

# Official Journal

## of the European Communities

English edition

## Information and Notices

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<sup>(1)</sup> Text with EEA relevance

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**Notice to readers** (see page 3 of the cover)




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<sup>(1)</sup> Text with EEA relevance

## I

*(Information)*

## COUNCIL

## COUNCIL RESOLUTION

of 4 December 1997

concerning the report on the state of women's health in the European Community

(97/C 394/01)

THE COUNCIL OF THE EUROPEAN UNION,

REFERRING TO the Commission report of 19 July 1995 on the state of health in the European Community and the Council's conclusions of 30 November 1995<sup>(1)</sup>;

RECALLING that, in the aforementioned conclusions, the Council considered that the preparation of reports containing comprehensive and accurate information on health status, determinants of health and health-related activities throughout the Community provides a way in which to help improve public knowledge and understanding of major health problems in the Community and of the action and programmes being undertaken at Community and Member State level;

RECALLING also that in the said conclusions the Council agreed to consider further the objective and format of future reports, the sources of data to be used, the frequency of their publication and how they might be used as a basis for determining priorities for Community action;

WELCOMES the Commission's report of 22 May 1997 on the state of women's health in the European Community;

OBSERVES that this report highlights a lack of reliable, up-to-date and comparable data as well as a lack of data broken down according to gender;

NOTES that this report shows a considerable increase in women's life expectancy since 1970 and continuing

differences between the life expectancy of women in the different Member States and between the life expectancy of men and that of women;

NOTES also that the report highlights sexual and reproductive health problems, the increase in breast and lung cancers, the problem of violence against women with its adverse impact on physical and psychological health, the high number of attempted suicides, the different aspects of eating disorders and the extent of chronic illnesses resulting from women's increased life expectancy;

CONSIDERS that the specific problems linked to women's health should be taken into account when the new framework for action in the field of public health is being considered;

CONSIDERS THAT, for the purposes of drawing up future reports,

— the objective of the reports should be to provide information on health trends and determinants which can be used in the planning, among other things, of measures to be undertaken at Community level as well as for the evaluation of those already being carried out,

— topics should be selected according to their significance for future Community measures in the field of health,

— these reports should take account of the socio-economic factors affecting health, analyse in greater depth, in the fields considered, the data and the differences between Member States and their causes,

<sup>(1)</sup> OJ C 350, 30. 12. 1995, p. 1.

and, where appropriate, formulate operational conclusions for action at Community level;

STRESSES that Member States should be consulted in advance and the competent authorities/bodies of the Member States associated with the preparation of these reports, including the validation of data;

EMPHASIZES that the actions to be implemented under the programme of Community action on health monitoring within the framework for action in the field of public health (1997 to 2001)<sup>(1)</sup> are aimed, *inter alia*, at establishing Community indicators by developing appropriate methods for collecting health data rendered progressively more comparable, as well as support for analyses and reports on health status, trends and determinants;

CONSIDERS that this work, carried out in close cooperation with the Member States, is an essential contribution towards improving the quality and comparability of the data so as to increase the reliability of the reports;

CONSIDERS that this work will also contribute towards the definition of an appropriate methodology for preparing future reports and the improvement of their quality and value;

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<sup>(1)</sup> Decision No 1400/97/EC of the European Parliament and of the Council of 30 June 1997 (OJ L 193, 22. 7. 1997, p. 1).

CALLS upon the Member States to proceed with the breakdown of health data by gender, account being taken of socio-economic factors, and to gather more data concerning health problems specific to women, paying particular attention to improving women's quality of life, given *inter alia* the increase in women's life expectancy;

CALLS upon the Commission to:

- take due account of this report in implementing the programmes under way and in developing future action, including determining the priorities for Community action,
- attach particular importance to improving the quality and comparability of health data and to their breakdown according to gender in the framework of the programme of Community action on health monitoring,
- for the preparation of future reports, consult the Member States in an appropriate manner, in particular in the committee for the health monitoring programme, in order to determine the objective and format of future reports, the frequency with which they should appear, the choice of topics, the data sources to be used, the methods to be followed and the selection of coordinators.

# COMMISSION

Ecu <sup>(1)</sup>

29 Dezember 1997

(97/C 394/02)

Currency amount for one unit:

Belgian and Luxembourg franc	40,8085	Finnish markka	5,98976
Danish krone	7,53614	Swedish krona	8,67659
German mark	1,97787	Pound sterling	0,663622
Greek drachma	311,955	United States dollar	1,11210
Spanish peseta	167,493	Canadian dollar	1,59831
French franc	6,61832	Japanese yen	144,628
Irish pound	0,767123	Swiss franc	1,59920
Italian lira	1943,36	Norwegian krone	8,11999
Dutch guilder	2,22876	Icelandic krona	79,7486
Austrian schilling	13,9168	Australian dollar	1,69734
Portuguese escudo	202,324	New Zealand dollar	1,90689
		South African rand	5,40591

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 fax answering service (No 296 10 97/296 60 11) providing daily data concerning calculation of the conversion rates applicable for the purposes of the common agricultural policy.

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

Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ L 349, 23. 12. 1980, p. 34).

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

Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ L 345, 20. 12. 1980, p. 23).

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

Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ L 311, 30. 10. 1981, p. 1).

## Ecu

24 December 1997

Currency amount for one unit:

Belgian and Luxembourg franc con.	40,7780	Finnish markka	5,98366
Danish krone	7,52964	Swedish krona	8,65528
German mark	1,97624	Pound sterling	0,667214
Greek drachma	311,659	United States dollar	1,11438
Spanish peseta	167,257	Canadian dollar	1,60214
French franc	6,61273	Japanese yen	144,569
Irish pound	0,771251	Swiss franc	1,59691
Italian lira	1940,37	Norwegian krone	8,12049
Dutch guilder	2,22720	Icelandic krona	79,9791
Austrian schilling	13,9036	Australian dollar	1,69179
Portuguese escudo	202,171	New Zealand dollar	1,90818
		South African rand	5,42146

COMMISSION COMMUNICATION PURSUANT TO ARTICLE 4 (1) (a) OF COUNCIL  
REGULATION (EEC) No 2408/92

**Imposition of public service obligations in respect of scheduled air services within the United  
Kingdom**

(97/C 394/03)

(Text with EEA relevance)

- Pursuant to Article 4 (1) (a) of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes, the United Kingdom has decided to impose public service obligations in respect of scheduled air services between the Orkney Mainland (Kirkwall) and the islands of Papa Westray and North Ronaldsay.
- The public service obligations are as follows
  - *Minimum frequencies:*
    - two return trips per day except Sunday on each route.
  - *Capacity:*
    - on certain services part of the capacity should be set aside for commercial traffic but generally the capacity of the aircraft should be not less than eight seats on each route.
  - *Fares:*
    - the price of a single adult ticket must not exceed £ 13 on each route.

No changes may be made to the fare levels without the prior written consent of Orkney Islands Council.

COMMISSION COMMUNICATION PURSUANT TO ARTICLE 4 (1) (a) OF COUNCIL  
REGULATION (EEC) No 2408/92

**Imposition of public service obligations in respect of scheduled air services within the United  
Kingdom**

(97/C 394/04)

(Text with EEA relevance)

1. Pursuant to Article 4 (1) (a) of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes, the United Kingdom has decided to impose public service obligations in respect of scheduled air services between the Shetland Mainland (Tingwall/Sumburgh) and the islands of Foula, Papa Stour, Out Skerries and Fair Isle.
  2. The public service obligations are as follows:
    - *Minimum frequencies:*
      - two return trips per day on four days each week as follows:
        - Monday, Tuesday, Wednesday and Friday to Foula from Tingwall;
        - Monday, Wednesday, Thursday and Friday to Out Skerries from Tingwall,
        - Monday, Wednesday and Friday from Tingwall to Fair Isle and Saturday from Tingwall/Sumburgh to Fair Isle, and
      - two return trips per day on Tuesday only to Papa Stour from Tingwall.
    - *Capacity:*
      - the capacity of the aircraft should be not less than eight seats on each route although, depending on weight, numbers may be restricted on the Out Skerries route.
    - *Fares:*
      - the price of a single adult ticket must not exceed £ 20 on the Tingwall/Foula route, £ 15 on the Tingwall/Papa Stour route, £ 17 on the Tingwall/Out Skerries route and £ 35 on the Tingwall or Sumburgh/Fair Isle route.
- No changes may be made to the fare levels without the prior written consent of Shetland Islands Council.
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**LIST OF DOCUMENTS FORWARDED BY THE COMMISSION TO THE COUNCIL  
DURING THE PERIOD 15 TO 19. 12. 1997**

(97/C 394/06)

*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(97) 679	CB-CO-97-698-EN-C	Report from the Commission to the Council on sheepmeat: Second Commission report to the Council on the functioning of the ewe premium (follow up of the 1997/1998 price package)	15. 12. 1997	16. 12. 1997	15
COM(97) 706	CB-CO-97-726-EN-C	Proposal for a European Parliament and Council Directive relating to the taking up and pursuit of the business of credit institutions (codified version) <sup>(1)</sup>	15. 12. 1997	16. 12. 1997	96
COM(97) 709	CB-CO-97-729-EN-C	Proposal for a Council Regulation (EC) laying down for 1998 certain conservation and management measures for fishery resources in the regulatory area as defined in the Convention on Future Multilateral Cooperation in the North West Atlantic Fisheries <sup>(2)</sup>	16. 12. 1997	16. 12. 1997	24
COM(97) 710	CB-CO-97-730-EN-C	Proposal for a Council Regulation (EC) laying down, for 1998, certain measures for the conservation and management of fishery resources applicable to vessels flying the flag of Norway <sup>(2)</sup>	15. 12. 1997	16. 12. 1997	15
COM(97) 711	CB-CO-97-731-EN-C	Proposal for a Council Regulation (EC) allocating, for 1998, Community catch quotas in Greenland waters <sup>(2)</sup>	15. 12. 1997	16. 12. 1997	8
COM(97) 713	CB-CO-97-733-EN-C	Proposal for a Council Regulation (EC) laying down for 1998 certain conservation and management measures for fishery resources in the convention area as defined in the Convention on Future Multilateral Cooperation in the North-East Atlantic <sup>(2)</sup>	15. 12. 1997	16. 12. 1997	7
COM(97) 717	CB-CO-97-739-EN-C	Communication from the Commission to the Council — the extension of the International Grains Agreement 1995 and the negotiation of a successor agreement <sup>(2)</sup>	16. 12. 1997	16. 12. 1997	6
COM(97) 708	CB-CO-97-728-EN-C	Proposal for a Council Directive on the marketing of propagating material of ornamental plants	16. 12. 1997	17. 12. 1997	29
COM(97) 721	CB-CO-97-741-EN-C	Proposal for a Council Regulation (EC) extending the coverage of Regulations (EC) No 3281/94 and (EC) No 1256/96 concerning the European Union's schemes of generalized tariff preferences for the benefit of the least-developed countries	16. 12. 1997	17. 12. 1997	25
COM(97) 719	CB-CO-97-740-EN-C	Communication from the Commission to the Council and the European Parliament — the future for the market in fisheries products in the European Union: responsibility, partnership and competitiveness <sup>(2)</sup>	16. 12. 1997	18. 12. 1997	25

<sup>(1)</sup> This document contains an impact assessment on business, and in particular on SMEs.

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

<sup>(3)</sup> 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.

**Prior notification of a concentration**  
**(Case No IV/M.1088 — Thomson/Fritidsresor)**

(97/C 394/07)

(Text with EEA relevance)

1. On 22 December 1997, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>(1)</sup> by which the undertaking Thomson International SA controlled by The Thomson Corporation acquires within the meaning of Article 3 (1) (b) of the Regulation control of the whole of the undertaking Fritidsresor AB by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— The Thomson Corporation: professional information and publishing, newspaper publishing, tour operations, travel agency services and charter airline services,

— Fritidsresor AB: tour operations, charter airline services, the provision of hotel services.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) 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.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax ((32-2) 296 43 01 or 296 72 44) or by post, under reference IV/M.1088 — Thomson/Fritidsresor to:

European Commission,  
Directorate-General for Competition (DG IV),  
Directorate B — Merger Task Force,  
Avenue de Cortenberg/Kortenberglaan 150,  
B-1040 Brussels.

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<sup>(1)</sup> OJ L 395, 30. 12. 1989; corrigendum: OJ L 257, 21. 9. 1990, p. 13.

**Prior notification of a concentration**  
**(Case No IV/M.1064 — Bombardier/Deutsche Waggonbau)**

(97/C 394/08)

(Text with EEA relevance)

1. On 17 December 1997, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 <sup>(1)</sup> by which the undertaking Bombardier Inc., Montreal, acquires within the meaning of Article 3 (1) (b) of the Regulation control of the whole of the undertaking Deutsche Waggonbau AG, Berlin, by way of purchase of its shares.
2. The business activities of the undertakings concerned are:
  - Bombardier Inc.: main focus on design, development, manufacture and marketing of transportation equipment, aerospace, defence and motorized consumer product industries,
  - Deutsche Waggonbau AG: main focus in the field of manufacture and distribution of rail transportation vehicles (coaches, freight waggons) and components.
3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) 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.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax ((32-2) 296 43 01 or 296 72 44) or by post, under reference IV/M.1064 — Bombardier/Deutsche Waggonbau, to:

European Commission,  
Directorate-General for Competition (DG IV),  
Directorate B — Merger Task Force,  
Avenue de Cortenberg/Kortenberglaan 150,  
B-1040 Brussels.

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<sup>(1)</sup> OJ L 395, 30. 12. 1989; corrigendum: OJ L 257, 21. 9. 1990, p. 13.

**Re-notification of a previously notified concentration**  
**(Case No IV/M.1072 — Bertelsmann/Burda/Futurekids)**

(97/C 394/09)

(Text with EEA relevance)

1. On 21 November 1997, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>(1)</sup> by which the undertakings Reinhard Mohn GmbH controlled by the Bertelsmann AG, Gütersloh (Bertelsmann), and Burda New Media GmbH controlled by the Burda Holding GmbH & Co. KG, Offenburg (Burda) acquire within the meaning of Article 3 (1) (b) of the Regulation joint control of the undertaking Futurekids Franchising System GmbH & Co. Dienstleistungen KG, München (Futurekids Deutschland) until now fully owned by Burda.
2. Bertelsmann as well as Burda are active in the media business. The future joint venture Futurekids Deutschland is the German master-franchiser of the United States Futurekids Inc. Its business activities concern computer education centres for children, young people and adults, especially in licensing franchisees.
3. This notification was declared incomplete on 26 November 1997. The undertakings concerned have now provided the further information required. The notification became complete within the meaning of Article 10 (1) of Regulation (EEC) No 4064/89 on 17 December 1997. Accordingly, the notification became effective on 17 December 1997.
4. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved.
5. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax ((32-2) 296 43 01/296 72 44) or by post, under reference IV/M.1072 — Bertelsmann/Burda/Futurekids, to:

European Commission,  
Directorate-General for Competition (DG IV),  
Directorate B — Merger Task Force,  
Avenue de Cortenberg/Kortenberglaan 150,  
B-1040 Brussels.

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<sup>(1)</sup> OJ L 395, 30. 12. 1989; corrigendum: OJ L 257, 21. 9. 1990, p. 13.

**Prior notification of a concentration**  
**(Case No IV/M.1093 — ECIA/Bertrand Faure)**

(97/C 394/10)

(Text with EEA relevance)

1. On 18 December 1997, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>(1)</sup> by which the undertaking ECIA belonging to the Peugeot group acquires within the meaning of Article 3 (1) (b) of the Regulation control of Bertrand Faure by way of public bid announced on 11 December 1997.

2. The business activities of the undertakings concerned are:

— ECIA: automotive components, fabrication of motorcycles,

— Bertrand Faure: seats for automobiles, baggages, parts for aeronautics.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) 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.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax ((32-2) 296 43 01 or 296 72 44) or by post, under reference IV/M.1093 — ECIA/Bertrand Faure, to:

European Commission,  
Directorate-General for Competition (DG IV),  
Directorate B — Merger Task Force,  
Avenue de Cortenberg/Kortenberglaan 150,  
B-1040 Brussels.

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<sup>(1)</sup> OJ L 395, 30. 12. 1989; corrigendum: OJ L 257, 21. 9. 1990, p. 13.

**Prior notification of a concentration****(Case No IV/M.1073 — Metallgesellschaft/Klöckner Chemiehandel)**

(97/C 394/11)

(Text with EEA relevance)

1. On 16 December 1997, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>(1)</sup> by which the undertaking Metallgesellschaft AG acquires within the meaning of Article 3 (1) (b) of the Council Regulation control of the whole of the undertaking Klöckner Chemiehandel GmbH by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— Metallgesellschaft AG: main focus on trade, project engineering, production of chemicals and site engineering,

— Klöckner Chemiehandel GmbH: main focus on trade and production of organic and anorganic chemical products.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) 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.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax ((32-2) 296 43 01 or 296 72 44) or by post, under reference IV/M.1073 — Metallgesellschaft/Klöckner Chemiehandel, to:

European Commission,  
Directorate-General for Competition (DG IV),  
Directorate B — Merger Task Force,  
Avenue de Cortenberg/Kortenberglaan 150,  
B-1040 Brussels.

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<sup>(1)</sup> OJ L 395, 30. 12. 1989; corrigendum: OJ L 257, 21. 9. 1990, p. 13.

**Prior notification of a concentration**  
**(Case No IV/M.1094 — Caterpillar/Perkins Engines)**

(97/C 394/12)

(Text with EEA relevance)

1. On 18 December 1997, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>(1)</sup> by which the undertaking Caterpillar Inc. (Caterpillar) acquires within the meaning of Article 3 (1) (b) of the Regulation control of the whole of the diesel engine business currently owned by Lucas Varsity plc, and carried out under the Perkins brand name.
2. The business activities of the undertakings concerned are:
  - Caterpillar: agricultural machinery, diesel engines, provision of financial products,
  - Perkins: diesel engines.
3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) 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.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax ((32-2) 296 43 01 or 296 72 44) or by post, under reference IV/M.1094 — Caterpillar/Perkins Engines, to:

European Commission,  
Directorate-General for Competition (DG IV),  
Directorate B — Merger Task Force,  
Avenue de Cortenberg/Kortenberglaan 150,  
B-1040 Brussels.

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<sup>(1)</sup> OJ L 395, 30. 12. 1989; corrigendum: OJ L 257, 21. 9. 1990, p. 13.

## STATE AID

C 47/97 (ex N 109/93, NN 11/93 and N 543/94)

Germany

(97/C 394/13)

(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 other Member States  
and interested parties concerning aid granted by the German Federal Government to the  
Leuna 2000 refinery (Saxony-Anhalt)**

The Commission has sent the German Government the following letter, informing it that it has decided to initiate proceedings pursuant to Article 93 (2) of the Treaty.

#### 1. DECISIONS TAKEN BY THE COMMISSION

On 24 June 1993 the Commission decided not to raise any objections to the notified aid for the privatization and restructuring of the former Leuna and Zeitz refineries and the Minol petrol network (State aid No N 109/93 and NN 11/93). As regards the two sub-aspects of the restructuring (temporary continued operation of the Leuna/Zeitz plants and construction of the new Leuna 2000 refinery), the Leuna/Zeitz plants and construction of the new Leuna 2000 refinery), the Commission approved the following aid provided by the Treuhandanstalt (THA) and the Land of Saxony-Anhalt: DM 750 million to cover losses incurred through the activities of the previous refineries and DM 1 465,5 million in investment aid for the construction of the new refinery (under several regional aid programmes authorized by the Commission). With an estimated investment of DM 4,5 billion for building the new refinery, the aid intensity was thus 32,56 %.

On 5 November 1994 the Commission approved further aid amounting to DM 40 million in respect of additional investment amounting to DM 200 million. The aided proportion of the project — with a total investment volume of DM 4,7 billion — was thus 32 %.

#### 2. THE LEUNA 2000 PROJEKT

##### 2.1. Total aid intensity

Elf set up Mitteldeutsche Erdöl-Raffinerie GmbH (Mider) as a wholly owned subsidiary to build the new Leuna 2000 refinery. Mider concluded a building contract with a consortium (Thyssen-Lurgi-Technip Joint Venture — TLT) to carry out the construction.

The investment costs are being financed partly through loans. For one loan amounting to DM 2,8 billion, the German authorities are to give Mider a guarantee under the Federal/Land guarantee programme approved by the Commission under aid No 297/91 (letter D/13344 of 15 July 1991). On 3 April 1996 the German authorities decided to provide a guarantee for a loan amounting to DM 1,4 billion. According to available information, the loan has not yet been granted. The consortium of banks contacted for the purpose of financing the loan comprises European and Japanese banks. The guarantee covers 65 % of the amount of the loan. The guarantee commission amounts to 0,25 % per six-month period; if the guarantee is called, a one-off payment of DM 25 000 must also be made. On the basis of the information provided by the German Federal Government, the net grant equivalent amounts to about 1 %.

Accordingly, the intensity of all the investment aid provided by the State for the building of the Leuna 2000 refinery does not amount to more than 35 % and is thus below the maximum rate of aid allowed for large firms established in an area eligible for assistance under Article 92 (3) (a) of the EC Treaty.

##### 2.2. Calculation of the actual investment costs

The Commission received information on a study carried out by the consultants Solomon Associates Ltd. for the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (BvS), the successor to the Treuhandanstalt, to determine the price for the acquisition of shares in the new refinery.

In 1994 the future share ratios in the new Leuna 2000 refinery were readjusted. In order to spread the risk, Elf acquired a Russian consortium and the BvS as partners, which took over 24 % and 33 % respectively of the capital. The BvS granted Elf/Mider a put-option that would allow the BvS to enter the project on request. Early in 1997 the Russian consortium withdrew from the project. As a result, with the option being put into effect, Elf's

share will be two third of the capital (at present Elf's holding is 100 %). The BvS commissioned the above-mentioned study in order to have a basis for assessing the amount of the price to be paid.

By letters dated 24 April 1996 (D/50294), 11 October 1996 (D/53016), 20 November 1996 (D/53767) and 14 April 1997 (D/51771) the Commission requested detailed information on this matter. The German authorities answered by letters dated 7 June 1996, 23 December 1996, 3 June 1997, 10 July 1997 and 14 July 1997. By letters dated 25 April 1996 and 29 April 1997 they also transmitted the annual reports for 1995 and 1996 that had to be submitted under the Commission's authorisation decisions.

The Solomon study initially concluded that costs indicated by Elf, which had been the basis of the Commission's decisions, were well above the normal building costs for a comparable plant. Solomon started on the basis of an appropriate price of under DM 2 billion for the construction of the plant. These costs were calculated by means of a statistical method for a theoretical plant. The construction of the processing plant was given to a consortium (Thyssen-Lurgi-Technip Joint Venture — TLT) with which a fixed price was agreed for turn-key delivery ("lump-sum-turn-key EPC contract").

According to the annual report for 1996, the buildings costs were estimated in June 1996 at a total of DM 4,885 billion: DM 3,31 billion for the building of the plant and DM 1,575 billion for putting it into operation.

Solomon has since revised its study. The latest study dating from November 1996 puts the normal cost at about DM 2,4 billion. The difference between the figure calculated by Solomon and the costs calculated by Elf/Mider is about DM 900 million.

The Germany authorities explains this wide difference between the costs agreed in the contract (DM 3,3 billion) and the normal price for the construction of a notional plant (DM 2,4 billion) as follows:

- the TLT-consortium had to set a fixed price and included a safety margin in its calculation to cover unforeseen factors,
- the Leuna 2000 refinery differs from what is regarded from a cost point of view as a national plant in that it is tailored to the special requirements of Elf, which pushes up the costs,
- Mider has applied stricter environmental standards than those required by law,
- the construction of the new refinery on the old Leuna site made it necessary to discharge possible environmental liabilities, which also pushed up the costs.

The Commission notes that the data which the Federal Government presented in its letters and reports differ from the information on which its decisions are based and that the justifications are not fully substantiated by means of documents and figures.

### 3. ASSESSMENT

In the decisions of 24 June 1993 (aid cases No N 109/93 and NN 11/93) and 5 November 1994 (aid No N 543/94) the Commission decided not to raise any objections to the notified aid proposals for the privatization and restructuring of Leuna/Minol.

The subject of the decisions was the privatization of the petrol station network and the planned building of the new Leuna 2000 refinery, pending the completion of which the existing Leuna and Zeitz plants were to continue in operation. The privatization and the construction of the new plant are part of the efforts to restructure the old Leuna chemicals site. The German authorities are required, under the Commission decisions in aid cases No N 109/93, NN 11/93 and N 543/94, to present a detailed report once a year on the continued operation of the old refineries (whose losses are being covered by the BvS) and on the construction of the refinery. In addition, the German authorities are required to notify all amounts in excess of the funds authorised by the Commission for offsetting losses and assisting investment.

In the light of press reports, the Commission requested additional explanations and precise details on the actual costs of the investment carried out by Elf/Mider so as to be able to assess the amount of investment aid.

In the studies carried out by the consultants Solomon for the BvS, the price of a theoretical plant is calculated without taking account of the special features of the Leuna site. The Solomon study is the basis used by the BvS for negotiations on the price which it has to pay for the shares to be taken over by it.

Two points need clarification with regard to the findings of the study:

- if the price determined by Solomon is below the costs estimated by Elf/Mider, it must be clarified whether Elf/Mider's estimate of the costs was artificially high and the costs are not in line with the actual investment expenditure, or whether Elf/Mider is in fact paying a premium due to the lump-sum price which it has agreed by contract with the TLT consortium,
- in addition, the price which the BvS has to pay for the purchase of refinery shares must not contain any additional aid and must therefore depend solely on the value of the investment. Such price should consequently be determined in the light of the Solomon study and the historical value of the plant, with account being taken of the particularities of the construction and of market conditions;

In view of the extent of the aid and the questions still to be resolved, the Commission is justified in carrying out a thorough investigation of the actual investment cost and of the actual value of the investment. For this purpose, the Commission asked the Federal Government for detailed information by letters dated 24 April 1996 (D/50294), 11 October 1996 (D/53016), 20 November 1996 (D/53767) and 14 April 1997 (D/51771). The replies do not contain any documentation that would justify the divergence between the investment expenditure estimated by Elf and the price determined by Solomon. In addition, the most recent reports submitted by the German authorities specify amounts for the construction of the new refinery which are in excess of the costs on which the Commission's decisions were based.

The Commission therefore regards the information provided by the Federal Government as insufficient to remove its misgivings regarding the actual value of the construction of Leuna 2000 and the funds actually invested by Elf/Mider. If the actual costs were below the costs which formed the basis of the Commission's decisions, or if the value of the investment carried out by Elf/Mider were below the costs paid by Elf/Mider, then the investment aid granted to Elf/Mider would exceed the regional aid intensities permitted. Similarly, the conditions of sale for the Mider shares to the BvS should be carefully examined.

The Commission accordingly has doubts as to the application of its decision (Article 93 (3) of the EC Treaty) and indeed as to the information on which its decisions approving the aid were based, and consequently as to the compatibility of the aid granted to Elf/Mider with Article 92 of the EC Treaty and Article 61 of the EEA Agreement.

The Commission has therefore decided to initiate proceedings pursuant to Article 93 (2) of the EC Treaty.

As part of the proceedings, the Commission calls on the German authorities to state their views and provide any relevant information within one month of the notification of this decision. The Commission requests in particular:

- detailed information on the costs agreed by contract and on the amount of the actual costs of constructing the new refinery (building of the processing plant and overall project costs — in particular details of the costs that are additional to those which initially formed the basis of the Commission's decisions),
- the amount of the costs so far paid and/or contractually specified,
- evidence regarding the contract negotiations which shows clearly that the contracts for the construction of the refinery were concluded on the best possible price conditions for such an investment project,
- the amount of the State aid so far granted for the construction of the Leuna 2000 refinery,
- the conditions of the option contract, which should be examined at a subsequent stage.

The Federal Republic of Germany may also submit any other information which it considers relevant.'

The Commission hereby gives other Member States and other interested parties notice to submit any observation on the measures in question within one month of the date of publication of this notice in the Official Journal of the European Communities, to:

European Commission,  
Directorate-General for Competition (DG IV),  
Rue de la Loi/Wetstraat 200,  
B-1049 Brussels.

*The observations will be communicated to Germany.*

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