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Information and Notices

Contents

(1) Text with EEA relevance

(Continued overleaf)

Notice (see page 3 of the cover)

EN

I

(Information)

COMMISSION

Ecu ([1])

24 April 1998

(98/C 128/01)

Currency amount for one unit:

Belgian and Luxembourg franc	40,7952	Finnish markka	5,99841
Danish krone	7,53979	Swedish krona	8,47258
German mark	1,97637	Pound sterling	0,659070
Greek drachma	344,580	United States dollar	1,10012
Spanish peseta	167,812	Canadian dollar	1,57867
French franc	6,62658	Japanese yen	142,785
Irish pound	0,782670	Swiss franc	1,64358
Italian lira	1953,04	Norwegian krone	8,21460
Dutch guilder	2,22400	Icelandic krona	78,7026
Austrian schilling	13,9055	Australian dollar	1,69093
Portuguese escudo	202,455	New Zealand dollar	1,96380
		South African rand	5,56496

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.

([1]) 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).

Commission communication concerning autonomous tariff suspensions and quotas

(98/C 128/02)

1. Introduction

1.1. By virtue of Article 28 of the EC Treaty [1] autonomous tariff suspensions and quotas are approved by the Council acting on a qualified majority on the basis of a Commission proposal. In 1989 the Commission, therefore, published a communication [2] defining the guiding principles and procedures to be followed by the Commission in drawing up its proposals to the Council.

1.2. The aim of this communication is to update and replace the previous communication in the light of the results of the Uruguay Round and the adoption of the Information Technology agreement which led to significant changes in the economic environment in the Community. In accordance with the objectives of the 'Customs 2000' action programme comments and ideas forwarded during and following a seminar on the subject in Vienna were hereby taken into account in order to clarify these principles and to simplify the procedures for the operators engaged in foreign trade. Furthermore, the abolition of time limits for the validity of the Council regulations establishing the tariff suspensions and quotas has also been taken into consideration for this update.

1.3. The objective pursued by the Commission in determining these guiding principles is to specify the economic reasoning behind the policy of the Community in this sector.

1.4. The Commission intends to follow the general policy defined in this communication and the corresponding rules for suspensions taking effect in the second half of 1998.

2. General observations

2.1. *Role of the Common Customs Tariff*

2.1.1. Article 9 of the EC Treaty [3] states that 'the Community shall be based upon a customs union which shall cover all trade in goods and which shall involve ... the adoption of a common customs tariff in ... relations with third countries'.

Since 1968, the Community has applied this common customs tariff as one of a set of measures designed to promote the efficiency and competitive capacity of its industry on an international scale.

2.1.2. In addition to promoting industrial development within the Community, the duty rates fixed in this tariff are intended to strengthen the Community's industrial production capacity, thereby making it easier for its producers to compete with third country suppliers.

Consequently, except derogations foreseen in the Community provisions, the duties laid down in this tariff must be paid in respect of all products entered for free circulation. Payment of these duties therefore constitutes the normal state of affairs.

2.2. *Concept of tariff suspensions*

2.2.1. The suspensions approved on the basis of Article 28 of the EC Treaty constitute an exception to the normal state of affairs since, during the period of validity of the measure and for an unlimited quantity (suspension) or a limited quantity (quota), they permit the total (total suspension) or partial waiver (partial suspension) of the normal duties applicable to imported goods (anti-dumping duties are not affected by these suspensions).

2.2.2. In this connection, it should be pointed out that goods imported under the suspension arrangements enjoy freedom of movement throughout the Community; consequently, once a suspension is granted, any operator in any Member State is eligible to benefit from it. This means that a suspension granted in response to a request from one Member State could have consequences for all the others, and that the sector should therefore be administered on the basis of close and extensive cooperation between the Member States and the Commission so that the latter can see to it that all Community interests are taken into consideration.

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[1] This Article will be replaced by Article 26 when the Amsterdam Treaty enters into force.

[2] OJ C 235, 13.9.1989, p. 2.

[3] This Article will be replaced by Article 23 when the Amsterdam Treaty enters into force.

2.3. *Characteristics of tariff suspensions*

2.3.1. Article 28 of the EC Treaty refers to alterations or suspensions of duties under the common customs tariff. The text of this Article makes it apparent that the drafters of the Treaty had foreseen that it should be possible to use different means for changing the Common Customs Tariff.

2.3.2. It follows from the above that suspensions will be reviewed regularly with the possibility of deletion on request of a party concerned. In exceptional cases, where a continuation of a suspension implies the lasting need to supply the Community with certain products at reduced or zero rates (e.g. needed quantities of a specific product too small to justify the investments necessary to launch a Community production), the Commission may propose an amendment to the autonomous duty of the Common Customs Tariff.

2.3.3. Moreover, since suspensions constitute an exception to the general rule represented by the Common Customs Tariff, they must, like all derogations, be applied in a coherent manner.

2.3.4. Lastly, to avoid being discriminatory measures favouring a single operator, suspensions must be open to all enterprises, that is, to all Community importers and third country suppliers. This means that a suspension will not be granted in respect of goods covered by an exclusive trading agreement.

2.4. *The role of tariff suspensions*

2.4.1. The Commission considers that customs duties have a particular economic function. Suspensions which are intended fully or partially to cancel the effects of the customs duties over a given period may be granted only for specific and valid reasons. Furthermore as these duties are regarded as the Community's own resources, the economic reasons given should be assessed in relation to the general interests of the Community.

2.4.2. Thus, by allowing enterprises to obtain supplies at a lower cost for a certain period, it becomes possible to stimulate economic activity within the Community, to improve the competitive capacity of these enterprises and, in particular, to enable the latter to create employment, modernise their structures, etc.

2.5. *Products that may benefit from tariff suspensions*

2.5.1. Traditionally, the chief aim of suspensions has been to enable Community enterprises to use raw materials, semi-finished goods or components not available within the Community, with the exception of 'finished' products.

However, since 1989, the economic background has changed with the need to create jobs in the Community and the growing globalisation of trade and the economy which has often led to a relocation of certain mass production processes. The suspensions should therefore take account of these new economic realities. From the Community point of view it is important to ensure that suspensions enable Community firms to maintain full employment and obtain the necessary parts to manufacture sophisticated products with a high added value, even where the activity consists mainly of the assembly of parts.

2.5.2. As Community firms are converting increasingly to assembling products requiring parts that are already highly sophisticated, some of the parts required are used without major modification and can therefore be considered as finished products. Nevertheless tariff suspensions could, in certain cases, be granted for finished products used as components in the final product, provided the added value of such an assembly operation is sufficiently high.

2.5.3. In the case of equipment and material to be used in the production process, a suspension could be considered (although such products are generally finished products) provided they are specific and necessary for the manufacture of clearly identified products and are not jeopardising competing Community enterprises.

2.6. *Those who benefit from tariff suspensions*

Tariff suspensions are destined for firms producing in the Community. Where the use of the product is confined to a particular purpose,

this shall be monitored in accordance with the procedures governing the control of the end use [1].

Special attention will be paid to the interests of small and medium-sized enterprises, although efforts will also be made not to congest the lists of products covered by suspensions with goods subject to an economically insignificant amount of duty.

2.7. *Suspensions for ECSC products*

The criteria set out in this communication also apply to products falling under the ECSC Treaty. However, the decisions concerning suspensions for those products currently follow different procedures [2].

2.8. *Customs union with Turkey*

For products which are subject to the rules of the Customs Union with Turkey (all goods except agricultural and ECSC products) the same criteria apply since Turkey's rights and obligations in this case are similar to the Member States' ones. However, for the decision-making different procedures exist.

3. **General trends**

For the reasons outlined above, the Commission intends following the line of action as indicated below in its proposals to the Council and the regulations it can adopt.

3.1. The main purpose of tariff suspensions is to enable Community enterprises to use raw materials, semi-finished goods or components without being required to pay the normal duties laid down in the common customs tariff.

Suspensions are proposed after a thorough examination of the economic reasons on which the requests are based and only insofar as they seem likely to benefit the Community economy.

Due to time constraints the Council regulations granting autonomous tariff suspensions were often published only a few days before their entry into force, thus creating problems for national administrations and economic operators. The Council therefore decided, with the exception of certain fishery products, to adopt pluriannual regulations [3] (i.e. not containing expiry dates) which are partially updated every six months to take account of new requests and technical or economic trends in products and markets.

3.2. In principle, unless the Community interest dictates otherwise, and in deference to international obligations, no suspension will be proposed in the following situations:

— where identical, equivalent or substitute products are manufactured in sufficient quantities within the Community or by producers in a third country with preferential tariff arrangements [4] if they are known to the parties concerned. The same applies in cases where, in the absence of production in the Community or in a third country with preferential tariff arrangements, suspension could result in a distortion of competition between the Community enterprises with regard to the finished products in which the goods in question are to be incorporated, or in products of a related sector,

— where the goods in question are finished products intended for sale to end-consumers without further substantial processing or without forming an integral part of a bigger final product for whose functioning they are necessary,

— where the goods imported are covered by an exclusive trading agreement which restricts the possibility of Community importers to purchase these products from third country manufacturers,

[1] Articles 21 and 82 of Regulation (EEC) No 2913/92 (OJ L 302, 19.10.1992, p. 1) and Articles 291 to 304 of Regulation (EEC) No 2454/93 (OJ L 253, 11.10.1993, p.1).

[2] See, for example, Decision 1348/96/ECSC, (OJ L 174, 12.7.1996, p. 11).

[3] Regulations (EC) No 3050/95 (OJ L 320, 30.12.1995, p. 1), (EC) No 1255/96 (OJ L 158, 29.6.1996, p. 1) and (EC) No 2505/96 (OJ L 345, 31.12.1996, p. 1).

[4] This includes all countries for which a duty rate below the Community's conventional rate of duty is applied on imports of the product concerned.

— where the benefits of the suspension are unlikely to be passed on to the Community processors or producers concerned,

— where suspension would entail a conflict with any other Community policy (e.g. other preferential arrangements, an anti-dumping measure, a quantitative or environmental restriction).

3.3. Where there is some Community production or supply from producers known to the parties concerned and located in a third country under preferential tariff arrangements of identical, equivalent or substitute products to the product to be imported but such production is insufficient to meet the requirements of all the relevant processing or manufacturing companies, tariff quotas (limited to the unavailable quantities) or partial tariff suspensions may be granted. Imports of products for which another preferential arrangement is available or which are destined for re-export (e.g. inward processing) are also considered in taking the decision.

The quota application may be presented as such or result from the examination of a suspension request. In this connection, account will be taken, where appropriate, of consequential damage to any new production and of any manufacturing capacity which could be made available in the Community or in a third country with preferential tariff arrangements.

The tariff quotas are allocated according to the first-come first-served principle [1].

3.4. As far as possible, the equivalence of imported and Community products or products imported from a third country with preferential tariff arrangements is assessed with reference to objective criteria, due account being taken of the essential chemical, physical characteristics of each, their intended function and commercial use and, in particular, their mode of operation and their current or future availability on the Community market.

Differences in price between the imported and Community products are not taken into account in the evaluation.

3.5. In accordance with the provisions in the Annexes hereafter, requests for tariff suspensions or quotas should be submitted by the Member States on behalf of Community processing or manufacturing companies, identified by name, which are adequately equipped to use the imported goods in their production processes. Applicants should indicate that they have recently made a genuine, though unsuccessful, attempt to obtain the goods in question or equivalent or substitute products from potential Community suppliers or companies known to them which are located in a third country with preferential tariff arrangements.

They must also provide the information which will enable the Commission to examine their request on the basis of the criteria laid down in this communication. For practical reasons, requests are not considered where the amount of uncollected customs duty in question is estimated to be less than ECU 20 000 per year. Enterprises may group together to reach this threshold.

3.6. The provisions of the Annexes which follow may be reviewed in the light of the Customs 2000 programme [2], in particular as regards the introduction of automated procedures for the transmission of new requests and of oppositions in partnership with the Member States.

The current balances of tariff quotas are available daily in the Internet on the Europa server (http://europa.eu.int) on the World-Wide-Webpage 'http://europa.eu.int/en/comm/dg21/tariff/public/infos/qotwelco.htm'. The consolidated annexes of the suspensions and quotas regulations, the new requests and the addresses of the Ministries responsible will also be made available on the same server.

[1] See Article 308a of Regulation (EEC) No 2454/93, as amended by Regulation (EC) No 1427/97 (OJ L 196, 24.7.1997, p. 31).

[2] OJ L 33, 4.2.1997, p. 24; see Articles 9(4) and 10(2).

ANNEX 1

ADMINISTRATIVE ASPECTS

1. Experience gained in this area suggests that the best way of administering this sector involves the collection of requests in such a way as to ensure that, when approved, new suspensions and modifications enter into force on either 1 January or 1 July of each year. This grouping facilitates the treatment of these measures within the framework of TARIC (Tarif intégré des Communautés européennes/Integrated Tariff of the European Communities) and, consequently, their application by the Member States. To this end, the Commission will make every effort to present its proposals for suspensions to the Council in sufficient time for the relevant Regulations to be published in the *Official Journal of the European Communities* in sufficient time in advance of their entry into force. As regards tariff quotas, quantity increases or extensions of validity may in certain circumstances be decided by Commission Regulation outside the periods referred to above [1].

Transmission of request

2. Requests are transmitted to a central office in each of the Member States where they are examined to make sure that the requests fulfil the conditions of this Communication. The Member States decide under their responsibility which requests are sent to the relevant Commission department in DG XXI.

   Transmission to the Commission should be made in due time taking into account the time necessary for the completion of the procedure of evaluation and publication of a suspension or a tariff quota. For suspensions, this means

   — 15 March for implementation on 1 January of the following year, and

   — 15 September for implementation on 1 July of the following year.

3. Suspension requests are examined by the Commission with the aid of the opinion of the Economic Tariff Questions Group. For certain decisions (e.g. increase of tariff quotas during the year), the Member States representatives vote in the framework of the Customs Code Committee — Economic Tariff Questions Section. The Group in question meets, under the Commission's aegis, according to the requirements and nature of the products to be examined.

4. Requests are to be submitted in accordance with the model in Annex 2 (or a corresponding computer format). To speed up the administrative and economic processing of the requests, it is recommended that, where appropriate, along with requests drafted in the language of the applicant, an English, French or German translation be supplied (including the technical data if necessary).

5. The description of the product should be made by using, where appropriate, the names and expressions of the Combined Nomenclature or International Standard Organisation (ISO), International Nonproprietary Name (INN), International Union of Pure and Applied Chemistry (IUPAC) or Colour Index (CI) names. The units should be those of the International System of Units (SI) and the test methods and standards should be internationally recognised.

6. Requests for suspension are to be accompanied by all the documentation required for a thorough examination of the measures concerned (technical data sheets, explanatory leaflets, sales literature, statistics, samples, etc.).

7. If any information is confidential, it should be sent to the Commission under separate cover. Nevertheless, the Chairman of the Economic Tariff Questions Group may communicate this information to another Member State at its express request, but only with the explicit permission of the representative of the Member State responsible for that information and provided that all necessary measures are taken to protect is confidentiality. It goes without saying however that a request will not be taken into

[1] See Articles 6 and 7 of Regulation (EC) No 2505/96 (OJ L 345, 31.12.1996, p. 1).

account if any piece of information essential for scrutiny cannot be supplied for whatever reason (in particular to protect 'company confidential information' such as manufacturing processes, chemical formulae or compositions, etc.).

8. When it is deemed necessary, the Commission may ask the Member State concerned to provide any additional information relating to a request for suspension which it considers essential for the preparation of a proposal to the Council.

Objections to requests by Member States

9. Objections to a new request must be tabled at the latest during the second meeting of the Economic Tariff Questions Group for the period concerned as set in paragraph 2 above. The Chairman can by means of a written consultation ask for the opinion of the Group. In this case, objections should be submitted within a reasonable time limit indicated by him.

10. Grounds for any objection should be made in writing using the model in Annex 3 (or a corresponding computer format) and include as detailed as possible information on the existence of Community production of the product in question or an equivalent product and the names of producers who may be able to supply such products. This information shall be sent to the Commission at the same time as to all Member States.

11. The criteria set out above also apply to suspensions in force. Where the Commission deems it necessary, it may request the submission of a new request, indicating the quantities imported as part of the suspension already in progress. Objections to the continuation of a tariff suspension should be made at the latest during the first meeting of the Economic Tariff Questions Group for the period concerned or by means of a written consultation on the initiative of the Commission services.

Comments to requests by countries with preferential tariff arrangements

12. To take account of any comment to a new request made by a country with preferential tariff arrangements, it must reach the Commission by 15 June for implementation on 1 January of the following year and by 15 December for implementation on 1 July of the following year at the latest. It shall be made in a form similar to Annex 3 and be accompanied with substantive evidence indicating that the producer in this country is able to supply the product for which a tariff suspension is requested and that such product can get preferential tariff treatment when imported into the Community.

13. Comments made by countries with preferential tariff arrangements to the continuation of a tariff suspension shall reach the Commission by 15 May for implementation on 1 January of the following year and 15 November for implementation on 1 July of the following year at the latest. Form and content of these comments shall be in accordance with the conditions described in paragraph 12 above.

14. Comments made by countries with preferential tariff arrangements to a new request or the continuation of a tariff suspension shall not delay the Commission's decision to propose a new or to maintain or to modify an existing tariff suspension. These comments can only be taken into account where the evidence and information available to the Commission and the Member State allows to conclude without reasonable doubts that they are justified with regard to the aims and principles set out in the Communication.

Rejected requests

15. Requests of suspensions that have not been accepted by the Commission for proposal to the Council may be reconsidered only if they contain new elements which are relevant for the acceptance (e.g. essential complementary information, objection of a Member State withdrawn or likely to be withdrawn shortly).

ANNEX 2

REQUEST FOR TARIFF SUSPENSION OR QUOTA

(Member State:)

Part I

1. Combined nomenclature code:

2. Precise product description taking into account customs tariff criteria:

3. Further information including commercial denomination, packaging, mode of operation, intended use of the imported product, type of product in which it is to be incorporated and end-use of that product:

4. Declaration by the interested party that the imported products are not the subject of an exclusive trading agreement (join extra sheet):

5. (a) Name and addresses of firms known in the Community or in a third country with preferential tariff arrangements approached with a view to the supply of identical, equivalent or substitute products:

   (b) Dates and results of these approaches:

   (c) Reasons for the unsuitability of the products of these firms for the purpose in question:

6. Special remarks (e.g. indication of similar or old suspension or quota, indication on existing binding tariff information . . .):

REQUEST FOR TARIFF SUPENSION OR QUOTA

(Member State:)

Part II

1. Combined nomenclature code:

2. Request submitted by:
   Address:
   Telephone/telex/fax:

3. Anticipated annual imports:
   — value (in ECU):
   — quantity (in statistical units):

4. Current imports (preceding year):
   — value (in ECU):
   — quantity (in statistical units):

5. Period requested:

6. Applicable duty rate at the time of the request:

7. Estimated uncollected customs duties (in ECU) on an annual basis:

8. Name and address of non-Community producer:

9. Names and addresses of the importer and the user in the Community:

For chemical products:

10. CUS No (Reference number in European Customs Inventory of Chemicals) and CAS No (Chemical Abstracts Service Registry Number):

11. Structural formula:

Annexes (product data sheets, explanatory leaflets, brochures, etc.)

(date)

NB:

If any of the items of information in part I or II is confidential, it may be sent to the Commission under separate cover.

ANNEX 3

OBJECTION TO A REQUEST FOR TARIFF SUSPENSION OR QUOTA

(Member State:)

Request No: CN code: Goods: File No:

☐ The goods are currently available in the Community.

☐ The goods will be available in the Community from (date).

☐ One or more equivalent or substitute products are obtainable within the Community.

☐ Other

Firms able to supply an identical, equivalent or substitute product

Name of firm:

Person to contact:

Address:

Tel.:

Fax:

E-Mail:

Product trade name:

Notice of initiation of a review of the anti-dumping measures applicable to imports of certain electronic weighing scales originating in Japan

(98/C 128/03)

Following the publication of a notice of impending expiry of the anti-dumping measures in force on imports of certain electronic weighing scales originating in Japan [1], the Commission has received a request to review these measures pursuant to Article 11(2) of Council Regulation (EC) No 384/96 [2] (hereinafter referred to as the Basic Regulation).

1. Request for review

The request was lodged on behalf of Community producers whose collective output of the product concerned constitutes a major proportion of the total Community production of this product.

2. Product

The product concerned is retail electronic weighing scales (hereinafter referred to as 'REWS'), currently classified under CN code 8423 81 50. This CN code is only given for information.

3. Existing measures

The measures currently in force are definitive anti-dumping duties imposed by Council Regulation (EEC) No 993/93 [3].

4. Grounds for the review

The request contains *prima facie* evidence that the expiry of the measures would be likely to result in the continuation or recurrence of dumping and injury to the Community industry.

The applicants submitted that exports from Japan have continued to be made at dumped prices. The allegation of dumping is based on a comparison of the domestic prices in Japan with the export prices to the Community of the product concerned by the investigation. On this basis, the dumping margins calculated are substantial and are significantly higher as compared to the margins found in the previous investigation.

It is also argued that imports sold at prices which undercut those of the Community industry have contributed to continued injury being suffered by this industry in the form of a substantial drop in prices, sales volume, actual production and capacity utilisation. It is furthermore alleged that injury will undoubtedly increase if the measures are allowed to expire since injury has continued despite the measures in force.

The allegation of the continuation of dumping and injury is reinforced by the statement that since the imposition of anti-dumping duties Japanese producers have increased their production capacity off-shore substantially, in addition to their already freely disposable capacity in Japan. Imports of the product concerned from certain of these countries, i.e. Korea and Singapore, are subject to anti-dumping measures. Unless anti-dumping measures against Japanese-manufactured REWS are maintained, it is alleged that Japanese producers could switch back additional manufacture to Japan from their off-shore locations, and should this course come about, it would inevitably lead to an even further increase in dumping and injury from this source of manufacture.

In view of the allegation that the expiry of the measures would result in increased dumping and injury, the Commission considers it appropriate not only to initiate the review pursuant to Article 11(2) of the Basic Regulation, but also pursuant to Article 11(3) of this Regulation.

5. Procedure of the determination of dumping and injury

Having determined, after consulting the Advisory Committee, that sufficient evidence exists for the initiation of a review, the Commission hereby initiates an investigation pursuant to Articles 11(2) and (3) of the Basic Regulation.

(a) *Questionnaires*

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the Community producers, exporters and importers which participated in the investigation having led to the existing measures. At the same time, a copy of the corresponding questionnaire will be sent to any known representative association of exporters or importers. The authorities of the exporting countries will be notified of the exporters known to be concerned and provided with a copy of the questionnaire sent to them.

[1] OJ C 329, 31.10.1997, p. 6.
[2] OJ L 56, 6.3.1996, p. 1, as amended by Regulation (EC) No 2331/96 (OJ L 317, 6.12.1996, p. 1).
[3] OJ L 104, 29.4.1993, p. 4.

Other exporters and importers are invited to contact the Commission forthwith in order to find out whether they are concerned by the review. In the latter case, they should as soon as possible, but not later than 15 days after publication of this notice in the *Official Journal of the European Communities*, request a copy of the questionnaire as all questionnaires have to be completed within the time limit set out in paragraph 7 of this notice. Any request for questionnaires must be made in writing to the address below and should indicate the name, address, telephone, fax and/or telex numbers of the interested party.

(b) *Collection of information and holding of hearings*

All interested parties, provided that they can show that they are likely to be affected by the results of the investigation, are hereby invited to make their views known in writing and to provide supporting evidence.

Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

6. **Community interest**

In accordance with Article 21 of the Basic Regulation and in order that an informed decision may be reached as to whether repealing or maintaining the anti-dumping measures currently in force would be in the Community interest, the Community producers, importers and their representative associations, and representative users may, within the time limit specified in this notice, make themselves known and provide the Commission with information. It should be noted that any information submitted under this Article will only be taken into account if supported by factual evidence at the time of submission.

7. **Time limit**

Interested parties, if their representations are to be taken into account during the investigation, must make themselves known, present their views in writing and submit information within 40 days from the date of the publication of this notice. Interested parties may also apply to be heard by the Commission within the same time limit. This time limit also applies to interested parties unknown to the Commission, and it is consequently in the interest of these parties to contact the Commission without delay at the following address:

European Commission,
Directorate-General I,
External Relations: Commercial Policy and Relations with North America, the Far East, Australia and New Zealand,
Directorates I-C/I-E,
(DM 24 8/38),
Rue de la Loi/Wetstraat 200,
B-1049 Brussels,
Fax (32-2) 295 65 05,
Telex COMEU B 21877.

8. **Non-cooperation**

In cases in which any interested party refuses access to, or otherwise does not provide necessary information within the time limit, or significantly impedes the investigation, preliminary or final findings, affirmative or negative, may be made in accordance with Article 18 of the Basic Regulation, on the basis of the facts available.

STATE AID

C 83/97 (ex NN 153/97)

Germany

(98/C 128/04)

(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 other Member States and other parties concerned regarding aid which has been granted to Dow/Buna SOW Leuna Olefinverbund GmbH (BSL)

By means of the letter reproduced below, the Commission informed the German Government of its decision to initiate the Article 93(2) procedure.

'1. On 28 November 1995 and 29 May 1996, the Commission adopted a final decision approving aid up to DEM 9,5 billion which was going to be awarded in the context of the privatisation of the largest complexes of the chemical industry of the former German Democratic Republic, now Buna SOW Leuna Olefinverbund GmbH (BSL) ([1]).

1.1. BSL is located in the Leipzig area, inland in Sachsen-Anhalt. It is the remnant of the three chemistry companies Buna (at Schkopau), SOW (at Böhlen) and Leuna-Werke GmbH (at Leuna) which, at GDR times, comprised a large number of quite diverse branches of activity and which gave employment to 68 500 people.

1.2. After the German unification in 1991 and after the hiving off of several branches of the three companies in which production plants were outdated, obsolete or had an uneconomic scale of production, the privatisation trustee Treuhandanstalt (THA) had combined the remainder under one roof since the three sites depended on each other. Thus, the ethylene cracker at Böhlen had to provide both the Buna and Leuna Polyolefine plants with which it was connected by pipelines with the olefines they needed for their production. Consequently, the THA tried to privatise the three sites as a whole. At the same time, the THA reduced the number of employees down to 5 820 people until January 1995.

1.3. The Dow Chemical Company (Dow) which was the only bidder for the privatisation of BSL presented a sound plan for a complete restructuring of the olefine complex. This plan foresaw a further reduction of workforce down to 2 200 people until January 1999 but it also showed perspectives for long-term viability of the complex. In April 1995, the privatisation agreement between Dow and the *"Bundesanstalt für vereinigungsbedingte Sonderaufgaben"* (BvS) — which had succeeded to the THA — was notarised. The contract which contained a suspensory clause for Commission approval pursuant to Article 93 of the EC-Treaty provided for substantial payments by BvS to BSL which by far exceeded the price Dow had to pay for the take over.

The Commission had always taken the position that a privatisation sale to a party other than the highest bidder in a public call for bids or at a negative price may entail State aid. It therefore examined in an Article 93(2) proceeding the aid elements contained in the privatisation agreement on their compliance with the Community rules on State aid.

2. The original privatisation contract in that form in which it was submitted to the Commission foresaw State support totalling to DEM 11,597 billion plus a compensation for energy cost and the cost for the installation and use of a pipeline to Rostock which were both unlimited in their risk. Under the Article 93(2) procedure, your Government agreed to modify and to reduce the aid foreseen; In the end, the Commission identified a maximum of DEM 9,5 billion which constituted aid in the meaning of Article 92(1) of the EC-Treaty and Article 61(1) of the EEA Agreement and which would be compatible with the common market provided certain conditions contained in that decision would be met.

2.1. In its approval of the aid, the Commission took in particular into consideration that the restructuring programme submitted by Dow consisted of interlinked elements, each of which was necessary in order to create an integrated and viable complex. It also concluded that none of these elements could be left out or modified without endangering the complex as a whole.

([1]) Due to some minor deviations between the German and the English version of the Decision of 28 November 1995 the Commission adopted on 29 May 1996 a harmonised version of this Decision which was published in OJ L 239 of 19 September 1996 as Commission Decision 96/545/EC.

In addition, in the course of the Article 93(2) proceeding, the Commission had investigated whether the expansion of capacity and the introduction of new capacity would lead to overcapacity on the market or would take place in areas where structural overcapacities already existed. It concluded that, with the exception of a proposed aniline plant, none of the plants proposed by Dow would create overcapacity in any of the production areas BSL would be acting. Thus, the Commission approved, among others:

— a benzene plant with a capacity of 200 KTA,

— the modernisation of the butadiene plant with a capacity of 45 KTA (without increase of capacities),

— an ethylbenzene/styrene unit with a capacity of 200 KTA,

— acrylic (90 KTA) and acrylic esters (93 KTA) plants,

— an LDPE plant at Leuna with a capacity of 145 KTA, and

— upgrading of the SBR rubber (70 KTA) and PB rubber (24 KTA).

Moreover, the Commission noticed that there is a significant contribution by Dow to the restructuring totalling to DEM 1,5 billion which would be complemented by DEM 212 if Dow decided to install an aniline plant or carry out a replacement investment on its own cost.

Furthermore, the Commission had also taken into consideration that the aid to BSL could secure an industrial base, with all of its positive ramifications on the employment levels and the region. In this context, the Commission also took into account that the privatisation contract laid down that Dow and BSL contemplated making further investments of DEM 1,2 billion in addition to the investments under the restructuring programme until the year 2010, in order to secure the long-term competitiveness, growth and economic viability of the petrochemical complex.

2.2. Among the different elements of aid figured in particular a maximum of DEM 2,973 billion investment aid to finance the restructuring programme and a cash-flow compensation with a maximum of DEM 2,988 billion for the period of the restructuring which was supposed to last from 1996 until 31 May 2000.

2.2.1. Within the investment aid, the Commission also approved DEM 327 million aid for investments in plants which were part of but not integrated in BSL (such as phthalic acid, solvents, dispersions). The privatisation contract noted that, if Dow should not wish to continue these plants and be unable to find a buyer for them, it could shut them down, provided it offered suitable replacement investments. These investments would then be eligible to the DEM 327 million aid. The Commission only approved this amount for the aforementioned investments because, at this stage, it could not know which exactly the replacement investments would be.

The cost for the installation and use of the pipeline to Rostock which finally was identified during the Article 93(2) proceeding and approved by the Commission amounted to DEM 540 million.

2.2.2. The original privatisation contract foresaw that the price BSL should pay for steam and power would be subsidised by BvS. During the restructuring period, until 31 May 2000, these subsidies were to be awarded partly out of the cash-flow compensation and partly in addition to it. For the period after the restructuring, until 31 December 2014, the contract foresaw an additional subsidy to of the steam and power prices. The exact figures of the aid to be paid for the compensation of energy costs were not quantified in the original privatisation contract itself. During the proceeding, however, these costs were quantified at a total of DEM 966 million out of which DEM 162 million should come out of the cash-flow compensation and the remaining DEM 804 million should be paid as an additional compensation for power and steam costs.

Within the Article 93(2) proceeding the Commission took the position that there was no justification for such operating aid. Energy contracts usually would be negotiated between individual companies, without State aid being available to cover the gap between the amount the purchaser of energy is prepared to pay and the price the supplier wishes to receive. In addition, the Commission held that Germany could not demonstrate convincingly that such aid to energy prices was the consequence of, or even linked to, the restructuring process.

Your authorities and Dow therefore agreed to delete completely those parts of the privatisation contract according to which power and steam costs were to be compensated in addition to the cash-flow compensation and to lower the cash-flow compensation ceilings by DEM 162 million down from DEM 3,150 billion to DEM 2,988 billion.

2.3. The conditions under which the Commission could approve the aid elements contained in the privatisation contract were, among others, the following:

— exclusion of the cost of the aniline, nitric acid and nitrobenzene plant amounting to DEM 212 million from BvS' capital contribution (Article 2(1) of the Decision),

— deletion of the Articles making reference to subsidies of the energy costs (Article 2(3) of the Decision),

— submission of the modified contract and notification to the Commission pursuant to Article 93(3) of the EC-Treaty of any deviation from the modified contract (Article 3 of the Decision),

— submission to the Commission of half-yearly reports on the progress of restructuring and the amount of aid actually awarded under the various items in the privatisation contract (Article 4(1) of the Decision), and

— refraining from granting any further aid to BSL in support of the restructuring plan (Article 5 of the Decision).

2.4. It has also to be maintained that the Commission, while approving the aid in favour of investment and the cash-flow compensation, took well note that the privatisation contract contained incentive clauses for BSL not to consume the totality of agreed aid in the form of premiums (20 % for the investment and 33 % for the cash-flow compensation) on the amount not consumed by the end of the restructuring period.

3. By letter, dated 9 August 1996, your authorities submitted to the Commission the Second Amendment Agreement ([2]) which had been concluded in order to comply with the Commission's Decision of 29 May 1996. After a scrutiny of the amendments and their related annexes, the Commission took the opinion that it could not decide whether its Decision of 29 May 1996 had been complied with.

Thus, the business plan in the second amendment was not identical to the original plan, on the basis of which the Commission had taken its Decision. Notably for benzene, planned capacities had increased markedly.

In addition, a new energy contract had been negotiated between BSL and VKR (VEBA). The second amendment carried a new clause that the cash-flow compensation calculation includes "payments for power and steam contracts approved by BvS". A publication in the German press claimed that the new energy contract provided for a much higher price during the restructuring period (in which BvS compensates a negative cash-flow) than in later years and that this had been done in order to circumvent the Commission's Decision that aid to cover energy costs should not be allowed.

By letter dated 30 October 1996 supplementary clarifications on these points were requested.

On 2 December 1996, the requested clarifications were received concerning changes in the investment programme. Concerning energy, your authorities stated that negotiations were still ongoing with Dow/BSL.

On 23 January 1997, bilateral discussions between representatives of the Commission and your authorities had taken place in which these points were discussed.

4. On 10 April 1997, an inspection of the energy contracts by the Commission took place in Schkopau. The results were as follows:

— the energy contracts were concluded for a period of 19 years (until 31 December 2014). For the remaining restructuring period (until 31 May 2000) during which, according to the privatisation contract, losses will be covered by BvS, the contracts indeed foresee prices ([3]) which exceed the average prices for the supply of power and steam by far. For the period after the restructuring, however, when Dow itself will have to finance any losses in BSL, the contracts foresee energy prices which are first by far lower than the average price. These prices will then increase annually and gradually until they will be in line with the average prices in the year 2014,

— according to BSL, the reasons for this remarkable evolution of prices consisted of the following:

  — The price until 31 May 2000 is in line with other east German energy prices for large users, defined

([2]) The first Amendment Agreement was signed in August 1995. It lays down the economic transfer date of 1 June 1995 and covers the period between that date until the Commission would approve the aid.

([3]) The exact amounts and the details of the price calculation are known at the Commission. For reasons of confidence, however, these amounts and details are not published.

as users with an off-take of 25 MW and 7 000 h/a. It also reflects the relatively low off-take and especially the ups and downs in the off-take during the restructuring period,

— The much lower prices from June 2000 on reflect the effects of the liberalisation of electricity prices. BSL wanted to include a clause in the contract allowing for revision of prices in the case of liberalisation effects (this was well before the Council reached its agreement); in the end, such a clause was replaced by a drop in prices by the year 2000,

— Dow itself owns energy plants at various sites in the world where it produces chlorine, including at Stade on the basis of natural gas. A new state-of-the-art power plant would enable it to provide electricity at a price which was even lower than the price BSL would have to pay after June 2000. Under the energy contract, BSL has the right to build a power plant of its own, if VKR is unable to match the expected lower long term price such a power plant would yield. If, instead, BSL had decided to build its own plant from the start, that plant would have been available by the year 2000,

— Fluctuations in off-take will decrease once the restructuring has been completed. In 1996, the electricity take off varied between 43,2 MW and 125,2 MW. Even inside one month there were remarkable variations (July 1996: Between 34,4 MW and 124,9 MW). Similar fluctuations take place in steam off-take. By the end of 1998, chlorine production will have shifted to the membrane process. In between, electricity for this installation is expected to have dropped from 74 MW to 55 to 37 and then have risen to 56. There will also be two complete shutdowns of limited duration.

— Energy prices in eastern Germany are still some 25 % higher than in western Germany. It is expected that these prices will level over time.

— From the energy contracts, it appeared in addition that BSL will take over parts of the financing of the adaptations of VKR's power station and will receive for this compensation payments by BvS at an amount of [. . .].

5. Until August 1997, the Commission received three half-yearly reports covering the period between 1 June 1995 and 31 December 1996. These reports, however, were too shallow for any monitoring of the compliance of the restructuring measures with the Commission Decision of 29 May 1996. Your authorities were informed of this by letter dated 4 August.

6. By letter dated 8 September 1997, your Government submitted two new contractual agreements between Dow and BvS to the Commission, together with an explanatory note. These agreements, the third and fourth Amendment Agreement to the privatisation contract, were concluded in April 1996 and on 1 September 1997. The Third Amendment Agreement concerns the pipeline to Rostock, the Fourth Amendment Agreement concerns, amongst other points, the changes in installations that are to be built or modernised. In difference to the privatisation contract itself, none of both Amendment Agreements contain suspensory clauses for Commission approval pursuant to Article 93 of the EC Treaty.

6.1. Your authorities' letter of 8 September does not just refer to the monitoring of compliance with the Commission's Decision, but also, if the Commission should be of the opinion that the modifications of the restructuring plan alter the aid in the meaning of Article 93(3) of the Treaty, provide the information as a notification pursuant to Article 93(3).

6.2. In the letter, the Commission was also informed that with the fourth Amendment Agreement Dow has formally become the 80 % owner of BSL. Moreover, Dow would be carrying out additional investment at the three sites for which BvS will pay no aid. This would notably concern the construction of a new PET plant with a capacity of 150 KTA, which is expected to start producing in the second half of 1998 and the construction of an XPS (extruded polystyrene foam) plant capable of producing 300 000 m^3 per year. The aniline plant, which the Commission decided could not be aided under the restructuring plan, would now be built by Dow Germany at Böhlen (the SOW site) on land leased from BSL. The overall restructuring investments would be progressing more or less as planned, so that a request to prolong the restructuring period from five to six or seven years would be unlikely. Finally, negotiations would be taking place with several down-stream processing companies who are interested in establishing production facilities on BSL sites. The BSL restructuring project therefore would most probably achieve the desired effect of stimulating both Dow and others in the chemical sector to invest in the area.

6.3. The Third Amendment Agreement states that MIDER (Mitteldeutsche Erdölraffinerie, previously Leuna 2000) will contribute DEM 10,5 million to the pipeline to Rostock. The contribution of BvS is reduced by this sum; however, the total aid ceiling remains as it is.

6.4. The relevant changes listed in the Fourth Amendment Agreement concern the following installations:

— regarding the upgrading of the cracker, an increase of the chemical grade ethylene up to 60 KTA is foreseen. Chemical grade ethylene is needed for the production of ethyl benzene and, further downstream, of styrene. The polymer grade ethylene will continue to stand at 450 KTA,

— it has been decided to increase the capacity of the benzene plant to 320 KTA. The originally planned capacity was 120 KTA, but during the Commission's Article 93(2) proceeding the planned capacity was already increased to 200 KTA. This is the capacity on which the Commission had based its Decision of 29 May 1996. The benzene, which does not travel well, will all be consumed captively, notably in the aniline plant and in the ethylbenzene/styrene unit,

— an increase in the capacity of the butadiene plant from 45 KTA to 120 KTA has been added to the restructuring plan as replacement for the DEM 45 million propane storage tank approved in the Commission's Decision, which is no longer needed in the modified restructuring plan. The butadiene will be consumed captively in the new solution process elastomers plant. The financing of the butadiene plant expansion will require DEM 90 million,

— the ethylbenzene/styrene unit was added to the restructuring plan as part of the replacement of "structural deficiency" payments the Commission could not accept. The capacity of this unit is now to be expanded from 200 KTA to 280 KTA. Both products will be consumed captively. The Fourth Amendment Agreement lays down that DEM 33 million of the investment will not be financed by BvS. The overall plant will cost DEM 75 million more than originally planned,

— the acrylic acid and acrylic esters plants will be built by Hoechst on behalf of BSL. They will have a lower capacity than originally planned, but will cost considerably more. The Fourth Amendment Agreement introduces a ceiling of DEM 390 million, above which BvS will not finance this investment. The Fourth Amendment Agreement stipulates that the agreements between BSL and Hoechst which were not enclosed in your letter of 8 September 1997 concern the operation as well as the construction of the plants in question and that an incentive payment to Hoechst is involved,

— the new version of Annex 7 to the privatisation agreement shows a total EDC capacity of 532 KTA whereas, in the old version, only 276 KTA were foreseen,

— regarding the approved DEM 327 million aid for investment in plants which were part of, but not integrated in BSL (such as phtalic acid, solvents, dispersions) or for investment in replacement plants, the Fourth Amendment Agreement clarifies which units will be shut down and which will be maintained; the investment in the latter will only amount to DEM 28 million. For the remaining DEM 299 million, the Agreement also introduces replacement plants, the total cost of which will amount to DEM 432 million: A 15 KTA hydrocarbon resin plant, a 36 KTA syndiotactive polystyrene plant, a 60 KTA solution process elastomers plant and a 23 KTA polycyclohexylethylene (PCHE) plant,

— the capacity of the LDPE plant at Leuna is now described as being 160 KTA, instead of 145 KTA,

— finally, the capacity of the upgraded existing SBR and PBR (rubber) plants has been fixed at 90 KTA and 27 KTA respectively, instead of the 70 KTA and 24 KTA foreseen.

7. As the Commission has already held in its Decision of 29 May 1996 ([4]), there is no doubt that the financial support to be provided by BvS in the context of BSL's privatisation to Dow constitutes aid in the meaning of Article 92(1) of the EC Treaty and Article 61(1) of the EEA-Agreement.

As the Commission has also stated in its Decision of 29 May 1996 ([5]), there is competition between manufacturers of chemical products and are traded between Member States, as is well documented in trade statistics ([6]). BSL does not only continue to produce some of the intermediary products made by Buna, SOW and Leuna, but also manufactures new derivates as part of the integrated set-up resulting from the restructuring.

([4]) OJ L 239, 19.9.1996, p. 2.
([5]) OJ L 239, 19.9.1996, p. 7.
([6]) See *Panorama of EU Industry 1997*, chapter 7.

Financial aid to companies strengthens their position compared with others that are competing with them in the Community and the European Economic Area. Where this occurs, such aid must be deemed to distort competition with such other undertakings.

8. In their letter of 8 September 1997, your authorities have notified to the Commission the deviations from the authorised privatisation contract between Dow and BvS. Your authorities hereby complied in so far with their notification obligation pursuant to Article 3(2) of the Commission Decision of 29 May 1996 in connection with Article 93(3) of the EC Treaty. Nevertheless, as far as your authorities' obligation of Article 93(3) of the EC Treaty, according to which they must refrain from granting the aid until the Commission has taken its position, is concerned, your authorities failed. In difference to the original privatisation contract, the amendments do not contain suspensory clauses for Commission approval. Thus, the legal validity of these amendments begins from their conclusion on and aid which is paid in the context of these amendments may have been awarded without prior approval by the Commission. Such aid would be formally illegal.

9. It is also doubtful if the aid which will be awarded in the context of the privatisation in that form as it is laid down in the Third and Fourth Amendment Agreements to the privatisation contract may comply with the Community rules on State aid on the substance.

9.1. There are serious doubts if this aid may be regarded as being covered by the Commission Decision of 29 May 1996.

As the Commission has stated in that Decision, the project of restructuring BSL envisages to create an integrated complex, in which all parts necessarily hang together. Hence, if the capacity of one installation is changed, this will have consequences for the input and output of other installations as well.

The Commission takes well into account that the overall aid sum mentioned in its Decision has not been changed. In this context, however, it is important to note that the Commission approved maximum aid ceilings related to specific projects, rather than sums. The Commission even approved an incentive scheme to stimulate that less than the maximum aid be paid.

The Commission also understands well that a restructuring plan, and certainly the quite extraordinary plan for the restructuring of BSL, is not a completely static thing. Opportunities and new possibilities may come up, the implementation of which make the project more attractive. It is, however, the Commission's position that its Decision of 29 May 1996 is based on the effect on competition of clearly defined products and production capacities. Any new changes which increase production capacities, or which lead to different products, are not covered by this Decision and should therefore be financed by the company itself, with the help of the usual aid instruments only.

Taking into account these considerations the Commission has serious doubts whether the following changes in the restructuring plan contained in the Amendment Agreements may not alter its assessment of the Decision of 29 May 1996:

— The DEM 10,5 million contribution by MIDER to the pipeline to Rostock which was agreed by the Third Amendment Agreement appears to lead to an increase of the aid budget available for other investment. The contribution of BvS is reduced by this sum; however, the total aid ceiling remains as it is. The overall aid budget should be reduced by the same amount. This the more so, as MIDER is largely subsidised as well and its contribution is therefore similar to the award of aid under different schemes.

— Concerning the up-grading of the cracker, the Commission takes note that the capacity of the production of chemical grade ethylene will be increased up to 60 KTA. In this context, the Commission would like to know whether the investment carried out in the cracker still corresponds to the information provided by your authorities before the Commission's Decision of 29 May 1996 was adopted. It would in particular be important to know if the increase of chemical grade ethylene takes place within the overall capacity of the cracker or will lead to an increase of this overall capacity.

— As regards the increase of capacity of the benzene plant 200 KTA to 320 KTA, the Commission, at this stage, sees no reason why the additional investment cost should be financed under the approved aid. Even if benzene itself is not traded, aniline certainly is. Take into account that several aniline manufacturers have repeatedly indicated their concern to the Commission about the aniline plant, the compatibility of the aid to the app. DEM 50 million additional investment appears doubtful.

— In respect of the increase in the capacity of the butadiene plant from 45 KTA to 120 KTA which has been added to the restructuring plan as replacement for the DEM 45 million propane storage tank

approved in the Commission's Decision, which is no longer needed in the modified restructuring plan, it has to be stated that the compatibility of the financing of the DEM 90 million cost of the butadiene plant expansion by BvS is doubtful.

— Concerning the ethylbenzene/styrene unit which was added to the restructuring plan as part of the replacement of "structural deficiency" payments the Commission could not accept, the capacity of this unit will be expanded from 200 KTA to 280 KTA. The fourth Amendment Agreement lays down that DEM 33 million of the investment will not be financed by BvS. The Commission has serious doubts on the aid to this investment for the following reasons: the original capacity of 200 KTA seems to be higher than what was communicated to the Commission under the first Article 93(2) procedure and, secondly, whether DEM 33 million really represents the cost of the higher capacity, given that the plant will cost DEM 75 million more than originally planned.

— The acrylic acid and acrylic esters plants will be built by Hoechst on behalf of BSL. They will have a lower capacity than originally planned, but will cost considerably more. The fourth Amendment Agreement introduces a ceiling of DEM 390 million, above which BvS will not finance this investment. The Commission does not have the agreements between BSL and Hoechst, but it can see from the fourth Amendment Agreement that these agreements concern the operation as well as the construction of the plants in question and that an incentive payment to Hoechst is involved. Therefore, the Commission has serious doubts that Hoechst may become a beneficiary of the aid approved by the Commission in favour of BSL.

— In respect of the EDC plant, there are inconsistencies concerning the figures. Annex 7 to the original privatisation contract foresees a capacity of 276 KTA whereas the Fourth Amendment Agreement shows a capacity of 532 KTA. In this context, the Commission would also like to know whether the investment carried out in the cracker still corresponds to the information provided by your authorities before the Commission's Decision of 29 May 1996 was adopted.

— As regards the approved DEM 327 million aid for investment in plants which were part of, but not integrated in BSL (such as phtalic acid, solvents, dispersions) the privatisation contract notes that, if Dow should not wish to continue these plants and be unable to find a buyer for them, it can shut them down, provided it offers suitable replacement investments. These investments would then be eligible to the DEM 327 million aid. While approving the aid, the Commission was obviously unable to approve such a possibility to introduce replacement investment of which nothing was known and therefore merely approved the aid to phtalic acid, solvents and dispersions.

— The fourth Amendment Agreement clarifies which units will be shut down and which will be maintained; the investment in the latter will only amount to DEM 28 million. For the remaining DEM 299 million, the Agreement also introduces replacement plants, the total cost of which will amount to DEM 432 million: A 15 KTA hydrocarbon resin plant, a 36 KTA syndiotactive polystyrene plant, a 60 KTA solution process elastomers plant and a 23 KTA polycyclohexylethylene (PCHE) plant.

The Commission, in principle, is less negative on these replacement investments than on others for two reasons: the possibility of replacement was explicitly mentioned in the privatisation contract and a considerable part of their investment cost will not be financed by BvS. However, it cannot be excluded that these alternative investments may cause particular sectoral problems and affect trade between Member States to an extent contrary to the common interest.

— the capacity of the LDPE plant at Leuna is now described as being 160 KTA, instead of 145 KTA. Here, the Commission needs to know which is the reason for this change, particularly, if there is a change in the investment,

— nevertheless, the fourth Amendment Agreement also contains changes, which can be considered as acceptable but which should, for the sake of completeness, be mentioned as well. Thus, the capacity of the upgraded existing SBR and PBR (rubber) plants has been fixed at 90 KTA and 27 KTA respectively, instead of the 70 KTA and 24 KTA foreseen originally. Under the first Article 93(2) procedure the Commission was warned that the latter figures were only estimations, because Dow had no experience with these plants.

9.2. Beyond the question if the restructuring of BSL in that form as it is laid down by the Third and Fourth Amendment Agreement is covered by the Commission Decision of 29 May 1996, there are serious doubts if it complies with the derogations as set out in Article 92(2) and (3) of the EC-Treaty and Article 61(2) and (3) of the EEA-Agreement if it is examined on its own merits.

9.2.1. As regards the derogations of Article 92(2)(a) and (b), these are inapplicable in this case, given the nature and the objective of the aid.

9.2.2. Concerning the derogation of Article 92(2)(c), the Commission has already held in its Decision of 29 May 1996 ([7]) that this is not applicable in this case because difficulties companies in the former GDR are facing, which result from the fact that these companies need to stand up to competitors in the Community and the EEA after unification, cannot be interpreted as disadvantages caused by the former division of Germany.

The assessment of the modifications of BSL restructuring programme does not provide for any deviation of this previous conclusion.

9.2.3. It should also be recalled that the Commission, in its Decision ([7]), has held that German unification did not lead to a serious disturbance in Germany's economy to an extent that the derogation of Article 92(3)(b) might apply.

The modification of the restructuring programme does not contain any element which might alter this assessment.

9.2.4. As far as the derogations of Article 92(3)(a) and (c) are concerned under which the Commission finally had approved the restructuring programme contained in the original privatisation contract, it has to maintain that the modifications contained in the two Amendment Agreements will lead to alterations in production capacity which may have a negative impact on competition and trade between Member States. Thus, at this stage, there are serious doubts if these derogations will also apply to the privatisation programme as it is laid down by the two Amendment Agreements.

10. There are also serious doubts if the new energy contracts do not contain elements of aid. The Commission Decision of 29 May 1996 expressly excluded any State support for energy supply since the Commission considered such support as being operating aid which could in no way be accepted. In addition, it stipulated in Article 5 of its Decision of 29 May 1996 that Germany shall refrain from any further aid in favour of restructuring of BSL which goes beyond the aid approved by that Decision.

The Commission's doubts emerge from the enormous differences in price which BSL will have to pay during the restructuring period and that one which it will pay afterwards. This difference seems to be artificial and it may not be excluded that the very high energy price during the restructuring period, when losses will be covered by BvS, may subsidise the much lower energy price in the period after.

In addition, as regards the Commission request for any aid support of energy supply, the Commission has serious doubts that this requirement could be complied with since, by the take over of parts of the financing of VKR's power plant by BSL which are compensated by BvS at an amount of [. . .], the energy prices could have been influenced since VKR was relieved from expenses which it would, otherwise, have had to cover itself.

11. The Commission took well note of the fact that with the fourth Amendment Agreement Dow has now also formally become the 80 % owner of BSL and that is certainly a very positive feature, that Dow is carrying out additional investment at the three sites for which BvS will pay no aid. This notably concerns the construction of a new PET plant with a capacity of 150 KTA, which is expected to start producing in the second half of 1998 and the construction of an XPS (extruded polystyrene foam) plant capable of producing 300 000 m^3 per year. The aniline plant, which the Commission decided could not be aided under the restructuring plan, will now be built by Dow Germany at Böhlen (the SOW site) on land leased from BSL. It is also positive that the restructuring investments are progressing more or less as planned and that negotiations are taking place with several down-stream processing companies who are interested in establishing production facilities on BSL sites. The Commission therefore acknowledges that the BSL restructuring project seems to have the desired effect of stimulating both Dow and others in the chemical sector to invest in the area.

12. Nevertheless, taking into account the alterations within the restructuring contained in the Third and Fourth Amendment Agreement between Dow and BvS and the impact these alterations will have on trade and competition within the Common market, the Commission considers it necessary to examine in more detail if the distortion of competition is not higher than that one which it had approved in its Decision of 29 May 1996. In addition, the Commission nourishes serious doubts that the energy contracts contain elements of aid which would lead to a breach of the Commission Decision of 29 May 1996. The Commission has therefore decided to initiate the procedure provided for in Article 93(2) of the EC Treaty in respect of the aid granted to BSL on the occasion of its privatisation.

([7]) OJ L 239, 19.9.1996, p. 7.

As part of the procedure, the Commission hereby gives your Government the opportunity to present, within one month of being notified of this letter, its comments and any information relevant to the aid.

The Commission should remind you of the suspensory effect of Article 93(3) of the EC Treaty and would draw your attention to the communication published in the *Official Journal of the European Communities* C 318 of 24 November 1983, page 3, in which it was stipulated that any aid granted unlawfully, i.e. without prior notification or without awaiting the Commission's final decision under the procedure provided for in Article 93(2) of the EC- Treaty, may have to be recovered from the beneficiary, with interest running from the day the aid was paid to it and with an interest rate equal to the reference rate, that is used to calculate the net grant equivalent of aid schemes, which was applicable at that date.

The Commission requests the German authorities not to grant further aid to BSL and to inform the recipient firm without delay of the initiation of the procedure and the fact that it may have to repay any aid improperly received.'

The Commission hereby gives the Member States and other parties concerned notice to submit their comments on the measures in question within one month of the date of publication of this notice to:

European Commission,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels.

The comments will be communicated to the German Government.

Non-opposition to a notified concentration

(Case No IV/M.1120 — Compaq/Digital)

(98/C 128/05)

(Text with EEA relevance)

On 23 March 1998, 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. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),

— in electronic form in the 'CEN' version of the CELEX database, under document number 398M1120. CELEX is the computerised documentation system of European Community law; for more information concerning subscriptions please contact:

EUR-OP,
Information, Marketing and Public Relations (OP/4B),
2, rue Mercier,
L-2985 Luxembourg,
Tel. (352) 29 29 424 55, fax (352) 29 29 427 63.

Prior notification of a concentration

(Case No IV/M.1132 — BT/ESB/AIG)

(98/C 128/06)

(Text with EEA relevance)

1. On 15 April 1998, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 [1] by which the undertakings British Telecommunications (BT), the Electricity Supply Board of Ireland (ESB) and the American International Group (AIG) acquire, within the meaning of Article 3(1)(b) of the Regulation, joint control of Newco which will provide a range of telecommunications products and services in Ireland.

2. The business activities of the undertakings concerned are:

— BT: telecommunications services and equipment,

— ESB: supply of electricity within Ireland,

— AIG: American based global insurance/financial services company.

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 (No (32-2) 296 43 01/296 72 44) or by post, under reference IV/M.1132 — BT/ESB/AIG, to the following address:

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

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[1] OJ L 395, 30.12.1989. Corrigendum: OJ L 257, 21.9.1990, p. 13.

Prior notification of a concentration

(Case No IV/JV.1 — Telia/Telenor/Schibsted)

(98/C 128/07)

(Text with EEA relevance)

1. On 8 April 1998, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 [1] by which the undertakings Schibsted Multimedia AS, a wholly-owned subsidiary of Schibsted ASA, Telenor Nextel AS, a wholly-owned subsidiary of the Norwegian telecommunications operator Telenor AS, and Telia AB acquire within the meaning of Article 3(1)(b) of the Regulation joint control of an undertaking (NewCol) by way of purchase, of shares in a newly created company constituting a joint venture.

2. The business activities of the undertakings concerned are:

— Schibsted Multimedia AS: the provision of Internet content, the development, production and design of Internet services,

— Telenor Nextel AS: the provision of Internet services, of messaging and communication services, website hosting, netcentric solutions and consultancy services related to such services,

— Telia AB: the provision of telecommunications services and networks and related services,

— for NewCol: the provision of Internet services directed to both consumer and business users.

3. This notification was declared incomplete on 16 April 1998. 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 20 April 1998. Accordingly, the notification became effective on 20 April 1998.

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 (No (32-2) 296 43 01) or by post, under reference IV/JV.1 — Telia/Telenor/Schibsted, to:

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

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[1] OJ L 395, 30.12.1989; Corrigendum OJ L 257, 21.9.1990, p. 13.

III

(Notices)

COMMISSION

Notice of open competition

(98/C 128/08)

The Secretariat of the European Parliament is organising the following open competition [1]:

PE/205/LA — French-language INTERPRETERS
(Career bracket LA 7/LA 6)

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[1] OJ C 128 A, 25.4.1998, (French edition).

NOTICE

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