

# Official Journal

## of the European Communities

ISSN 0378-6986

C 9

Volume 42

13 January 1999

English edition

## Information and Notices

<u>Notice No</u>	<u>Contents</u>	<u>Page</u>
	<i>I Information</i>	
	<b>Commission</b>	
1999/C 9/01	Euro exchange rates .....	1
1999/C 9/02	Information procedure — technical regulations <sup>(1)</sup> .....	2
1999/C 9/03	Publication of decisions by Member States to grant or revoke operating licences pursuant to Article 13(4) of Council Regulation (EEC) No 2407/92 on licensing of air carriers <sup>(1)</sup> .....	3
1999/C 9/04	Publication of decisions by Member States to grant or revoke operating licences pursuant to Article 13(4) of Council Regulation (EEC) No 2407/92 on licensing of air carriers <sup>(1)</sup> .....	4
1999/C 9/05	Publication of decisions by Member States to grant or revoke operating licences pursuant to Article 13(4) of Council Regulation (EEC) No 2407/92 on licensing of air carriers <sup>(1)</sup> .....	5
1999/C 9/06	State aid — C 61/98 (ex NN 189/97) — Austria <sup>(1)</sup> .....	6

**Important notice to readers** (see page 3 of the cover)



## I

*(Information)*

## COMMISSION

**Euro exchange rates <sup>(1)</sup>****12 January 1999**

(1999/C 9/01)

<b>1 euro</b>	=	7,443	Danish krone
	=	323,8	Greek drachma
	=	9,0955	Swedish krona
	=	0,7066	Pound sterling
	=	1,152	United States dollar
	=	1,7392	Canadian dollar
	=	129,63	Japanese yen
	=	1,6072	Swiss franc
	=	8,61	Norwegian krone
	=	80,59495	Icelandic króna <sup>(2)</sup>
	=	1,809	Australian dollar
	=	2,121	New Zealand dollar
	=	6,95808	South African rand <sup>(2)</sup>

---

<sup>(1)</sup> Source: reference exchange rate published by the ECB.

<sup>(2)</sup> Source: Commission.

### Information procedure — technical regulations

(1999/C 9/02)

(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 <sup>(1)</sup>	Title	Echeance <sup>(2)</sup>
98/544/NL	Regulation of the State Secretary for Transport, Public Works and Water Management of . . ., No HDTP/98/. . ./JdJ, implementing Article 2(b) and Article 4, of the Decree on the wire-tapping of public telecommunications networks and services (Interim Regulation on the wire-tapping of public telecommunications networks and services)	<sup>(3)</sup>
98/570/NL	Bill amending the Fisheries Act 1963 with regard to the adaptation of rules in the field of inland fisheries	15.3.1999
98/567/UK	Technical texts for the British Pharmacopoeia 1999 (other than those of the European Pharmacopoeia)	11.3.1999
98/568/DK	TB98 099, Technical Regulations for radio equipment for the local data network, HIIPERLAN	8.3.1999
98/569/DK	TB98 100, Technical Regulations for low-power equipment for tracking pleasure boats	8.3.1999
98/571/A	RVS 3.43, junctions, composite and multi-level junctions	19.3.1999
98/572/D	Approval Regulation Reg TP 323 ZV 008 regarding block-selective T-DAB repeaters	19.3.1999
98/573/UK	The BSE (Feeding Stuffs and Surveillance) Regulations 1999	21.12.1998
98/574/UK	The BSE (No 2) (Amendment) Order 1999	21.12.1998
98/575/NL	Bill amending the Aviation Act concerning airfield security	18.3.1999
98/576/S	Act on the trade in precious metal handicraft products	19.3.1999
98/577/S	Regulation on the trade in precious metal handicraft products	19.3.1999
98/578/S	Regulation amending the Regulation (1975:49) on a common control stamp, etc. for gold, silver and platinum handicraft products	19.3.1999
98/579/A	Order of the Federal Minister for Women's Affairs and Consumer Protection on the placing of laser pointers on the market (German designation: Laserpointer V)	17.3.1999

<sup>(1)</sup> Year — registration number — Member State of origin.

<sup>(2)</sup> Period during which the draft may not be adopted.

<sup>(3)</sup> No standstill period since the Commission accepts the grounds of urgent adoption invoked by the notifying Member State.

<sup>(4)</sup> 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.

<sup>(5)</sup> 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.

---

**Publication of decisions by Member States to grant or revoke operating licences pursuant to Article 13(4) of Council Regulation (EEC) No 2407/92 <sup>(1)</sup> on licensing of air carriers**

(1999/C 9/03)

(Text with EEA relevance)

AUSTRIA

**Operating licences granted**

*Category A: Operating licences without the restriction of Article 5(7)(a) of Regulation (EEC) No 2407/92*

Name of air carrier	Address of air carrier	Permitted to carry	Decision effective since
VIP — AIR GmbH	Seegalerie, Bahnhofstraße 10, A-6900 Bregenz	Passengers, cargo, mail	27.7.1998

*Category B: Operating licences including the restriction of Article 5(7)(a) of Regulation (EEC) No 2407/92*

Name of air carrier	Address of air carrier	Permitted to carry	Decision effective since
OREST — Immorent Leasing GmbH	Windmühlgasse 22-24, A-1060 Wien	Passengers	22.6.1998
B.A.C.H. Flugbetriebs GmbH	Bachgasse 21, A-1160 Wien	Passengers, cargo, mail	23.6.1998

---

<sup>(1)</sup> OJ L 240, 24.8.1992, p. 1.

---

**Publication of decisions by Member States to grant or revoke operating licences pursuant to Article 13(4) of Council Regulation (EEC) No 2407/92 <sup>(1)</sup> on licensing of air carriers**

(1999/C 9/04)

(Text with EEA relevance)

SPAIN

**Operating licences granted**

*Category A: Operating licences without the restriction of Article 5(7)(a) of Regulation (EEC) No 2407/92*

*Change of name (17.7.1998)*

Name of air carrier	Address of air carrier	Permitted to carry	Decision effective since
Iberworld Airlines <i>(previously: BCM Airlines)</i>	Paseo de Mallorca, 17 A, E-07011 Palma de Mallorca	Passengers, cargo, mail	20.11.1996

*Category B: Operating licences including the restriction of Article 5(7)(a) of Regulation (EEC) No 2407/92*

Name of air carrier	Address of air carrier	Permitted to carry	Decision effective since
Aeropublic, SL	Urbanización San Blas, 183, E-46740 Carcaixent (Valencia)	Passengers, cargo, mail	27.8.1998
PRT Aviation, SL	Pep Ventura, 6, E-08240 Manresa (Barcelona)	Passengers, cargo, mail	18.8.1998

*Change of name (corrigendum OJ No C 200, 26.6.1998)*

Name of air carrier	Address of air carrier	Permitted to carry	Decision effective since
Sky Services Aviation <i>(previously: Multiaviónica)</i>	Santander, 5-3º, E-28003 Madrid	Passengers, cargo, mail	20.4.1995

<sup>(1)</sup> OJ L 240, 24.8.1992, p. 1.

**Publication of decisions by Member States to grant or revoke operating licences pursuant to Article 13(4) of Council Regulation (EEC) No 2407/92 <sup>(1)</sup> on licensing of air carriers**

(1999/C 9/05)

(Text with EEA relevance)

SWEDEN

**Operating licences granted**

*Category A: Operating licences without the restriction of Article 5(7)(a) of Regulation (EEC) No 2407/92 — Corrigendum*

Name of air carrier	Address of air carrier	Permitted to carry	Decision effective since
West Air Sweden AB	Box 5433, S-402 29 Göteborg	Passengers, cargo, mail	6.12.1995

*Category B: Operating licences including the restriction of Article 5(7)(a) of Regulation (EEC) No 2407/92 — Change of address*

Name of air carrier	Address of air carrier	Permitted to carry	Decision effective since
Arlanda Helicopter AB	Box 136, S-190 45 Stockholm-Arlanda	Passengers, cargo, mail	21.7.1994
Bromma Flygskola AB	Box 310, S-161 26 Bromma	Passengers, cargo, mail	25.5.1994
Heliflyg AB	Överstevägen 40, S-784 63 Börlänge	Passengers, cargo, mail	15.8.1994
Lapplandsflyg/ Lapair AB	Umeå flygplats, S-904 22 Umeå	Passengers, cargo, mail	30.3.1994
Norrhelicopter AB	Tangogatan 35, S-943 32 Öjebyn	Passengers, cargo, mail	8.8.1994
Nya Skyline Helikopter AB	Box 51, S-796 22 Älvdalen	Passengers, cargo, mail	25.5.1994
Väst kustflyg AB	Säve flygplats 2035, S-423 73 Säve	Passengers, cargo, mail	13.4.1995

**Operating licences revoked**

*Category B: Operating licences including the restriction of Article 5(7)(a) of Regulation (EEC) No 2407/92*

Name of air carrier	Address of air carrier	Permitted to carry	Decision effective since
Blekinge Flyg AB	Målaregatan 18, S-372 30 Ronneby	Passengers, cargo, mail	29.5.1998
Five Star Flyers AB	Alpstigen 4, S-141 41 Huddinge	Passengers, cargo, mail	29.5.1998
IM-Air AB	PI 2388, S-980 16 Karesundo	Passengers, cargo, mail	29.5.1998

<sup>(1)</sup> OJ L 240, 24.8.1992, p. 1.

## STATE AID

C 61/98 (ex NN 189/97)

Austria

(1999/C 9/06)

(Text with EEA relevance)

*(Articles 92 to 94 of the Treaty establishing the European Community)***Commission notice pursuant to Article 93(2) of the EC Treaty to other Member States and interested parties concerning aid granted to Lenzing Lyocell GmbH & Co. KG, Austria**

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

**1. BACKGROUND**

Lenzing Lyocell GmbH & Co. KG, Heiligenkreuz, Austria ("LLG") forms part of the Austrian Lenzing Group, one of the world's largest producers of viscose fibres.

LLG, which is also active in the fibre production industry, manufactures Lyocell. Lyocell is a new type of man-made staple fibre, produced from natural cellulose contained in wood pulp. Lyocell is mainly used for apparel, notably dresses, slacks, coats and jeans. Only Lenzing AG and the British chemicals group Courtaulds plc<sup>(1)</sup> have patent rights to produce this fibre. A recently agreed cross-licensing arrangement allows Lenzing AG and Courtaulds plc to manufacture and sell Lyocell staple fibre anywhere in the world without restriction.

In 1995, after a fairly lengthy period of evaluating several production sites for the large-scale commercial production of Lyocell, Lenzing AG decided in favour of the Business Park Heiligenkreuz-Szentgotthard ("the Business Park"). The Business Park is a cross-border project between Austria and Hungary. LLG's plant is situated in the Austrian part of the Business Park, in the Province of Burgenland, Austria's only Article 92(3)(a) region. LLG was the first important firm to set up in the Austrian part of the Business Park.

The plant occupies an area of 12 hectares. As a whole, the complex comprises a pulp storage area, production buildings, a bale storage area and administrative buildings with a developed space of 211 000 m<sup>3</sup> and a built-up area of 15 000 m<sup>2</sup>. The investment, including machinery and plant and equipment, totalled some ATS 1,5 billion (ECU 108,3 million)<sup>(2)</sup>. The first fibre spinning line is designed for an annual capacity of 12 000 tonnes. It is planned to start up a second line in the first half of 1999, involving investment costs of ATS 600 million (ECU 43,3 million).

<sup>(1)</sup> In July 1998 Courtaulds plc became part of Akzo Nobel, the Netherlands-based international pharmaceuticals, coatings, chemicals and fibres company.

<sup>(2)</sup> <http://www.austria.eu.net/lyocell/english/home.html>

According to the ERP-Fund, one of the public institutions which provided State aid to LLG, the investment comprises the following costs:

Investment phase		ATS millions	ECU millions	
Phase I	Construction	463,5	33,5	
	Machinery	874,7	63,2	
	Other	70,4	5,1	
	<b>Eligible costs</b>	<b>Subtotal</b>	<b>1 408,7</b>	<b>101,7</b>
	Intangible investment	83,9	6,1	
	Start-up cost	7,4	0,5	
	<b>Non-eligible costs</b>	<b>Subtotal</b>	<b>91,3</b>	<b>6,6</b>
		<b>Total</b>	<b>1 500,0</b>	<b>108,3</b>
Phase II		<b>Total</b>	<b>600,0</b>	<b>43,3</b>
Phase I + Phase II		<b>Total</b>	<b>2 100,0</b>	<b>151,6</b>

## 2. CASE HISTORY

In 1994, the regional authorities of the Province of Upper Austria and the Province of Burgenland had several meetings with the EFTA Surveillance Authority, discussing their intentions to provide State aid to LLG.

In 1995, the State-owned Wirtschaftsbeteiligungs AG, Austria, ("WiBAG") informed the Commission informally of its intention to provide State aid to LLG for its investment in a new plant at the Business Park. By letter dated 30 August 1995, Austria declared that the information submitted by WiBAG should be considered to be an official submission by Austria and that the State aid was to be provided under the regional aid scheme N 589/95, which the Commission had approved by letter dated 3 August 1995<sup>(3)</sup>. By letter dated 28 September 1995, Austria sent further information.

By letter dated 5 October 1995, the Commission informed Austria that it understood that the grants

would be provided under the approved regional scheme N 589/95 and, therefore, did not require individual notification. As to guarantees, the Commission requested Austria to inform it in sufficient time before providing any guarantee.

On 20 November 1995, a law firm forwarded a complaint regarding the intended investment aid for LLG. By letter dated 27 November 1995, the Commission replied to the law firm stating that according to Austria the state aid was being provided under an approved scheme and that the combined aid intensity would not exceed the regional aid ceiling of 40 % net.

By letter dated 21 April 1997, Austria forwarded to the Commission application forms for ERDF cofinancing on two large-scale investment projects at the Business Park. The investment projects concerned the Business Park Heiligenkreuz GesmbH, Austria, ("BPH"), which has developed the Business Park, and Wirtschaftspark Heiligenkreuz Servicegesellschaft mbH, Austria, ("WHS"), which invested in building and machinery to establish a utility centre (Medienzentrale).

<sup>(3)</sup> The Commission informed Austria that the regional scheme "Änderung der Richtlinien betreffend die Gewährung von nicht rückzahlbaren Zuschüssen gemäß dem Gesetz vom 24. März 1994, LGBl. Nr. 33/1994, über Maßnahmen zur Gewährleistung der wirtschaftlichen Entwicklung im Burgenland, Landes-Wirtschaftsförderungsgesetz 1994 — WiFöG" had been approved.

In those documents, Austria said that LLG's involvement had had an important impact on the development activities at the Business Park. Furthermore, Austria stated that the commitments of the Province of Burgenland to LLG would be

fulfilled by WHS. Austria explicitly said that WHS would invest in a utility centre primarily to provide basic process utilities to LLG as guaranteed by the Province of Burgenland. Austria also indicated that the Province of Burgenland would have to provide grants to WHS to cover expected negative cash flows resulting from supplying LLG with basic process utilities.

The Province of Burgenland made commitments in a contract ("the contract") and a side-letter ("the side-letter"), which were signed on 21 March 1995 by the Province of Burgenland and on 14 June 1995 by LLG. In the contract, the Province of Burgenland committed to several aid measures. In the side-letter, the Province of Burgenland gave a commitment to provide basic process utilities at fixed prices over 30 years.

On 9 June 1997, Commission officials discussed the case with the Austrian authorities. It was agreed that Austria would provide additional information and demonstrate that the investment aid to BPH and WHS would not involve any indirect investment aid and that the fixed prices of basic process utilities would not constitute any operating aid to LLG. Austria did not provide the information, and the Commission again expressed its misgivings by letter dated 28 July 1997. By letter dated 28 August 1997, Austria asked for an extension of the deadline for responding to the Commission. The Commission agreed. By letter dated 10 October 1997, Austria replied without clarifying the most important issues.

By letter dated 23 December 1997, the Commission informed Austria that it had transferred the case to the NN register. It asked Austria again to prove that LLG was paying a commercial price for the company-specific infrastructure investment carried out by BPH and to demonstrate that LLG was paying commercial prices for each of the basic process utilities. The Commission also asked Austria to provide all contracts which were related to the activities of LLG at the Business Park and to list all State aid measures provided or proposed to LLG. By letter dated 2 February 1998, the Austrian authorities asked for an extension of the deadline for responding to the Commission. The Commission agreed. By letter dated 26 March 1998, Austria replied, but did not adequately address all the questions. Moreover, Austria informed the Commission of State aid measures which raised doubts as to their compatibility with the common market. Following a meeting between Commission staff and the Austrian authorities, Austria again provided, by letter dated 16 July 1998, additional information, but did not properly address the Commission's concerns.

### 3. NOTIFIED STATE AID MEASURES

The following table gives a summary of the state aid measures which Austria promised and proposed to LLG, according to Austria's letter dated 26 March 1998.

Form of aid		Aid provider	Scheme	ATS millions	ECU millions
<b>Investment aid</b>	Grant	Province of Burgenland	Not known	5,0	0,4
	Grant	Province of Burgenland, ERDF	WiFöG	192,5	13,9
	Dormant equity holding	WiBAG	Not known	300,0	21,7
	Soft loans	ERP-Fund	ERP-Regional Scheme	96,0	6,9
	Grant	ERP-Fund	ERP-Regional Scheme	19,0	1,4
	Grant	Federal Government	Article 51(a) AMFG	142,5	10,3
	Grant	Federal Government	Article 51(a) AMFG	31,0	2,2
	Grant	Province of Burgenland	Not known	15,0	1,1
<b>Subtotal</b>				<b>801,0</b>	<b>57,8</b>

Form of aid		Aid provider	Scheme	ATS millions	ECU millions
<b>Environmental aid</b>	Grant	Federal Government ERDF	Environmental Act	76,3	5,5
<b>Training aid</b>	Grant	AMS Burgenland, ESF, Province of Burgenland	Article 35 a AMFG, not known	9,1	0,7
	Grant	AMS Burgenland, ESF, Province of Burgenland	Not known	1,3	0,1
	<b>Subtotal</b>			<b>10,4</b>	<b>0,8</b>
<b>Investment aid-planned</b>	Grant	Province of Burgenland	Not known	147,0	10,6
<b>Total</b>				<b>1 034,7</b>	<b>74,7</b>

#### 4. ASSESSMENT OF THE NOTIFIED STATE AID MEASURES

##### 4.1. Aid for acquisition of land

Austria said that the Province of Burgenland provided a grant of ATS 5 million (ECU 0,4 million) for the acquisition of land. Austria did not state the legal base or provide any further information on the aid.

The Commission cannot verify whether the aid was provided under and in accordance with an approved or existing aid scheme.

##### 4.2. Investment aid under the Regional Business Promotion Act of the Province of Burgenland (N 589/95)

Austria said that the Province of Burgenland had provided a grant of ATS 192,5 million (ECU 13,9 million) under the approved scheme N 589/95. The State aid included joint financing by the ERDF. Austria did not provide any further information on the aid.

The Commission cannot verify whether the grant by the Province of Burgenland and the joint financing by the ERDF were provided in accordance with the approved scheme N 589/95.

##### 4.3. Contract between WiBAG and LLG

On 28 June 1995 and 13 July 1995, WiBAG and LLG signed an authentic dormant equity holding

(“echte stille Beteiligung”) contract<sup>(4)</sup>, WiBAG provided ATS 300 million (ECU 21,7 million) in capital. The dormant equity holding contract was concluded for an unlimited period, with WiBAG committing itself not to terminate the contract for the next 30 years.

WiBAG is a public undertaking. In 1994, the Regional Business Promotion Act (WiFöG) appointed WiBAG to perform business promotion activities and to provide State aid on behalf of the Province of Burgenland<sup>(5)</sup>.

The objective of the dormant equity holding contract was to provide LLG with sufficient capital to establish and operate the fibre production plant at the Business Park. The Commission notes that no investment costs or investment timetables were stipulated as a precondition for the capital injection. The Commission therefore infers that the capital was provided only for investment phase I.

The dormant equity holding capital resembles a soft loan without any due date. WiBAG will receive only 1 % a per year on its dormant equity holding capital from LLG's profits. If LLG does not achieve sufficient profits to pay interest to WiBAG, the outstanding amount will be deferred until it can fully be paid from profits. WiBAG explicitly stated

<sup>(4)</sup> An authentic dormant equity holding means that WiBAG does not participate in hidden reserves or goodwill.

<sup>(5)</sup> <http://www.bnet.co.at/wibag/wirtschaft.htm>

it would waive its invested dormant equity holding capital if LLG goes bankrupt. As a result, in the worst case, WiBAG will lose 100 % of its ATS 300 million (ECU 21,7 million) in invested capital.

WiBAG provided the dormant equity holding capital on conditions which obviously do not meet commercial criteria. As a result, the State-owned WiBAG did not act as a private investor. The Commission starts from the assumption that the provision of capital as part of the dormant equity holding by WiBAG may not have been covered by any approved or existing scheme.

#### 4.4. ERP-Fund

By two letters, each dated 15 December 1995, the ERP-Fund provided two soft loans, one of ATS 200 million (ECU 14,4 million) and another of ATS 300 million (ECU 21,7 million). By letter dated 18 September 1996, the ERP-Fund provided ERDF cofinancing of ATS 19,0 million (ECU 1,4 million) on the ERP-Fund soft loan of ATS 300 million (ECU 21,7 million). The ERP-Fund provided the two soft loans and the ERDF cofinancing under the approved scheme N 315/95 (ERP-Regional-Programme) (\*).

The soft loans were provided for investment phase I on eligible investment costs of ATS 1 408,7 million (ECU 101,7 million). According to Austria, the combined net grant equivalent of the two loans amounted to ATS 69 million (ECU 5 million). The Commission notes that this amount would correspond to a gross grant equivalent of ATS 96 million (ECU 6,9 million).

The information available to the Commission indicates that the soft loans and the ERDF cofinancing were provided in accordance with the approved scheme N 315/95.

#### 4.5. Investment aid under Article 51(a) of the Labour Market Promotion Act

On 17 December 1996, the Republic of Austria and LLG signed two State aid contracts with the

objective of creating 150 jobs at the Business Park. The first contract concerned a grant of ATS 142,5 million (ECU 10,3 million) by the Federal State. The second concerned ATS 31 million (ECU 2,2 million) cofinancing by the ERDF. The aid contracts were based on Article 51(a) of the Labour Market Promotion Act (AMFG). This scheme was approved by the ESA under the number N 94-038.

Both aid measures were provided on condition that LLG invested ATS 2,1 billion (ECU 151,6 million) and that LLG would employ at least 150 persons for at least three years once it had raised its capacity to 20 000 tonnes a year.

However, the Commission notes that, in order to receive full payment of the grants of ATS 142,5 million (ECU 10,3 million) and ATS 31 million (ECU 2,2 million) respectively, LLG only had to prove investment costs of ATS 1,48 billion (ECU 106,9 million), which corresponds to the estimated total of eligible and non-eligible investment costs of phase I. Moreover, LLG has not yet had to prove that it employs 150 persons. To date, LLG has approximately 120 employees. Furthermore, the contracts do not specify a deadline by which LLG has to have 150 employees or must have invested the total amount of ATS 2,1 billion (ECU 151,6 million). The contracts only state that the company will not have completed investment phase II before 1 May 1999. In addition, the contracts do not specify any requirement that LLG must reimburse the aid if it does not meet all conditions set out in the contract. It was only agreed that the State could order recovery of the State aid.

In the light of the above, the Commission concludes that the grants were *de facto* provided for investment phase I. The Commission would also point out that the State aid may be used to support non-eligible investment costs and costs which cannot receive aid under the present scheme because they were aided on the exclusive basis of an environmental protection scheme (see point 4.7). Last but not least, the Commission wonders whether the failure to meet the condition as to the number of newly created jobs and the vague requirement regarding reimbursement are in line with Article 51(a) of the Labour Market Promotion Act.

The Commission therefore doubts whether Austria has fully complied with the objectives and conditions of the Labour Market Promotion Act.

(\* Commission letter to Austria, dated 14 July 1995.

#### 4.6. Commitment given by the Province of Burgenland

In the contract, the Province of Burgenland committed itself, *inter alia*, to providing a grant of ATS 400 million (ECU 28,9 million) on investments of ATS 1,48 billion (ECU 106,9 million).

Austria argues that the Province of Burgenland has already fulfilled its commitment to the extent of ATS 385 million (ECU 27,8 million). This includes the grant of ATS 192,5 million (ECU 13,9 million) under the approved scheme N 589/95; the grant of ATS 142,5 million (ECU 10,3 million) under Article 51(a) of the Labour Market Promotion Act; the ATS 31,0 million (ECU 2,2 million) cofinancing by the ERDF of the aid under the Labour Market Promotion Act; and the ATS 19,0 million (ECU 1,4 million) cofinancing by the ERDF of the ERP-Fund loan of ATS 300 million (ECU 21,7 million) under the ERP-Regional-Programme.

The Commission therefore concludes that the Province of Burgenland must still provide a grant of ATS 15 million (ECU 1,1 million). Austria did not clarify under which scheme the Province of Burgenland will provide this State aid which it has undertaken to grant. The Commission cannot therefore verify whether the aid will be provided under and in accordance with an approved or existing aid scheme.

The Commission starts from the assumption that the Province of Burgenland pledged the aid for investment phase I. The Commission would point out that the State aid pledged may be used to support non-eligible investment costs and costs which cannot receive aid because they were aided on the exclusive basis of an environmental protection scheme (see point 4.7).

#### 4.7. Environmental protection aid

By letter dated 11 January 1996, the publicly owned Kommunal Kredit declared on behalf of the Federal State that it would provide an environment-related investment grant of ATS 76,3 million (ECU 5,5 million) for environment-related investment of ATS 152,6 million (ECU 11,0 million).

The aid was provided under Article 12(5) of the Environmental Protection Act (*Umweltförderungsgesetz*) No 185/1993 and the corresponding aid guidelines (*Förderungsrichtlinien 1993 für betriebliche*

*Umweltschutzmaßnahmen*). This law and the aid guidelines were notified to the EFTA Surveillance Authority ("ESA") as existing aid and registered by the ESA under the number N 93-148. The law was in force until 1996, when the Commission approved amendments and additions.

The aid amount of ATS 76,3 million (ECU 5,5 million) was provided in two instalments. The first instalment amounted to ATS 26,3 million (ECU 1,9 million) and included 50 % cofinancing by the ERDF for research and development activities. The second instalment of ATS 50,0 million (ECU 3,6 million) was intended for environmental protection aid granted outside of EU regional State aid financing.

As to the first instalment, the Commission would point out that the list of eligible investment items covers only investment in machinery and process units, but not research and development items. As to the second instalment, it is not clear whether Austria considered that the aid was granted for a company located outside of the assisted areas or that the ERDF cofinancing was not intended for this aid objective. Austria did not state how the alleged eligible costs are allocated to the first State aid instalment, which is cofinanced by the ERDF, and to the second State aid instalment, which is not cofinanced by the ERDF. Moreover, Austria did not demonstrate the eligibility of the aided investment costs.

The Environmental Protection Act has the objective of promoting environment-related measures that result in a significant improvement on mandatory standards. Austria did not state in which area the company achieves a significant improvement on mandatory standards.

Austria provided environmental protection aid of 50 %. Under the Environmental Protection Act, only pilot projects can be awarded an aid intensity of up to 50 % of eligible costs. It follows that Austria considered the plant to be a pilot project. Austria did not provide evidence to demonstrate the pilot project nature of the plant. The Commission would point out that LLG's main competitor, Courtaulds plc, started commercial Lyocell fibre production in the United States in 1992. The Commission therefore doubts whether the plant could be deemed to be a pilot project.

The Commission also notes that LLG applied for State aid to the Kommunal Kredit on 27 July 1995. The Kommunal Kredit stated that it would accept invoices and payments for services which were dated

after 27 April 1995 and invoices and payments for intermediate goods and services even before this deadline. The Commission would point out that the aid contract was drawn up on 11 January 1996 and questions whether Austria could effectively prove the necessity of aid for payments and invoices made before that date.

The Commission also points out that, according to Article 6(1) of the scheme, costs aided by other sources are excluded from assistance under this environmental scheme. Since Austria provided aid under the environmental scheme, it follows that the investment costs which Austria considered eligible for environmental aid were not eligible for other aid sources. The wording of the State aid contracts assessed above indicates that Austria may have also provided aid for these environment-related investment costs from other resources.

As a result, the Commission takes the view that the environmental aid under the Environmental Protection Act may not have been provided in accordance with this existing scheme.

#### 4.8. Training Aid

A training aid contract between LLG and the Labour Market Service ("AMS") was signed on 15 November 1995 and 15 January 1996. AMS undertook to provide training aid of up to ATS 10,2 million (ECU 0,8 million) for 37 employees from December 1995 to June 1997. According to the contract, the training of employees was carried out at the training centre of the parent company in the Province of Upper Austria.

By letter dated 18 June 1996, the Province of Burgenland declared its accession to the training aid contract between AMS and LLG in order to make ESF cofinancing available. According to this contract, the Province of Burgenland took over training aid of up to ATS 4,5 million (ECU 0,3 million), the contribution of AMS decreased to ATS 600 000 (ECU 43 000) and ESF cofinancing amounted to ATS 5,1 million (ECU 0,4 million). LLG finally received ATS 9,1 million (ECU 0,7 million) since fewer employees participated in the training programme.

AMS provided a further ATS 1,3 million (ECU 0,1 million) in training aid to LLG. The Province of Burgenland took over part of the aid by decision adopted on 2 December 1997.

The aid provided by AMS and the ESF was based on Article 35(a) of the Labour Market Promotion Act (Arbeitsmarktförderungsgesetz). Austria did not specify the legal basis for the Province of Burgenland's share in the training aid. The Commission starts from the assumption that the Province of Burgenland may not have provided the training aid under an approved or existing aid scheme.

The Commission also notes that, by letter dated 19 September 1995, WiBAG stated that the Province of Burgenland would not provide training aid and that it would keep the Commission informed on any training aid. Austria did not provide any information before the Province of Burgenland provided the training aid.

Moreover, the Commission wonders whether the training aid was compatible with the Commission's approach towards this kind of aid and if the aid was intended to provide general training to unemployed people or to serve company-specific skill requirements. In a note of 4 December 1997 on a decision of the Government of the Province of Burgenland, the Province of Burgenland explicitly justifies the provision of training aid to LLG by reference to the need for company-specific skills. The Commission therefore doubts whether the training aid provided by AMS and the Province of Burgenland was granted in accordance with the Labour Market Promotion Act and the Commission's approach to training aid.

#### 4.9. Planned investment aid

In the contract, the Province of Burgenland proposed to provide grants of ATS 147 million (ECU 10,6 million) on LLG's investment in excess of ATS 1,48 billion (ECU 106,9 million), up to a total of ATS 1,9 billion (ECU 137,2 million). Moreover, the Province of Burgenland proposed to provide similar State aid intensities if LLG increased the production capacity to 40 000 tonnes per year.

In the side-letter, the Province of Burgenland proposed that it would provide State aid of 30 % aid intensity if LLG transferred other facilities to the Province of Burgenland, notably the research department and a pilot plant. The Commission would point out that a transfer of facilities is not covered by the concept of initial investment and may be incompatible with the EC Treaty.

Austria did not state under which scheme these aid measures would be provided. The Commission cannot verify whether these aid measures are to be

provided under and in accordance with approved or existing aid schemes.

#### 4.10. Aid intensity of the notified State aid measures

According to the annual report for 1997, the Lenzing group had a turnover of ATS 7,2 billion (ECU 520 million), a balance sheet total of ATS 11,6 billion (ECU 838 million) and 4 869 employees (<sup>(7)</sup>). According to the Commission Recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises (<sup>(8)</sup>) and applying the independence criterion set out therein, LLG is a large undertaking. The plant is situated in an Article 92(3)(a) region with a maximum aid intensity of 40 % net for large undertakings (<sup>(9)</sup>).

Austria did not provide the Commission with an appropriate breakdown of investment costs within an investment timetable. The Commission cannot therefore verify the eligibility of the investment costs for the various State aid measures and cannot calculate the present value of the eligible investment. The Commission would, however, point out that the eligible investment costs may be below ATS 1,5

billion (ECU 108,3 million), the amount which was stated in various aid contracts. The Commission notes that, according to the ERP-Fund, the investment amount of ATS 1,5 billion (ECU 108,3 million) contained non-eligible costs of ATS 83,9 million (ECU 6,1 million). Moreover, the eligible investment costs may have to be reduced by the alleged environment-related investment costs of ATS 152,6 million (ECU 11,0 million), which received aid on the exclusive basis of the Environmental Protection Act. Thus, the eligible investment costs of investment phase I may amount only to ATS 1 256 million (ECU 90,7 million).

Austria did not submit a timetable showing when the aid was granted. The Commission cannot therefore calculate the present value of the notified State aid measures.

As a result, the Commission cannot calculate the precise aid intensity. However, the Commission considers that, on the basis of the information available, it is likely that the combined investment aid intensity for the investment phase I would amount to 64 % gross and 46 % net.

The following table summarises the figures:

Cost	ATS millions	ECU millions	State aid	ATS millions	ECU millions	Aid intensity gross	Aid intensity net
Investment costs ( <sup>(1)</sup> )	1 256,1	90,7	Investment aid	801,0	57,8	63,8 %	45,8 %
Environmental costs	152,6	11,0	Environmental aid	76,3	5,5	50,0 %	36,0 %

(<sup>(1)</sup>) Eligible investment cost according to the ERP-Fund without environmental cost.

The Commission further notes that to date LLG has 120 employees. The total of pledged investment aid and environmental aid amounts to ATS 877,3 million (ECU 63,3 million). This results in an extraordinarily high amount of aid per employee, namely ATS 7,3 million (ECU 527 000).

vided to LLG. Austria did not comply with this request.

In the letter dated 26 March 1998, Austria specified a number of State guarantees provided on grants and loans totalling ATS 692,5 million (ECU 50 million).

## 5. ASSESSMENT OF GUARANTEES

The Commission asked Austria to inform it in sufficient time before any guarantee was pro-

1. In the aid contracts based on Article 51(a) of the Labour Market Promotion Act, it was agreed that a bank or the Province of Burgenland or WiBAG would provide guarantees for grants amounting to ATS 173,5 million (ECU 12,5 million). The Commission assumes that either the Province of Burgenland or WiBAG provided these guarantees.

(<sup>(7)</sup>) [http://www.lenzing-ag.co.at/ag/investor-relations/gb\\_download.html](http://www.lenzing-ag.co.at/ag/investor-relations/gb_download.html)

(<sup>(8)</sup>) OJ L 107, 30.4.1996, p. 4.

(<sup>(9)</sup>) ESA decision of 11.5.1994 (OJ C 199, 21.7.1994, p. 7).

2. The Province of Burgenland provided a guarantee for the ERP-Fund soft loan of ATS 200 million (ECU 14,4 million) and the public EB und Hypo-Bank Burgenland Aktiengesellschaft provided a guarantee for the ERP-Fund soft loan of ATS 300 million (ECU 21,7 million). The Commission assumes that the Province of Burgenland also provided a guarantee for the ERDF cofinancing of ATS 19,0 million (ECU 1,4 million).

The Commission infers from Austria's communications of 26 March 1998 that LLG did not pay any fee for these guarantees.

The Commission assumes that the guarantees were not provided under an approved or existing scheme.

#### 6. ASSESSMENT OF TRANSFER PRICE OF LAND

In the contract, the Province of Burgenland undertook to offer land of an area of at least 100 000 m<sup>2</sup> which was appropriate for the intended industrial use of LLG and was not to cost more than ATS 60 (ECU 4,3) per m<sup>2</sup>. Moreover, the Province of Burgenland undertook to provide a grant of ATS 5 million (ECU 0,4 million) on the acquisition of land. In the side-letter, the Province of Burgenland undertook to provide "more" land under the same conditions.

By letter dated 19 September 1995, WiBAG said that LLG bought land directly from several private landowners for ATS 60 (ECU 4,3) per m<sup>2</sup>. Austria said that the State did not provide any benefit to the private landowners for selling their land to LLG.

In the documents submitted on 21 April 1997, Austria said that, at the Business Park, BPH planned to sell land with railway access for ATS 450 (ECU 32,5) and land without railway access for ATS 350 (ECU 25,3) per m<sup>2</sup>. The Commission therefore doubts whether the land price of ATS 60 (ECU 4,3) per m<sup>2</sup> could be considered to be the market price.

#### 7. ASSESSMENT OF INFRASTRUCTURE INVESTMENTS

In the contract, the Province of Burgenland undertook to develop the infrastructure to supply

LLG with electricity, process water, telecommunications, water treatment and waste disposal and to provide access to the site with appropriate road and railway facilities. It was agreed that the Province of Burgenland was to pay the costs of the infrastructure investment.

BPH developed the infrastructure at the Business Park. It provided LLG's site with road and rail access, water supply, sewage treatment, electricity, natural gas, telecommunications lines and flood protection. The Commission assumes that LLG did not pay any fee for the infrastructure development.

Austria said that this infrastructure investment did not constitute state aid within the meaning of Article 92 of the EC Treaty for LLG since any company at the Business Park could take advantage of the infrastructure.

The Commission considers that, in line with Austria's letter dated 21 April 1997, the development of the Business Park took into account specific requirements of LLG. The Commission therefore cannot exclude the possibility that LLG benefited from company-specific development measures. Moreover, the Commission takes the view that, for instance, the railway access to LLG's site can be used only by LLG, and not by any other company at the Business Park.

The Commission also notes that in Austria, companies are usually required to pay a fee for State-provided infrastructure development. This is also underlined by the fact that the Province of Burgenland undertook to cover the infrastructure investment costs. This undertaking would not have been necessary if companies normally do not pay fees for infrastructure development.

Furthermore, Austria stated that BPH is not a public undertaking and that BPH operates as a private investor. The Commission doubts that BPH is a private undertaking since the majority of the shares are held by public entities. Moreover, it would be strange that the Province of Burgenland could undertake to provide LLG with infrastructure development free of charge if it did not have a controlling influence over BPH. Finally, the Commission questions whether a private investor would provide company-specific development free of charge to any company at the Business Park.

Austria also claimed that if the Commission considered the infrastructure development to be aid, any such aid would be covered by the approved Business Promotion Act (WiFöG) 1994. The Commission takes the view that any free infrastructure development measures carried out by BPH for LLG or aid provided by the Province of Burgenland to BPH to enable BPH to develop infrastructure for LLG free of charge might not be covered by that scheme.

## 8. ASSESSMENT OF THE PROVISION OF BASIC PROCESS UTILITIES

### 8.1. Price guarantee

In the side-letter, the Province of Burgenland undertook to provide basic process requirements such as electricity, process steam, process water, cold energy, compressed air, water treatment, waste disposal and telecommunications. For all these basic process utilities except the last one, the Province of Burgenland guaranteed a fixed price for 30 years. The fixed prices for all of the utilities may vary according to the average change in energy prices in the EU Member States.

Austria explained that at the start-up of the Business Park sufficient power supply was not available. The Province of Burgenland had therefore to guarantee basic process utility prices to encourage LLG to establish its production site at the Business Park. Austria pointed out that the Province of Burgenland would have offered such guarantees to any company that had been the first to set up at the Business Park.

Moreover, Austria considers the fixed prices to be market prices. The Commission notes that, as to electricity prices, Austria only stated that the combined heat and power plant ("CHP plant") allows electricity and process steam to be generated at a price which cannot be compared with the electricity price charged by public utilities. The Commission presumes that Austria meant that the electricity and steam prices charged by WHS to LLG are significantly lower than prices charged by utilities to companies outside the Business Park. As to the other basic process utilities, Austria did not provide any evidence that the fixed prices were market prices.

### 8.2. The relevant companies at the Business Park

The following companies are engaged in providing basic process utilities to companies at the Business Park: WHS, BPH, Energiezentrale Heiligenkreuz

GmbH ("EZH"), Burgenländische Erdgasversorgungsgesellschaft ("BEGAS"), ÖFWG — Fernheizwärmeprojektierungs- und -errichtungsgesellschaft mbH ("ÖFWG") and Abwasserverband Jennersdorf.

1. WHS plays a central role in the abovementioned complex network of companies. WHS supplies companies at the Business Park with basic process utilities such as electricity, process steam, process water, cooling water, cold energy, compressed air, and water treatment. It invested in a utility centre ("Medienzentrale") to provide process water, cooling water, cold energy and compressed air<sup>(10)</sup>.
2. BPH provided the Business Park's infrastructure for the distribution of basic process utilities to companies located at the Business Park<sup>(11)</sup>.
3. EZH invested in a CHP plant for the production of electricity and process steam using natural gas. EZH supplies electricity and process steam to WHS.
4. BEGAS supplies WHS with natural gas.
5. ÖFWG operates the utility centre for WHS and the CHP plant for EZH. ÖFWG is also the owner of the land on which WHS invested in the utility centre. WHS supplies ÖFWG with natural gas. ÖFWG supplies WHS with the basic process utilities produced in the utility centre. ÖFWG provides electricity and process steam to EZH.
6. Abwasserverband Jennersdorf operates a water treatment plant. WHS entered into a contract with Abwasserverband Jennersdorf on the treatment of waste water of companies at the Business Park.

Austria took the view that the basic process utilities were provided by private undertakings. As a result, the prices of these supplies have to be deemed to be market prices.

<sup>(10)</sup> WHS's investment amounts to ATS 430 million (ECU 32,0 million). WHS received investment aid of ATS 159 million (ECU 11,5 million), including ATS 63 million (ECU 4,5 million) from the ERDF.

<sup>(11)</sup> The total investment has been estimated at ATS 386 million (ECU 27,9 million) and comprised the acquisition of land, construction of roads, sewage facilities, electricity supply, water supply, gas supply, and road lighting. BPH has received investment aid of ATS 143 million (ECU 10,3 million), including ATS 57 million (ECU 4,1 million) from the ERDF.

The Commission holds that this argument would be valid only if the allegedly private undertakings had agreed to fulfil the Province of Burgenland's guarantee to LLG, notably the provision of basic process utilities at fixed prices over the next 30 years, without any support from the Province of Burgenland. Austria has not demonstrated this.

Moreover, it has not been demonstrated that WHS, EZH, ÖFWG and BEWAG are private undertakings.

1. WHS's shareholders are Dr Mauler, with 51 %, and WEBU Wirtschaftsengineering Burgenland GmbH ("WEBU"), with 49 %. WEBU's shareholders are Glöckner GmbH with 51 % and the State-owned WiBAG with 49 %. Austria did not disclose the identity of Dr Mauler. Since WHS's total investment is estimated at ATS 430 million (ECU 31 million) and WHS's equity requirements exceed the normal resources of a private individual, the possibility cannot be ruled out that Dr Mauler is a trustee for a public entity and that WHS is therefore a public undertaking. The central role of WHS in fulfilling the Province of Burgenland's commitments to LLG may also indicate that WHS is either by contract or by shareholding controlled by the Province of Burgenland.
2. BPH is 5 % owned by Marktgemeinde Heiligenkreuz, 5 % owned by Stadtgemeinde Szentgotthard and 90 % owned by WEBU. As a result, even if Glöckner GmbH is a private undertaking, the majority of BPH's shares are controlled by public entities.
3. The State-owned Verbund-BeteiligungsgmbH and the State-owned BEWAG Burgenländische Elektrizitätswirtschafts AG each own 50 % of EZH. EZH is therefore a public undertaking.
4. The Commission presumes that BEGAS is a public undertaking.
5. ÖFWG's sole shareholder is the Gesellschaft für energie- und umwelttechnische Projekte GmbH. Austria did not disclose the shareholders of the later company and did not state whether the company is privately or publicly owned.

6. The Commission presumes that Abwasserverband Jennersdorf is a public entity in which WHS is a partner.

### 8.3. No evidence for market prices

Austria explicitly said that WHS invested in a utility centre primarily to provide the basic process utilities to LLG, which were guaranteed by the Province of Burgenland. Austria has to demonstrate that LLG is paying a commercial price for operating the plant and that the price contains a fair remuneration of capital costs for WHS's investment in the utility centre.

According to Austria, WHS has fully financed the investment in a water treatment plant of the Abwasserverband Bezirk Jennersdorf. Austria said that the industrial pre-cleaning unit (industrielle Vorreinigung) was exclusively designed for the requirements of LLG. Austria has to demonstrate that the price for water treatment charged to LLG not only covers the operating costs, but also contains a fair remuneration for WHS's capital costs in carrying out the investment.

Austria has not, however, demonstrated, as requested, that the fixed prices for electricity, process steam, process water, cold energy, compressed air and water treatment correspond to market prices.

Moreover, the Commission has found strong evidence that the fixed prices are below market prices.

1. The Commission wonders how the Province of Burgenland was able to offer basic process utilities at market prices if providers were not available at that time.
2. The Commission doubts whether process utilities such as water treatment, process water, compressed air and process steam will follow the same price trend over the next 30 years as the price of electricity. The Commission would point out in particular that the prices of process water and water treatment may possibly rise significantly more steeply than the price of electricity.
3. The Commission wonders if any private utility would ever have entered into a contract to provide basic process utilities at fixed prices over 30 years, when LLG can terminate the contract as early as the year 2001.

4. Austria indicated that the Province of Burgenland would have to provide grants to WHS to cover expected negative cash flows resulting from the provision of basic process utilities to LLG.
5. Austria explicitly declared, by letter dated 25 March 1998, that the guarantees provided by the Province of Burgenland constituted operating aid; Austria took the view that the operating aid was justifiable due to the structural disadvantages of the region.

The Commission would also point out that the natural gas supplier BEGAS does not directly supply natural gas to ÖFWG, the operator of the utility centre and the CHP plant, but to WHS, which supplies the natural gas to ÖFWG. The Commission cannot rule out the possibility that WHS may supply natural gas on different terms and conditions to ÖFWG and thus have an impact on the production costs and the price of the basic process utilities.

## 9. CONCLUSIONS

The Commission's conclusions can be summarised as follows:

1. The Commission cannot assess whether the grant of ATS 5 million (ECU 0,4 million) for the purchase of the land, the ATS 192,5 million (ECU 13,9 million) investment aid under the Regional Business Promotion Act of the Province of Burgenland, and the pledge given by the Province of Burgenland as regards the remaining ATS 15 million (ECU 1,1 million) were provided under or in accordance with approved schemes.
2. The Commission doubts whether Austria has provided all the notified state aid measures in accordance with approved schemes, notably, the grants of ATS 173,5 million (ECU 12,5 million) under Article 51(a) of the Labour Market Promotion Act and the environmental aid of ATS 76,3 million (ECU 5,5 million) under Article 12(5) of the Environmental Protection Act.
3. The Commission presumes that the ATS 300 million (ECU 21,7 million) dormant equity holding capital provided by WiBAG and the training aid provided by the Province of Burgenland were not covered by any approved or existing scheme. Moreover, the Commission doubts whether the training aid granted by AMS and the Province of Burgenland was provided in accordance with the Commission's practice on training aid.
4. The Commission cannot assess whether the proposed ATS 147 million (ECU 10,6 million) investment aid to be granted by the Province of Burgenland, the proposed investment aid for an increase in capacity to 40 000 tonnes and the proposed investment aid for a transfer of facilities to the site at the Business Park are to be provided under or in accordance with approved schemes. Moreover, the Commission holds that aid for a transfer of facilities may not be compatible with the common market.
5. The Commission takes the view that the combined aid intensity of the notified State aid for investment phase I may exceed the regional aid ceiling of 40 % net. Furthermore, the Commission notes that the notified State aid results in an extraordinarily high amount of aid per employee, namely ATS 7,3 million (ECU 527 000).
6. The Commission notes that the State provided guarantees to secure grants and loans of ATS 692,5 million (ECU 50 million). The Commission presumes that LLG did not pay commercial fees and that these guarantees were not covered by any approved scheme.
7. The Commission doubts whether the price of ATS 60 (ECU 4,3) per m<sup>2</sup> for the 12 hectares of land reflects a market price and whether private landowners sold land to LLG without any benefit from the State.
8. The Commission believes that LLG may have benefited free of charge from company-specific infrastructure development by BPH.
9. The Commission doubts whether LLG is paying market prices for basic process utilities on which the Province of Burgenland gave a price guarantee covering a period of 30 years.

The abovementioned measures may provide a gratuitous benefit to LLG. The measures might help LLG to significantly reduce its investment and operating costs, and this would have a significant and lasting positive impact on its financial position. As regards Lyocell, the British chemicals group Courtaulds plc, which markets the fibre under the trade name Tencel, is LLG's main competitor.

Moreover, LLG is also in competition with a number of other fibre producers situated in different Member States. The fibre market suffers from over-capacity. The measures are therefore liable to affect the economic position of competitors from other Member States<sup>(12)</sup>.

Consequently, the measures outlined above may constitute State aid within the meaning of Article 92(1) of the EC Treaty and Article 61(1) of the EEA Agreement, as they may distort or threaten to distort competition between Member States.

The Commission assumes that several State aid measures were not covered by approved or existing schemes and may therefore have been unlawful.

In accordance with the judgment of the Court of 5 October 1994 in Case C-47/91 (Italy v. Commission)<sup>(13)</sup>, if the Commission has doubts as to the conformity of individual aid with its decision approving the general scheme, it is up to it to order the Member State concerned to supply to it, within such period as it may specify, all such documentation, information and data as are necessary in order that it may examine the compatibility of the aid in question with its decision approving the aid scheme. Should the Member State fail, notwithstanding the Commission's injunction, to supply the information requested, the Commission may order the suspension of the aid and directly assess compatibility with the Treaty as if it was new aid.

As regards the following measures, the Commission doubts whether Austria applied aid schemes in accordance with the provisions under which they were approved by the Commission or under which they were reported to the ESA as existing aid schemes: the aid under Article 51(a) of the Labour Market Promotion Act, Article 12(5) of the Environmental Protection Act, the Regional Business Promotion Act of the Province of Burgenland, and under other schemes still to be specified by Austria.

The Commission therefore enjoins Austria, within one month following receipt of this letter, to furnish all documents, information and data needed

for assessment of the compatibility of the aid measures with approved or existing schemes, and in particular to provide comprehensive information on the following issues:

1. as regards the ATS 173,5 million (ECU 12,5 million) investment grant under Article 51(a) of the Labour Market Promotion Act, to show that the non-effective condition as to the number of newly created jobs and the vague reimbursement provision are in accordance with this scheme;
2. as regards the ATS 76,3 million (ECU 5,5 million) in environmental aid under Article 12(5) of the Environmental Protection Act, to demonstrate that the plant is a pilot project, taking into account the fact that Courtaulds plc started commercial Lyocell fibre production in 1992, to demonstrate that the investment costs which received support are eligible for environmental aid and that these investment costs were necessary in order to achieve a significant improvement on mandatory standards, to state which mandatory standards have been improved on and to what extent, to explain why ERDF funding for research and development was provided, and to prove the necessity of the aid;
3. as regards the ATS 192,5 million (ECU 13,9 million) investment grant under the Regional Business Promotion Act of the Province of Burgenland, to demonstrate that the aid was provided in accordance with the approved scheme;
4. as regards company-specific infrastructure development by BPH, to state in detail the costs of providing access to LLG with appropriate road and railway facilities, electricity, process water, telecommunications and water treatment and to demonstrate that the aid was provided in accordance with Business Promotion Act of the Province of Burgenland;
5. as regards the undertaking given by the Province of Burgenland for aid of ATS 15 million (ECU 1,1 million), to demonstrate that the aid will be provided under and in accordance with an approved scheme;
6. as regards the ATS 5 million (ECU 0,4 million) investment grant for the purchase of land, to

<sup>(12)</sup> Judgment of the Court of 14.9.1994, in Joined Cases C-278-280/92 Spain v. Commission [1994] ECR I-4103.

<sup>(13)</sup> [1994] ECR I-4635.

state the legal base and to demonstrate the eligibility of the investment under an approved or existing scheme;

7. as regards the dormant equity holding contract between WiBAG and LLG involving ATS 300 million (ECU 21,7 million), to demonstrate that the aid was provided under and in accordance with an approved or existing scheme;
8. as regards the ATS 10,4 million (ECU 0,8 million) in training aid provided by AMS, ESF and the Province of Burgenland, to demonstrate that the aid was provided under and in accordance with an approved or existing scheme;
9. as regards proposed investment aid by the Province of Burgenland amounting to ATS 147 million (ECU 10,6 million), the proposed investment aid for an increase in capacity to 40 000 tonnes and the proposed investment aid for a transfer of facilities to the site at the Business Park, to demonstrate that they are to be provided under and in accordance with approved or existing schemes;
10. as regards investment costs, to submit a detailed breakdown of the investment costs within a timetable, to demonstrate the eligibility of the assisted costs for each of the notified State aid measures and to submit complete LLG annual reports since 1995;
11. as regards the notified State aid measures, to present the aid-funding of the measures within a timetable;
12. as regards planned investment phase II, in which LLG is to double its production capacity, to state by which date Austria expects the investment to be completed at the latest and to specify the State aid measures it would order to be recovered if LLG had not completed investment phase II by such date;
13. as regards any further unnotified State aid measures for LLG, to notify them.

As regards the other measures, on which Austria did not specify that they were covered by approved or existing aid schemes, namely, the guarantees, the transfer price of land and the provision of basic

process utilities, the Commission has decided to initiate proceedings under Article 93(2) of the EC Treaty in order to assess the overall compatibility of the above-described measures with the common market.

In accordance with the judgment of the Court of 13 April 1994 in Joined Cases C-324/90 and C-342/90 (Federal Republic of Germany and Pleuger Worthington GmbH v. Commission)<sup>(14)</sup>, the Commission also has the power to issue an interim decision requiring the Member State concerned to provide all such documents, information and data as are necessary in order that it may examine the compatibility of aid with the common market.

The Commission enjoins Austria, within one month following receipt of this letter, to furnish all documents, information and data needed for assessment of the compatibility of the aid measures, and in particular to provide comprehensive information on the following issues:

1. as regards guarantees to secure grants and loans of ATS 692,5 million (ECU 50 million), to state whether LLG has paid fees and, if so, to demonstrate that such fees reflect commercial fees by providing fee rates of private banks or private guarantors;
2. as regards the price of ATS 60 (ECU 4,3) per m<sup>2</sup> for the land, to demonstrate that the price reflects a market price, to state whether the former private landowners received any State benefit linked to the transfer of land and to explain how the price of ATS 60 (ECU 4,3) per m<sup>2</sup> is consistent with the information provided by Austria that BPH plans to sell land at the Business Park for ATS 450 (ECU 32,5) per m<sup>2</sup> with railway access and ATS 350 (ECU 25,3) per m<sup>2</sup> without railway access;
3. as regards the question whether WHS and ÖFWG are private undertakings, to explain the role of Dr Mauler and to state whether the parent company of ÖFWG is a private or public undertaking;

<sup>(14)</sup> [1994] ECR I-1173.

4. as regards the prices for basic process utilities, to demonstrate that the prices guaranteed for 30 years and the pegging of the prices to the average change in electricity prices in the EU Member States reflect market prices, to show that the fixed prices of the basic process requirements also take account of the capital costs of WHS's investment in the utility centre and that the prices for the water treatment take account of the capital costs of WHS's investment in the treatment plant of Abwasserverband Bezirk Jennersdorf, to state the measures the Province of Burgenland will adopt to fulfil its commitment to LLG if the providers, particularly WHS, are not willing to provide the basic process utilities at the fixed prices over the next 30 years;
5. as regards natural gas supply, to provide evidence that WHS supplies natural gas to ÖFWG on the same terms and conditions as it receives natural gas from BEGAS;
6. as regards the question whether WHS, EZH, ÖFWG, WiBAG, BPH and WiBAG are private investors, to provide annual reports for the last three years and, if necessary, forecasts in order to demonstrate that the companies are operating profitably;
7. to submit any agreement or contract made between the Province of Burgenland, WiBAG, WHS, BPH, EZH, ÖFWG and BEGAS.

If the Commission does not receive the information requested, it will adopt a decision on the basis of the information in its possession.

The Commission requests your authorities to forward a copy of this letter without delay to any recipient of the aid.

The Commission would remind Austria of the suspensory effect of Article 93(3) of the EC Treaty and would draw its attention to the letter sent to all Member States on 22 February 1995, stating that any aid granted unlawfully must be recovered from the recipient in accordance with the relevant provisions of national law; the amounts thus recovered will include interest calculated on the basis of the reference rates used to calculate the grant equivalent of regional aid, running from the date on which the aid was granted to the recipient(s) until the date of actual recovery.

The Commission would draw Austria's attention to the fact that it will inform interested parties by publishing this letter in the *Official Journal of the European Communities*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement by publication of a notice in the EEA Supplement to the *Official Journal of the European Communities* and will inform the EFTA Surveillance Authority by sending it a copy of this letter. All interested parties will be invited to submit their comments within one month of the date of such publication.'

The Commission hereby gives other Member States and other interested parties notice to submit any observations 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 observations will be communicated to the Republic of Austria.*

## IMPORTANT NOTICE TO READERS

*Subject: Changes to the Official Journal of the European Communities in 1999*

In 1999 the OJ L&C will be available on the following supports:

- Paper
- Microfiche
- CD-ROM, published quarterly
- Hybrid CD-ROM/Internet, published monthly
- The commercial databases CELEX (<http://europa.eu.int/celex>) and EUDOR (<http://eudor.eur-op.eu.int/>)
- Free on EUR-Lex (<http://europa.eu.int/eur-lex>) for 45 days

### PAPER

The 1999 price of the paper subscription to the OJ L&C will be 840 €. This price rise is necessary to better cover production and postage costs.

### SUPPLEMENTARY COSTS FOR RETROACTIVE DESPATCH OF PAPER

Any subscriber requiring the retroactive despatch of paper editions after 1 April 1999 will be charged supplementary costs to cover the extra collection, storage and despatch costs this entails to EUR-OP. Retroactive despatch will be charged at 280 € (\*) per month, which is still lower than the total cost of missing issues if sold at cover price. To avoid these charges, we recommend all subscribers to renew promptly where possible, or to purchase the most recent edition of the cumulative OJ EUR-Lex CD-ROM costing 100 € (\*) or 140 € (\*) to cover the months in question.

### OJ L&C ON CD-ROM

A quarterly CD-ROM subscription, costing 396 € (\*) offers sophisticated search possibilities and text formats, plus bibliographical details as found in the Celex database. The 1998 promotional price for existing subscribers has been abandoned.

Based on the EUR-Lex system, a new OJ L&C hybrid CD-ROM/Internet subscription will be launched in 1999, at the price of 144 € (\*). This will appear monthly, and will offer access to PDF files both on the CD-ROM and to the EUR-Lex internet site. With a simple click, via the CD-ROM you can search for any OJ L&C text published in 1999 to date, whether stored on the CD-ROM or on the Internet site.

Using the same EUR-Lex technology, a monolingual CD-ROM will be produced in Spring 1999 containing the full collection of the 1998 OJ L&C: price 144 € (\*). A simple demonstration version will be sent to all paper and

microfiche subscribers in early December 1998. A more complete pre-release version will be available in late January 1999 on request.

Both the quarterly and the monthly-hybrid CD-ROM subscriptions are monolingual and cumulative: individual CD-ROMs may also be ordered.

### OJ L&C ONLINE

In addition to the legal database Celex (<http://europa.eu.int/celex>), available pay per view or as a flat fee subscription for 960 € (\*), and the EUDOR archive (<http://eudor.eur-op.eu.int/>), priced per page, the full text of the OJ L&C is available free of charge for a period of 20 days (soon to be extended to 45 days) on the EUR-Lex Internet site (<http://europa.eu.int/eur-lex>).

### OJ L&C Microfiche

The microfiche subscription will continue for 1999, but will be replaced by an electronic support in the year 2000. Please send any comments on this proposed change to OP4, SALES UNIT, EUR-OP, 2 rue Mercier, L-2985 Luxembourg, fax + 352 2929 42763.

### SUPPLEMENT TO THE OFFICIAL JOURNAL

In 1999 available as:

- 5 x week subscription, cost 492 € (\*)
- 2 x week subscription, cost 204 € (\*)
- individual CD-ROM, cost 2.50 € (\*)
- on-line in the TED database (<http://ted.eur-op.eu.int>).

Access to TED will become free of charge in January 1999.

Use of the CD-ROM in a Local Area Network (LAN) will be free from January 1999. By 1 April 1999, the paper facsimile option (PDF format) currently included on the CD-ROM will disappear, as a new version, with a common user interface to the TED database, is introduced. This new version will offer other major improvements, such as new search fields, search profiles and more flexibility.

### AVAILABILITY

Any OJ subscription, regardless of support, can be purchased from any member of EUR-OP's traditional, offline or gateway sales networks. For the latest address list see over, or see <http://eur-op.eu.int/en/general/s-ad.html>

(\*) Prices excluding VAT.