AIUTI DI STATO — REGNO UNITO


Invito a presentare osservazioni a norma dell’articolo 88, paragrafo 2, del trattato CE

(2002/C 283/04)

(Testo rilevante ai fini del SEE)

Con lettera del 2 ottobre 2002, riprodotta nella lingua facente fede dopo la presente sintesi, la Commissione ha comunicato al Regno Unito la propria decisione di avviare il procedimento di cui all’articolo 88, paragrafo 2, del trattato CE in relazione all’aiuto in oggetto.

La Commissione invita gli interessati a presentare osservazioni entro un mese dalla data della presente pubblicazione, inviandole al seguente indirizzo:

Commissione europea
Direzione generale della concorrenza
Protocollo Aiuti di Stato
B-1049 Bruxelles
Fax (32-2) 296 12 42

Dette osservazioni saranno comunicate al Regno Unito. Su richiesta scritta e motivata degli autori delle osservazioni, la loro identità non sarà rivelata.

SINTESI

1. Procedimento

Nel dicembre 2001, la Commissione ha ricevuto un reclamo in merito a un progetto del governo britannico concernente un aiuto per la realizzazione di un nuovo impianto per il riciclaggio di carta da giornale nel quadro del programma WRAP. La successiva corrispondenza fra la Commissione e il Regno Unito ha dato luogo alla notifica, il 20 marzo 2002, di un progetto di aiuto per la realizzazione di un impianto per il riciclaggio di carta da giornale nel quadro del programma d’azione «rifiuti e risorse». Con lettera registrata il 16 luglio 2002, il Regno Unito ha notificato il regime generale denominato «Programma d’azione rifiuti e risorse», registrato sotto il N 474/02. Tale notifica sarà oggetto di una valutazione separata.

2. Descrizione della misura

2.1. Il programma WRAP


2.2. La procedura di gara


2.3. Il beneficiario: Shotton

Shotton ha sede a Shotton, Flintshire, Galles del Nord, un’area ammessa a beneficiare di aiuti regionali ai sensi dell’articolo 87, paragrafo 3, lettera c), del trattato CE. Shotton è di proprietà di UPM-Kymmene Corporation, una società finlandese. Il sito attuale di Shotton dispone di due macchinari per la produzione di carta che utilizzano pasta proveniente da legno vergine e da carta di recupero.

2.4. Il progetto presentato da Shotton

Il progetto propone l’adeguamento dei macchinari per la produzione di carta per consentire la sostituzione della pasta vergine con carta di recupero. Propone anche lo sviluppo di una delle linee di deinchiostrazione per la carta riciclata che alimenta uno dei macchinari per la produzione di carta. Esso consentirebbe un aumento del consumo di carta di recupero pari a circa 321 000 tonnellate all’anno. L’adeguamento dell’impianto sarà terminato nel 2003, ed esso sarà pienamente operativo entro il 2005.
Shotton si procurerà la carta di recupero dagli enti locali e dalle società per la gestione dei rifiuti, che dovranno creare un'infrastruttura per la raccolta di carta da recupero. Obiettivo di UPM-Kymmene è concludere contratti a lungo termine con gli enti locali per la maggior parte del suo fabbisogno di carta di recupero. L'accordo di finanziamento specifico impone a Shotton altri obblighi ambientali specifici per quanto riguarda la riduzione delle emissioni di CO₂, la riduzione dei movimenti di veicoli pesanti, la riduzione delle emissioni di composti organici volatile e il riciclaggio dell’acqua.

I costi totali del progetto sono stimati a 127.9 milioni di GBP (199,16 milioni di EUR), dove l'elemento attribuibile al riciclaggio ammonta a 88,2 milioni di GBP (137,34 milioni di EUR). I rimanenti 39,7 milioni di GBP (61,82 milioni di EUR) rappresentano spese per il miglioramento della produzione e della qualità per i macchinari esistenti e non riguardano il riciclaggio. Shotton ha chiesto un aiuto di 23 milioni di GBP (35,81 milioni di EUR).

Secondo le autorità britanniche i costi ammissibili ammontano a 88 200 000 GBP, da cui hanno detrauto gli investimenti necessari per rispettare le norme ambientali obbligatorie (1) (35 000 GBP), nonché i vantaggi nel corso dei primi cinque anni (824 000 GBP) (2). I costi ammissibili ammonterebbero così a un totale di 87 341 000 GBP.

3. Valutazione della misura

La misura è finanziata mediante risorse concesse dallo Stato nel quadro del programma WRAP. Essa è concessa a un singolo beneficiario, falso o minaccia di falsare la concorrenza e potrebbe incidere sugli scambi intracomunitari in quanto sia la carta da giornale che la carta di recupero sono oggetto di scambi internazionali. La Commissione ritiene pertanto in questa fase che la misura possa essere considerata un aiuto di Stato ai sensi dell'articolo 87, paragrafo 1 del trattato CE.

3.1. Applicabilità della disciplina ambientale (3).

La Commissione nutre dubbi quanto al fatto che l'aiuto possa qualificarsi per una valutazione alla luce della disciplina degli aiuti di Stato per la tutela dell'ambiente (in seguito "disciplina ambientale"). In generale, obiettivo degli aiuti agli investimenti nel quadro di tale disciplina è la riduzione dell'inquinamento provocato dal beneficiario, ma non un effetto ambientale indiretto come nel caso in oggetto.

In primo luogo, la Commissione osserva che obiettivo degli aiuti agli investimenti non è un miglioramento delle norme direttamente applicabili all’impresa, ma il rispetto delle norme comunitarie che si applicano al Regno Unito.

L'utilizzo della carta di recupero per la produzione di carta da giornale sembra essere ora la prassi corrente. In tutti gli Stati membri esistono impianti per il riciclaggio della carta. La carta di recupero risulta essere una materia prima normale, dotata di valore economico e oggetto di scambi sui mercati.

Secondo il bando di gara, l’aiuto doveva essere utilizzato per la produzione di carta da giornale e il progetto doveva essere ubicato nel Regno Unito. La società aggiudicataria doveva impegnarsi a utilizzare un quantitativo concordato di carta di recupero proveniente dai rifiuti raccolti dai comuni. Le prime due condizioni del bando di gara (vale a dire il fatto che l’aiuto dovesse essere impiegato per la produzione di carta da giornale e che l’impresa dovesse essere ubicata nel Regno Unito) potrebbero essere considerate eccessive in relazione agli obiettivi ambientali, in quanto escludono soluzioni al problema dei rifiuti basate su incentivi diretti a sistemi di raccolta che si rivolgano al mercato per garantire il riciclaggio della carta di recupero raccolta. La Commissione, pertanto, dubita che queste condizioni siano adeguate per stabilire le finalità ambientali dell’aiuto.

Tenendo conto delle considerazioni che precedono e sulla base delle informazioni disponibili, la Commissione dubita che gli investimenti in oggetto possano essere considerati investimenti ai sensi del punto 29 della disciplina. Essi potrebbero costituire, almeno in parte, investimenti a cui non si applica la disciplina ambientale.

In considerazione dei dubbi quanto alla conformità con la disciplina ambientale, la Commissione ha valutato la misura anche alla luce degli orientamenti in materia di aiuti di Stato a finalità regionale (4). Tuttavia, poiché non si tratterebbe solo di un investimento iniziale, ma, almeno parzialmente, anche di un investimento di sostituzione, non tutti i costi di investimento sarebbero ammissibili. Inoltre, l’intensità dell’aiuto del progetto è pari al 17 %, supponendo che tutti i costi potessero beneficiare di un aiuto regionale. Tale percentuale supera l’intensità massima applicabile nella regione del Flintshire (che è pari al 15 %). L’aiuto inoltre dovrebbe essere valutato nel quadro della disciplina multisettoriale (5). Non sembra che siano applicabili neppure altre deroghe ai sensi dell’articolo 87, paragrafi 2 e 3 del trattato CE.

3.2. Compatibilità con la disciplina ambientale

Nonostante in questa fase abbia espresso dubbi sull’applicabilità della disciplina ambientale, è opportuno che la Commissione cerchi di valutare il caso alla luce di tale disciplina in quanto è su tale base che il Regno Unito ha notificato l’aiuto. Secondo quest’ultimo, l’intensità massima consentita ammonterebbe al 35 %. Un aumento del tasso di riciclaggio della carta di recupero comporta indubbiamente benefici per l’ambiente e tale obiettivo è in linea con la politica comunitaria in materia di gestione dei rifiuti.

In primo luogo, il punto 37 della disciplina ambientale prevede che i costi ammissibili si limitino esclusivamente ai costi di investimento supplementari necessari per soddisfare gli obiettivi ambientali. Nella fattispecie, i costi ammissibili presentati dal Regno Unito riguardano l’investimento globale per la conversione delle carriere esistenti in carriere che utilizzino carta di recupero.

(1) Questo importo riguarda la parte degli investimenti necessari per rispettare le norme ambientali e il monitoraggio delle emissioni atmosferiche.
(2) Questi vantaggi sono stati calcolati tenendo conto della differenza fra l’impianto attuale e quello futuro durante i primi cinque anni dell’investimento.
(3) GU C 37 del 3.2.2001, pag. 3.
(4) Orientamenti in materia di aiuti di Stato a finalità regionale (GU C 74 del 10.3.1998, pag. 9).
(5) Disciplina multisettoriale degli aiuti regionali destinati ai grandi progetti di investimento (GU C 107 del 7.4.1998, pag. 7).
In secondo luogo, il punto 37 della disciplina ambientale prevede che la Commissione calcoli i costi al netto dei vantaggi apportati dall’eventuale aumento di capacità, risparmi di spesa ottenuti nei primi cinque anni di vita dell’impianto e delle produzioni accessorie aggiuntive realizzate nell’arco dello stesso periodo quinquennale. Il Regno Unito ha fornito informazioni dettagliate ma, nonostante la richiesta in tal senso della Commissione, non ha fornito informazioni complete in merito alle ipotesi relative ai prezzi dei fattori produttivi e dei prodotti.

In questa fase e sulla base delle informazioni disponibili, pertanto, la Commissione nutre dubbi sulla compatibilità dell’aiuto con la disciplina ambientale.

4. Conclusione
Alla luce delle considerazioni qui sopra, nonché sulla base delle informazioni disponibili e della valutazione preliminare che precede, la Commissione ha deciso di avviare il procedimento di cui all’articolo 88, paragrafo 2, del trattato CE. Conformemente all’articolo 14 del regolamento (CE) n. 659/1999 del Consiglio, ogni aiuto illegittimo può formare oggetto di recupero presso il beneficiario.

TESTO DELLA LETTERA
«The Commission wishes to inform the United Kingdom that, having examined the information supplied by your authorities on the aid referred to above, it has decided to initiate the procedure laid down in Article 88(2) of the EC Treaty.

1. PROCEDURE
By letter dated 20 December 2001 and registered on 21 December 2001 under number A/40145, the Commission received a complaint, against a planned aid measure by the UK Government for the erection of a newsprint reprocessing facility under the WRAP programme. The complaint was registered by the Commission under number CP 219/01. Following this complaint, the Commission asked for clarifications to the UK by letter dated 24 January 2002 and registered under number D/50289. The UK replied by letter dated 5 February 2002, and registered on 7 February 2002 under number A/30923. The Commission asked further questions by letter dated 14 February 2002, and registered under number D/50655. The UK replied by letter dated 7 March 2002, and registered on 11 March 2002 under number A/31885.

By letter dated 20 March 2002, and registered by the Commission on 20 March 2002, under number A/32132, the authorities of the UK notified an aid project for a newsprint reprocessing capacity under the Waste and resources action programme. The notification was registered under number N 196/02. According to the notification, the UK authorities intended, at a later stage, to notify the general scheme ‘Waste and resources action programme’. The Commission informed the UK authorities that the notification was considered to be incomplete, and asked for further questions by letter dated 15 May 2002 and registered under number D/52364. The UK submitted the answers by letter dated 14 June 2002, and registered on 19 June 2002 under number A/34497. By letter registered on 16 July 2002, the UK notified the WRAP scheme. This scheme has been registered under number N 474/02, and will be subject to a separate assessment. By letter dated 26 July 2002, and registered on the same date under number A/35727, the UK asked for a meeting, and agreed to extend the time limit for the Commission to take a decision until 20 October 2002. A meeting was held on 29 August 2002 between the Commission and representatives of the UK Government and of the WRAP programme. The UK provided further information by letter dated 6 September 2002.

2. DESCRIPTION OF THE MEASURE
2.1. The WRAP programme
The aid is given within the framework of the WRAP programme (hereafter WRAP). According to the information submitted by the UK, WRAP is an entity established to promote sustainable waste management, and more specifically to promote efficient markets for recycled materials and products. Its central objective is to enable recycled markets to function more effectively by stimulating demand for recycled materials and products, thereby improving the economics of collection. WRAP’s members comprise the charity Wastewatch, the Environmental Services Association as well as the Secretary of State for Environment, Food and Rural Affairs. It has as duty to administer the aid, and is funded by the government for the period 2001-2004. WRAP ensures that the funds for recycling projects are the minimum necessary, are proportionate to WRAP’s objectives, and that the use of non-government funding is maximised. WRAP functions as an adjunct to the government, and implements government policies, although it has a private corporate form. The financial support in itself is provided though WREB (Waste and Resources Environmental Body Limited), a subsidiary of WRAP. WREB is also in charge with the process for identifying the recipient of the support.

In the present case, WRAP has chosen to give support for the creation of newsprint reprocessing capacity for the following reasons: in the UK newsprint sector, there seems to be an established demand for the recycled products, but a market failure seems to have led to a shortage of reprocessing capacity (7). The UK identified the main cause of the market failure to be the lack of sufficient reprocessing capacity for waste newsprint, which is currently being landfilled in the UK because of the low prices for landfilling. With a greater recycling capability, waste paper would be in strong demand. This market failure would have led to difficulties experienced in sourcing wastepaper in the last decade, and attendant price fluctuations. For this reason, an increase in reprocessing capacity has been hampered by lack of investor confidence. In order to correct for this market failure, WRAP decided, by way of a competitive tender process, to offer support to the private sector to increase newsprint reprocessing capacity which utilises waste newspapers and magazines as its raw material input. According to the UK, the current project will create a real market demand for waste paper, which will provide environmental benefits over time.
2.2. The tender process

In the present case, WRAP has issued a competitive tender in July 2001 inspired by EC public procurement procedures (7), in view to promote the creation of newsprint reprocessing capacity. The specific aim expressed in the tender procedure was to provide a subsidy towards the creation of a newsprint reprocessing facility in return for a commitment to use an agreed tonnage of waste newspapers and magazines recovered from the municipal waste stream as the raw material for the new facility. WRAP’s waste input target was for the agreed tonnage to exceed 300 000 tonnes per year, and the facility to enter into production in 2003, with full capacity to be reached as soon as possible thereafter. The tender was submitted to two key conditions: first of all, the reprocessing facility has to produce newsprint, and must be located within the United Kingdom. Secondly, the reprocessing facility must use an agreed tonnage of waste paper per year recovered from the municipal waste stream as raw material input for the duration of the life of the facility. The agreed tonnage must be in excess of the aggregate amount of waste paper used by the successful bidder in a prior calendar year in its newsprint manufacturing facilities in the UK. Tenderers needed to specify the level of support required to bring forward their proposals, and to demonstrate technological developments and environmental benefits. Furthermore, the tender specification stipulated that any costing included in the tender bids should only refer to the activities and investments needed to achieve the required environmental benefits.

Following the tender procedure, a prequalification pack was sent to five companies, four of which did prequalify and received a tender invitation document. Applications were finally received from two companies: Aylesford Newsprint Limited, and UPM Kymmene — Shotton (hereafter ‘Shotton’). Aylesford Newsprint was appointed preferred bidder in November 2001, but during the discussion between WRAP and Aylesford Newsprint, it appeared that Aylesford Newsprint would not be able to enter into the level of contractual commitment which would enable WRAP to achieve its objectives. That is why WRAP reviewed its position, and appointed Shotton preferred bidder. The decision was taken on 18 January 2002. Discussions then followed between WRAP and Shotton, regarding the completion of the funding arrangements to enable the overall investment to proceed. The funding is subject to state aid clearance. A funding agreement was entered into on 21 February 2002.

According to the UK, the fact that there has been a competitive tender to ensure that the minimum necessary is paid to secure the environmental benefits, avoids the existence of any distortion of competition. That is why the UK authorities consider it arguable that the funding does not constitute State aid. But in order to obtain full legal certainty, it has been decided by the UK to notify the project.

2.3. The beneficiary: Shotton

Shotton is based in Shotton, Flintshire, in North Wales, being an area eligible for regional aid under Article 87(3)(c) of the EC Treaty. Shotton is owned by UPM-Kymmene Corporation, a Finnish company. The present site of Shotton disposes of two paper machines, using pulp derived from a combination of virgin wood and from recycled wastepaper.

2.4. The project

The project proposes the adaptation of the current paper machines to enable wastepaper to substitute for virgin pulp. It proposes also the enhancement of one of the de-inking lines for the recycled paper feeding one of the paper machines. According to the UK authorities, this project will allow to achieve an increase in wastepaper consumption of approximately 321 000 tonnes per annum over that achieved in the UK in 2000. This exceeds WRAP’s objective of achieving a net increase target of 300 000 tonnes per annum in the year 2000. The adaptations of the facility will be finished in 2003, and the facility will be fully operating by 2005.

The UK authorities explain that the waste paper used by Shotton as raw material in its newsprint production process will source from local authorities and waste management companies. UPM-Kymmene aims to enter into long term contractual arrangements with local authorities for the major part of its feedstock. This will enable the local authorities to implement comprehensive long term collection systems where they do not currently exist. The excess wastepaper collected prior to commissioning will be diverted to other paper mills within the UPM-Kymmene group. According to the UK, the local authorities and the waste management companies will need to build up a wastepaper collection infrastructure.

Apart from the fact that Shotton has to use an agreed tonnage of waste newspapers and magazines recovered from the municipal waste stream as the raw material for the new facility, the support to Shotton is submitted to other environmental obligations set out in the funding agreement. These comprise:

— an additional reduction of 118 000 tonnes of CO₂ emissions,
— an annual reduction of some 6 500 lorry movements (this means a minimum reduction of some 325 000 lorry miles per year),
— an annual reduction of 53 tonnes of emissions of volatile organic compounds,
— the recycling of an additional total of 54 600 m³ of water.

According to the UK, the main objective of the current project is to achieve additional newsprint recycling. But the UK argues that the investment project would bring about other environmental benefits consisting in a reduction of the waste going to landfills (8), in the reduction of carbon dioxide and methane emissions from landfills, and in the virgin timber conservation of 1.9 million tonnes. Furthermore, they claim that this project will lead to the creation of an increasing demand for a major proportion of the household waste stream in the region concerned to be recycled. This demand for waste newspapers and magazines, being 30-40 % of household waste by weight, would provide a stable economic platform for the establishment and maintenance of separated collections for household waste for recycling. The simultaneous collection of other recyclable materials at much higher rates could therefore also be supported. This leads to the conclusion that the facility would enable greater proportions of household waste to be recycled (8). This will bring benefits for the environment, while this will also allow less waste to be disposed in the landfills.
The UK authorities argue that the investment in the newsprint facility will enable the UK to make significant progress toward achieving its obligations within the framework of European waste management policy, and deliver tangible environmental benefits. These environmental benefits bring the UK to affirm that the aid qualifies for investment aid under point 29 of the Community guidelines on State aid for environmental protection (9) (hereafter 'environmental guidelines'), when firms undertake investment in the absence of mandatory Community standards. According to the UK authorities, there are no specific mandatory requirements for any newsprint manufacturer to use recycled wastepaper as a raw material. As far as concerns the waste water standards, the new investment in the facility does not involve any additional expenditure on waste water treatment. In the case of air emissions, there is only a very small part referable to mandatory air emissions standards. This investment concerns the installation of equipment for online monitoring of emissions, and amounts approximately to GBP 35 000.

Concerning the costs of the project, the total costs are estimated at GBP 127.9 million (EUR 199.16 million) (10), of which the elements attributable to recycling constitutes GBP 88.2 million (EUR 137.34 million). The remaining GBP 39.7 million (EUR 61.82 million) represent enhancements to the production and quality capabilities of the existing paper machines, and do not relate to recycling. Shotton has applied for a support of GBP 23 million (EUR 35.81 million). The UK provided a detailed schedule of the payment of the GBP 23 million.

The elements attributable to recycling are distributed as follows:

| Rebuild of recycled fibre mill line 1 | 8 400 |
| Recycled fibre mill line 3 | 40 600 |
| Extension of recycled fibre storage | 6 700 |
| Sludge combustion | 22 200 |
| Sludge dewatering | 4 000 |
| Power distribution | 1 600 |
| Raw water treatment | 1 500 |
| Effluent treatment | 700 |
| Mill site installations | 2 500 |
| **Total** | **88 200** |

This total includes the amount of GBP 35 000 relating to the part of the investment necessary to meet environmental standards, and concerning the monitoring of air emissions. According to the UK, the switch from the current paper mills to the new paper mills using only waste paper will result in an increase in the total earnings of GBP 824 000 over the five year period from the date of full operation.

The UK authorities calculated the aid intensity in the present case on the following manner, based on point 37 of the environmental guidelines: the eligible costs amount to GBP 88 200 000 and they deducted from this figure the investment to meet the mandatory environmental standards (GBP 35 000), and the benefits in the year 1-5 (GBP 824 000). These benefits were calculated taking into account the difference between the actual facility and the future facility during the first five years of the investment. According to the UK, this brings the eligible costs to a total of GBP 87 341 000. As the support asked amounts to GBP 23 million, the aid intensity would be 26.334 %. According to the UK, this aid intensity would be below the maximum intensity, which would amount to 35 % (30 % + 5 %) because of the fact that the investment is located in a region eligible for regional aid under Article 87(3)(c) of the EC Treaty (12).

As far as concerns the employment, the UK authorities argue that the level of employment after the investment is expected to be similar to the present plant.

3. PRELIMINARY ASSESSMENT OF THE MEASURE

According to Article 6 of the Procedural Regulation (13), the decision to initiate the formal investigation procedure shall summarise the relevant issues of fact and law, shall include a preliminary assessment of the Commission as to the aid character of the proposed measure, and shall set out the doubts as to its compatibility with the common market.

3.1. Existence of aid under Article 87(1) EC Treaty

Under Article 87(1) EC Treaty, 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market'.

In this case, the measure is funded by resources, granted by the State under the WRAP programme. The measure is granted to an individual beneficiary. The aid granted under the WRAP programme will cover a significant part of investment costs, which will relieve the company from costs it should normally have had to bear. The measure distorts or threatens to distort competition, and could affect trade between Member States, since both newsprint and waste paper are traded internationally (14). In fact, a large part of the UK paper consumption is imported mainly from other Member States (15). It should also be noted that the UK exported 138 000 tonnes of newsprint paper in 2001. It is also clear from the case-law of the Court that when aid granted by the State strengthens the position of an undertaking vis-à-vis other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid (16).

Therefore, the measure qualifies as State aid under Article 87(1) of the EC Treaty.
The investment takes place in an area eligible for regional aid under Article 87(3)(c) of the EC Treaty. For this reason, the aid could be assessed as regional investment aid. However, since the investment seems not to concern only an initial investment, but seems to be at least partly a replacement investment, not all the investment costs would be eligible for regional aid under the Guidelines for national regional aid (18). Furthermore, the aid intensity of the project amounts to 17 %, assuming that all costs would be eligible for regional aid. This exceeds the maximum aid intensity applicable in the Flintshire region, which amounts to 15 %. Moreover, as the amount of the investment exceeds EUR 50 million, the cumulative aid intensity expressed as a percentage of the eligible investment costs is at least 50 % of the regional aid ceiling for large investment projects as defined in point 37. The Commission does not have all the information for such an assessment, but the allowable intensity can only become lower. For this reason, the aid could not be approved. Furthermore, according to the UK authorities, the investment will not lead to the creation of employment, as the level of employment is expected to be the similar to that at present. For these reasons, the regional benefits of the project seem to be doubtful to the Commission.

According to point 6 of the environmental guidelines, the concept of environmental protection refers to any action taken to remedy or prevent damage to our physical surroundings or natural resources, or to encourage the efficient use of these resources.

According to the conditions set out in the tender, the aid should be used for the production of newsprint, and the project is to be located within the UK. Furthermore, the winning company should commit itself to take up an agreed tonnage of waste paper from the municipal waste stream. The first two conditions in the tender (i.e. the fact that the aid should be used for the production of newsprint, and the condition for the undertaking to be located in the UK) might be seen as excessive in order to achieve the environmental objectives, since it excludes solutions for the waste problem based on direct incentives for collection systems which may rely on the market for waste paper to ensure that the collected waste paper is recycled. Therefore, at this stage, the Commission has doubts on the justification of these two conditions for considering the aid to pursue an environmental objective.

According to point 29 of the guidelines, ‘investment aid enabling firms to improve on the Community standards applicable may be authorised up to not more than 30 % gross of the eligible investment costs as defined in point 37. These conditions also apply to aid where firms undertake investment in the absence of mandatory Community standards [. . .]’.

The Commission notes that the investment is not designed to improve on standards which would directly apply to the undertakings, but to improve the recycling ration in the UK.

According to the information of which the Commission disposes, the use of waste paper for the production of newsprint seems to be the current state of the art. It seems that paper reprocessing facilities exist in all Member States, and that they function similarly. Waste paper appears to be a normal raw material with an economic value, subject to trade on the markets. According to the information available on the website of the Confederation of the European Paper Industry, it seems that 65 % of the newsprint paper is produced on the basis of waste paper (22). Furthermore, nearly the total amount of newsprint seems to be produced on the basis of waste paper in the United Kingdom (23). Waste paper seems therefore to be the normal raw material for the production of newsprint. This is confirmed by the fact that Shotton already uses waste paper in part of its current plant.

Taking the above considerations into account and based on the information available, the Commission doubts whether the investment qualifies as an investment in the meaning of point 29 of the guidelines. The investment, at least in part, may rather constitute an investment, to which the environmental guidelines do not apply.
3.3.2. Compatibility with the environmental guidelines

Although the Commission expressed doubts, at this stage, in the former paragraph about the applicability of the environmental guidelines, it does not prejudge their applicability in the present case. Therefore, it is appropriate for the Commission to try and assess the aid under these guidelines, on basis of the fact that the UK authorities notified the aid on that basis.

First of all, at this stage, the calculation of the eligible costs raises doubts as far as concerning the definition of the eligible costs. Point 37 of the environmental guidelines requires that the eligible costs must be strictly confined to the extra investment costs necessary to meet the environmental objectives. In the present case, the eligible costs presented by the UK refer to the overall investment for the conversion of the existing paper mills to mills using waste paper. Even though the remaining operational life of the existing machines seems to be 10-20 years, the replacement of the existing machines should not be considered as a whole to be admissible as an eligible cost strictly necessary to achieve an environmental benefit.

Secondly, point 37 of the environmental guidelines require the Commission to calculate the cost net of the benefits accruing from any increase in capacity, cost savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period. The UK provided detailed information, but despite the Commission’s request, the UK has not provided full information on the assumptions as regards input and output prices. It should also be noted that, according to the British Recovered Paper Association, it seems preferable to use recycled fibres in large volumes, because it is very expensive to install the necessary de-inking and cleaning equipment to allow recovered paper to be re-processed (\(^{(a)}\)). For this reason, the Commission doubts whether the benefits resulting from the switch to using waste paper as raw material instead of virgin wood pulp could be more important than the amount of GBP 824 000 estimated by the UK.

Therefore, the Commission has, at this stage and based on the information available, doubts on the compatibility of this aid with the environmental guidelines.

4. CONCLUSION

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 88(2) of the EC Treaty, requests the United Kingdom to submit its comments and to provide all such information as may help to assess the aid, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission wishes to remind the United Kingdom that Article 88(3) of the EC Treaty has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.\(^{(a)}\)

\(^{(a)}\) According to the information submitted by the UK, each time the recycling capacity increased in the UK, the price of mixed waste paper and magazines increased. The supply responds very slowly to the increasing demand, and causes upward pressure on prices.

\(^{(a)}\) According to the UK, since the process related to the award of financial support rather than the procurement of a work, supply or service, there could be no publication in the Official Journal. The structure of the process was however informed by the EC procurement rules.

\(^{(a)}\) In the region where UPM-Kymmene is located, there is an abundance of low cost landfills, therefore local authorities have not been motivated to invest in the collection of waste materials for recycling.

\(^{(a)}\) According to the UK, it is estimated that the demand for newsprint of the scale created by the development of this facility will allow around 596 Kt of other materials (steel, aluminium, glass, newsprint, plastic) to be recycled per year.

\(^{(a)}\) OJ C 37, 3.2.2001, p. 3.

\(^{(a)}\) Exchange rate on 20 June 2002.

\(^{(a)}\) Point 34(a) of the environmental guidelines.


\(^{(a)}\) According to the statistics provided by the Confederation of European Paper Industries, the trade balance of waste paper amounted to 1 774 million tonnes in the EU in the year 2000.

\(^{(a)}\) Source: British Recovered Paper Association (http://www.recycledpaper.org.uk.cpi.htm).

\(^{(a)}\) Court of Justice, C-310/99, 7.3.2002, Italy v Commission.

\(^{(a)}\) OJ C 37, 3.2.2001, p. 3.


\(^{(a)}\) OJ C 37, 3.2.2001, p. 3.


