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Information and Notices

(1) Text with EEA relevance

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6 October 1998

(98/C 307/01)

Currency amount for one unit:

Belgian and Luxembourg franc	40,3339	Finnish markka	5,95201
Danish krone	7,43409	Swedish krona	9,52670
German mark	1,95502	Pound sterling	0,707918
Greek drachma	339,587	United States dollar	1,19128
Spanish peseta	166,184	Canadian dollar	1,85006
French franc	6,55516	Japanese yen	158,107
Irish pound	0,782710	Swiss franc	1,60883
Italian lira	1933,00	Norwegian krone	8,90187
Dutch guilder	2,20423	Icelandic krona	81,9484
Austrian schilling	13,7558	Australian dollar	2,04267
Portuguese escudo	200,481	New Zealand dollar	2,41640
		South African rand	7,19536

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.

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(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).

Information procedure — technical regulations

(98/C 307/02)

(Text with EEA relevance)

— Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations
(OJ L 109, 26.4.1983, p. 8).

— Directive 88/182/EEC of 22 March 1988 amending Directive 83/189/EEC
(OJ L 81, 26.3.1988, p. 75).

— Directive 94/10/EC of the European Parliament and the Council of 23 March 1994 materially amending for the second time Directive 83/189/EEC
(OJ L 100, 19.4.1994, p. 30).

Notifications of draft national technical regulations received by the Commission.

Reference (1)	Title	Echeance (2)
98/332/A	Order concerning the mutual recognition of calibration certificates from accredited calibration centres	26.10.1998
98/389/S	Regulation governing manufacturer responsibility for electrical and electronic products	1.12.1998
98/392/NL	Regulation amending the regulation on the gathering of animals and the regulation on the trade in live animals and live products	8.12.1998
98/393/D	Specimen directive on requirements with regard to building supervision pertaining to schools specimen schools construction directive (German designation: MSchulbauR), draft 10 July 1998	4.12.1998
98/394/A	Act on the prevention, collection and treatment of waste (Salzburg Waste Management Act 1998 — German designation: S.AWG)	11.12.1998
98/395/A	Draft order of the Salzburg provincial government on minimum heat insulation of structures (heat insulation order)	11.12.1998
98/396/NL	Third regulation amending the regulation issued by the Benelux-Hotel Classification Commodity Board for the catering industry 1985	11.12.1998
98/365/A	Special scheme in Lower Austria for subsidising heating boiler replacement and remote heating	(4)
98/397/A	Order of the Federal Minister for Science and Transport amending the order on the carriage of dangerous goods by water (ADN order)	11.12.1998
98/398/UK	Revision of the UK Government's standard assessment procedure (SAP) for the energy rating (SAP rating) of dwellings	11.12.1998

(1) Year — registration number — Member State of origin.
(2) Period during which the draft may not be adopted.
(3) No standstill period since the Commission accepts the grounds of urgent adoption invoked by the notifying Member State.
(4) No standstill period since the measure concerns technical specifications or other requirements linked to fiscal or financial measures, pursuant to the third indent of the second paragraph of Article 1(9) of Directive 93/189/EEC.
(5) Information procedure closed.

The Commission draws attention to the judgment given on 30 April 1996 in the 'CIA Security' case (C-194/94), in which the Court of Justice ruled that Articles 8 and 9 of Directive 83/189/EEC are to be interpreted as meaning that individuals may rely on them before the national court which must decline to apply a national technical regulation which has not been notified in accordance with the Directive.

This judgment confirms the Commission's communication of 1 October 1986 (OJ C 245, 1.10.1986, p. 4).

Accordingly, breach of the obligation to notify renders the technical regulations concerned inapplicable, so that they are unenforceable against individuals.

Information on these notifications can be obtained from the national administrations, a list of which was published in *Official Journal of the European Communities* C 324 of 30 October 1996.

Non-opposition to a notified concentration

(Case No IV/M.1168 — DHL/Deutsche Post)

(98/C 307/03)

(Text with EEA relevance)

On 26 June 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 only available 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 398M1168. 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 29-42455, fax (352) 29 29-42763.

Non-opposition to a notified concentration

(Case No IV/M.1276 — NEC/PBN)

(98/C 307/04)

(Text with EEA relevance)

On 3 September 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 only available 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 398M1276. CELEX is the computerised documentation system of European Community law; for more information concerning subscriptions please contact:

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L-2985 Luxembourg.
Tel. (352) 29 29-42455, fax (352) 29 29-42763.

Prior notification of a concentration

(Case No IV/M.1282 — Retevisión Móvil)

(98/C 307/05)

(Text with EEA relevance)

1. On 1 October 1998, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 [1], as last amended by Regulation (EC) No 1310/97 [2], by which STET Mobile Holding controlled by Telecom Italia, Grupo Eléctrico de Communicaciones, SA (GET) controlled by Endesa, and Unión Fenosa Inversiones, SA, acquire within the meaning of Article 3(1)(b) of the Regulation joint control of Retevisión Móvil, SA, a newly created company.

2. The business activities of the undertakings concerned are:

— Telecom Italia: main telecommunications operator in Italy,

— Endesa: leading electricity generator and distributor in Spain, telecommunications through GET,

— Unión Fenosa: generation and distribution of electricity in Spain.

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 or 296 72 44) or by post, under reference IV/M.1282 — Retevisión Móvil, 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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[1] OJ L 395, 30.12.1989, p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.
[2] OJ L 180, 9.7.1997, p. 1; corrigendum: OJ L 40, 13.2.1998, p. 17.

Non-opposition to a notified concentration

(Case No IV/M.1132 — BT/ESB)

(98/C 307/06)

(Text with EEA relevance)

On 19 May 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 only available 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 398M1132. 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 29-42455, fax (352) 29 29-42763.

Non-opposition to a notified concentration

(Case No IV/M.1161 — Alcoa/Alumax)

(98/C 307/07)

(Text with EEA relevance)

On 28 May 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 only available 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 398M1161. 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 29-42455, fax (352) 29 29-42763.

STATE AID

C 37/98 (ex N 124/98)

France

(98/C 307/08)

(Text with EEA relevance)

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

Commission notice pursuant to Article 93(2) of the EC Treaty to other Member States and interested parties concerning a French notification of development aid to the French Polynesia. The aid is to be granted in relation to the sale of two cruise vessels from Chantiers de l'Atlantique to Renaissance Financial, who will deploy the vessels in the French Polynesia

By the letter reproduced below, the Commission informed the French Government of its decision to open the procedure provided for pursuant to Article 93(2) of the EC Treaty.

'The Commission hereby inform France that after having examined the information submitted by your authorities concerning the above mentioned aid project, the Commission has decided to initiate the procedure provided for in Article 93(2) of the EC Treaty.

On 10 February 1998 the French Government notified pursuant to Articles 4(7) and 11(2) of the Seventh Directive on Aid to Shipbuilding [1] the development aid to the French Polynesia. By letter dated 23 February 1998 the Commission asked for further information and by letter dated 20 March your government provided more information.

The proposal concerns development aid which is to be granted in relation to the sale of two cruise vessels from Chantiers de l'Atlantique to Renaissance Financial (RF). The vessels will be deployed in the French Polynesia (FPO).

RF is resident in Paris and the company is a subsidiary of the American company Renaissance Cruise Inc. RF was established in 1997 with the objective to acquire and operate the two vessels. It is argued that in the absence of the aid, the operator cannot acquire the vessels on normal market conditions because the normal interest rate would be too high to allow the exploitation in the FPO. Despite the advantage from the aid, the preliminary budget for those vessels will balance only if the capacity utilisation is more than 75 %. In fact the first five years a deficit of FRF 50 Million is expected each year. Therefore, it is argued that the project is not viable without the aid. In accordance with the fiscal scheme, the operator must use the vessels for a period of minimum seven years in the FPO after they have been ordered. If this is not respected the operator must reimburse the aid.

Your authorities argue that the regional authorities in FPO have the objective to develop tourism, in particular cruises. The aim is to increase the growth rate of tourism from the current 3,2 % p.a. to approximately 9 % p.a. in year 2010. It is argued that the present project is especially suitable to help fulfil this goal. The two vessels with 350 cabins each will triple the capacity of cruise trips by the end of 1999, and it is claimed that the local authorities in FPO have expressed a very favourable attitude to the project.

The vessels have a contract value of [. . .] each. The aid intensity is 41,6 %. The aid is granted as a tax concession exempting investors from a tax of 41,6 % on their profits originating from other activities, if the investors reinvest the profits in the vessels intended for the French Polynesia. The aid is granted under a fiscal scheme [2], which was approved by the Commission by letter of 27 January 1993 [3]. In the approval it was stated that the application of the scheme was subject to the Community rules and frameworks on aid for various purposes and for various sectors.

[1] Council Directive 90/684/EEC as prolonged by Council Regulation (EC) No 2600/97.

[2] The Law of 11 July 1986 amended, concerning productive investments in the overseas departments and territories.

[3] SG(93) D/1300.

According to Article 4(7) of the Seventh Directive on Aid to Shipbuilding aid granted as development assistance to a developing country shall not be subject to the ceiling. It may be deemed compatible with the common market if it complies with the terms laid down for that purpose by OECD Working Party No 6 in its Agreement concerning the interpretation of Articles 6 to 8 of the Understanding on Export Credits for ships or corrigendum to the said Agreement. The Commission must be given prior notification of any such individual aid proposal. It shall verify the particular development content of the proposed aid and satisfy itself that it falls within the scope of the Agreement mentioned above.

The Agreement concerning the interpretation of the OECD Understanding requires among other things that the donor must give appropriate assurances that the real owner is resident in the beneficiary country and that the beneficiary company is not a non-operational subsidiary of a foreign company ([4]).

In addition in Case C-400/92 concerning German development aid to the Chinese company Cosco the Court established that the Commission shall verify the development content of the project separately from the OECD criteria. In the Cosco case the development aid could not be approved because Cosco was an enterprise who did not need the aid in order to contribute to China's development. Furthermore, it is precisely the examination of this particular content which enables the Commission to ensure that aid based on Article 4(7) and intended to reduce the cost of vessels for certain developing countries pursues, in the light of the specific conditions of its application, a genuine development objective and does not, despite of the fact that it complies with the OECD criteria, constitute aid in favour of a shipyard in a Member State which must be subject to the ceiling ([5]).

In the case in question the aid will be granted to a company residing in Paris. The OECD Understanding requires that the real owner is resident in the beneficiary country. The Commission considers that the interpretation of this clause must be that the owner shall be resident in the FPO. Therefore, the Commission has doubts that the aid proposal complies with the OECD Understanding.

Whilst tourism is a priority sector in development terms in the pacific region, in the light of the specific conditions of its application, at this stage the Commission is not convinced that the project contains a genuine development content. Also, the development aid content in FPO appears to be limited since the immediate beneficiary of the aid is the investors who benefit from the tax exemption. The recipients of the quantifiable aid (i.e. [. . .]) are not resident in the developing country. It appears that the FPO will only profit if extra passengers visit the FPO and they will mainly benefit from the money spent by the tourists while they visit the islands. In addition, the operator expects a capacity utilisation of less than 75 % at least in the first five years and will accumulate losses of 50 million FF in the process. The operator must use the vessels for a minimum of seven years in FPO after they have been ordered. The Commission has doubts that the viability of the project is poor considering the fact that French private enterprises invest their profit in the vessels. In general it must be expected that the investors would only invest in the project if a profit is foreseen.

In the light of the answer given by the French Government the Commission considers that is is doubtful that the development aid is compatible with the conditions laid down in Article 4(7) of Directive 90/684/EEC as last prolonged by Regulation (EC) No 2600/97. More specifically, at this stage it is doubtful that the conditions in the OECD Understanding are met and that the development content can be verified.

In view of the above the Commission has therefore decided to initiate the procedure provided for in Article 93(2) of the EC Treaty.

The French Government shall take note that any recipient of an aid granted before an approval by Commission, may have to refund the aid in accordance with the procedures and provision of the law of the Member State concerned, in particular those relating to arrears of State liabilities. The amount will have to be repaid with interest charged on the amount of aid paid to the company concerned from the date of payment at the percentage value of that date of the reference rate used for the calculation of the net grant equivalent of the various types of aid in that Member State.

([4]) Commission letter to Member States SG(89) D/311 of 3 January 1989.

([5]) Judgement of 5 October 1994 — Case C-400/92, I-4701.

The Commission hereby gives notice to the French Government to submit all the comments necessary to asses the compatibility of the aid within one month of the date of this letter.'

The Commission hereby gives notice to Member States not involved in the case and other parties concerned to submit their comments within one month of the date of this notice to:

European Commission,
Directorate-General for Competition (DG IV),
State Aid Directorate,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels;
Fax (32-2) 296 98 17.

These comments will be communicated to the French Government.

STATE AID

C 35/98 (ex N 783/97 and N 160/98)

Italy

(98/C 307/09)

(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 an Italian notification of regional investment aid under Italian Law 488/92 for the creation of two new shipyards (Oristano and Belvedere Marittimo)

By the letter reproduced below, the Commission informed the Italian Government of its decision to open the procedure provided for pursuant to Article 93(2) of the EC Treaty.

'By letter No 7715 of 17 November 1997, registered by the Commission on 18 November 1997, the Italian Government notified the Commission of a plan to grant investment aid under Law 488/92 for the construction of a new shipyard at Oristano (Sardinia).

The shipyard is to build twin-hull or single-hull fast ferries using existing technology originating in Australia and already used by another Italian shipyard specialised in this type of vessel. The initial objective is to build one vessel, representing 80 000 man-hours of labour, per year. Since Sardinia is an Objective 1 region, investment aid may be granted there up to a maximum of 50 % nge plus 15 % gge. The investment cost of the project is ITL 83,9 % billion and the nominal amount of the aid, which has been set at 89 % of the maximum allowed, is ITL 53,4 billion.

By letter SG D/55737 of 15 December 1997 the Commission asked for additional information and stated that an operation of this nature could possibly be contemplated only on condition that, as stipulated in Article 6 of the Directive on shipbuilding, the new capacity is directly linked to a corresponding irreversible reduction in other capacities over the same period.

By letter No 1579 of 6 March 1998, registered on 12 March 1998, the Italian authorities acknowledged that they were unable to provide a precise list of shipyards deleted from the Italian Special Register of shipyards or to state whether the capacity of recently closed yards corresponded to the new capacity that was to be created. The project promoters provided, for their part, a list of small yards that had shut down or ceased shipbuilding activities in the more or less recent past.

By letter No 1582 of 6 March 1998, registered on 12 March 1998, at the same time as their answer to the request for additional information on the Oristano yard, the Italian authorities notified the Commission of a

second plan to create a shipyard that was to be identical in all respects to the one described above, but located at Belvedere Marittimo (Calabria). Since Calabria is also an Objective 1 region, investment aid may be granted there up to a maximum of 50 % nge plus 15 % gge. The investment cost of the project is also ITL 83,9 billion and the nominal amount of the aid, which has been set for this project at 89 % of the maximum allowed, is ITL 54,6 billion.

Investment aid for the creation of new shipyards must be assessed in the light of Article 6(1) of Directive 90/684/EEC on aid to shipbuilding, the application of which was last extended by Regulation (EC) No 2600/97, which stipulates that investment aid, whether specific or non-specific, may not be granted for the creation of new shipyards unless it is directly linked to a corresponding irreversible reduction in the capacity of other yards in the same Member State over the same period. Since the Italian authorities have themselves stated that they were unable to establish whether the capacity of recently closed yards corresponded to the new capacity which would be created, or to provide the names of shipyards which had irreversibly closed down their shipbuilding activities and should therefore be deleted from the Special Register of Italian shipyards, the Commission can only find that the conditions laid down in Article 6 of the Directive are not met.

Consequently, in the light of the comments set out above, the Commission hereby informs the Italian Government that is has decided to initiate proceedings under Article 93(2) of the EC Treaty in respect of the planned aid for the creation of new shipyards at Oristano (Sardinia) and Belvedere Marittimo (Calabria).

As part of those proceedings, the Commission hereby gives the Italian Government notice to submit its comments within two months of the date of this letter.

Furthermore, the Commission hereby informs the Italian Government that it will be publishing a notice in the *Official Journal of the European Communities* inviting other Member States and interested parties to submit their comments.

The Commission would draw the attention of the Italian Government to the letter which it sent to all the Member States on 3 November 1983 on the subject of their obligations under Article 93(3) of the EC Treaty and to the notice it 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 awaiting the Commission's final decision under the procedure provided for in Article 93(2) of the EC Treaty, may have to be recovered.

The Commission would also remind the Italian authorities that, as it stated in its letters of 4 March 1991 and 22 February 1995, the amount of any unlawfully granted aid that is to be recovered from the beneficiaries will have to carry interest running from the date of actual payment of the aid and calculated at the reference rate used for regional aid.'

The Commission hereby gives notice to Member States not involved in the case and other parties concerned to submit their comments within one month of the date of this notice to:

European Commission,
Directorate-General for Competition (DG IV),
Directorate for State Aid II,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels.
Fax (32-2) 296 98 17.

These comments will be communicated to the Italian Government.

STATE AID

C 43/98 (ex N 558/97)

Netherlands

(98/C 307/10)

(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 on aid to Dutch service stations located near the German border

In the letter reproduced below, the Commission informed the Dutch Government of its decision to initiate proceedings under Article 93(2) of the EC Treaty:

'By letter of 14 August 1997, registered on 18 August, the Dutch authorities notified the Commission of their intention to grant aid to Dutch service stations located near the German border. The Commission requested further information by letter dated 22 September, to which the Dutch authorities replied by letter of 30 October, registered on 31 October. By letter dated 17 December, the Commission requested clarifications in respect of those questions which had still not been properly answered. On 15 January 1998 the Dutch authorities asked for the deadline to be extended. On 22 January the Commission set a new deadline of 10 February. On 16 February it sent a reminder to the Dutch authorities. On 17 February the Dutch authorities supplied some of the information requested.

The Dutch Government is planning to grant aid to Dutch natural or legal persons, partnerships or limited partnerships on whose behalf one or more service stations are operated, provided that they are located near the German border. The subsidy is calculated on the basis of the quantity of light oil supplied. It decreases in proportion to the distance from the German border, i.e. service stations located within 10 kilometres of the border will receive NLG 80 (ECU 36) per 1 000 litres of light oil supplied and those located between 10 and 20 kilometres from the border will receive NLG 40 (ECU 18) per 1 000 litres of light oil supplied. Total aid should amount to some NLG 126 million (ECU 56,57 million), depending on the turnover recorded by the service stations. The duration of the aid scheme is three years maximum, i.e. until 1 July 2000.

The purpose of the aid is to compensate the owners of these service stations for the alleged decline in turnover resulting from the increase in excise duty on light oil that took effect on 1 July 1997 in the Netherlands. As a result of this increase, Dutch consumers in the border area are inclined to fill up at German service stations. The Dutch Government plans to reduce aid in the event of excise duty being increased in Germany.

According to the Dutch Government, a ceiling of ECU 100 000 per service station will apply for the duration of the aid measure. It also considers that the planned aid measure is in line with the Commission's requirements as set out in the *de minimis* rule. In its view, each service station can be regarded as a separate enterprise and the Commission should approve these measures without raising any objections.

According to the Dutch authorities, there are three kinds of service stations in the Netherlands. In the first category (dealer-owned/dealer-operated), the dealers own the service stations, operate them at their own risk and are linked to their suppliers by exclusive purchasing agreements for a period of five years with an option for a further five years, in accordance with Regulation (EEC) No 1984/83 [1]. In the second category (company-owned/dealer-operated), the dealers rent the service stations, operate them at their own risk and are linked to the oil company as long as they rent the service station by exclusive purchasing agreements in accordance

[1] Commission Regulation (EEC) No 1984/83 of 22 June 1983 on the application of Article 85(3) of the Treaty to categories of exclusive purchasing agreements.

with Regulation (EEC) No 1984/83. In the third and final category (company-owned/company-operated), the service stations are run by employees of the oil companies or of one of their subsidiaries. The employees/subsidiaries do not operate at their own risk and are not free to choose their supplier. Regulation (EEC) No 1984/83 does not apply here.

The *de minimis* rule applies only if each service station can be regarded as a separate enterprise. This cannot be the case if one owner owns several service stations or if the freedom of "independent" operators is circumscribed by both rental and exclusive purchasing agreements to such an extent that they are controlled *de facto* by the large oil companies.

After a preliminary examination, it would seem that the first category, i.e. "dealer-owned/dealer-operated" service stations, meets the independent enterprise criteria as set out in the *de minimis* rule. However, as regards the second and third categories, i.e., "company owned/dealer operated" and "company owned/company operated" service stations, the Commission cannot rule out the possibility that the oil companies will be the direct recipients of the aid. For it may be that the freedom of action of the "independent" operators of the second category is so circumscribed that they must be considered *de facto* as belonging to the third category, where the risk assumed by the dealers is a crucial criterion in determining their freedom of action.

In order to check the ownership of the service stations concerned, both as regards the definition of the different categories and the number of service stations in each category, the Commission wrote to the Dutch authorities raising a number of questions.

As regards the definition of the different categories, the Dutch authorities, despite receiving several written reminders, have failed to provide the Commission with copies of all the combined exclusive purchasing and rental agreements concluded by each oil company. As a result, the Commission is unable to assess the freedom of action of operators, and the risks assumed by them, in particular as regards operators in the second category.

With regard to the number of service stations in each category, the information provided by the Dutch authorities is contradictory and inadequate.

One such contradiction concerns the information provided on the ownership structure of service stations in the Netherlands, broken down by category. In 1994 [2] there were about 4 362 service stations in the Netherlands, of which 734 (17 %) were operated by Shell, 580 (13 %) by Texaco, 470 (11 %) by Mobil, 399 (9 %) by Esso, 301 (7 %) by BP, 201 (5 %) by KNP (Q8), 200 (5 %) by Total, 171 (4 %) by Fina and 900 (21 %) by independent operators. Statistically, it can be assumed that the ownership of service stations in the Netherlands as a whole is similar to that in the eligible area. According to this reasoning, Shell, Texaco, BP/Mobil, Esso, KNP (Q8), Total and Fina should own 106, 81, 113, 56, 31, 31 and 25 of these 624 service stations respectively, with independent operators owning about 131 stations. However, these figures do not tally with the information provided by the Dutch authorities, which shows that:

1. 566 of the 624 aid recipients own just one service station, 33 own two service stations and 10 own three service stations. The percentage of recipients owning more than three service stations is negligible;

2. 374 (60 %) of the 624 service stations are dealer-owned/dealer-operated (first category), 187 (30 %) are company-owned/dealer-operated (second category) and 63 (10 %) are company-owned/company-operated (third category). If we extrapolate from the figure for the Netherlands as a whole, the figure for the first category in the assisted area should be 131 (21 %);

3. Shell, Texaco, BP, Esso, KNP (Q8), Total and Fina own 47, 21, 46, 33, 4, 6 and 5 service stations in the second category, and 0, 4, 10, 0, 0, 5 and 1 service stations in the third category, i.e. a total of 47, 25, 56, 33, 4, 11 and 6 service stations respectively.

Lastly, even if each service station could be considered as a separate enterprise for the purposes of the *de minimis* rule, it cannot be ruled out that the *de minimis* rule may not be applicable in this special case. The rule was established on the general presumption that small amounts of aid would not have any appreciable effect on trade between the Member States and therefore would not be caught by Article 92(1) of the EC Treaty. However, it should be noted that the *de minimis* rule is based on a

[2] These figures are based on 1994 statistics. The Commission has asked the Dutch authorities for more recent information. However, the updated information (1996) provided by them is of no use because neither the total number of fuel sales outlets nor the percentage of the total number of fuel sales outlets for each oil company has been indicated. If the information given for 1996 comprises all sales outlets, Shell, Texaco, BP/Mobil, Esso, KNP (Q8), Total and Fina would own 145, 110, 148, 76, 37, 37 and 33 of the 624 service stations respectively, leaving no market share for independent operators.

refutable legal assumption, namely that, although the amount of aid involved is small and therefore falls under the *de minimis* threshold, the rule does not apply if the aid has an appreciable effect on trade and competition between the Member States.

This might in fact be the case in the present instance for three reasons. First, the service stations eligible for aid are situated on the border with Germany. Second, the purpose of the measure is to compensate the owners of these service stations for the alleged fall in turnover as Dutch consumers now fill up at German service stations following the increase in excise duty on light oil in the Netherlands. Lastly, the aid is conditional on excise duties not being increased in Germany. In the light of all these factors, the measure must be seen as clearly having an appreciable effect on trade and competition, with Germany at any event. It should also be remembered that, although only Dutch service stations on the border with Germany are eligible for the aid in question, service stations in Belgium are likely to be affected by the measure as well in view of their geographical proximity.

In conclusion, the Commission takes the view that, on the basis of the information provided, the Dutch authorities have failed to demonstrate that the aid does not have an appreciable effect on trade and competition between Member States within the meaning of the Commission notice on the *de minimis* rule for state aid. It has therefore decided to initiate the proceedings provided for in Article 93(2) of the EC Treaty in order to determine whether the measure in question is compatible with the common market.

The Commission hereby gives the Dutch Government notice, as part of the proceedings, to submit its comments and any further information relevant for the appraisal of the measure within one month of receiving this letter. In particular, the Dutch authorities are requested to provide the following:

1. a list of the owners of the 624 service stations, a breakdown of the 624 service stations into the three categories and updated information on the market shares of the 624 service stations, broken down by owner;

2. comparable data on the ownership structure of service stations in the Netherlands as a whole and in the eligible area. If ownership in the Netherlands as a whole is different to that in the eligible area, the Dutch Government should explain why this is so;

3. copies of all combined exclusive purchasing and rental agreements for each oil company so that the Commission can assess whether the "independent" operators' freedom of action is circumscribed to such an extent that they are contolled *de facto* by the oil company in question.

The Commission would remind the Dutch authorities of the suspensory effect of Article 93(3) of the EC Treaty and would draw their attention to the communication published in *Official Journal of the European Communities* C 318 of 24 November 1983, which states that aid granted illegally, i.e. without prior notification or before the Commission has taken a final decision under the procedure provided for in Article 93(2), may have to be repaid. Lastly, considering the duration of the measure, i.e. from 1 July 1997, the question arises whether the Dutch authorities have complied with this obligation, of which they were reminded in our letters of 22 September and 17 December 1997.

In addition, the Commission requests the Dutch Government to inform the enterprises concerned immediately that proceedings have been initiated and that they may be required to repay aid granted illegally.

The Commission will publish a notice in the *Official Journal of the European Communities* inviting the other Member States and other interested parties to submit their comments. It will inform other interested parties in those EFTA countries that are signatories to the EEA Agreement by publishing a notice in the EEA Supplement to the *Official Journal of the European Communities* and will notify the EFTA Surveillance Authority by sending it a copy of this letter.

The Dutch Government is therefore asked to inform the Commission, within ten working days of the date of dispatch of this letter, whether it contains sensitive information which should not be published. The Dutch Government should clearly state the specific reasons in each case. If the Commission does not receive a request along these lines within the stipulated period, it will assume that the Dutch authorities agree to the publication of this letter in full.'

The Commission hereby gives the other 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,
Directorate-General IV/H/2,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels,
Fax (32-2) 296 98 16.

The comments will be communicated to the Dutch authorities.

STATE AID

C 20/98 (ex NN 166/97, NN 169/97, NN 170/97)

Germany

(98/C 307/11)

(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 State aid for SICAN, Germany

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 EC Treaty.

'THE HISTORY OF THE CASE

A complaint was sent to the Commission dated 30 September 1996 concerning alleged aid of ECU 150 million given to SICAN, an enterprise situated in Hanover, Lower Saxony. By letter dated 4 November 1996, the Commission asked the German Government to provide information, which the German authorities provided by letter of 20 March 1997. Together with that information, they submitted three separate communications by which they informed the Commission that State aid had been given.

A meeting with the German authorities and Commission services was held on 4 December 1997. In this meeting, the German authorities provided additional information. Nevertheless, major aspects of the case remained unclear. In the meeting, the German authorities had promised to send further information within three weeks time which had not been provided as of the date of drafting the present document.

On the basis of the information provided by the German authorities so far, the following can be said:

THE GROUP

In 1989, the Government of Lower Saxony decided, in the framework of the European project JESSI, to set up, together with the Federal Government, SICAN as strategic centre of competence for microelectronics in order to support and qualify Lower Saxon enterprises in the sector, by carrying out research projects together with, or for them. Subsequently, the group was reorganised and acquired its present structure. In 1996, the total number of permanent employees was [. . .] (1), the total annual turnover of the group was ECU 16,44 million (DEM 32,5 million). While the enterprises of the SICAN group are organised as private limited companies (GmbHs), they were, according to the German authorities, set up to fulfil the public task described above, and State influence would be exercised through the supervisory organs of the mother company. In view of the German authorities, all entities of the SICAN group fall within the scope of the Commission's definition of small and medium-sized enterprises.

The SICAN group is composed of a management holding SICAN Beteiligungs-GmbH (hereafter SIBEG), two operative subsidiaries SICAN GmbH (hereafter SICAN) and SICAN F&E-Betriebs-GmbH (hereafter SIBET) and a company owning the assets of the group SICAN Anlagen Verwaltungs-GmbH (hereafter SIAG).

According to information provided by the German authorities, SIBEG is primarily owned by German and American companies. SICAN is a 100 % subsidiary of SIBEG. SIBET shares are held by SIBEG (51 %) and Nord/LB and some German *Länder* (49 %). The only shareholder of SIAG is Nord/LB, thus SIAG is indirectly State-owned.

The activity of SICAN, who is a market player, is to carry out precompetitive development projects under contract with enterprises. SICAN has carried out about [. . .] (2) such projects so far. SIBET is said to be non-profit oriented and not active in the market. It also carries out R&D-projects but mostly at the stage of industrial research, with collaboration partners from industry and partly research institutes. SIAG is non-

(1) Confidential information; the figure is less than 200.
(2) Confidential information; the figure is several hundred.

profit oriented and owner of the assets of all SICAN-companies (buildings, equipment, software and further equipment). It provides these assets for use to SICAN and SIBET and also renders services to these companies through its personnel.

THE PRESUMED AID

1. **Amounts granted**

Since its setting up, the group received more than ECU 100 million public funding from federal and *Land* sources. The bulk was given to SIAG for the financing of the assets of the group (ECU 57,5 million (DEM 113,74 million)) and for operating costs (ECU 5,92 million (DEM 11,71 million)). SIBET received ECU 31,76 million (DEM 62,79 million) for investment and R&D-projects. SICAN received ECU 13,64 million (DEM 26,97 million) as start-up funding in 1990/91 and it has operated self-supporting since then.

2. **Aid through SICAN and SIBET**

As far as direct aid to contractors of SIBET is concerned, the German authorities have stated that ECU 5,11 million (DEM 10,11 million) were given to SIBET to be passed on as project funding to its collaboration partners, the maximum intensity for industrial partners being 50 %. According to the German authorities, no direct project funding was given to partners of SICAN. As far as any indirect benefits of the contractors of SIBET and SICAN are concerned, the German authorities declared that SIBET and SICAN rendered their services if not at market prices, then at least at full costs and thus did not pass any indirect benefits to other enterprises.

3. **Aid to SICAN and SIBET as such**

As far as aid to SICAN and SIBET is concerned, beyond the direct funding mentioned under paragraph 1, advantages were transferred from SIAG to SICAN and SIBET through the billing of services rendered by SIAG. While SIAG billed SICAN and SIBET at full costs for personnel services, the German authorities have declared that the fees paid for the use of the assets owned by SIAG did not include depreciation costs and the ECU 5,92 million (DEM 11,71 million) SIAG had received to cover operating costs.

4. **Position of the German authorities and content of the NN notifications**

In view of the German authorities, the aid given for projects of SICAN and SIBET is in conformity with the R&D-framework since the average intensity never surpassed the intensities permissible under the framework.

Furthermore, the three communications submitted by the German authorities as NN-notifications by letter of 20 March 1997 cover certain aspects of the funding:

— with the communication registered as NN 169/97, it is proposed to approve *ad hoc* aid in form of grants to industrial partners of SIBET to carry out projects at the stage of industrial research, covering a total of ECU 3,8 million (DEM 7,5 million) for [. . .] [3] industrial project partners for the period 1992 to 1999. The intensity would be between 25 and 50 %. In the meeting, the German authorities clarified, however, that there had been more than [. . .] [4] project partners which had received funding,

— with the communication registered as NN 170/97, it is proposed to approve *ad hoc* aid to SIBET through use of fixed assets provided by and administrative services rendered by SIAG with an aid amount of between ECU 0,18 and 1,5 million p.a. (DEM 0,36 to 2,96 million) for the period 1994 to 1999. The notified aid concerns the mechanism of calculating the fees SIBET had to pay to SIAG for the use of its assets. SIBET did not have to pay any depreciation costs,

— with the communication registered as NN 166/97, it is proposed to approve *ad hoc* aid to SICAN through use of fixed assets provided by and administrative services rendered by SIAG, with an aid amount of between ECU 0,06 and 3,9 million p.a. (DEM 0,13 to 7,7 million) for the period 1990 to 1999.

APPRAISAL

It seems that State aid has been granted to project partners of the SICAN group on the one hand and the SICAN group itself on the other hand.

A. AID THROUGH THE SICAN GROUP

(a) Concerning direct funding of project partners, the German authorities acknowledge that aid has been granted to project partners of SIBET. Such aid falls within the scope of Article 92(1) of the EC Treaty in that it benefits the enterprises which are industrial research partners of SIBET. Thereby, the aid has a potential effect on trade between Member States. The number of research partners having received aid as well as the amounts of aid involved

(3) Confidential information.

(4) Confidential information; the number of project partners stated in the communication.

remain to be clarified. In the meeting of 4 December 1997, the German authorities have been asked to provide a list with the promoted projects.

(b) In addition to such direct aid, the Commission does not exclude that indirect advantages have been passed from both SIBET and SICAN to their project partners, which could also be considered as State aid. While the German authorities have declared that both companies have charged their contractors at full costs, they have not, as requested by the Commission in the meeting of 4 December 1997, demonstrated that SIBET and SICAN have a cost-accounting system enabling them to determine those costs for each individual project. Equally, the German authorities have not demonstrated that the indirect advantages SIBET and SICAN received through SIAG as well as the direct funding given to SIBET and SICAN were integrated into the prices billed to their customers.

B. AID TO THE SICAN GROUP

As far as the funding of the SICAN group is concerned, this funding will probably at least partly have to be qualified as State aid, while the exact amount of State aid remains to be clarified.

(a) On the basis of the information presently before the Commission, direct funding given to SICAN, a company active in the market, has to be qualified as State aid.

(b) The same applies for direct funding given to SIBET. The Commission doubts that SIBET is a public, non profit-oriented research institute in the meaning of point 2.4 of the R&D framework, as asserted by the German authorities.

(c) The indirect benefits from SIAG to SIBET and SICAN have also with high probability to be seen as State aid although such aid cannot be quantified yet. In this connection, the German authorities themselves see SIBET as recipient of State aid from SIAG. The German authorities have been asked to give further clarification as to what kind of services SIAG rendered to SICAN and SIBET and to specify which were billed at full costs and which were rendered freely.

(d) In order to be able to assess the case, the Commission had furthermore asked the German authorities to provide information as to considerable profits admittedly made by SICAN and any profits of SIBET. In fact, if SICAN and SIBET have rendered their services at full cost, including the indirect advantages received through SIAG, they should have made considerable profits. Furthermore, the authorities should confirm that no further direct public funding except for the ECU 13,64 million mentioned above were granted to SICAN. In addition, it is also doubtful whether direct funding to SIBET was limited to ECU 31,76 million mentioned above.

C. COMPATIBILITY WITH THE COMMON MARKET

For all aid in question, i.e. aid to project partners as well as aid to the group itself, it is questionable whether the aid could be held compatible with the common market. Aid for the purpose of promoting research and development projects can, in principle, qualify for an exemption under Article 92(3)(c) of the EC Treaty and thus be considered as compatible with the common market, if the conditions of the R&D framework are met.

On the basis of the information at present before the Commission, it seems doubtful for the Commission whether the conditions of the respective framework were fulfilled. For such an assessment, it would, *inter alia,* be necessary to attribute the aid involved to specific research projects and then to qualify the stage of research of promoted projects and to quantify the total amount of aid given, to allow for a calculation and evaluation of the aid intensity involved and to demonstrate the necessity and the incentive effect of the aid. The German authorities have not provided the necessary information which would allow for such an assessment.

Finally, in the meeting of 4 December 1997, the German authorities asserted that aid to the project partners of SICAN group could fall under a research and development scheme approved by the Commission. The authorities have, however, not substantiated this assertion by giving details of such a scheme and its approval. Therefore, the Commission is not in a position to check such an assertion.

CONCLUDING REMARKS

On the basis of the above assessment, the Commission considers at this stage that the abovementioned measures are State aid and has serious doubts as to the compatibility of the State aid with the common market under Article 92(3) of the EC Treaty.

The Commission has therefore decided to open the procedure under Article 93(2). The Commission hereby gives the German Government the opportunity to present, within one month of the receipt of this letter, any comments and further relevant information.

The Commission reminds the German authorities that under Article 93(3), any aid granted without prior notification or without awaiting the Commission's final decision is unlawful. Any recipient of an aid granted illegally may have to refund the aid, conforming to the procedures and stipulations of German legislation, including interest calculated using the reference rate for regional aid, beginning from the date on which the aid was granted.

The Commission requests the German Government to inform the recipient firms and the Government of Lower Saxony of the initiation of the procedure and the fact that the financial means received might have to be repaid.

If the authorities are of the opinion that this letter contains confidential information which should not be published, they should inform the Commission within a period of 15 working days.

The Commission hereby informs the German Government that it will publish this letter as a notice in the *Official Journal of the European Communities*, giving other Member States and interested parties notice to submit comments, and in the EEA supplement to the Official Journal, giving interested parties in the EFTA States similar notice to submit comments. The ESA will be informed in accordance with Protocol 27 of the EEA Agreement.'

The Commission hereby gives other Member States and interested parties notice to submit their comments on the measures within 30 days 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.