constitute an infringement of Article 90 in conjunction with Article 59 of the Treaty.

(7) In addition, the abolition of exclusive and special rights on the provision of voice telephony would have little or no effect, if new entrants would be obliged to use the public telecommunications network of the incumbent telecommunications organizations, with whom they compete in the voice telephony market. Reserving to one undertaking which markets telecommunications services the task of supplying the indispensable raw material, i. e. the transmission capacity, to all its competitors would be tantamount to conferring upon it the power to determine at will where and when services can be offered by its competitors, at which costs, and to monitor their clients and the traffic generated by its competitors, placing that undertaking in a position where it would be induced to abuse its dominant position. It is true that Council Directive of 5 June 1992 on the application of open network provision to leased lines [1] harmonizes the basic principles regarding the provision of leased lines, but this Directive only harmonizes the conditions of access and use of leased lines. The aim of Directive 92/44/EEC is not to remedy the conflict of interest of the telecommunications organizations as infrastructure and service providers. It does not impose a structural separation between the telecommunications organizations as providers of leased lines and as service providers. Complaints illustrate that even in Member States which have implemented this Directive, telecommunications organizations still use their control of the access conditions to the network at the expense of their competitors in the services market. Complaints show that telecommunications organizations still apply excessive tariffs and that they use information acquired as infrastructure providers regarding the services planned by their competitors, to target clients in the services market. Directive 92/44/EEC only provides for the principle of cost-orientation and does not prevent telecommunications organizations to use the information acquired as capacity provider as regards subscriber's usage patterns, necessary to target specific groups of users, and on price elasticities of demand in each service market segment and region of the country. The current regulatory framework does not resolve the conflict of interest mentioned above. The most appropriate remedy to this conflict of interest is therefore to allow service providers to use own or third party telecommunications infrastructure to provide their services to the final customers instead of the infrastructure of their main competitor. In its resolution of 22 December 1994 the Council also approved the principle that infrastructure provision should be liberalized.

Member States should therefore abolish the current exclusive rights on the provision and use of infrastructure which infringe Article 90 in combination with Articles 59 and 86, and allow voice telephony providers to use own and/or any existing alternative infrastructure of their choice.

(8) As regards the access of new competitors to the telecommunications markets, only essential requirements can justify restrictions to the fundamental freedoms provided for in the Treaty. These restrictions should be limited to what is necessary to achieve the objective of a non-economic nature pursued. Member States may therefore only introduce licensing or declaration procedures where it is indispensable to ensure compliance with the applicable essential requirements and, with regard to the provision of voice telephony and the underlying infrastructure, introduce requirements in the form of trade regulations where it is necessary in order to ensure in accordance with Article 90 (2) the performance in a competitive environment of the particular tasks of public service assigned to the relevant undertakings in the telecommunications field and/or to ensure a contribution to the financing of universal service.

[1] OJ No L 165, 19. 6. 1992, p. 27.

In the framework of the adoption of authorization requirements under Directive 90/388/EEC, it appeared that certain Member States were imposing obligations to new entrants which where not in proportion with the aims of general interest pursued. To preclude such measures delaying market entry of new competirors in the voice telephony and public telecommunications networks markets and thereby strengthening the dominant position of the incumbent operator, it is necessary that Member States should notify any licensing or declaration requirements to the Commission, before they are introduced to enable the latter to assess their compatibility with the Treaty and in particular the proportionality of the obligations imposed.

(9) According to the principle of proportionality, the number of licences may only be limited where this is unavoidable to ensure compliance with essential requirements concerning the use of scarce resources. As the Commission stated in its communication on the consultation on the Green Paper on the liberalization of telecommunications infrastructure and cable television networks, the sole reason in this respect should be the existence of physical limitations, imposed by the lack of necessary frequency spectrum (1). Conversely, licensing is not justified when a mere declaration procedure would suffice to attain the relevant objective.

As regards the provision of voice telephony, public fixed telecommunications networks and other telecommunications networks involving the use of radio frequencies, the essential requirements would justify the introduction or maintenance of an individual licensing procedure. In all other cases, a general authorization or a declaration procedure suffices to ensure compliance with the essential requirements.

As regards the provision of packet- or circuit-switched data services, Commission Directive 90/388/EEC allowed the Member States to adopt specific sets of public service specifications in the form of trade regulations. The Commission has in the course of 1994 assessed the effects of the measures adopted under this provision. The results of this review were made public in its communication on the status and the implementation of Directive 90/388/EEC (2). Given that most of the Member States have not deemed it necessary to adopt specific schemes for data services, without noticeable negative effects as regards the public interest objectives pursued by these schemes and on the basis of assessment mentioned, there is no justification under Article 90 (2) to continue this specific regime and the current schemes should be abolished accordingly. However, Member States may replace these schemes by a declaration or a general authorization procedure.

(10) Newly authorized voice telephony providers will only be able to compete effectively with the current telecommunications organizations, if they are granted adequate numbers to allocate to their customers. Moreover, where numbers are allocated by the current telecommunications organizations, the latter are likely to reserve the best numbers for themselves and to give their competitors insufficient numbers or numbers which are commercially less attractive, for example because of their length. By maintaining such power in the hands of their telecommunications organizations Member States would therefore induce the former to abuse their power on the market for voice telephony and infringe Article 90 in conjunction with Article 86 of the Treaty.

Consequently, the establishment and administration of the national numbering plan should be entrusted to a body independent from the telecommunications organization, and a procedure for the allocation of numbers should, where required, be drafted, which is based on objective criteria, is transparent and without discriminatory effects.

(11) The right of new providers of voice telephony to interconnect their service for call completion purposes with the existing public telecommunications network at the necessary interconnection points is of crucial importance in the initial period after the abolition of the special and exclusive rights regarding voice telephony and telecommunications infrastructure provision. Interconnection should in principle be a matter for negotiation between the parties, subject to the application of the competition rules addressed to undertakings. Given the imbalance in negotiating power for new entrants compared with the telecommunications organizations whose monopoly position results from their special and exclusive rights, it is likely that, as long as a harmonized regulatory framework has not been established by the European Parliament and the Council, interconnection would be delayed by disputes as to terms and conditions to be applied.

(1) COM(95) 158 final of 3. 5. 1995, p. 34.
(2) COM(95) 113 final, 4. 4. 1995, pp. 19 to 21.

The failure by Member States to adopt the necessary safeguards to prevent such a situation would lead to a continuation *de facto* of the current special and exclusive rights, which as set out above are considered to be above incompatible with Article 90 in conjunction with Articles 59 and 86.

Such competitive safeguards should cover firstly the requirement of the telecommunications organizations to publish standard terms and conditions for interconnection to their voice telephony and networks offered to the public, including interconnection price lists and access points, no later than six months before the actual date of liberalization of voice telephony and telecommunications transmission capacity. Such standard offers should be sufficiently unbundled to allow the new entrants to purchase only those elements of the interconnection offer they actually need. They may further not discriminate on the basis of the origin of the calls and/or the networks.

These standard terms and conditions should be maintained during the time period required to allow the emergence of effective competition. Experience shows that a time period of at least five years from the date of the abolition of the special or exclusive rights for the provison of voice telephony is reasonable.

(12) Moreover in order to allow the monitoring of interconnection obligations under competition law, the cost accounting system implemented with regard to the provision of voice telephony and public telecommunications networks should clearly identify the cost elements relevant for pricing interconnection offerings, and in particular for each element of the interconnection offered, the basis for that cost element (embedded direct costs, marginal costs or stand alone costs). Such cost accounting should further allow adequate monitoring such that the telecommunications organization may be prevented from charging itself less than the lowest charge it offers to a competitor, even where this might be justified by objective cost differentials.

Member States should also establish a procedure making possible the swift resolution of interconnection disputes to avoid delays in the roll out of the service and the network of new entrants requiring interconnection, without prejudice to other remedies available under applicable national law or Community law.

(13) The obligation to publish standard charges and interconnect conditions is without prejudice to the negotiation of special or tailor-made agreements for a particular combination or use of unbundled public switched telephony network components and/or the granting of discounts for particular service providers or large users where these are justified.

(14) A number of Member States are currently still maintaining exclusive rights with regard to the provision of telephone directory services. These exclusive rights are generally granted either to organizations which are already enjoying a dominant position in providing voice telephony, or to one of their subsidiaries. In such a situation, these rights have the effect of extending the dominant position enjoyed by those organizations and therefore strengthening that position, which according to the case law of the European Court of Justice, constitutes an abuse of a dominant position contrary to Article 86. The exclusive rights granted in the area of telephone directory services are consequently incompatible with Article 90 in conjunction with Article 86 of the Treaty. These exclusive rights consequently have to be abolished.

(15) Directory information constitutes an essential access tool for telephony services. In order to ensure the availability of directory information to subscribers to all voice telephony services, Member States may adopt a scheme of general authorization for the provision of directory information to the general public. Such a licensing scheme should not, however, restrict the provision of such information by new technological means, nor the provision of specialized and/or regional and local directories.

(16) In the case where universal service can only be provided at a loss or provided under costs falling outside normal commercial standards, different financing schemes can be envisaged to ensure universal service. The emergence of effective competition by the dates established for full liberalization, would however, be seriously delayed if Member States were to implement a financing scheme allocating too heavy a share of any burden to new entrants or were to determine the size of the burden beyond what is necessary to finance the universal service.

Financing schemes disproportionately burdening new entrants and accordingly strengthening the dominant position of the telecommunications organizations would be in breach of Article 90 in

conjunction with Article 86 of the Treaty. Whichever financing scheme they decide to implement, Member States should ensure that only providers of public telecommunications services and networks contribute to the provision and/or financing of universal service obligations and that the method of allocation amongst them is based on objective and non-discriminatory criteria and is in accordance with the principle of proportionality. According to this principle, it could be justified to exempt new entrants which have not yet achieved any significant market presence.

Moreover, the funding mechanisms adopted should seek only to ensure that market participants contribute to the financing of universal service, and not to the provision of other activities.

(17) The tariff structure of voice telephony provided by the telecommunications organizations in certain Member States is currently still out of line with cost. Certain categories of calls are provided at a loss and are cross-subsidized out of the profits from other categories. Artificially low prices, however, impede competition since potential competitors have no incentive to enter into the relevant segment of the voice telephony market and are contrary to Article 86 of the Treaty, as long as they are not justified under Article 90 (2) as regards specific identified endusers or groups of end-users. Member States should lift all unjustified restrictions on tariff rebalancing by the telecommunications organizations and in particular those preventing the adaptation of rates which are not in line with costs and increase the burden of universal service provision.

(18) Where Member States entrust the application of the financing scheme of universal service obligations to their telecommunications organization with the right to recoup a share of it from competitors, Member States should ensure that its amount is made separate and explicit with respect to interconnection (connection and conveyance) charges. The mechanism should be closely monitored and efficient procedures for timely appeal to an independent body to settle disputes as to the amount to be paid must be provided, without prejudice to other available remedies under national law or Community law.

The Commission shall review the situation in Member States where a system of supplementary charges is applied five years after the introduction of full competition, to ascertain whether these financing schemes do not lead to situations which are incompatible with Community law.

(19) Providers of public telecommunications networks require access to pathways across public and private property to place facilities needed to reach the end users. The telecommunications organizations in many Member States enjoy legal privileges to install their network on public and private land, without charge or at charges set simply to recover incurred costs. If Member States do not grant similar possibilities to new licensed operators to enable them to roll out their network, this would delay and in certain areas be tantamount to maintaining exclusive rights in favour of the telecommunications organization.

Moreover Article 90 in conjunction with Article 59 requires that Member States should not discriminate against new entrants, who generally will originate from other Member States, in comparison with their national telecommunications organizations and other national undertakings, which have been granted rights of way facilitating the roll out of their telecommunications networks.

Where essential requirements would oppose the granting of similar rights of way to new entrants, Member States should at least ensure that the latter have, where it is technically feasible, access, on reasonable terms, to the existing ducts or poles, of the telecommunications organization, where these facilities are necessary to roll out their network. In the absence of such requirements the telecommunications organizations would be induced to limit access by their competitors to these essential facilities and thus abuse their dominant position. A failure to adopt such requirements would therefore be contrary to Article 90 in conjunction with Article 86.

(20) The abolition of special and exclusive rights in the telecommunications markets will allow undertakings enjoying special and exclusive rights in sectors other than telecommunications to enter the telecommunications markets. In order to allow for monitoring under the applicable rules of the Treaty and national law of possible anticompetitive cross-subsidies between, on the one hand, areas for which providers of telecommunications services or telecommunications infrastructures enjoy special or exclusive rights and, on the other, their business as

telecommunications providers, Member States should take the appropriate measures to achieve transparency as regards the use of resources from such protected activities to enter in the liberalized telecommunications market. Member States should at least require such undertakings once they achieve a significant turnover in the relevant telecommunications service and/or infrastructure provision market, to keep separate financial records, distinguishing between, *inter alia*, costs and revenues associated with the provision of services under their special and exclusive rights and those provided under competitive conditions. For the time being, a turnover of more than ECU 50 million could be considered as a significant turnover.

(21) Most Member States also currently maintain exclusive rights for the provision of telecommunications infrastructure for the supply of telecommunications services other than voice telephony.

Under Directive 92/44/EEC Member States must ensure that telecommunications organizations make available certain types of leased lines to all providers of telecommunications services. However, the Council Directive provides only for such offer of a harmonized set of leased lines up to a certain bandwidth. Companies needing a higher bandwidth to provide services based on new high-speed technologies such as SDH (synchronous digital hierarchy) have complained that the telecommunications organizations concerned are unable to meet their demand whilst it could be met by the optic fibre networks of other potential other providers of telecommunications infrastructure, in the absence of the current exclusive rights. Consequently these rights delay the emergence of new advanced telecommunications services and therefore restrict technical progress at the expense of the users contrary to Article 90 in conjunction with Article 86 (b) of the Treaty. Moreover the removal of restrictions in this area has proven to be essential for the establishment of undistorted competition in cases regarding neighbouring markets.

(22) Given that the lifting of such rights will concern mainly services which are not yet provided and does not concern voice telephony, which is still the main source of revenue of those organizations, it will not destabilize the financial situation of the telecommunication organization. There is consequently no justification to maintain exclusive rights on the provision of network infrastructure for services other than voice telephony and these rights should be lifted by the Member States as from 1 January 1996.

In order to take account of the specific situation in Member States with less developed networks and in Member States with very small networks, the Commission shall grant, upon request, additional transitional periods as set out above.

(23) The abolition of exclusive and special rights on the establishment of new telecommunications networks would have less effect if Member States were not allowing connection of terminal equipment to these new networks. If Member States decide to impose type approval to such terminal equipment, they should notify to the Commission the specifications drafted according to Council Directive 83/189/EEC. In this case, Member States should take the necessary measures to avoid that delays in the adoption of such new specifications are delaying market entry. As provided for in Article 3 of Directive 88/301/EEC, as regards equipment to be connected to the current public networks, Member States should not restrict the connection of such equipment to the new networks authorized, except where they can demonstrate that such equipment does not comply with an essential requirement, mentioned in Article 4 of Directive 91/263/EEC.

(24) This Directive does not prevent measures regarding undertakings, which are not established in the Union, being adopted in accordance with Community law and existing international obligations so as to ensure that nationals of Member States are afforded comparable and effective treatment in third countries.

(25) The establishment of procedures at national level concerning licensing, interconnection, universal service, numbering and rights of way is without prejudice to the harmonization of the latter by a European Parliament and Council Directive, in particular in the framework of open network provision (ONP).

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 90/388/EEC is hereby amended as follows:

**(Definitions)**

1. In Article 1:

(a) Replace the thirteenth indent of paragraph 1 by the following:

'— "essential requirements" means the non-economic reasons in the public interest which may cause a Member State to impose conditions on the establishment and/or operation of telecommunications networks or the provision of telecommunications services. These reasons are security of network operations, maintenance of network integrity, and, where justified, interoperability of services, data protection, the protection of the environment and town and country planning objectives as well as the effective use of the frequency spectrum and the avoidance of harmful interference between radio-based telecommunications systems and other, space-based or terrestrial, technical systems.

Data protection may include protection of personal data, the confidentiality of information transmitted or stored as well as the protection of privacy.';

(b) The fourth indent of paragraph 1 is replaced by the following:

'— "public telecommunications network" means a telecommunications network used *inter alia* for the provision of public telecommunications services';

(c) The following is inserted after the last indent of paragraph 1:

'— "telecommunications network" means the transmission equipment and, where applicable, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electromagnetic means;

— "interconnection" means the physical and logical linking of the facilities of organizations providing telecommunications networks and/or telecommunications services, in order to allow the users of one organization to communicate with the users of another organization or to access services provided by third organisations.'

**(Abolition of special and exclusive rights)**

2. Article 2 is replaced by the following:

'*Article 2*

1. Without prejudice to Article 1 (2), Member States shall withdraw all those measures which grant:

(a) exclusive rights for the supply of telecommunications services, including the supply of telecommunications networks required for the provision of such services; and

(b) special rights which limit to two or more the number of undertakings authorized to supply such telecommunications services or such networks, otherwise than according to objective, proportional and non-discriminatory criteria; and

(c) special rights which designate, otherwise than according to such criteria, several competing undertakings to provide such telecommunications services or such networks.

2. They shall take the measures necessary to ensure that any undertaking is entitled to supply any such telecommunications services or such networks. As regards voice telephony and the provision of public telecommuncations networks for voice telephony, Member States may maintain special and exclusive rights until 1 January 1998.

3. Member States which make the supply of telecommunications services or networks subject to a licensing, general authorization or declaration procedure aimed at compliance with the essential requirements shall ensure that the relevant conditions are objective, non-discriminatory, proportionate and transparent, that reasons are given for any refusal, and that there is a procedure for appealing against any refusal.

The provision of telecommunications services other than voice telephony, the provision of public telecommunications networks and other telecommunications networks involving the use of radio frequencies, may only be subjected to a general authorization or a declaration procedure.

4. Member States shall communicate to the Commission the criteria on which licences, general authorizations and declaration procedures are based together with the conditions attached thereto.

Member States shall continue to inform the Commission of any plans to introduce new licensing, general authorization and declaration procedures or to change existing procedures.'

**(Licensing of voice telephony and public telecommunications networks)**

3. Article 3 is replaced by the following:

'*Article 3*

As regards voice telephony and the provision of public telecommunications networks, Member States shall, no later than 1 January 1997, notify to the Commission before implementation any licensing or declaration procedure which is aimed at compliance with:

— essential requirements, or

— trade regulations relating to conditions of permanence, availability and quality of the service, or

— financial obligations with regard to universal service, according to the principles set out in Article 4 (c) of the present Directive.

Conditions relating to availability can include requirements to ensure access to customer base necessary for the provision of universal directory information.

The whole of these conditions shall form a set of public-service specifications and shall be objective, non-discriminatory, proportionate and transparent.

Member States may limit the number of licences to be issued only on the basis of essential requirements and only where related to the lack of availability of frequency spectrum and justified under the principle of proportionality.

Member States shall ensure, no later than 1 July 1997, that such licensing or declaration procedures for the provision of voice telephony and of public telecommunications networks are published. Before they are implemented, the Commission shall verify the compatibility of these projects with the Treaty.

As regards packet- or circuit-switched data services, Member States shall abolish the adopted set of public-service specifications. They may replace these by declaration procedures of general authorizations referred to in Article 2.'

**(Numbering)**

4. In Article 3B the following paragraph is inserted after the third paragraph:

'Member States shall ensure before 1 July 1997 that adequate numbers are available for all telecommunications services. They shall ensure that numbers are allocated in an objective, non-discriminatory, proportionate and transparent manner.'

5. In Article 7 the words 'numbers as well as the' are inserted before the word 'surveillance'.

6. In Article 4 the first paragraph is replaced by the following:

'As long as Member States maintain special and exclusive rights for the provision and operation of fixed public telecommunications networks they shall take the necessary measures to make the conditions governing access to the networks objective and non-discriminatory and shall publish them.'

7. The following Articles are inserted after Article 4:

**(Interconnection)**

'*Article 4 (a)*

1. Without prejudice to future harmonization of the national interconnection regimes by the European Parliament and the Council in the framework of ONP, Member States shall ensure that the telecommunications organizations provide interconnection to their voice telephony service and their switched telecommunications network to other undertakings authorized to provide such service or networks, on non-discriminatory, proportional and transparent terms, as set out in Annex, and which are based on objective criteria.

2. Member States shall ensure in particular that the telecommunications organizations, publish, no later than 1 July 1997, the terms and conditions for interconnection to the basic functional components of their voice telephony service and their public switched telecommunications networks, including the interconnection points and the interfaces offered.

3. Member States shall, where the Commission considers it necesarry to request, supply to it the information referred to in Annex, together with any necessary background information, notably the methodology used. Member States shall ensure that the cost accounting system implemented by the telecommunications organizations to identify the relevant elements of pricing of interconnection offerings, is kept at the disposal of the Commission for five years from the end of each financial year.

4. Member States shall further ensure that organizations providing telecommunications networks and/or services who so request can negotiate interconnection agreements for access to the public switched telecommunications network regarding special network access and/or conditions meeting their specific needs. If commercial negotiations do not lead to an agreement within a reasonable time period, the Member States shall upon request from either party and within a period of two months adopt a reasoned decision which establishes the necessary operational and financial conditions and requirements for such interconnection without prejudice to other remedies available under the applicable national law or under Community law.

5. The measures provided for in this Article shall apply for a period of five years from the date of the effective abolition of these special and exclusive rights for the provision of voice telephony granted to the telecommunications organization. The Commission shall, however, review the present Article if the European Parliament and the Council adopt a Directive harmonizing interconnection conditions before the end of this period.'

**(Directories)**

'*Article 4 (b)*

Member States shall ensure that all exclusive rights with regard to the establishment of directory services on their territory are lifted.'

**(Universal service)**

'*Article 4 (c)*

Without prejudice to the harmonization by the European Parliament and the Council in the framework of ONP, any national scheme which is necessary to share the net cost of the provision of universal service obligations entrusted to the telecommunications organizations, with other organizations providing telecommunications networks and/or services, whether it consists of a system of supplementary charges or a universal service fund, shall:

(a) only apply to undertakings providing voice telephony or public telecommunications networks;

(b) allocate the respective burden to each undertaking according to objective and non-discriminatory criteria and in accordance with the principle of proportionality;

(c) contain incentives for providing universal service as efficiently as possible, and, in particular, allow any undertaking covered to propose to fulfil itself the relevant universal service obligation for a compensation equal to or below the cost claimed by the incumbent telecommunications organization;

(d) provide for an efficient procedure for appeal to settle disputes as to the amount to be paid by operators, without prejudice to other remedies available under the applicable national law or under Community law;

Member States shall communicate any such scheme to the Commission so that it can verify the scheme's compatibility with the Treaty.

Member States shall allow their telecommunications organizations to re-balance tariffs and, in particular, to adapt rates which are not in line with costs and which increase the burden of universal service provision.

The Commission shall review by 1 January 2003 at the latest the situation in the Member States where the financing scheme consists in a system of supplementary charges to be paid in addition to the connection charges for interconnection at specified points of the public switched telecommunications network and assess in particular whether such schemes do not limit access to the relevant markets. In this case, the Commission will examine whether there are other methods and make any appropriate proposals.'

**(Rights of way)**

'*Article 4 (d)*

Member States shall ensure that there is no discrimination between providers of public telecommunications networks with regard to the granting of public rights of way for the provision of such networks.

Where the granting of additional rights of way to undertakings wishing to provide public telecommunications networks is not possible due to applicable essential requirements, Member States should ensure access to existing facilities established under rights of way and which may not be duplicated, at reasonable terms.'

**(Deferment)**

'*Article 4 (e)*

As regards the requirements set out in Articles 2 (3), 3 and 4 (a) (1) to (3), Member States with less developed networks shall be granted upon request an additional implementation period of up to five years and Member States with very small networks shall be granted upon request an additional implementation period of up to two years, in order to achieve the necessary structural adjustments.'

*Article 2*

Member States shall in the authorization schemes for the provision of voice telephony and public telecommunications networks at least ensure that where such authorization is granted to undertakings to which they also grant special or exclusive rights in areas other than telecommunications, such undertakings keep separate financial accounts as concerns activities as providers of voice telephony and/or networks and other activities, as soon as they achieve a turnover of more than ECU 50 million in the relevant telecommunications market.

*Article 3*

1. Without prejudice to Article 4 of Directive 90/388/EEC as modified by Directive 95/. . ./EC [concerning the abolition of the restrictions on the use of cable television networks for the provision of telecommunications services], Member States shall ensure that all restrictions on the provision of telecommunications services other than voice telephony with regard to the us of networks established by the provider of the telecommunications service, the use of infrastructures provided by third parties and the sharing of networks, other facilities and sites are lifted no later than 1 January 1996.

2. As regards the requirements set out in paragraph 1 of this Article, Member States with less developed networks shall be granted upon request an additional implementation period of up to five years and Member States with very small networks shall be granted upon request an additional implementation period of up to two years, in order to achieve the necessary structural adjustements.

*Article 4*

Where Member States decide to adopt type-approval specifications for terminal equipment intended for connection to new public telecommunications networks authorized under the present Directive, they shall notify these specifications in draft form to the Commission in accordance with Directive 83/189/EEC.

In the absence of such specifications, Member States shall not refuse to allow terminal equipment to be connected to such new public networks and brought into service, except in the cases where they demonstrate that these terminal equipment does not comply with an essential requirement under Article 4 of Directive 91/263/EEC.

*Article 5*

Member States shall supply to the Commission, not later than nine months after this Directive has entered into force, such information as will allow the Commission to confirm that Articles 1, 2, 3 and 4 have been complied with.

The present Directive is without prejudice to existing obligations of the Member States to communicate measures taken to comply with Directives 90/388/EEC and 94/46/EC.

*Article 6*

The Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities.*

*Article 7*

This Directive is addressed to the Member States.

*ANNEX*

The transparency referred in the first paragraph of the present Article 4A, shall apply in particular to following costs of the interconnection offered:

(a) the initial connection charge covering the one-off and rental costs of implementing the physical interconnection (e.g. specific equipment; signalling resources; compatibility testing; connection maintenance; etc.) as well as the variable costs for ancillary and supplementary services (e.g. access to directory services; operator assistance; data collection; charging; billing; switch-based and advanced services etc.);

(b) conveyance charges (e.g. the costs of switching and transmission) identifying the billing principle applied (call-per-call basis and/or on the basis of additional network capacity required);

(c) the share of the costs incurred in providing equal access (e.g. the support of identical end-user access procedures), and number portability, and costs of ensuring essential requirements (maintenance of the network security in cases of emergency situation; interoperability of services; and protection of data);

(d) where applicable, supplementary charges aimed to share the net cost of serving customers which the telecommunications organizations should refuse to serve in the absence of universal service obligation.

# STATE AID

## C 22/94 (ex N 53/94)

## Belgium

(95/C 263/08)

**(Text with EEA relevance)**

*(Articles 92 to 94 of the Treaty establishing the European Community)*

**Commission notice pursuant to Article 93 (2) of the EC Treaty to the Member States and interested parties concerning the proposal of the Kingdom of Belgium to award aid to DS Profil bvba, a producer of synthetic down located in Dendermonde, Vlaanderen**

By the letter reproduced below, the Commission informed the Belgian Government that it had decided to close the Article 93 (2) procedure opened on 4 May 1994 [1].

'By letter dated 3 January 1994, pursuant to Article 93 (3) of the EC Treaty and the code on aid to the synthetic fibres industry [2], your Government notified the Commission of the proposal to award aid to DS Profil bvba (hereinafter DSP), located in Dendermonde, Vlaanderen, in support of investments costing ECU 2 786 434 in a new facility for the production, texturization and surface treatment of polyester staple fibre (hereinafter P-SF) from polyester granules and subsequent processing of the treated fibre to produce polyester down. The annual capacity of the plant was approximately 2 000 tonnes, and a total of 12 jobs had been created as a result of the complete investment.

The proposed aid would be awarded under the Law of 4 August 1978 for the expansion of small and medium-sized enterprises in three forms:

Firstly, an interest subsidy (ECU 214 102) in respect of a loan of ECU 952 381 over seven years, which would be repaid in 12 half-yearly instalments of ECU 79 365 between 28 February 1994 and 28 August 1999. The proposed interest subsidy is calculated as 15 % of the total cost of the part of the investment concerning the following specific activities which the Belgian authorities considered were in all cases outside the scope of the Code, i.e. the blending and carding of treated P-SF, and the packaging and storage of the end-product, polyester down. The intensity of 15 % constitutes the sum of the intensity at which aid is generally available under the scheme, 6 %, an additional 6 % because young, first-time workers were employed as a result of the investment and a further 3 % because the investment was the first in a new industrial zone and, as such, was considered to be a project of strategic interest. The subsidy would be paid in yearly instalments over three years, starting one year after the provision of the loan.

Secondly, exemption from advance property tax (ECU 14 273,49), calculated as 1 % of the total cost of that part of the investment concerning the specific activities identified above.

Thirdly, authorization to apply accelerated depreciation (value uncertain) i.e. depreciation at twice the normal annual rate, over three consecutive tax periods form the fiscal year in which the investment took place on the cost of the land, buildings and shared infrastructure costs allocated to the specific activities identified above.

On 4 May 1994, the Commission decided to open the procedure provided for in Article 93 (2) of the EC Treaty in respect of the proposed aid.

In taking this decision, the Commission noted that the activities that your Government proposed to support, i.e. the blending and carding of the treated fibres, and the packaging and storage of the end-product, polyester down were linked directly to the production of P-SF and could not be dissociated from it. Therefore, the proposed aid would be by way of support for production of P-SF and could only be considered compatible with the common market and the functioning of the EEA Agreement if it conformed with the code on aid to the synthetic fibres industry. Moreover, the Commission noted that the investment in question involved the installation of new capacity by the prospective aid beneficiary for the production of P-SF whereas the Code states that proposals to award aid can only be authorized where they would result in a significant reduction in production capacity. Accordingly, the Commission concluded that the proposed aid would not conform with the Code.

By letter dated 12 July 1994, the Commission informed Belgium that it had decided to open the procedure provided for in Article 93 (2) of the EC Treaty in respect of the proposal to award aid to DSP. Other Member States and interested parties were informed by publication of the letter in the *Official Journal of the European Communities* [3].

By letters dated 21 October 1994 and 1 March 1995, Belgium submitted comments under the procedure,

[1] OJ No C 201, 23. 7. 1994, p. 2.

[2] OJ No C 346, 30. 12. 1992, p. 2 and OJ No C 224, 12. 8. 1994, p. 4.

[3] OJ No C 201, 23. 7. 1994, p. 2.

which largely repeated comments submitted by DSP by letters dated 15 October 1994, and 16 and 24 February 1995. In addition, Commission officials visited the site of the investment in question on 15 February 1995.

In their comments submitted under the procedure, DSP and the Belgian authorities described the background to the establishment of the company in 1990 and the reasons for undertaking the investment in question, and provided details of the technical aspects of the process for the production of its end-product, a kind of synthetic down.

DSP had been created with the specific aim of producing a new product with the characteristics needed for use as a filler by the furniture industry and in filling applications such as cushions and pillows as well as mattress stuffing. Having perceived significant latent demand for a material that would combine resilience and comfort but also be non-allergenic, non-flammable and not prone to mildew, DSP determined that a product with such characteristics could be produced from P-SF. In brief, the integrated process carried out by DSP comprised the extrusion and three dimensional texturization of hollow P-SF, subsequent surface treatment by siliconization of the fibre, and blending and carding to produce the end-product which is then packed and stored on site prior to sale.

DSP and the Belgian authorities stated that certain of the different stages of this process were technically distinct and could, in principle, have been carried out separately i.e. the company could in principle have produced the end-product by blending and carding bought-in hollow P-SF that had been texturized three-dimensionally and subjected to the necessary surface treatment. There was no direct, technical link between those parts of the process that concerned the production, texturization and surface treatment of P-SF and the downstream activities that would be supported by the proposed aid.

DSP and the Belgian authorities also claimed that, in any case, it would not in practice have been possible for the company to have invested only in the downstream activities because, despite contacting various synthetic fibre producers, the company had been unable to find a potential supplier of siliconized, three-dimensionally texturized, hollow P-SF. Moreover, because of the need for iterative development of the various stages of the fibre production process, i.e. the hollowness of the fibre, and the texturization and siliconization stages, in order to optimize the characteristics of the end-product, no producer would have been able to supply P-SF without significant additional investment. At the same time, DSP would have had to divulge the technical specifications of the complete process, undermining the commercial viability of the investment. Consequently, DSP had been compelled to invest in an integrated process starting with the production of P-SF and ending with the packaging and storage of the end-product. DSP did not sell P-SF to any other company nor had it any intention to do so. DSP and the Belgian authorities commented that other producers of similar products to that produced by the company had also been obliged to produce and process fibres because no source of supply was available although, depending on the success achieved by DSP's product and other with which it is in competition, some such source of supply might become available at some future date. Furthermore, DSP and the Belgian authorities commented that, since DSP had undertaken its investment, there had been wider development of the various stages in the fibre production process by a number of synthetic fibres producers; the considerations of confidentiality concerning the iterative determination of the optimum characteristics, which had necessitated the company's undertaking the investment in fibre production as well as processing were no longer as significant. Therefore, if the company's fibre requirements were to increase in the future, it should be possible for DSP to cooperate with a mainstream producer of synthetic fibres rather than by increasing its own production capacity.

DSP and the Belgian authorities also argued that the current code only applied to proposals to award aid in direct support of the production of synthetic fibres, as defined in the code, or to aid awarded in support of activities downstream of production that were linked technically to the process of production. Where there was not a direct, technical link between fibre production and the downstream activities that would be supported by aid, as DSP and the Belgian authorities claimed was the position in the case in question, the proposed aid would in their opinion be outside the scope of the code. In support of this interpretation of the scope of the current code, DSP and the Belgian authorities cited the Commission's decision of 26 March 1991 concerning the German authorities' proposal to award aid to Textilwerke Deggendorf GmbH [1], which was in fact assessed against an earlier version of the Code [2].

In addition, DSP and the Belgian authorities stated that the company's end-product was innovative and still in development in respect of the range of possible end-uses. By stimulating demand for P-SF in new end-uses, DSP's investment should make a positive contribution in the long-term to a stimulation of demand for polyester down and, thereby, improve the average rate of utilization of capacity for existing producers of P-SF, possibly encouraging them to extend their activities downstream

[1] OJ No L 215, 2. 8. 1991, p. 16.
[2] OJ No C 173, 8. 7. 1989, p. 5.

and produce polyester down themselves. DSP and the Belgian authorities also commented that, "in the near future" it would be possible to use DSP's end-product as filling for upholstery such as the seating in motor vehicles in which polyurethane foam, which is toxic and inflammable, is used currently.

Finally, DSP and the Belgian authorities provided a more detailed breakdown of the costs of the investment, which is summarized below:

| Activity | Equipment cost (excluding infrastructure costs) (in Bfrs) | Percentage of total investment cost (excluding infrastructure costs) (%) |
|---|---|---|
| Extrusion and texturization | 12 909 256 | 15,4 |
| Surface treatment | 27 877 267 | 33,3 |
| Blending | 22 928 385 | 27,4 |
| Carding | 9 120 754 | 10,9 |
| Packaging and storage | 10 939 126 | 13,1 |
| Total | 83 774 788 | 100,0 |

The infrastructure costs were allocated to each activity in direct proportion to the percentage of the total cost of the investment (excluding infrastructure costs) accounted for by the equipment costs associated with that activity:

| Infrastructure | Cost (Bfrs) |
|---|---|
| Land | 11 804 261 |
| Buildings | 11 355 061 |
| Other (electricity/water/steam) | 10 096 087 |
| Total | 33 255 409 |

The Belgian authorities endorsed the comments submitted by DSP that this simple method of allocating overhead costs was adopted because it would have been very difficult and, in some cases, impossible to allocate the infrastructure costs individually to each activity. The adopted method was considered to provide a fair proxy for the actual allocation of costs given that, for example, extrusion would require a greater proportion of energy costs than the fibre processing activities but the latter certainly accounted for a greater proportion of the land and building costs of the investment.

The total cost of the investment was, therefore, Bfrs 117 030 197.

Under the Article 93 (2) procedure, comments were received from the International Rayon and Synthetic Fibres Committee (hereinafter Cirfs) and Montefibre, an Italian producer of synthetic fibres including P-SF.

Cirfs and Montefibre commented that the downstream activities that would be supported by the proposed aid were integral to the fibre production process and could not be considered separate as they were necessary to transform fibre into the end-product. Therefore, because DSP produced P-SF albeit as an intermediate rather than as an end-product, the investment in question came within the scope of the code and, as it concerned the installation of new capacity, any aid in support of any part of the investment would not conform with the code. Any new capacity would further reduce the average rate of capacity utilization for existing EEA producers of P-SF, which Cirfs noted was 77 % in 1993, and depress prices, damaging the profitability and viability of competing firms. Both parties therefore supported the Commission's initial conclusion that the proposed aid was incompatible with the common market and the functioning of the EEA Agreement.

By letter dated 18 October 1994, the comments submitted under the procedure were sent to the Belgian authorities, which replied by letter dated 25 November 1994. Their comments largely followed those submitted by DSP by an undated letter received by the Commission on 23 November 1994.

DSP and the Belgian authorities rejected the suggestion that the company should be considered a synthetic fibres producer, and did not accept the view expressed by Cirfs and Montefibre that the downstream activities that would be supported by the proposed aid were integral to the fibre production process and could not be considered separate as they were necessary to transform fibre into the end-product. DSP and the Belgian authorities reiterated that there was no technical link between the downstream activities in question and the fibre production process. Such activities were generally not carried out by producers for whom synthetic fibres constituted end-products. In support of their interpretation of the code, namely that proposals to award aid in support of downstream activities were outside the scope of the code if there was no technical link *per se* between those activities and fibre production, DSP and the Belgian authorities again cited the Commission's decision of 26 March 1991 concerning the German authorities' proposal to award aid to Textilwerke Deggendorf GmbH, and its decision of 4 May 1994 on the UK authorities' proposal to award aid to Hualon Corporation (1). Finally, DSP and the Belgian authorities refuted the view that any aid in support of the Company's investment

(1) OJ No C 271, 29. 9. 1994, p. 5.

would depress prices, damaging the profitability and viability of competing firms, on the grounds that the company had only had to invest in an integrated process comprising the production and downstream processing of P-SF because it had been unable to find a potential supplier of P-SF with the desired characteristics.

Article 92 (1) of the EC Treaty lays down the principle that, except where otherwise allowable, aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade among Member States, incompatible with the common market. Similarly, Article 61 (1) of the EEA Agreement states that, except where otherwise allowable, such aid is incompatible with the functioning of the EEA Agreement.

The proposal to award aid to DSP undoubtedly constitutes aid within the meaning of Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Agreement as it would mean that the company had been able to carry out the investment in question without having to bear the full cost. The intermediate and end-products of the investment to be supported by the proposed aid are, respectively, polyester staple fibre not carded, combed or otherwise processed for spinning (CN code 5503 20 00) and wadding of synthetic fibres (CN code 5601 22 91). Therefore, as there is intra-Community trade in the general type of intermediate and end-products produced by DSP (in 1992, approximately 90 000 tonnes and 9 000 tonnes respectively), the proposed aid would distort competition and affect trade within the meaning of Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Agreement.

Articles 92 (2) and (3) of the EC Treaty and, similarly, Articles 61 (2) and (3) of the EEA Agreement describe the circumstances in which such aid is or may be allowed.

Article 92 (3) (c) of the EC Treaty and, similarly, Article 61 (3) (c) of the EEA Agreement relate to aid intended to facilitate the development of certain economic areas or activities where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

The intensity and other aspects of the proposed aid and the forms in which it would be awarded are in accordance with the terms on which the Commission authorized the Law of 4 August 1978 as compatible with the common market by virtue of Article 92 (3) (c) of the EC Treaty (1).

(1) By letter SG(78) D/13815, dated 8 November 1978.

Since 1977, the conditions under which aid may be awarded to synthetic fibres producers by way of support for such activities have been prescribed by a code whose terms and scope have been revised from time to time, most recently in 1992. Under the code, Member States are required to transmit to the Commission the information it needs to assess the sectoral consequences of any aid to a synthetic fibres producer. This is a general obligation which must be met even where the aid is question is granted under a scheme previously authorized by the Commission.

Accordingly, the code requires Member States to notify all proposals to award aid to synthetic fibres producers by way of support for such activities. Proposals to award aid by way of direct support for the production of synthetic fibres automatically come within the scope of the code and must be notified. Proposals to award aid in direct support of activities downstream of production, such as marketing or processing, for example by weaving or spinning, may constitute indirect support and, thereby, must be notified to the Commission if the fibres would be supplied from newly installed or recently modernized production capacity, belonging either to the prospective aid beneficiary or to another company in the group to which it belongs. Under the code, investment aid can only be authorized where it would result in a significant reduction in the production capacity of the prospective recipient, irrespective of all other considerations such as the company's size, the volume of its capacity, the average capacity utilization rate for existing producers of the relevant fibres or yarns, the current state and forecast development of the relevant markets and the status of the region in which the investment in question is located.

The Commission does not accept the contention of Cirfs and Montefibre that the activities that would be supported by the proposed aid are, in all cases, integral parts of the fibre production process. Nevertheless, in the case in question, although the proposed aid would be awarded in support of activities downstream of fibre production, the P-SF would be supplied from newly installed capacity belonging to DSP.

Therefore, as the proposal to award aid to DSP could constitute indirect support and thereby might come within the scope of the code, it was properly notified to the Commission pursuant to Article 93 (3) of the EC Treaty and the code. As in all cases, the notification of the proposal was without prejudice to the question of whether or not the proposed aid would in fact constitute support for production in which case it would have to conform with the Code.

Consequently, the Commission was required to determine whether or not the proposed aid would come within the scope of the code.

In supporting their view that it did not come within the scope of the code, DSP and the Belgian authorities cited two previous decisions of the Commission concerning State aid to synthetic fibres producers by way of support for activities downstream of fibre production.

Firstly, in taking a conditional decision on the German authorities' proposal to award aid to Textilwerke Deggendorf GmbH, the Commission assessed the proposal against an earlier version of the code whose period of validity expired on 19 July 1991. The scope of the notification requirement under this earlier version of the code and the scope of the code itself differ significantly from those of the current code.

Secondly, in deciding to close the Article 93 (2) procedure on the UK authorities' proposal to award aid to Hualon Corporation which was assessed against the current version of the code, the Commission was satisfied that the downstream activities that would be supported by the proposed aid would not be supplied with synthetic fibres supplied from newly installed or recently modernized capacity belonging to the prospective aid beneficiary or the Group to which it belonged. Accordingly, the proposed aid did not constitute indirect support and did not come within the scope of the code.

Therefore, neither of the decisions cited by DSP and the Belgian authorities is relevant to the Commission's assessment of whether or not the proposed aid to DSP would come within the scope of the code.

Given that DSP and the Belgian authorities claimed that the company had been compelled to invest in an integrated process comprising the production and downstream processing of P-SF because it had been unable to find a potential supplier of P-SF with the desired characteristics, the Commission sought independent expert advice from a leading specialist consultancy in the synthetic fibres sector.

The Commission was advised that, while hollow P-SF was available, DSP appeared to be the only company in the whole of Western Europe producing three-dimensionally texturized hollow P-SF and then only in a limited quantity for the downstream production of polyester down as described above. For any of the major synthetic fibre producers to decide to offer a specialized fibre with the relevant characteristics, there would have to be significant demand in the order of 10 000 to 20 000 tonnes. In the investment in question, i.e. where the fibre was required as a precursor for the production of a specific end-product, the only possible alternative to integrating fibre production with the downstream processing activities — buying in hollow fibre and then undertaking three-dimensional texturization and siliconization — would have added to costs and could in any case have been unfeasible depending on whether or not hollow fibre with the appropriate attributes was commercially available.

Therefore, in the light of this independent expert advice, the Commission has concluded that fibres with the characteristics required in order to produce DSP's end-product were not available from any producer of synthetic fibres located within the EEA. DSP was compelled to install the necessary fibre production capacity itself. Similarly, Belgium could have supported DSP's downstream fibre processing activities, by which it produced polyester down, only where these activities were integrated with the production of the fibres concerned. Moreover, the fibres produced by DSP are not placed on the market but are produced solely as an intermediate from which the end-product, polyester down, will be produced. In this case, because the fibres could only have been supplied from newly installed production capacity belonging to the aid beneficiary and could not have been supplied form any other source, the proposed aid would not constitute indirect support for the production of synthetic fibres and, consequently, it does not come within the scope of the code.

As noted above, the proposed aid conforms with the terms on which the Commission authorized the Law of 4 August 1978 as compatible with the common market by virtue of Article 92 (3) (c) of the EC Treaty.

Consequently, the proposed aid is compatible with the common market by virtue of Article 92 (3) (c) of the EC Treaty, and is also compatible with the functioning of the EEA Agreement by virtue of Article 61 (3) (c) of that Agreement.

In light of the foregoing information, the Commission has decided not to object to the proposal to award aid to DS Profil bvba, located in Dendermonde, Vlaanderen, in support of investments costing ECU 2 786 434 in a new facility for the production, texturization and surface treatment of polyester staple fibre from polyester granules and subsequent processing of the treated fibre to produce polyester down.

I have, therefore, the honour of informing you that the Commission has decided to close the procedure opened under Article 93 (2) in respect of the proposed aid.

This letter will be published in the *Official Journal of the European Communities* and in the EEA Supplement to the Official Journal. In addition, a copy will be sent to the EFTA Surveillance Authority.'

III

*(Notices)*

# COMMISSION

## Notice of open competition

(95/C 263/09)

The European Commission is organizing three open competitions for principal assistants (B 1):

— COM/B/949: Austrian nationality (1),

— COM/B/951: Finnish nationality (2),

— COM/B/953 Swedish nationality (1).

(1) OJ No C 264 A, 11. 10. 1995 (German and Swedish editions).
(2) OJ No C 263 A, 10. 10. 1995 (Finnish and Swedish editions).

## EUROPEAN ECONOMIC INTEREST GROUPING

### Notices published pursuant to Council Regulation (EEC) No 2137/85 of 25 July 1985 (1) — Formation

(95/C 263/10)

1. ***Name of grouping:*** Chapel and Shepherd EEIG
2. ***Date of registration of grouping:*** 12. 9. 1995
3. ***Place of registration of grouping:***
   (a) ***Member State:*** UK
   (b) ***Place:*** Cardiff, CF4 3UZ
4. ***Registration number of grouping:*** GE 90
5. ***Publication(s):***
   (a) ***Full title of publication:*** The London Gazette
   (b) ***Name and address of publisher:*** HMSO Publications, HMSO Publications Centre, 59 Nine Elms Lane, UK-London SW8 5DR
   (c) ***Date of publication:*** 18. 9. 1995

(1) OJ No L 199, 31. 7. 1985, p. 1.

**Continuous administrative forms**

(95/C 263/11)

1. ***Name, address, telephone, telegraph, telex and facsimile numbers of the awarding authority:*** Commission of the European Communities, Directorate-General Personnel and Administration IX.C.1, Buildings policy, options and contracts, ORBN 1/69, rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel.

   Tel. 295 21 00. Facsimile 295 23 72.

2. a) ***Award procedure chosen:*** Open procedure.

   b) ***Form of contract to be tendered for:*** Framework agreement with a maximum duration of 5 years with annual price review in accordance with regulations in force.

3. a) ***Place of delivery:*** Delivery to stores of the Commission of the European Communities in B-Brussels and Luxembourg.

   b) ***Nature and quantity of the goods to be supplied. CPA reference No:*** The invitation to tender is divided into 5 lots for each print group:

   I. 1 000-5 000 copies.

   II. 5 001-10 000 copies.

   III. 10 001-20 000 copies.

   IV. 20 001-50 000 copies.

   V. In excess of 50 000 copies.

   Estimated quantities p.a.:

   I. 95 000 bundles.

   II. 82 000 bundles.

   III. 135 000 bundles.

   IV. 162 000 bundles.

   V. 215 000 bundles.

   CPA No: 22.22.

   c) ***Indication of whether the supplier can tender for a part of the goods required:*** Suppliers to tender for:

   — a complete lot; or

   — several complete lots.

4. ***Deadline for delivery:***

5. a) Name and address of the service from which the necessary documents may be requested: Tender documents may be requested from the address in 1.

   All requests to be submitted in writing, quoting reference 95/18/IX.C.1.

   b) ***Final date for making such requests:*** 10. 11. 1995.

   c) ***Where applicable, the amount and method of payment of any sum payable for such documents:*** Free of charge.

6. a) ***Deadline for the receipt of tenders:*** 24. 11. 1995.

   b) ***Address to which they must be sent:*** As in 1.

   c) ***Languages in which they must be drawn up:*** 1 of the 11 official European Union languages.

7. a) ***Persons authorized to be present at the opening of tenders:*** Only 1 person for each tenderer. The name and position of the participant at the opening must be stated (if possible by facsimile 295 23 72 in B-Brussels) by the date of submission of tenders at the latest.

   b) ***Date, time and place of the opening:*** 1. 12. 1995 (10.00) in assembly room 1/55 in the Orban building (Square Frère Orban 8, B-1040 Bruxelles).

8. ***Where applicable, any deposits and guarantees required:***

9. ***Main terms concerning financing and payment and/or references to the texts in which they are contained:*** Payment upon receipt of invoice 60 days following receipt of invoice or request for payment, payment being considered effected on day of debit from the account of the Commission.

10. ***Where applicable, the legal form to be taken by the grouping of service providers to whom the contract will be awarded:***

11. ***Information concerning the service provider's own position, and information and formalities necessary for an appraisal of the minimum economic and technical standards required of him:*** A statement of sufficient annual turnover in relation to the volume of the supplies to which the contract relates. Balance sheets and accounts or other relevant documents must be enclosed.

12. ***Period during which the tenderer is bound to keep open his tender:*** 5 months, commencing 24. 11. 1995.

13. ***Criteria for the award of the contract (criteria other than the lowest price shall be mentioned where they do not appear in the contract documents):*** The award of each lot will be based on the economically most advantageous tender having regard to price, quality and time of delivery.

14. ***Where applicable, non-acceptance of variants:***

15. ***Other information:***

16. ***Date of publication of the pre-information notice in the Official Journal of the European Communities:*** Pre-information notice No 95/C 53/14 and 95/S 44-20611 published 4. 3. 1995.

17. ***Date of dispatch of the notice:*** 28. 9. 1995.

18. ***Date of receipt by the Office for Official Publications of the European Communities:*** 28. 9. 1995.

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## Ex-post evaluation study of the Community LEADER Initiative

(95/C 263/12)

1. The Commission of the European Communities and the Directorate-General for Agriculture in particular is inviting invitations to tender from competent organizations, companies or institutes for carrying out an 'ex-post' evaluation of the Community Initiative (CI) LEADER I (Liaison between actions and development of the rural economy) decided in accordance with Article 11 of EEC Council Regulation No 4253/88 [1] finally modified by EEC Regulation No 2082/93 [2] and EC Regulation No 3193/94 [3].

This evaluation is required in terms of Article 6 of EEC Regulation No 2052/88 of Council [4], finally modified by EEC Regulation No 2081/93 [5] and EC Regulation No 3193/94 (follow-up and evaluation) and Article 26 of EEC Regulation No 4253/88.

This evaluation must take place within the context of the partnership defined in Article 4 of EEC Regulation No 2052/88.

2. **Objectives and content of the evaluation**

The general objective of the evaluation of the CI LEADER I aims at assessing the effects of support measures of the structural funds implemented within the context of LEADER I, in compliance with the orientations defined by the Commission in its communication of 19. 3. 1991 [6].

The evaluation concerns all the Member States and will cover all the overall subsidies decided in terms of this Community initiative in favour of all the local action groups (LAG).

The specific objectives of the evaluation involve:

a) analysing the relevance and conformity of the actions implemented by the LAGs as well as by the structures responsible at national and regional levels as compared with orientaions and objectives contained in the Commission's communication of 19. 3. 1991,

b) evaluating the expected effects, especially on employment,

c) evaluating the effective impact of the actions at local level,

d) analysing the procedures implemented with a view to assessing to what extent certain administrative procedures, institutional or legal realities, have effected the efficiency and impact of the Community structural operation,

e) evaluating the suitable use for the funds allocated to this initiative,

f) analysing the running and efficiency of the network,

g) evaluating, in qualitative and quantitative terms, the positive value produced owing to Community action.

3. The evaluation shall highlight the innovative nature of the approach initiated by CI LEADER I, as compared with Community Support Framework (CSF) measures relating to the areas concerned.

In this respect, it should analyse the following aspects, in particular:

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[1] OJ No L 374 of 31. 12. 1988, p. 1.
[2] OJ No L 193 of 31. 7. 1993, p. 20.
[3] OJ No L 337 of 24. 12. 1994, p. 11.
[4] OJ No L 185 of 15. 7. 1988, p. 9.
[5] OJ No L 193 of 31. 7. 1993, p. 5.
[6] OJ No C 73 of 19. 3. 1991, p. 33.

— the way in which the bottom-up approach advocated by CI LEADER I brought out and actualized the endogenous and local potential, and the degree of association of populations and local economic factors with the design and management of the measures,

— where and in which areas the CI has had an innovative character, taking account of its exemplary value for the whole of the rural areas and the way in which it has contributed to an optimal integration of sectoral actions,

— the multiplier and demonstrative effects of the proposed measures.

4. Within the context of the assessment of CI implementation procedures, the evaluation should analyse the following elements in particular:

— running and efficiency of the form of intervention favoured by LEADER I: the overall subsidy,

— effectiveness of the facilities set up at Community level and also concerning the financial circuits and the participation of Community funds,

— effectiveness of the approach followed as regards drawing up, implementing the business plan and checking the clarity of the orientations given by the Commission concerning the business plan,

— relevance of the choice of areas or territories as well as the local action groups,

— realization and degree of success of the actions most widely spread,

— description of the administrative organization at all levels and an analysis of the management difficulties encountered at LAG level,

— analysis, on the one hand, of the reasons which have enabled a number of LAGs to achieve the objectives set, and, on the other hand, the main reasons for their failure,

— effectiveness in the use of funds, in particular in terms of cost/benefit by comparing the situations between different groups and in different countries,

— impact of the network action both on the LAGs and with regard to the distribution of the results of their action as well as the added value brought about by the existence of the network.

Finally, the evaluation will include an assessment of the financial and physical implementation of the LAGs' actions carried out on the basis of relevant financial and physical indicators.

5. **Evaluation methodology**

Considering the local innovative and demonstrative character of the CI the consultant shall define and propose a suitable methodology which enables the following to be carried out:

— assessment of the real impact of LEADER I and the positive value brought about by this CI,

— definition of the necessary tools enabling the diversity of the LAGs and the impact of the implemented actions to be grasped.

In this context the assessor shall define a group typology in accordance with relevant criteria and select the priority actions and/or areas enabling a better valuation of the impact of this initiative to be made.

This typology should not limit itself to a simple description of the groups, their territorial characteristics, the actions implemented or the size of their budget. Besides these elements it should, above all, reflect the type of strategy followed by them as well as the results achieved.

According to the typology to be selected, the consultant will be requested to proceed with an in-depth evaluation of certain key themes within a sample of groups selected on account of their representativeness in accordance with the selected themes. These themes shall be proposed by the consultant, who should, moreover, in the preparation of his study, use all the works carried out at national and regional levels, as well as the data available from the animation unit EAILD (European Association for Information on Local Development), by integrating them in his analysis and, if necessary, by going into them in detail.

6. **Different stages of evaluation work**

The assessor (or team of assessors) shall complete the following works:

a) definition of the methodology as well as a detailed work programme for implementation, showing separately the work required for the intermediary and final report. The final report shall follow the points contained in paragraph 2.4.

The consultant will be granted a 2-month period in order to submit the methodology and work schedule for approval. If these are accepted by the Commission, the assessment and implementation of the work schedule may commence. The consultant will be requested in his proposal to form a team which will be able to continue with the assessment work in all the Member States. The Commission reserves the possibility to challenge a number of the experts proposed and to request, if necessary, new

proposals from the organizations approached for this assessment mission;

b) the contents and expected results of the assessment work itself should be clearly defined. This assessment work shall be submitted for all the Member States. It will be the object of 2 reports: an intermediary and a final report.

7. **Criteria for the selection of the assessor**

Selection criteria are based on the assessment of the following elements:

— technical and professional information concerning the status of the organization or company submitting the proposal as well as its most recent balance sheet providing evidence of the assessor's technical, professional and financial capacity,

— a list of the experts who will participate in the different stages of the study: those who will prepare the methodology and those who will carry out the assessment work of CI LEADER I in the 12 Member States concerned by specifying the details for each Member State. A curriculum vitæ for each of these experts will be enclosed with the proposal, detailing the experience and competence of the persons in the area studied as well as the direct link between their previous work and the relevant theme.

8. **Award criteria**

The award criteria for the tender are based on a scale classifying the tenders according to cost, quality and the scientific level of argumentation concerning the following points:

— a description, within its broad lines and within the context of a specific report, of the methodology that the assessors will use for successfully completing the evaluation of LEADER I. The elements contained in points 5 and 6 must be developed here,

— a plan of the contents of the intermediary and final reports,

— the quality of developments concerning the methodology and their relevance,

— a clear definition of the expected results of the study,

— a detailed price quote specifying all the expenditure (calculated in the national currency and in ecus, fees, deductions, VAT and contingent taxes) broken down by way of the different areas covered by the study and distinguishing between personal expenses, travel costs, administrative costs, etc.,

a breakdown of the budget allotted to work stages a) and b) and also by each Member State in the study.

9. **Duration of the contract**

The contract must be completed in 10 months, of which there will be a maximum of 2 months for the preparation of the methodology.

10. **Name and address of the awarding authorities**

Tenderers must send their tender in triplicate to the following address:

— M. L. Van Depoele, Commission of the European Communities, Directorate-General for Agriculture, Directorate VI/FI, Rural Development, bureau 6/192, rue de la Loi/Wetstraat 130, B-1049 Brussels, tel. 296 57 67, facsimile 295 01 31.

The tenders must be submitted in a double envelope. They must be:

— either sent by registered delivery, as evidenced by the postmark, in this case,

— or submitted directly to the service referred to above.

Interested parties may contact the Commission, Directorate VI/FI, at the abovementioned address, in order to obtain basic documentation concerning CI LEADER I.

Tenders must be sent to the above address within 52 days from the date of publication of the invitation to tender in the Official Journal.

Tenders must be drawn up in 1 of the official European Union languages.

## Phare — computer equipment and software

## Notice of invitation to tender issued by the European Commission on behalf of the Government of Romania for a programme financed by the Phare Programme

(95/C 263/13)

**Programme title**

Customs computerization in Romania - RO 9304

1. **Participation and origin**

Participation is open on equal terms to all natural and legal persons of the Member States of the European Community, or of the beneficiary countries of the Phare Programme (Albania, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia). Supplies offered must originate in the above states.

2. **Subject**

Supply, in 1 lot: computer equipment, software, and services for the Romanian General Customs Administration.

3. **Invitation to tender dossier**

The complete tender dossier may be obtained free of charge from:

a) The European Commission, DG IA-B/4, Directorate General for External Political Relations, for the attention of Mr Peter Wragg, SC 27-2/49, rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel, facsimile (32-2) 299 16 66

b) Romanian Customs Administration, for the attention of Mr Vasile Ihora, Mr Nicolae Popa, 13, Matei Millo Street, RO-70704 Bucharest, tel. (40-1) 312 13 38, facsimile (40-1) 312 52 61

c) Offices of the European Commission in the Community:

A-1040 Wien, Hoyosgasse 5 [Tel. (43-1) 505 33 79, 505 34 91; Telefax (43-1) 50 53 37 97].

D-53113 Bonn, Zitelmannstraße 22 [Tel. (49-228) 53 00 90; Telefax (49-228) 530 09 50]

NL-2594 Den Haag, EVD, afdeling PPA, Bezuidenhoutseweg 151 [tel. (31-70) 379 88 11; telefax (31-70) 379 78 78]

UK-London SW1P 3AT, Jean Monnet House, 8 Storey's Gate [tel. (44-71) 222 81 22; facsimile (44-71) 222 09 00/81 20]

L-2920 Luxembourg, bâtiment Jean Monnet, rue Alcide de Gasperi [tél. (352) 430 11; télécopieur (352) 43 01-44 33]

F-75007 Paris Cedex 16, 288, boulevard Saint-Germain [tél. (33-1) 40 63 40 99; télécopieur (33-1) 45 56 94 17]

I-00187 Roma, via Poli 29 [tel. (39-6) 678 97 22; telefax (39-6) 679 16 58]

DK-1004 København K, Højbrohus, Østergade 61 [tlf. (45-33) 14 41 40; telefax (45-33) 11 12 03]

IRL-Dublin 2, 39 Molesworth Street [tel. (353-1) 71 22 44; facsimile (353-1) 71 26 57]

GR-10674 Athens, Vassilissis Sofias 2 [τηλ. (30-1) 724 39 82, τελεφάξ (30-1) 724 46 20]

E-28046 Madrid, Paseo de la Castellana, 46 [tel. (34-1) 431 57 11; telefax (34-1) 432 14 09]

P-1200 Lisboa, Centro Europeu Jean Monnet, Largo Jean Monnet 1-10º [tel. (351-1) 154 11 44; telefax (351-1) 155 43 97]

FIN-00131 Helsinki, Pohoisesplanadi 31, PO Box 234 [tel. (358-0) 65 64 20; telefax (358-2) 65 67 80]

S-11147 Stockholm, Hamngatan 6 [tel. (46-8) 611 11 72; telefax (46-8) 611 44 35]

4. **Tenders**

Should arrive, at the latest, on 24. 11. 1995 (15.00), local time, at:

Romanian Customs Administration, for the attention of Mr Vasile Ihora, Mr Nicolae Popa, 13, Matei Millo Street, RO-70704 Bucharest

They will be opened on 27. 11. 1995 (10.00), local time, at the same address.

## Recruitment of European senior executives for training in Japan

(95/C 263/14)

1. ***Awarding authority:*** European Commission, Directorate-General III, Industry, Division III.A.2: Industrial Cooperation, rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel.

   Tel. (32-2) 295 64 11 (M. Walther Fleig). Telegraphic address: COMEUR BRUSSELS. Telex COMEUR BRU 21877. Facsimile (32-2) 296 98 53.

2. a) ***Award procedure:*** Public invitation to tender, open procedure.

   b)

3. a) ***Delivery site:*** European Commission, Directorate-General III, Industry, Division III.A.2: Industrial Cooperation, RP Schuman 6, 2/62, rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel.

   b) ***Services:*** Community-wide executive search for European senior business executives for the 4 Human Resources Training Programmes (HRTP) Nos 19, 20, 21 and 22 organized by the EU - Japan Centre for Industrial Cooperation, Tokyo, Japan, from August to November 1996 and 1997 and from January to March 1997 and 1998. An option for contract extension with regard to recruitment for HRTP Nos 23 and 24 should be included in the offer.

   The EU-Japan Centre for Industrial Cooperation is a common venture between the European Union and Japan established in 1987 and confirmed by European Council decision of May 1992. Its objective is to contribute to industrial cooperation between the European Union and Japan notably by organizing management training programmes for senior European business executives.

   Course candidates' selection criteria include:

   — EU Member State nationality,

   — age of 35 years or older,

   — minimum of 10 years' professional experience in a key management or specialist position,

   — good knowledge of English,

   — sponsorship by employer with scholarship possibilities for SMEs.

   For the 4 HRTP courses (6 with option for contract extension), shortlists of 35 suitable candidates and an additional 5 reserve candidates have to be submitted to the European Commission, DG III.A.2, at the latest 4 full months before courses start, i.e. prior to 1st April and 1st September 1996 and 1997.

   Not more than one-third of the candidates should originate from SMEs.

   c), d)

4. ***Deadline for completion of tasks:*** 31. 1. 1998 (option 1999).

5. a) ***Documents may be requested from:*** European Commission, Directorate-General III, Industry, Division III.A.2.

   b)

6. a) ***Deadline for receipt of tenders:*** 20. 11. 1995 (17.00).

   b) ***Address for submission of tenders:*** Tenders must be submitted either by registered letter not later than 17.00 hours on the fifty-second day following the expedition of this invitation to tender, or by hand to the secretariat of the service mentioned under 5. a), Rond-point Schuman 6, 2nd floor, N° 62, B-1049 Brussels, by the same time and date. Tenders must be signed and placed inside 2 sealed envelopes. The addressed envelopes should be marked 'Tenders No 95/C... submitted by... to be opened only by the Commission service indicated'. Self-adhesive envelopes which can be opened and re-sealed without leaving any trace must not be used.

   c) ***Language:*** The official language of a Member State.

7. a) ***Persons present at opening of tenders:*** Tenders will be opened by the relevant services of DG III.

   b) ***Date and time of opening:*** 1 week after the deadline for receipt.

8. ***Security and guarantee:*** If the overall amount of the contract exceeds 250 000 ECU, the bidder is asked to supply a security for the initial payment in the form of a banker's guarantee.

9. ***Financing and payment:*** The tender price should be expressed in ECU using the conversion rates published in the Official Journal of the European

Communities, 'C' series, on the date of publication of the invitation to tender; VAT, if any, should be indicated separately.

Besides the total tender price, its single elements like fees and expenses should be stated. Finally, the daily rate used to calculate the cost of the services, including all the costs, and also the fees and expenses per shortlisted candidate, must be given.

10.

11. ***Basic qualification requirements:*** Written declaration with name, legal status, address, telephone and facsimile numbers, name of person in charge.

Description of the bidder and his activities showing his competence for guaranteeing punctual and successful Japan-related EU-wide senior executive recruitment in numbers and quality as required above.

Short CV of the co-ordinating manager(s) responsible for the contract.

Information on the bidder's resources and extent of representation in the Member States demonstrating that he is able to assign the necessary qualified staff and infrastructure for Community-wide recruitment.

Respect of delivery deadlines.

12. ***Duration of validity of tender:*** Tenders may lapse after 120 days from the closing date.

13. ***Award criteria other than price, efficiency and least-cost planning:***

— The quality of services offered,

— the capability for nationally balanced Community-wide recruitment.

14., 15., 16.

17. ***Date of dispatch of notice:*** 28. 9. 1995.

18. ***Date of receipt by the Office for Official Publications of the European Communities:*** 28. 9. 1995.