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I

(Information)

COMMISSION

Euro exchange rates [1]

28 April 2000

(2000/C 121/01)

1 euro	=	7,4551	Danish krone
	=	336,2	Greek drachma
	=	8,14	Swedish krona
	=	0,5794	Pound sterling
	=	0,9085	United States dollar
	=	1,3457	Canadian dollar
	=	97,48	Japanese yen
	=	1,571	Swiss franc
	=	8,1475	Norwegian krone
	=	68,573	Icelandic króna [2]
	=	1,5552	Australian dollar
	=	1,8733	New Zealand dollar
	=	6,22204	South African rand [2]

[1] *Source:* reference exchange rate published by the ECB.

[2] *Source:* Commission.

COMMISSION INTERPRETATIVE COMMUNICATION ON CONCESSIONS UNDER COMMUNITY LAW

(2000/C 121/02)

On 24 February 1999 the Commission adopted and published a Draft Commission interpretative communication on concessions under Community law on public contracts [1] and submitted it to a wide range of bodies for consultation. Taking into account the substantial input [2] it has received following publication of the initial draft in the *Official Journal of the European Communities*, the Commission has adopted this interpretative communication.

1. INTRODUCTION

1. Concessions have long been used in certain Member States, particularly to carry out and finance major infrastructure projects such as railways and large parts of the road network. Involvement of the private sector has declined since the first quarter of the 20th century as governments began to prefer to be directy involved in the provision and management of infrastructure and public services.

2. However due to budgetary restrictions and a desire to limit the involvement of public authorities and enable the public sector to take advantage of the private sector's experience and methods, interest in concessions has been heightened over the last few years.

3. First of all, it should be pointed out that the Community does not give preference to any particular way of organising property, whether public or private: Article 295 (ex Article 222) of the Treaty guarantees neutrality with regard to whether enterprises are public or private.

4. Given that this form of association with operators is being used more and more frequently, particularly for major infrastructure projects and certain services, the Commission feels this interpretative communication is needed to keep the operators concerned and the public authorities informed of the provisions it considers apply to concessions under current Community law. Indeed, the Commission is repeatedly faced with complaints concerning infringements of Community law on concessions when public authorities have called on economic operators' know-how and capital to carry out complex operations. It has thus decided to define the concept of 'concessions' and set out the guidelines it has followed up to now when investigating cases. This interpretative communication is therefore part of the transparency required to clarify the current legal framework in the light of the experience gained when investigating the cases examined up to now.

5. In the draft version of this interpretative communication [3], the Commission had stated that it also intended to deal with the other forms of partnership used to call upon private-sector financing and know-how. The Commission decided not to consider the forms of partnership whose characteristics are different from those of a concession as defined in this interpretative communication. Such an approach was also favoured in the input received. The wide range of situations, which are in constant flux, as revealed in the feedback on the draft interpretative communication, calls for an indepth consideraton of the characteristics they have in common. The discussion set off by the publication of the draft interpretative communication must therefore continue on this matter.

6. The comments on concessions have enabled the Commission to refine its analysis and define the characteristics of concessions which distinguish them from public contracts, in particular the delegation of services of general interest operated by this kind of partnership.

7. The Commission wishes to reiterate that this text does not seek to interpret the specific regimes deriving from Directives adopted in different sectors, such as energy and transport.

This interpretative communication (hereinafter referred to as the 'communication') will specify the rules and the principles of the Treaty governing all forms of concession and the specific rules that Directive 93/37/EEC on public works contracts [4] (hereinafter 'the works Directive') lays down for public works concessions.

2. DEFINITION AND GENERAL PROBLEM OF CONCESSIONS

Concessions are not defined in the Treaty. The only definition to be found in secondary Community law is in the works Directive, which lays down specific provisions for works concessions [5]. However, other forms of concessions do not fall within the scope of the directives on public contracts [6].

However, this does not mean that concessions are not subject to the rules and principles of the Treaty. Indeed, insofar as these concessions result from acts of State, the purpose of which is to provide economic activities or the supply of goods, they are subject to the relevant provisions of the Treaty and to the principles which derive from Court Case law.

In order to delimit the scope of this communication, and before specifying which regime applies to concessions, their distinctive features must be described. To this end, a brief review of the concept of works concessions as found in the works Directive should prove useful.

2.1. WORKS CONCESSIONS

2.1.1. **Definition as given in Directive 93/37/EEC**

The Community legislator has chosen to base its definition of works concessions on that of public works contracts.

The text of the works Directive states that public works contracts are 'contracts for pecuniary interest concluded in writing between a contractor and a contracting authority (. . .) which have as their object either the execution, or both the execution and design, of works related to one of the activities referred to in Annex II or a work (. . .), or the execution by whatever means of a work corresponding to the requirements specified by the contracting authority' (Article 1(a)).

Article 1(d) of the same Directive defines a public works concession as 'a contract of the same type as that indicated in (a) except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the construction or in this right together with payment'.

According to this definition, the main distinctive feature of a works concession is that a right to exploit a construction is granted as a consideration for having erected it; this right may also be accompanied by payment.

2.1.2. **Distinction between the concepts of 'public works contract' and 'works concession'**

The Commission believes that the right of exploitation is a criterion that reveals several characteristics which distinguish a works concession from a public works contract.

For example, the right of exploitation allows the concessionaire to demand payment from those who use the structure (e.g. by charging tolls or fees) for a certain period of time. The period for which the concession is granted is therefore an important part of the remuneration of the concessionnaire. The latter does not receive remuneration directly from the awarding authority, but acquires from it the right to obtain income from the use of the structures built ([7]).

The right of exploitation also implies the transfer of the responsibilities of operation. These responsibilities cover the technical, financial and managerial matters relating to the construction. For example, it is the concessionaire who is responsible for making the investments required so that it may be both available and useful to users. He is also responsible for paying off the construction. Moreover, the concessionaire bears not only the usual risks inherent in any construction — he also bears much of the risk inherent in the management and use of the facilities ([8]).

From these considerations, it follows that, in works concessions, the risks inherent in exploitation are transferred to the concessionaire ([9]).

The Commisison notes that more and more public works contracts are the subject of complex legal arrangements ([10]). As a result, the boundary between these arrangements and public works concessions can sometimes be difficult to define.

In the Commission's view, the arrangement is a public works contract as understood under Community law if the cost of the construction is essentially borne by the awarding authority and the contractor does not receive remuneration from fees paid directy by those using the construction.

The fact that the Directive allows for a payment in addition to the right of exploitation does not change this analysis. Such situations have occurred. The State therefore bears part of the costs of operating the concession in order to keep prices down for the user (providing 'social prices' ([11])). A variety of procedures are possible (guaranteed flat rate, fixed sum but paid on the basis of the number of users, etc.). These do not necessarily change the nature of the contract if the sum paid covers only a part of the cost of the construction and of operating it.

The definition of a concession allows the State to make a payment in return for work carried out, provided that that this does not eliminate a significant element of the risk inherent in exploitation. By specifying that there may be payment in addition to the right to exploit the construction, the works Directive states that operation of the structure must be the source of the concessionaire's revenue.

Even though the origin of the resources — directly paid by the user of the construction — is, in most cases, a significant factor, it is the existence of exploitation risk, involved in the investment made or the capital invested, which is the determining factor, particularly when the awarding authority has paid a sum of money.

However, even within public works contracts, part of the risk may be borne by the contractor ([12]). However, the duration of concessions makes these risks more likely to occur, and makes them relatively greater.

On the other hand, risks arising from the operation's financial arrangements, which could be considered 'economic risks', are part and parcel of concessions. This type of risk is highly dependent on the income the concessionaire will be able to obtain from the amount of use of the construction ([13]) and is is significant factor distinguishing concessions from public works contracts.

In conclusion, the risks arising from the operation of the concession are transferred to the concessionaire with the right of exploitation; specific risks are divided between the grantor and the concessionaire on a case by case basis, according to their respective ability to manage the risk in question.

If the public authorities undertake to bear the risk arising from managing the construction by, for example, guaranteeing that the financing will be reimbursed, there is no element of risk. The Commission considers such cases to be public works contracts, not concessions ([14]).

2.2. SERVICE CONCESSIONS

Article 1 of Directive 92/50/EEC on public service contract (hereinafter referred to as the 'services Directive') states that this Directive applies to 'public services contracts', defined as 'contracts for pecuniary interest concluded in writing between a service provider and a contracting authority, to the exclusion of (. . .)'.

Unlike the works Directive, the services Directive does not define 'service concessions' ([15]).

With the sole intention of distinguishing service concessions from public services contracts, and therefore limit the scope of the Communication, it is important to describe the essential characteristics of concessions.

For this purpose, it would seem useful to work on the basis of factors deriving from the above-mentioned concept of works concessions which take into account the Court's case law on the subject ([16]) and the *opinio juris* ([17]).

Works concessions are assumed to serve a different purpose from service concessions. This may lead to possible differences in terms of investment and duration between the two types of concessions. However, given the above criteria, the characteristics of concession contracts are generally the same, regardless of their subject.

Thus, as with works concessions, the exploitation criterion is vital for determining whether a service concession exists ([18]). Application of this criterion means that there is a concession when the operator bears the risk involved in operating the service in question (establishing and exploiting the system), obtaining a significant part of revenue from the user, particularly by charging fees in any form. As is the case for works concessions, the way in which the operator is remunerated is a factor which helps to determine who bears the exploitation risk.

Similarly, service concessions are also characterised by a transfer of the responsibility of exploitation.

Lastly, service concessions normally concern activities whose nature and purpose, as well as the rules to which they are subject, are likely to be the State's responsibility and may be subject to exclusive or special rights ([19]).

It should also be pointed out that, in the Lottomatica judgment mentioned above, the Court clearly distinguished between a transfer of responsibility to the concessionaire as concerns operating a lottery, which may be considered to be a responsibility of the State as described above, and simply supplying computer systems to the administration. In that case it concluded that without such a transfer the arrangement was a public contract.

2.3. DISTINCTION BETWEEN WORKS CONCESSIONS AND SERVICE CONCESSIONS

Given that only Directive 93/37/EEC provides for a special system of procedures for granting public works concessions, it is worth determining exactly what this type of concession is, especially if it is a mixed contract which also includes a service element. This is virtually always the case in practice, since public works concessionaires often provide services to users on the basis of the structure they have built.

As for delimiting the scope of the provisions in the works and services Directives, recital 16 of the latter specifies that if the works are incidental rather than the object of the contract they do not justify treating the contract as a public works contract. In the Gestión Hotelera Internacional case the Court of Justice interpreted these provisions and stated that 'where the works [. .] are merely incidental to the main object of the award, the award, taken in its entirety, cannot be characterised as a public works contract' ([20]). The problem of mixed contracts was also addressed by the Court of Justice in another case ([21]) which determined that, when a contract includes two elements which may be separated (e.g. supplies and services), the rules which apply to each should be applied separately.

Although these principles have been established for public contracts, the Commission considers that a similar approach should be taken to determine whether or not a concession is subject to the works Directive. Its field of application *ratione materiae* is effectively the same in the case of both works contracts and works concessions ([22]).

In view of this, the Commission maintains that the first thing to determine is whether the building of structures and carrying out of work on behalf of the grantor constitute the main subject matter of the contract, or whether the work and building are merely incidental to the main subject matter of the contract.

If the contract is principally concerned with the building of a structure on behalf of the grantor, the Commission holds that it should be considered to be a works concession.

In this case, the rules laid down by the works Directive must be complied with, as long as the Directive's applicaton threshold is reached (EUR 5 000 000), even if some of the aspects are service-related. The fact that the works are performed or the structures are built by third parties does not change the nature of the basis contract. The subject matter of the contract is identical.

In contrast, a concession contract in which the construction work is incidental or which only involves operating an existing structure is regarded as a service concession.

Moreover, in practice, operations may be encountered which include building a structure or carrying out works at the same time as the provision of services. Thus, alongside a public works concession, service concessions may be concluded for complementary activities which are, however, independent of the exploitation of the concession of the structure. For example, motorway catering services may be the subject of a different service concession from that involving its construction or management. In the Commission's view, if the objects of these contracts may be separated, the rules which apply to each type should be applied respectively.

2.4. SCOPE OF THIS INTERPRETATIVE COMMUNICATION

As already stated, even though concessions are not directly addressed by the public contracts directives, they are nonetheless subject to the rules and principles of the Treaty, insofar as they are granted via acts that are attributable to the State and their object is the provision of economic activities.

Any act of State ([23]) laying down the terms governing economic activities, be it contractual or unilateral, must be viewed in the light of the rules and principles of the Treaty, in particular Articles 43 to 55 (ex Articles 52 to 66) ([24]).

This communication therefore concerns acts attributable to the State whereby a public authority entrusts to a third party — by means of a contractual act or a unilateral act with the prior consent of the third party — the total or partial management of services for which that authority would normally be responsible and for which the third party assumes the risk. Such services are convered by this communication only if they constitute economic activities within the meaning of Articles 43 to 55 (ex Articles 52 to 66) of the Treaty.

These acts of State will henceforth be referred to as 'concessions', regardless of their legal name under national law.

In view of the above, and without prejudice to any provisions of Community law which might be applicable, this communication does not concern:

— acts whereby a public authority authorises the exercice of an economic activity even if these acts would be regarded as concessions in certain Member States ([25]);

— acts concerning non-economic activities such as obligatory schooling or social security.

On the other hand, it should be noted that, when a concession expires, renewal is considered equivalent to granting a new concession, and is therefore covered by the communication.

A particular problem arises in cases where are forms of inter-organic delegation between the concessionaire and the grantor which do not fall outside the administrative sphere of the contracting authority ([26]). The question of whether and to what extent Community law applies to this kind of relationship has been addressed by the Court ([27]). However, other cases currently pending before the Court could introduce new elements in this respect ([28]).

On the other hand, relationships between public authorities and public enterprises entrusted with the operation of services of general economic interest are, in principle, covered by this communication ([29]). It is true that, according to the Court's established case law ([30]), nothing in the Treaty prevents Member States from granting exclusive rights for certain services of general interest for non-economic public interest reasons whereby those services are not subject to open competition ([31]). Nonetheless, the Court adds that the way in which such a monopoly is organised and carried out must not infringe the provisions of the Treaty on the free movement of goods and services, nor the competition rules ([32]). In addition, the way in which these exclusive rights are granted are subject to the rules of the Treaty, and may therefore be covered by this communication.

3. REGIME APPLYING TO CONCESSIONS

As mentioned above, only works concessions for an amount equal to or greater than the threshold specified in Directive 93/37/EEC (EUR 5 000 000) are subject to a specific regime.

Nonetheless, like any act of State laying down the terms governing economic activities, concessions are subject to the provisions of Articles 28 to 30 (ex Articles 30 to 36) and 43 to 55 (ex Articles 52 to 66) of the Treaty, and to the principles emerging from the Court's case law ([33]) — notably the principles of non-discrimination, equality of treatment, transparency, mutual recognition and proportionality ([34]).

The Treaty does not restrict Member States' freedom to grant concessions provided that the methods used to do so are compatible with Community law.

The Court's case law holds that, even if Member States remain free under the Treaty to lay down the substantive and procedural rules, they must respect all the relevant provisions of Community law, and particularly the prohibitions deriving from the principles enshrined in the Treaty concerning right of establishment and freedom to provide services ([35]). Moreover, the Court emphasised the importance of the principles and rules enshrined in the Tretay by specifying in particular that the public procurement directives were intended to 'facilitate the attainment within the Community of freedom of establishment and freedom to provide services' and 'to ensure the effectiveness of the rights conferred by the Treaty in the field of public works and supply contracts' ([36]).

Certain Member States have sometimes thought that concessions were not governed by the rules of the Treaty in that they involved delegation of a service to the public, which would be possible only on the basis of mutual trust (*intuitu personae*). According to the Treaty and the Court's established case law, the only reasons which would enable State acts which violate Articles 43 and 49 (ex Articles 52 and 59) of the Treaty to escape prohibition under these Articles are those referred to in Articles 45 and 55 (ex Articles 55 and 66). The very restrictive conditions specified by the Court for the application of these Articles are described below ([37]). There is nothing in the Treaty or in the Court's case law which implies that concessions would be treated differently.

In what follows, the Commission will refer to the rules of the Treaty and the principles deriving from Court case law that are applicable to concessions covered by this communication.

3.1. THE RULES AND PRINCIPLES SET OUT IN THE TREATY OR LAID DOWN BY THE COURT

As has already been stated above, the Treaty makes no specific mention of public contracts or concessions. Several of its provisions are nonetheless relevant, i.e. the rules instituting and guaranteeing the proper operation of the Single Market, namely:

— the rules prohibiting any discrimination on grounds of nationality (Article 12(1) (ex Article 6(1))),

— the rules on the free movement of goods (Articles 28 (ex Article 30) *et seq*.), freedom of establishment (Articles 43 (ex Article 59) *et seq*.), freedom to provide services (Articles 49 (ex Article 59) *et seq*.) and the exceptions to those rules provided for in Articles 30, 45 and 46 (ex Articles 36, 55 and 56) ([38]),

— Article 86 (ex Article 90) of the Treaty might help to determine if the granting of these rights is legitimate.

These rules and principles arrived at by the Court are clarified below.

It is true that the case law cited refers in part to public contracts. Nonetheless, the scope of the principles which emerge from it often goes beyond public contracts. They are therefore applicable to other situations, such as concessions.

3.1.1. **Equality of treatment**

According to the established case law of the Court 'the general principle of equality of treatment, of which the prohibition of discrimination on grounds of nationality is merely a specific enunciation, is one of the fundamental principles of Community law. This principle requires that similar situations shall not be treated differently unless differentiation is objectively justified' ([39]).

Moreover the Court asserted that the principle of equality of treatment, of which Articles 43 (ex 52) and 49 (ex 59) of the Treaty are a particular expression, 'forbids not only overt discrimination by reason of nationality [. . .] but all covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result' ([40]).

The principle of equality of treatment implies in particular that all potential concessionaires know the rules in advance and that they apply to everybody in the same way. The case law of the Court, in particular the Raulin ([41]) and Parliament/Council ([42]) judgments, lays down that the principle of equality of treatment requires not only that conditions of access to an economic activity be non-discriminatory, but also that public authorities take all the measures required to ensure the exercise of this activity.

The Commission considers that it follows from this case law that the principle of open competition must be adhered to.

In the Storebaelt und Walloon Buses judgments, the Court has the occasion to set out the scope of the principle of equality of treatment in the area of public contracts, by asserting on the one hand that this principle requires that all offers conform to the tender specifications to guarantee an objective comparison between offers ([43]) and, on the other hand, this principle is violated, and transparency of the procedure impaired, when an awarding entity takes account of changes to the initial offers of one tenderer who thereby obtains an advantage over his competitors. Moreover, the Court notes that 'the procedure for comparing tenders had to comply at every stage with both the principle of the equal treatment of tenderers and the principle of transparency, so as to afford equality of opportunity to all tenderers when formulating their tenders' ([44]).

The Court has therefore specified in this case law concerning application of the Directives that the principle of equality of treatment between tenderers is quite separate from any possible discrimination on the basis of nationality or other criteria.

The application of this principle to concessions (which is obviously only possible when the awarding authority negotiates with several potential concessionaires) leaves the grantor free to choose the most appropriate award procedure, for example by reference to the characteristics of the sector in question, and to lay down the requirements which candidates must meet throughout the various phases of a tendering procedure ([45]). However, this implies that the choice of candidates must be made on the basis of objective criteria and the procedure must be conducted in accordance with the procedural rules and basic requirements originally set ([46]). Where these rules have not yet been set, the application of the principle of equality of treatment requires in any event that the candidates be chosen objectively.

The following should therefore be considered to contravene the above-mentioned rules of the Treaty and the principle of equality of treatment: provisions reserving public contracts only to companies of which the State or the public sector, whether directly or indirectly, is a major, or the sole, shareholder ([47]); practices allowing the acceptance of bids which do not meet the specifications, or which have been amended after being opened or allowing alternative solutions when this was not provided for in the initial project. In addition the nature of the initial project must not be changed during negotiation with regard to the criteria and requirements laid down at the beginning of the procedure.

Furthermore, in certain cases, the grantor may be unable to specifiy his requirements in sufficiently precise technical terms and will look for alternative offers likely to provide various solutions to a problem expressed in general terms. In such cases, however, in order to ensure fair and effective competition, the specifications must always state in a non-discriminatory and objective manner what is asked of the candidates and above all the way in which they must draw up their bids. In this way, each candidate knows in advance that he has the possibility of proposing various technical solutions. More generally, the specifications must not contain elements that infringe the abovementioned rules and principles of the Treaty. The requirements of the grantor may also be determined in collaboration with companies in the sector, provided that this does not restrict competition.

3.1.2. **Transparency**

The Commission points out that in its case law the Court has emphasised the connection between the principle of transparency and the principle of equality of treatment, whose useful effect it seeks to ensure in undistorted competitive conditions ([48]).

The Commission notes that in virtually all the Member States the administrative rules or practices adopted with regard to concessions provide that bodies wishing to entrust the management of an economic activity to a third party must, in order to ensure a minimum of transparency, make their intention public according to appropriate rules.

As confirmed by the Court in its most recent case law, the principle of non-discrimination on grounds of nationality, implies that there is an obligation to be transparent so that the contracting authority will be able to ensure it is adhered to ([49]).

Transparency can be ensured by any appropriate means, including advertising depending on, and to allow account to be taken of, the particularities of the relevant sector ([50]). This type of advertising generally contains the information necessary to enable potential concessionaires to decide whether they are interested in participating (e.g. selection and award criteria, etc.). This includes the subject of the concession and the nature and scope of the services expected from the concessionaire.

The Commission considers that, under these circumstances, the obligation to ensure transparency is met.

3.1.3. **Proportionality**

The principle of proportionality is recognised by the established case law of the Court as 'being part of the general principles of Community law' ([51]); it also binds national authorities in the application of Community law ([52]), even when these have a large area of discretion ([53]).

The principle of proportionality requires that any measure chosen should be both necessary and appropriate in the light of the objectives sought ([54]). In choosing the measures to be taken, a Member State must adopt those which cause the least possible disruption to the pursuit of an economic activity ([55]).

When applied to concessions, this principle, which allows contracting authorities to define the objective to be reached, especially in terms of performance and technical specifications, nonetheless requires that any measure chosen be both necessary and appropriate in relation to the objective set.

Thus, for example, when selecting candidates, a Member State may not impose technical, professional or financial conditions which are excessive and disporportionate to the subject of the concession.

The principle of proportionality also requires that competition and financial stability be reconciled; the duration of the concession must be set so that it does not limit open competition beyond what is required to ensure that the investment is paid off and there is a reasonable return on invested capital ([56]), whilst maintaining a risk inherent in exploitation by the concessionaire.

3.1.4. **Mutual recognition**

The principle of mutual recognition has been laid down by the Court and gradually defined in greater detail in a large number of judgments on the free circulation of goods, persons and services.

According to this principle, a Member State must accept the products and services supplied by economic operators in other Community countries if the products and services meet in like manner the legitimate objectives of the recipient Member State ([57]).

The application of this principle to concessions implies, in particular, that the Member State in which the service is provided must accept the technical specifications, checks, diplomas, certificates and qualifications required in another Member State if they are recognised as equivalent to those required by the Member State in which the service is provided ([58]).

3.1.5. **Exceptions provided for by the Treaty**

Restrictions on the free movement of goods, the freedom of establishment and the freedom to provide services are allowed only if they are justified by one of the reasons stated in Articles 30, 45, 46 and 55 (ex Articles 36, 55, 56 and 66) of the Treaty.

With particular reference to Article 45 (ex Article 55) (which allows restrictions on the freedom of establishment and the freedom to provide services in the case of activities connected, even occasionally, with the exercise of official authority), the Court has on numerous occasions stressed ([59]) that 'since it derogates from the fundamental rule of freedom of establishment, Article 45 (ex Article 55) of the Treaty must be interpreted in a manner which limits its scope to what is strictly necessary in order to safeguard the interests which it allows the Member States to protect'. Such exceptions must be restricted to those activities referred to in Articles 43 and 49 (ex Articles 52 and 59), which in themselves involve a direct and specific connection with the exercise of official authority ([60]).

Consequently, the exception included in Article 45 (ex Article 55) must apply only to cases in which the concessionairs directly and specifically exercises official authority.

This exception therefore does not automatically apply to activities carried out by virtue of an obligation or an exclusivity established by law or qualified by the national authorities as being in the public interest ([61]). It is true that any activity delegbated by the public authorities normally has a connotation of public interest, but this stil does not mean that such activity necessarily involves exercising official authority.

As an example, the Court of Justice dismisses application of the exception under Article 45 (ex Article 55) on the basis of findings such as:

— the activities transferred remained subject to supervision by the official authorities, which had at their disposal appropriate means for ensuring the protection of the interests entrusted to them ([62]),

— the activities transferred were of a technical nature and therefore not connected with the exercise of official authority ([63]).

As stated above, the principle of proportionality requires that any measure restricting the exercise of the freedoms provided for in Articles 43 and 49 (ex Articles 52 and 59) should be both necessary and appropriate in the light of the objectives pursued ([64]). This implies, in particular, that in the choice of the measures for achieving the objective pursued, the Member State must give preference to those which least restrict the exercise of these freedoms ([65]).

Furthermore, with regard to the freedom to provide services, the host Member State must check that the interest to be safeguarded is not safeguarded by the rules to which the applicant is subject in the Member State where he normally pursues his activities.

3.1.6. **Protection of the rights of individuals**

In consistent case law on the fundamental freedoms guaranteed by the Treaty, the Court has stated that decisions to refuse or reject must state the reasons and must be open to judicial appeal by the affected parties ([66]).

These requirements are generally applicable since, as the Court has stated, they derive from the constitutional traditions common to the Member States and enshrined in the European Convention on Human Rights ([67]).

They are therefore also applicable to individuals who consider that they have been harmed by the award of a concession within the meaning of the communication.

3.2. SPECIFIC PROVISION OF DIRECTIVE 93/37/EEC ON WORKS CONCESSIONS

The Commission considers it worthwhile to point out that the rules and principles explained above are applicable to works concessions. However, Directive 93/37/EEC also provides a specific system for these which includes, among other things, advertising rules.

It goes without saying that, for concessions whose value is below the threshold laid down by Directive 93/37/EEC, only the rules and principles of the Treaty are applicable.

3.2.1. **The upstream phase: choice of concessionaire**

3.2.1.1. *Rules on advertising and transparency*

Awarding authorities must publish a concession notice in the *Official Journal of the European Communities* according to the model laid down in Directive 93/37/EEC to put the contract up for competition at the European level ([68]).

A problem encountered by the Commission involves the award of concessions between public entities. Some Member States seem to consider that the provisions of Directive 93/37/EEC applicable to works concessions do not apply to contracts concluded between a public authority and a legal person governed by public law.

Nevertheless, Directive 93/37/EEC requires a preliminary advertisement for all contracts for public works concessions, irrespective of whether the potential concessionaire is private or public. Furthermore, Article 3(3) of Directive 93/37/EEC expressly states that the concessionaire can be one of the awarding authorities covered by the directive, which implies that this type of relation is subject to publication in accordance with Article 3(1) of the same directive.

3.2.1.2. *Choice of type of procedure*

As far as works concessions are concerned, the grantor is free to choose the most appropriate procedure, and in particular to begin negotiated procedures.

3.2.2. **The downstream phase: contracts awarded by the contract holder** ([69])

Directive 93/37/EEC lays down certain rules on contracts awarded by public works concessionaires for works for a value of EUR 5 000 000 or more. However, they vary according to the type of concessionaire.

If the concessionaire is an awarding authority within the meaning of the Directive, the contracts for such works must be awarded in full compliance with all the Directive's provisions on public works contracts ([70]).

If the concessionaire is not an awarding authority, the Directive stipulates that he must comply only with certain advertising rules. However, these rules are not applicable when the concessionaire awards works contracts to affiliated undertakings within the meaning of Article 3(4) of the Directive. The Directive also stipulates that a comprehensive list of such firms must be enclosed with the application for the concession and must be updated following any subsequent changes in the relationship between firms. Since this list is comprehensive, the concessionaire may not cite the non-applicability of the advertising rules as grounds for awarding a works contract to a firm which does not figure on the abovementioned list.

Consequently the concessionaire is always obliged to make known his intention to award a works contract to a third party whether or not he is an awarding authority.

Lastly, the Commission considers that a Member State is in breach of the provisions of Directive 93/37/EEC on works carried out by third parties if, without any invitation to tender, it uses as an intermediary a firm with which it is linked to award works contracts to third-party firms.

3.2.3. **Rules applicable to review**

Article 1 of Directive 89/665/EEC provides that 'Member States shall take the necessary measures to ensure that [. . .] decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible' in the conditions set out in the Directives, 'on the grounds that such decisions have infringed Community law in the field of public procurement or national rules implementing that law'.

This provision of the Directive applies to works concessions ([71]).

The Commission also draws attention to the requirements of Article 2(7) of Directive 89/665/EEC, which stipulates that 'the Member States shall ensure that decisions taken by bodies responsible for review procedures can be effectively enforced.'

This implies that the Member States must not take any material or procedural measures which might render ineffektive the mechanisms introduced by this Directive.

As for concessionaires who are awarding authorities, in addition to the obligations already mentioned above, public contracts awarded by them are subject to the obligation to state reasons laid down in Article 8 of Directive 93/37/EEC, which makes it compulsory for the awarding authority to give the reasons for its decision within fifteen days, and to the review procedures provided for by Directive 89/665/EEC.

3.3. CONCESSIONS IN THE UTILITIES SECTORS

Directive 93/38/EEC on contracts awarded by entities operating in the water, energy, transport and telecommunications sectors (hereinafter referred to as the 'utilities Directive') does not have any specific rules either on works concessions or on service concessions.

In deciding which rules apply, the legal personality of the grantor as well as his activity are therefore decisive elements. There are several possible situations.

In the first case, the State or other public authority not operating specifically in one of the four sectors governed by the utilities Directive awards a concession involving an economic activity in one of these four sectors. The rules and principles of the Treaty described above apply to this award, as does the works Directive if it is a works concession.

In the second case, a public authority operating specificially in one of the four sectors governed by the utilities Directive decides to grant a concession. The rules and principles of the Treaty are therefore applicable insofar as the grantor is a public entity. Even in the case of a works concession, only the rules and principles of the Treaty are applicable, since the works Directive does not cover concessions granted by an entity operating specifically in one of the four sectors governed by Directive 93/38/EEC.

Lastly, if the grantor is a private entity, it is not subject to either the rules or the principles described above ([72]).

The Commission is confident that the publication of this communication will help to clarify the rules of the game and to open up markets to competition in the field of concessions.

Moreover, the Commission wishes to emphasise that the transparency which the publication of this communication provides in no way prejudices possible future proposals for legislation on concessions, if this becomes necessary to reinforce legal certainty.

Lastly, the Court, which currently has preliminary matters before it ([73]), may further clarify elements deriving from the rules of the Treaty, the Diretives and case law. This communication may therefore be supplemented in due course in order to take these new elements into account.

([1]) OJ C 94, 7.4.1999, p. 4.

([2]) The Commission wishes to thank the economic operators, representatives of collective interests, public authorities and individuals whose input helped to improve this communication.

([3]) See point 2.1.2.4 of the Commission communication on public procurement in the European Union, COM(98) 143, adopted on 11 March 1998.

([4]) Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ L 199, 9.8.1993, p. 54).

([5]) Council Directive 93/37/EEC, mentioned above.

([6]) Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ L 209, 24.7.1992, p. 1). Council Directive 93/36/EEC of 14 July 1993 coordinating procedures for the award of public supply contracts (OJ L 199, 9.8.1993, p. 1). Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 199, 9.8.1993, p. 84).

([7]) The best-known example of a public works concession is a contract whereby a State grants a company the right to build and exploit a motorway and authorises it to earn revenue by charging tolls.

([8]) Verification will have to be on a case by case basis, taking account of various elements such as the subject matter, duration and the amount of the contract, the economic and financial capacity of the concessionaire, as well as any other useful element which helps establish that the concessionaire effectively carries risk.

([9]) If recovery of expenditure were guaranteed by the awarding authority without the risk involved in the management of the construction, there would be no element of risk and the contract should be regarded as a works contract rather than a concession contract. Moreover, if the concessionaire receives whether directly or indirectly during the course of the contract or even when the contract comes to an end, payment (by way of reimbursement, covering losses etc.) other than connected with exploitation, the contract could no longer be regarded as a concession. In this situation, the compatibility of any subsequent financing should be considered in the light of any relevant Community law.

([10]) For example, the Commission has already been faced with cases where a consortium composed of contractors and banks undertook to carry out a project to meet the needs of the awarding authority, in exchange for reimbursement by the awarding authority of the loan taken out by the contractors with the banks, together with a profit for the private partners. The Commission interpreted these as public works contracts since the consortium did not undertake any exploitation, and therefore bore no attendant risk. The Commission came to the same conclusion in another case where, although the private partner carrying out the work was ostensibly exploiting the construction, the public authority had in fact guaranteed that he would receive compensation. The terms of this guarantee were such that the public authority in effect bore the exploitation risks.

([11]) For example, if the toll for a motorway is set by the State at a level which does not cover operating costs.

([12]) For example, risks arising from changes in legislation during the life of the contract (such as changes in environmental protection which make it necessary to modify the construction, or changes in tax law which disrupt the financial arrangements in the contract) or the risk of technical obsolescence. Moreover, this type of risk is more likely to arise in the context of concessions, bearing in mind that these normally extend over a relatively long period of time.

([13]) It should be noted that economic risk exists where income depends on the amount of use. This holds true even in the case of a nominal toll, i.e. one borne by the grantor.

([14]) In a case investigated by the Commission, although the private partner was ostensibly exploiting the construction, the public authority had guaranteed that he would receive compensation. The terms of this guarantee were such that the public authority in effect bore the exploitation risks.

([15]) The absence of a reference to the concept of service concessions in the services Directive calls for some comment. Although, when preparing this Directive, the Commission had proposed including a special arrangement for this type of concession similar to the existing arrangement for works concessions, the Council did not accept this proposal. The question of wheather the granting of service concessions falls entirely under the arrangements introduced by the services Directive was therefore raised. As specified above, this Directive applies to 'contracts for pecuniary interest concluded in writing between a service provider and a contracting authority', with certain exceptions which are described in the Directive and which do not include concession contracts.
A literal interpretation of this definition, followed by certain authors, could lead to inclusion of concession contracts within the scope of the services Directive, since these are for pecunciary interest and concluded in writing. This approach would mean that the granting of a service concession would have to comply with the rules set out in this Directive, and would hence be subject to a more complex procedure than works concessions.
However, in the absence of Court case law on this point, the Commission has not accepted this interpretation in the actual cases it has had to investigate. A preliminary matter pending before the Court raises the question of the definition of service concessions and the legal arrangements which apply to them (Case C-324/98 Telaustria Verlags Gesellschaft mbH v. Post & Telekom Austria (Telaustria)).

([16]) Judgment of 26 April 1994, Case C-272/91 Commission v. Italy (Lottomatica), ECR I-1409.

([17]) Conclusions of Advocate-General La Pergola in Case C-360/96. Arnhem.
Conclusions of Advocate-General Alber in Case C-108/98, RI.SAN Srl v. Comune d'Ischia.

([18]) In its judgment of 10 November 1998 in Case C-360/98 (Arnhem), para. 25, the Court concluded that it could not be a public service concession on the grounds that the remuneration consisted solely of a sum paid by the public authority and not of the right to operate the service.

([19]) Conclusions of the Advocate-General in the Arnhem case; Conclusions of the Advocate-General in the RI.SAN Srl case; both referred to above.

([20]) Judgment of 19 April 1994, case C-331/92, Gestión Hotelera, ECR I-1329.

([21]) Judgment of 5 December 1989, Case C-3/88, Data Processing, ECR, p. 4035.

([22]) Moreover, the Court has already applied the same principle in order to delimit supply contracts and services in its judgment of 18 November 1999 on Case C-107/98, Teckal Srl v. Comune di Viano and AGAC di Reggio Emilia (Teckal).

([23]) In the largest sense, i.e. the acts adopted by all public bodies belonging to the organisation of the State (local authorities, regions, departments, autonomous communities, municipalities) as well as any other entity which, even if it has its own legal existence, is linked to the State in such a tight manner that it is to be considered to be part of the State's organisation. The notion of acts of State also comprises acts which are attributable to the State, that is acts for which the public authorities are responsible, even though not adopted by them, given that the authorities can intervene to prevent their adoption or impose amendments.

([24]) A similar line of reasoning should be followed for supply concessions, which must be viewed in the light of Articles 28 to 30 (ex Articles 30 to 36) of the Treaty.

([25]) For example, taxi concessions, authorisations to use the public highway (newspaper kiosks, café terraces), or acts relating to pharmacies and filling stations.

([26]) Similar to 'in-house' relationships. The latter issue was first analysed by Advocates-General La Pergola (in the Arnhem case referred to above), Cosmas (in the Teckal case referred to above) and Alber (in the RI.SAN case referred to above).

([27]) In the abovementioned Teckal case, the Court laid down that, for Directive 93/36/EEC to apply, 'it is, in principle, sufficient if the contract was concluded between, on the one hand, a local authority and, on the other, a person legally distinct from that local authority', and added 'The position can be otherwise only in the case where the local authority exercises over the person concerned a control which is similar to that which it exercises over its own departments and, at the same time, that person carries out the essential part of its activities with the controlling local authority or authorities' (recital 50).

([28]) Cases C-94/99 ARGE and C-324/98 Telaustria referred to above.

([29]) In the audiovisual sector, account should be taken of the Protocol on the system of public broadcasting in the Member States, annexed to the Treaty of Amsterdam, amending the Treaty on European Union (in force since 1 May 1999).

([30]) Judgments of 30 April 1974, Case 155/73, Sacchi, and of 18 June 1991, Case C-260/89, Elleniki Radiophonia.

([31]) Elleniki Radiophonia judgment mentioned above, point 10.

([32]) Elleniki Radiophonia judgment mentioned above, point 12.

([33]) It is worth pointing out that in the transport sector, the relevant rules on freedom to provide services are set out in Article 51 (ex Article 61) which refers to Articles 70 to 80 (ex Articles 74 to 84) of the Treaty. This is without prejudice to the fact that as the Court has consistently held, the general principles of Community law are applicable to the sector (see the judgments of 4 April 1974, Case C-167/73, Commission v. France, of 30 April 1986. Joined Cases 209/84 and 213/84, Ministère Public v. ASJES e. al., of 17 May 1994, Case C-18/93, Corsica ferries, of 1 October 1998, Case C-38/97 Autotrasporti Librandi snc v. Cuttica).
Moreover, transport services by rail, road and inland waterway are covered by Regulation (EEC) No 1191/69, as amended by Regulation (EEC) No 1893/91, which set out the mechanisms and procedures that public authorities can employ to ensure that their objectives for public transport are met.

([34]) Obviously, acts and behaviour of the concessionaire to the extent that these are attributable to the State within the meaning of the case law of the Court of Justice are governed by the above rules and principles.

([35]) Judgment of 9 July 1987 Joint Cases 27/86; 28/86 and 29/86, Bellini.

([36]) Judgments of 10 March 1987, Case 199/85, Commission v. Italy, and of 17 November 1993, Case C-71/92, Commission v. Spain.

([37]) Lottomatica judgment mentioned above. In this judgment, the Court of Justice ruled that, in view of the facts, the tasks of the concessionaire were limited to activities of a technical nature and, as such, were subject to the provisions of the Treaty.

([38]) The Commission points out that restrictive but non-discriminatory measures are contrary to Articles 43 (ex Article 52) and 49 (ex Article 59) of the Treaty if they are not motivated by overriding reasons of public interest worth protecting. This is the case when the measures are neither appropriate nor necessary for achieving the objective in question.

([39]) Judgment of 8 October 1980. Case 810/79, Überschär.

(40) Judgment of 13 July 1993, Case C-330/91, Commerzbank; also see Judgment of 3 February 1982, Joined Cases 62 and 63/81, Seco and Desquenne.

(41) Judgment of 26 February 1992, Case C-357/89.

(42) Judgment of 7 July 1992, Case C-295/90.

(43) Judgment of 22 June 1993, Case C-243/89, Storebaelt, point 37.

(44) Judgment of 25 April 1996, Commission v. Belgium, Case C-87/94. Walloon Buses. See also Judgment of the Court of First Instance (hereinafter referred to as the 'CFI') of 17 December 1998, T-203/96, Embassy Limousines & Services.

(45) In this respect, it is worth emphasising that this Communication does not prejudge the interpretation of specific transport rules provided for by the Treaty at in current or future regulations.

(46) Thus, for example, even if the specifications provide for the possibility for candidates to make technical improvements to the solutions proposed by the awarding authority (and this will often be the case for complex infrastructure projects), such improvements may not relate to the basic requirements of a project and must be delimited.

(47) Data processing, judgment mentioned above, point 30.

(48) Walloon Buses Judgment, referred to above, point 54.

(49) Judgment of 18 November 1999, Case C-275/98, Unitron Scandinavia, point 31.

(50) Transparency can be ensured, among other means, by way of publishing a tender notice, or pre-information notice in the daily press or specialist journals or by posting appropriate notices.

(51) Judgment of 11 July 1989, Case 265/87, Schröder, ECR p. 2237, point 21.

(52) Judgment of 27 October 1993, Case 127/92, point 27.

(53) Judgment of 19 June 1980, Joined Cases 41/79, 121/79 and 796/79, Testa et al., point 21.

(54) This is for example the case concerning the obligation to achieve a high level of environmental protection regarding application of the precautionary principle.

(55) See for example the judgment of 17 May 1984, Case 15/83, Denkavit Netherlands or the judgment of the CFI of 19 June 1997, Case T-260/94, Air Inter SA, point 14.

(56) Cf. the CFI's recent case law according to which the Treaty is applicable 'when a measure adopted by a Member State constitutes a restriction of the freedom of establishment of nationals of other Member States on its territory and at the same time provides advantages to an enterprise by granting it an exclusive right, unless the aim of the measure taken by the State is legitimate and compatible with the Treaty and is permanently justified by overriding considerations of general interest [. . .]'. In such cases, the CFI adds that 'it is necessary that the measure taken by the State be suited to ensuring the objective it is pursuing is achieved, and does not go beyond what is required to achieve that objective.' (Judgment of 8 July 1999, Case T-266/97, Vlaamse Televisie Maatschappij NV, point 108).

(57) This principle derives from case law relating to freedom of establishment and freedom to provide services (in particular in the Vlassopoulou Judgment of 7 May 1991 (Case C-340/89) and the Dennemeyer Judgment of 25 July 1991 (Case C-76/90). In the first Judgment, the Court of Justice found that 'even if applied without any discrimination on the basis of nationality, national requirements concerning qualifications may have the effect of hindering nationals of the other Member States in exercising their right of establishment guaranteed to them by Article 43 (ex Article 52) of the EC Treaty. That could be the case if the national rules in question took no account of the knowledge and qualifications already acquired by the person concerned in another Member State.' In the Dennemeyer Judgment the Court stated in particular that 'a Member State may not make the provision of services in its territory subject to compliance with all the conditions required for establishments and thereby deprive of all practical effectiveness the provisions of the Treaty whose object is, precisely, to guarantee the freedom to provide services.' Lastly, in the Webb case (of 17 December 1981, Case 279/80), the Court added that the freedom to provide services requires that '[. . .] the Member States in which the service is provided [. . .] takes into account the evidence and guarantee already produced by the provider of the services for the pursuit of his activities in the Member State in which he is established.'

(58) For example, the Member States in which the service is provided must accept the equivalent qualifications already acquired by the service provider in another Member State which attest to his professional, technical and financial capacities. Apart from applying the technical harmonisation directives, agreements on mutual recognition of voluntary certification systems can constitute proof that the qualifications of enterprises are equivalent; these agreements can be based on accreditation, which provide proof that the conformity assessment body is competent.

(59) Judgment of 15 March 1988, Case 147/86, Commission v. Greece.

(60) Judgment of 21 June 1974, Case 2/74, Reyners.

(61) Conclusions of Advocate-General Mischo in Case C-3/88, Data Processing, referred to above.

(62) Judgment of 15 March 1988, Case 147/86, referred to above.

(63) Cases C-3/88 and C-272/91, Data Processing and Lottomatica, referred to above.

(64) Case T-260/94, Air Inter SA, referred to above. For example, the Court rejected the application of the exception relating to public policy when it was supported by insufficient reasons and the objective could be achieved by other means which did not restrict freedom of establishment or freedom to provide services (recital 15 of the Judgment C-3/88, Data Processing, referred to above.)

(65) Judgment of 28 March 1996, Case C-272/94, Guiot/Climatec.

(66) Judgment of 7 May 1991, Case C-340/89, Vlassopoulou, point 22.

(67) Judgment of 15 October 1987, Case 222/86, Heylens, point 14.

(68) 'In order to meet the Directive's aim of ensuring development of effective competition in the award of public works contracts, the criteria and conditions which govern each contract must be given sufficient publicity by the authorities awarding contracts' (Judgment of 20 September 1988, Case 31/87, Beentjes, point 21).

([69]) It should be reiterated that, under Article 3(2) of the Directive, the contracting authority may require the concessionaire to award to third parties contracts representing a minimum percentage of the total value of the work. The contracting authority may also request the candidates for concession contracts to specify this minimum percentage in their tenders.

([70]) This is also the case for service concessionaires who are awarding authorities under these Directives. The provisions of the Directives apply to procedures to award concession contracts.

([71]) In this context, it should be noted that Advocate-General Elmer, in Case C-433/93, Commission v. Germany, found that according to the case law of the Court (the Judgments of 20 September 1988, in Case 31/87, Beentjes, and 22 June 1989, in Case 103/88, Constanzo) 'the Directives on public contracts confer on individuals rights which they may exercise, in certain conditions, directly before the national courts, *vis-à-vis* the State and awarding authorities'. The Advocate-General also maintainted that Directive 89/665/EEC, adopted after this judgment, did not seek to restrict the rights which case law confers on individuals *vis-à-vis* public authorities. On the contrary, the Directive sought to reinforce 'the existing arrangements at both national and Community levels . . . particularly at a stage when infringements can be corrected' (second recital of Directive 89/665/EEC).

([72]) Nonetheless, insofar as the concessionaire has exclusive or special rights for activities governed by the Utilities Directive, he must comply with this Directive's rules on public contracts.

([73]) For example, the Telaustria case referred to above.

Prior notification of a concentration

(Case COMP/M.1961 — NHS/MWCR)

(2000/C 121/03)

(Text with EEA relevance)

1. On 18 April 2000 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 the undertakings Nuova Holding Subalpina SpA (NHS), belonging to the Sanpaolo/IMI Group, and the MWCRLux Sarl, controlled by Schroders Group, acquire, within the meaning of Article 3(1)(b) of the Regulation, joint control of the Italian company MWCR SpA, by way of purchase of assets.

2. The business activities of the undertakings concerned are:

— NHS: retail banking and financial services,

— MWCRLux Sarl: retail banking and financial services.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference COMP/M.1961 — NHS/MWCR, to:

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

([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.

Notice published pursuant to Article 19(3) of Council Regulation No 17 [1] concerning case COMP/C.2 — 37.576 — UEFA's broadcasting rules

(2000/C 121/04)

(Text with EEA relevance)

1. THE NOTIFICATION

1. On 19 July 1999 the 'Union des Associations Européennes de Football' (UEFA) applied for a negative clearance under Article 81(1) of the EC Treaty or, failing this, an exemption under Article 81(3) of the EC Treaty in respect of its 'Regulations governing the implementation of the UEFA statutes, 1997 edition' (broadcasting regulations). Within the territories of UEFA's member associations, the broadcasting regulations provide national football associations with a possibility to block a limited number of hours during which football may not be broadcast on TV. The purpose of the broadcasting regulations is to provide national football associations with a limited opportunity to schedule domestic football fixtures at times when they are not liable to be disrupted by the contemporaneous broadcasting of football to the detriment of stadium attendance and amateur participation in the sport.

2. UEFA is an international organisation of 51 national football associations. It has its seat in Nyon in Switzerland. UEFA membership is open to all Eurpean National Football Associations. As a rule, there is a single association in each Member State of the EEA, which organises the sport at national level, except for the United Kingdom, where for historical reasons England, Wales, Scotland and Northern Ireland each have their own association. As the European confederation recognised by FIFA (Fédération Internationale de Football Association), UEFA is the governing body for European football. UEFA also organises international football competitions and tournaments at European level such as the UEFA European Football Championships, the UEFA Champions League and the UEFA Cup.

3. UEFA first introduced its broadcasting rules in 1988. The rules, which were notified to the Commission on 19 May 1992, were anmended on several occasions over the years.

4. The notified broadcasting rules have been subject to several complaints from broadcasters, which found that the rules restricted competition, a concern which was shared by the Commission. The Commission sought to find an amicable solution together with the parties, which would also be compatible with EC competition law. A mediator was appointed in 1994 who concluded in 1996 that a compromise solution could not be found.

5. On 16 July 1998, the Commission issued a statement of objections finding that the broadcasting regulations applicable at that time were an infringement of Article 81(1) and that they were not eligible for exemption under Article 81(3). On 15 October 1998, UEFA presented a proposal for new broadcasting regulations to the Commission. Based on the principles enshrined in this proposal, UEFA adopted new broadcasting regulations on 2 July 1999, replacing the ones, which were the subject of the statement of objections. UEFA withdrew its 1992 notification on 19 July 1999 when it notified the new broadcasting regulations.

6. The Commission requested UEFA to reduce the scope of the restrictions imposed on the televising of football further to match the time when football is actually being played in a given territory, i.e. to correspond to the main domestic fixture schedule. Consequently, UEFA was requested to accept that national football associations may only block the televising of football 2½ hours and on only one day of the weekend. The reference to the main domestic fixture schedule moreover implies that national football associations may not block for the televising of football within their territory when no football is being played there, e.g. during winter breaks. UEFA accepted the Commission's request on 31 March 2000. The Commission's preliminary view is therefore that the competiton concerns that were expressed in the Commission's statement of objections will no longer be present in respect of the new revised broadcasting regulations.

2. THE NOTIFIED ARRANGEMENT

7. The new revised broadcasting regulations may be summarised in the following manner.

8. Any transmission of football matches can only take place in accordance with these regulations irrespective of whether the transmission is free TV of pay-TV, live or deferred, of full length or in excerpts.

Transmission-free periods

9. The broadcasting regulations permit each UEFA member association to prohibit the TV transmission of football during 2½ hours on Saturday or Sunday within its territory [2]. The national association must decide on the

[1] OJ 13, 21.2.1962, p. 204/62.

[2] A summary of the national associations implementation of UEFA's broadcasting regulations can be found on UEFA's homepage on the following address: http://www.uefa.com/UEFA/index.asp?Filename=Regulations/Statutes_Media_Article44.html

transmission-free period one month, at the latest, before the beginning of the domestic season. These transmission-free hours must correspond to 'the main domestic fixture schedule'. The transmission-free hours do not apply to the transmission of non-sporting programmes (e.g. news programmes) which may include short, recorded excerpts of football matches.

10. The broadcasting regulations apply to the broadcasting of both domestic and foreign football. Member Associations are prohibited from discriminating against foreign football.

Exceptions to the transmission-free periods

11. The broadcasting regulations contain some possible exceptions to the transmission-free periods. Upon request from the national association to UEFA the following football matches may be transmitted during the 'blocked' hours: 1. matches involving the senior national representative team, 2. matches required to be broadcast live according to national legislation, and 3. any other match of national importance. Should a member association decide to transmit a match under the terms of this provision, it must also accept the transmission of any other match in its territory during the same period. Member associations must notify UEFA at least 45 days in advance of the dates and kick-off times of the matches to be exeptionally broadcast during the blocked hours.

Procedural provisions applying to national associations' implementation of the transmission-free periods

12. The decision of national football associations to adopt transmission-free periods must be notified to UEFA in writing at the time of the decision and accompanied by adequate proof that the chosen hours actually correspond to the main domestic fixture schedule. UEFA shall publish relevant information and act as the governing body for these Regulations. If a national football association fails to notify UEFA in due time of its decision, no transmission-free hours will apply to TV broadcasts of football that year for that national football association.

13. It is the responsibility of the organising national football association to ensure that all parties concerned respect the provisions of the broadcasting regulations and any member association can complain to UEFA's Control and Disciplinary Body which is empowered to impose disciplinary measures according to the provisions of UEFA's Statutes.

3. THE MARKET CONCERNED

14. Regardless of whether matches are played in national or European tournaments, the TV rights to football are generally sold to broadcasters on a national basis within the EEA. Viewer preferences, which reflect the participation of national teams or players, influence the broadcasters' choice when acquiring TV rights to football matches.

4. THE COMMISSION'S INTENTIONS

15. On the basis of the foregoing, the Commission intends to take a favourable view in respect of the notified agreements. Before adopting a favourable opinion, the Commission invites third parties to send their observations within one month of the publication of this notice to the following address quoting the reference 'Case 37.576 — UEFA's broadcasting rules':

European Commission
Directorate-General for Competiton
Directorate C
Rue de la Loi/Wetstraat 200
B-1049 Brussels
Fax (32-2) 296 98 04.

Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty

Cases where the Commission raises no objections

(2000/C 121/05)

(Text with EEA relevance)

Date of adoption of the decision: 14.9.1998

Member State: Belgium (Objective 2 regions Limburg and Turnhout)

Aid No: N 131/98

Title: Modification of the 'Aid scheme aimed at the promotion of R&D in large companies and SMEs (Limburg and Turnhout)' (N 308/96)

Objective: Regional development

Legal basis: Doelstelling 2-programma's voor Limburg en Turnhout

Budget: ECU 11,4 million for 1997 to 1999

Aid intensity or amount:

— Large firms: 60 % gross — 45 % gross — 40 % gross

Maximum ECU 150 000 per company during the programming period

— SME's: 60 % gross — 50 % gross

Maximum ECU 150 000 per company during the programming period

Duration: The scheme expires on 31.12.1999

Date of adoption of the decision: 17.9.1998

Member State: The Netherlands — Noord-Nederland

Aid No: N 473/98

Title: Modification of the 'Investment Aid Scheme for Noord-Nederland'

Objective: Regional development

Legal basis: Verordening investeringspremieregeling Noord-Nederland 1996

Budget: NLG 50 million annually

Aid intensity or amount: 20 % gross (+ 10 % gross for SMEs)

Duration: Until 31.12.1999

Date of adoption of the decision: 22.12.1999

Member State: Federal Republic of Germany (Brandenburg)

Aid No: NN 129/99 (ex N 444/98)

Title: Spremberger Tuche GmbH

Objective: Restructuring — Processing of textiles

Legal basis: Ad hoc

Budget: Land Brandenburg

Aid intensity or amount: Approximately EUR 2 356 500 million (DEM 4 713 300)

Duration: 1998 to 2000

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/sg/sgb/state_aids

Date of adoption of the decision: 18.1.2000

Member State: Germany (Mecklenburg-Vorpommern)

Aid No: NN 19/98

Title: Bau Union Ost Group

Objective: Restructuring — Construction

Legal basis: Ad hoc

Budget: Bundesanstalt für vereinigungsbedingte Sonderaufgaben

Aid intensity or amount: EUR 30 170 000 (DM 59 000 000)

Duration: 1996 to 1999

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/sg/sgb/state_aids

Date of adoption of the decision: 18.1.2000

Member State: Spain (Canary Islands)

Aid No: N 708/98

Title: Operating aid scheme: Special Economic Zone (ZEC)

Objective: Regional development

Legal basis: Título V de la Ley 19/1994, del 6 de julio de 1994, parcialmente modificado por el Real Decreto nº 3/1996, del 26 de enero de 1996, la Ley 13/1996, del 30 de diciembre de 1996 y la Ley 14/1996, de 30 de diciembre de 1996; proyecto de Real Decreto Ley . . ./2000. Referencias: BOE de 7.7.1994; BOE de 27.1.1996; BOE de 31.12.1996

Budget: EUR 102 111 957

Aid intensity or amount:

Operating aid in the form of:

— corporation tax rate of 1 % (instead of the standard 35 % rate) that rises at the end of the Period to 5 %, 4,5 %, 4 % or 3,5 %, depending on the number of jobs created. An additional 20 % reduction applies to those rates in the case of firms belonging to a sector not strongly represented in the Canary Islands

— total exemption from the tax on capital transfers and documented legal acts

— total exemption from the general indirect tax in the Canary Islands (VAT)

— a reduction in local taxes

However, the maximum amount of aid in the form of a reduced corporation tax rate is subject to a ceiling determined according to the number of jobs created and according to the mobility of the activity concerned

Duration: The deadline for applications for the aid scheme is 31 December 2006. The deadline for receiving aid is 31 December 2008

Other information: The scheme forms part of the objectives of the REF (Economic and Fiscal Scheme for the Canary Islands) (N 144/96) approved by the Commission

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/sg/sgb/state_aids

Date of adoption of the decision: 28.2.2000

Member State: Austria

Aid No: N 751/99

Title: State aid granted by the Province of Lower Austria in support of the economy 2000 to 2006 research and development

Objective: Research and development

Legal basis: LGBl. Nr. 7300-1, Gesetz über den NÖ Wirtschaftsförderungs- und Strukturverbesserungsfonds

Budget: ATS 90 million

Aid intensity or amount: Up to 50 % gross

Duration: 2000 to 2006

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/sg/sgb/state_aids

Date of adoption of the decision: 1.3.2000

Member State: Spain (Andalusia)

Aid No: N 442/99

Title: Research and development investment aid scheme

Objective: Regional development and R&D

Legal basis: Proyecto de Orden por la que regula un programa de ayuda para la promoción y desarrollo del sector industrial

Budget: ESP 22 000 million (EUR 132,222 million)

Aid intensity or amount:

— 30 % gge for investment aid

— 25 %-50 % gge for R&D aid

— 50 % gge for feasibility studies prior to reasearch or development activities

Duration: 2000 to 2006

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/sg/sgb/state_aids

Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty

Cases where the Commission raises no objections

(2000/C 121/06)

(Text with EEA relevance)

Date of adoption of the decision: 2.2.2000

Member State: Germany (Saxony-Anhalt)

Aid No: NN 90/98

Title: Aid in favour af Armaturen Technik Magdeburg GmbH

Objective: Restructuring — Production of valves

Legal basis: Ad hoc

Budget: Bundesanstalt für vereinigungsbedingte Sonderaufgaben State of Saxony-Anhalt

Aid intensity or amount: Approximately EUR 1 533 875 (DEM 3 000 000)

Duration: 1996 to 2001

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/sg/sgb/state_aids

Date of adoption of the decision: 2.2.2000

Member State: Italy (Friuli Venezia Giulia)

Aid No: N 144/99

Title: Environmental aid to Servola SpA

Objective: Environmental protection (ECSC steel)

Budget: ITL 545,13 million (EUR 0,3 million)

Aid intensity or amount: 4,8 % NGE

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/sg/sgb/state_aids

Date of adoption of the decision: 7.3.2000

Member State: Portugal

Aid No: N 8/2000

Title: Extension of the business modernisation aid scheme (SIRME — NN 100/98, ex N 393/98)

Objective: Restructuring of firms in financial difficulties

Legal basis: Despacho Ministerial

Budget: No budgetary impact

Aid intensity or amount: Variable

Duration: Until end 2003

Other information: Annual report; individual notification of aid to large firms and to firms in sectors covered by specific Community state aid rules

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/sg/sgb/state_aids

Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty

Cases where the Commission raises no objections

(2000/C 121/07)

Date of adoption of the decision: 22.3.2000

Member State: Italy (Piedmont)

Aid No: N 398/98

Title: 'Institution of wine districts and routes in Piemonte'

Objective: To facilitate the establishment of wine routes and wine districts in the Italian Region Piemonte through State aids for promotion, advertising, studies, availability of facilities, training, start-up aids

Legal basis: Legge regionale 9 agosto 1999 n. 20. Disciplina dei distretti dei vini e delle strade del vino del Piemonte. Modifiche della legge regionale 12 maggio 1980, n. 37

Budget: Approximately ITL 3 700 millions (approximately EUR 1 850 000) for each year

Aid intensity or amount: Different according to the different measures

Duration: Undetermined

Other information: The measure will be implemented in accordance with the undertakings of the competent authorities contained in their letters dated 13.9.1999 and 4.1.2000

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/sg/sgb/state_aids

Date of adoption of the decision: 14.3.2000

Member State: Italy (Bolzano)

Aid No: NN 123/99

Title: Conditions and modalities concerning premia for mountain pasturage

Legal basis: Determinazione dei criteri e delle modalità per la concessione di premi a favore dell'alpeggio, 20.9.1999

Budget: EUR 5 million

Aid intensity or amount: Up to EUR 60,4 per hectare

Duration: Unlimited

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/sg/sgb/state_aids

Date of adoption of the decision: 14.3.2000

Member State: Germany (Bremen)

Aid No: NN 128/99

Title: Investment aid for a orange juice processing plant.

Legal basis: Kaufvertrag 596/1999 M

Budget: Maximally DEM 10,22 million

Duration: One off

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/sg/sgb/state_aids

Date of adoption of the decision: 14.3.2000

Member State: Italy (Piedmont)

Aid No: N 165/99

Title: Drainage and irrigation standards

Objective: To set up a consortium and rationalise irrigation networks

Legal basis: Legge n. 21 del 9 agosto 1999 (ex disegno di legge n. 374) «Norme in materia di bonifica e di irrigazione»

Budget: ITL 10 billion (approximately EUR 5 165 000) over the next three years

Aid intensity or amount: Varies depending on the measures (certain measures are not aid measures)

Duration: Unspecified

Other information: Decision taken on the basis of the undertakings given by the Italian authorities in their letters of 13.8.1999, 16.11.1999, 4.1.2000 and 9.2.2000

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/sg/sgb/state_aids

Date of adoption of the decision: 14.3.2000

Member State: Germany (Schleswig-Holstein)

Aid No: N 473/99

Title: Agricultural management advice by advisory syndicates

Objective: Support is given for the development, through advisory services, of professional agriculture, with environmental and animal friendly production methods leading to the production of high-quality products.

Legal basis: Richtlinie über die Förderung der landwirtschaftlichen Unternehmensberatung durch Beratungsringe

Budget: DEM 2,5 million per year

Aid intensity or amount: Variable (currently approximately 37 %)

Duration: Indefinite

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/sg/sgb/state_aids

Date of adoption of the decision: 17.3.2000

Member State: The Netherlands

Aid No: N 19/2000

Title: Prolongation of measure N 718/95 (area-specific environmental policy)

Objective: Area-specific environmental policy

Legal basis: Wet milieubeheer

Budget: NLG 40 million

Aid intensity or amount: Measure not constituting aid

Duration: One year

Other information: The Dutch authorities assured that support for undertakings where *de minimis* does not apply, would be notified separately in conformity with Article 88(3) of the Treaty

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/sg/sgb/state_aids

III

(Notices)

COMMISSION

CALL FOR PROPOSALS

Adoption of a programme of Community action on pollution-related diseases within the framework for action in the field of public health (1999-2001)

(2000/C 121/08)

1. **BACKGROUND**

The Commission is required to ensure the implementation of the Decision of the European Parliament and of the Council of 29 April 1999 adopting a programme of Community action on pollution-related diseases. The programme spans a three-year period and has an annual budget of EUR 1,3 million. The actions to be implemented under the programme cover the following areas:

A. *Actions to improve information on pollution-related diseases*

Objective: To contribute towards a better understanding of the role of pollutants in the causation or aggravation of diseases in the Community.

B. *Actions to improve knowledge and understanding of the assessment and management of pollution-related diseases*

Objective: To improve the level of knowledge and understanding of the assessment and management of pollution-related health risks.

An annual work programme provides the reference framework for the selection of projects.

2. **PURPOSE OF THE CALL FOR PROPOSALS**

The Commission services seek to receive proposals for actions in the fields concerned.

Interested parties are invited to submit an application to the Commission services in accordance with the procedure set out in section 6, taking into account the criteria for selection and financing of projects set out in section 5.

The proposals selected will qualify for Community financial assistance.

The proposals must fit within the actions and specific objectives of Points I and II of the programme annexed to the Decision of the Parliament and the Council.

Each project must be set up in a network that includes within its structure a unit in charge of administrative and scientific management and coordination, which will be the Commission's sole discussion partner.

Each proposal must aim to meet all or some of the following objectives:

— collect from various bodies data relating to the epidemiology of pollution-related diseases,

— examine the quality of existing data and identify the areas where data are lacking, in order to improve the existing base and promote the futher continuation of Community research,

— contribute towards improving the comparability of epidemiological data within the Community,

— make the information collected available and accessible to the public and to the individuals or bodies whose role is to enlighten the public on the health risks posed by pollution and on the assessment and management of pollution-related diseases,

— identify the diseases in which specific pollutants are considered to play a role, even though the link between the pollutant and the disease may not yet have been clearly demonstrated,

— support the exchange of information aimed at achieving better public understanding of pollution-related health risks.

3. **PRIORITY FIELDS COVERED BY THE PROGRAMME**

Projects must take account of the priorities established in the work programme for the year 2000, especially:

1. those which will provide an assessment of the public health impact of:

   (a) toxin-related pollution,

   (b) noise-related pollution,

   (c) waste-related pollution;

2. those which will develop the concept of environment-linked health indicators.

4. **SPECIFIC CRITERIA**

1. The project should relate to diseases end exposures that have a certain importance for public health.

2. The project should promote an integrated, multidisciplinary approach designed to yield a better understanding of the entire risk chain, from exposure through to the effects on health, taking into account the main concerns of the public in terms of risk perception and covering the range of known substances and diseases. It must develop an original approach to the problem by combining different information sources.

3. The project must identify the methodological shortcomings and gaps in knowledge which would enable the authorities to take public health measures.

4. The project must promote the collection, analysis and exchange of standardised data.

5. The project must take account of work already done under this programme, so as to avoid any duplication and promote synergy.

5. **MAIN CRITERIA FOR THE SELECTION AND FINANCING OF PROJECTS**

The selection of projects submitted under the programme will additionally be based on the following general criteria:

1. The project must be complete and be judged administratively admissible by the Commission services (e.g. the project must be submitted in triplicate, the grant application must be signed, etc.).

2. The project must present a financing plan in accordance with the Community rules on this matter, using the forms designed for this purpose.

3. The project must provide real added value for the European Community. The following activities are deemed to yield added value:

   — activities involving the participation of at least three Member States,

   — activities conducted jointly in several Member States,

   — activities which could be applied in other Member States if adapted to their conditions and cultures (pilot projects).

4. Priority will be given to large-scale projects which are suitable, methodologically relevant, innovative where appropriate and hence likely to make a real impact, and which involve, as far as possible, public bodies and/or non-governmental organisations able to demonstrate satisfactorily their competence in the fields concerned.

5. Applicants must take account of activities conducted by other Commission services and by national or international organisations such as WHO and the Council of Europe, in order to avoid any duplication and promote synergy.

6. The project must include appropriate arrangements for the evaluation, dissemination and exploitation of the results, including highlighting the support provided by the European Commission.

6. **PROCEDURE, DEADLINES AND SUBMISSION OF PROPOSALS**

Proposals must comply with the requirements set out below, otherwise they will not be taken into consideration:

— they must be drawn up using the form obtainable from the address shown below;

— they must be submitted by 31 July 2000 (as evidenced by the postmark), to the following address:

European Commission
Programme 'Pollution-related diseases' — DG SANCO/F/2
Bâtiment Euroforum
L-2920 Luxembourg
Fax (352) 43 01-345 11

7. **FINANCIAL PROVISIONS**

The following extract from the main financial provisions applying to the project is given for guidance:

1. after appropriate consultations and selection of projects the Commission services will determine the amount of financial assistance to be granted, based on the annual budget available;

2. projects are financed under the shared cost principle. If the amount granted by the Commission services is lower than the amount of aid sought by the applicant, it is up to the latter to find supplementary financing or to reduce the total cost of the project without diluting either the objectives or the content;

3. the Commission services will grant a financial contribution not exceeding 70 % of the estimated total cost of the project. If the actual expenditure is lower than the estimated total cost, the Commission's contribution will be reduced proportionally. If the actual expenditure is higher than the estimated total cost, the Commission services will pay, at the most, the sum equivalent to the percentage granted on the basis of the initial budget annexed to the contract;

4. contributions in kind may be taken into account in calculating the total estimated cost, but must not exceed 20 % of that cost;

5. all projects submitted under this call for proposals must comply with the provisions of the 'Vade-mecum on grant management';

6. the maximum annual budget available amounts to EUR 1,3 million;

7. the number of projects receiving support may be estimated at 10.

8. **PRACTICAL INFORMATION**

An information pack containing all the documents needed for submitting an application is available on written request (letter or fax) from the address given in section 6:

The pack contains:

— Decision No 1296/1999/EC published in *Official Journal of the European Communities* L 155 of 22 June 1999, p. 7,

— the 'Rules, criteria and procedures for the selection and financing of projects',

— the application form, along with a summary sheet,

— the work programme for 2000,

— the 'Vade-mecum on grant management',

— other relevant information.

Applicants interested in submitting a proposal should note that there is a single closing date each year for submission of applications, in this instance 31 July 2000.

Call for proposals on general activities of observation and analysis

(Action 6.1.2 of the Socrates programme)

(2000/C 121/09)

1. **BACKGROUND INFORMATION**

On the basis of the Decision of the European Parliament and the Council adopting the second phase of the Community programme Socrates Decision 253/2000/EC of 24 Janaury 2000, (OJ L 28, 3.2.2000, p. 1) the Commission is inviting proposals for the implementation of sub-action 6.1.2(c) and (d).

Sub-action 6.1 is part of the action 'Observation of education systems, policies and innovation' and provides for a series of steps to improve and facilitate excange of information and experience in education across the countries participating in the Socrates programme.

Participation in the Socrates programme is open to the Member States. As regards the EFTA/EEA countries (Iceland, Liechtenstein and Norway), the countries of central and eastern Europe (Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, the Czech Republic, Romania, the Solvak Republic and Slovenia), Cyprus and Malta, applications for support may be submitted by, or include establishments from these countries. This participation will nonetheless depend on the decisions and agreements concluded by the time of selection of the applications.

2. **ELIGIBLE ACTIVITIES**

Under this call for proposals the Commissions intends to award financial aid:

— **to the networking of establishments and other bodies suitably qualified to analyse education systems and policies, and organisations participating in the evaluation of the quality of teaching,**

— **to studies, analyses, pilot projects, seminars and exchanges of experts and other appropriate actions relating to matters of common educational policy interest, on the priority themes decided by the Council (see point 5 below).**

The European unit of the network of information on education in Europe, 'Eurydice', can provide support for the establishments selected, particularly with regard to the bibliography for the description of education systems or other information useful in the perparation of studies and analyses to be carried out. For more on this, consult:
http://www.eurydice.org

3. **ELIGIBLE ESTABLISHMENTS**

To be eligible under this call for proposals, institutions must show that they are suitably qualified to implement their proposed activities.

4. **SELECTION CRITERIA**

Priority will be given to proposals which:

— relate to the priority themes described in point 5 below,

— have a Community level interest and cover several participating countries which have differently structured education systems,

— actively involve estabilshments from at least five countries taking part in Socrates and are capable of subsequently being extended to all the participating countries,

— set out, if they are based on studies and data already available in this area, to carry out a comparative summary (clearly establishing the level of knowledge achieved in this area) and describe in detail how they envisage the subsequent stages of the work,

— clearly describe — if they involve a corpus of fresh data — the methods and systems to be used to evaluate the reliability of the data collected,

— contain, where appropriate, prospective aspects, i.e. projects which seek to identify and anticipate trends, potential innovations in the area and their future development,

— set out explicitly their added value in relation to activities already completed. In particular, it is recommended that due account be taken of results available from projects funded under Action III.3.1 during the first phase of the Socrates programme. See http://europa.eu.int/comm/education/poledu/inda-en.html,

— clearly show their added value at European level and their potential multiplier effect, particularly with regard to potential impact in terms of pooling experience among serveral participating countries,

— include measures to monitor and evaluate the anticipated results of the project.

Potentially eligible applicants will also be assessed as a function of:

— the clarity and consistency of the overall design of the project, and the feasibility of attaining the objectives within a reasonable time frame,

— the quality of the material organisation of the project (commitment and involvement of the different partners, work plans and budget defined in accurate terms, clearly established coordination, etc.).

5. **PRIORITY THEMES**

The activities covered by Action 6.1.2(c) and (d) are not solely of an academic nature but also designed to fuel and support discussion at the policy level in the area of education.

In this connection, it should be noted that a 'New framework of structured cooperation' (or 'Rolling agenda') was adopted by a Council Resolution on 17 December 1999 [1], designed to organise the future work of the Education Council around certain priority areas to be included on the agenda at regular intervals. The first areas of focus put forward in the Council resolution on this new framework of cooperation are:

— the role of education and training in employment policies,

— the quality of education and vocational training,

— the promotion of mobility, including the recognition of qualifications study periods.

The 'priority themes' in education for this call for proposals relate to the areas set out in the 'Rolling Agenda' adopted by the Council.

PRIORITY THEME A — THE ROLE OF EDUCATION AND TRAINING IN EMPLOYMENT POLICIES

Objectives and priority themes

The objective of proposals should be to encourage the analysis and exchange, at European level, of measures, experience and good practice developed by the participating countries. Three areas have been defined as priority in this connection:

A.1. **Adapting the content of education to labour market requirements**

The proposals for projects to be put forward should as a matter of priority cover the following perspectives:

— The adaptation of the content of curricula, especially in university education, taking due account of the impact of the incorporation of the new information technologies in the content of curricula.

[1] OJ C 8, 12.1.2000, p. 6.

— The links between educational establishments and the business world (integrated technical education, the involvement of the social partners in redefining the curricula).

A.2. **Support for young people in difficulty**

Most participant countries have implemented measures aiming to integrate young people in difficulty through educational pathways. The sub-themes to be addressed in this areas are:

— positive action (trageting disadvantaged young people, actions in deprived inner city and rural areas),

— action to reintegrate young people into the education system (in the case of those who dropped out early and those who failed to leave school with qualifications, this involves getting them back to school; implementation of activities giving young people access to educational opportunities).

A.3. **Lifelong learning**

Lifelong learning is a vital component in the creation of a knowledge-based society, a vast area in which the following sub-themes have been identified as priorities:

— new teaching methods (use of the new information and communication technologies to build up knowledge and motinovate people in training),

— the training of teachers (level of recruitment, initial and continuing training of teachers),

— basic skills in complusory education (definition and analysis of basic skills needed as it appears in the different education systems, stepping up the teaching of fundamental subjects),

— prospects for structural and content modifications to education systems (in formal education and also in the new informal education contexts) within the framework of lifelong learning,

— development of giudance for young people in a context of lifelong learning.

PRIORITY THEME B — QUALITY INDICATORS IN EDUCATION

Use of indicators and benchmarking

The overall aim is promote at European level discussion on the quality of education based on benchmarking.

Projects should take due account of work already carried out in this area by other institutions (OECD, Unesco, etc.), but also focus on indicators and benchmarking methods specific to the EU. They should encourage exchange of information, experience and best practice on the use of indicators and benchmarks in the area of quality in teaching.

The proposals submitted should analyse indicators and benchmarks already developed nationally and internationally, along with their impact at policy and practical levels.

PRIORITY THEME C — PROMOTING MOBILITY

The objective in this area is to provide a fresh boost for actions on mobility (geographical and virutal) in the field of education, at European level. Priority will go to the following activities:

C.1. The objective of the projects in this area would be to produce a general analysis of the situation regarding mobility this sould also be a useful evaluation and planning tool for the participating countries.

Proposals should take the broadest perspective possible on all aspects of mobility, covering the conditions, arrangements and benefits of mobility for the different target goups concerned, but also on the cultural, linguistic and other aspects linked with the different forms of mobility, whether in the context of European Community, bilateral or private programmes.

The activities proposed should not only define the factors to be taken into account for the purposes of this general analysis: define the statistical criteria to be used (traget groups undertaking mobility, channels, country of origin and destination, pathways concerned, duration of mobility, etc.),

but also check the feasibility of the exercise: identifly the institutional players who should be involved, the channels for exchanging information, the format of the surveys (whether or not it is worthwhile undertaking surveys which target specific groups, specific pathways, etc.), the cost of conducting such surveys, etc.

C.2. Collecting specific and operational data on mobility would also be useful. Consequently, studies and projects on mobility within a given palthway and/or a given target group could accordingly be launched.

Projects could also include the following aspects, for analysis purposes:

— the incentives and obstacles to mobility within a given pathway, e.g. history studies,

— mobility as part of bilateral actions (identification of existing programmes, number of persons concerned, differences and similarities with mobility pursued in the Community framework, etc.),

— the impact and merits of mobility, in personal and professional terms (for example, in the field of Community law).

6. **SUBMITTING PROPOSALS**

Further information on the procedure for submitting proposals will be included in the information pack obtainable by faxing or mailing the following address:

For the attention of Mr Anders Hingel
European Commission
Directorate General of Education and Culture
'Development of educational policies' Unit
B-7, rue de la Loi/Wetstraat 200
B-1049 Brussels.
Fax (322) 299 22 31;
e-mail: UNITE-A1@cec.eu.int

The request for an information pack must contain the following details: name, full address, post code and language version desired. The request must refer explicitly to this call for proposals and to Action 6.1 of the Socrates programme. Only one copy per request will be sent.

The information pack, along with this call for proposals and other information, is also obtainable from the following Internet adress:
http://europa.eu.int/comm/education/socrates/observation/call.html

7. **CONTRACTS AND FINANCIAL AID**

Applicants may propose projects lasting one or two years. Projects lasting two years may be covered by a contract (agreement on funding) lasting one year, with possible renewal for a further year, or by a two-year contract. In the case of two-year contracts, a first advance will be paid at the start of the project. Subsequent payments will be subject to periodical revision and evaluation of the project's progress by the European Commission.

The Commission's financial support may be up to **EUR 200 000** yearly. This ceiling will nevertheless be reached only in exceptional circumstances. The amounts paid will be calculated so that they cover a maximum of 50 % of eligible expenditure. Conferences and seminars will be subsidised up to a maximum of EUR 40 000.

The total available budget for activities covered by this call for proposals is approximately **EUR 1 700 000**.

In the event of the Commission's approving a proposal, a funding agreement (in Euro) setting out the conditions and the level of funding, will be signed by the Commission and the beneficiary.

8. **APPLICATIONS**

All applications for funding must be submitted by **15 June 2000** by registered post to the address given in 6. Proposals sent after this deadline will not be taken into consideration. The postmark will be taken as proof of submission. Applications may not be sent by fax and/or in several parts. Incomplete applications will not be accepted. Applicants will receive an advice of receipt.

Unsuccessful applicants will be informed in writing.

INNOVATION PRIZE 2000

VP/2000/019

Prize for innovation in projects concerning discrimination on the basis of race and ethnic origin

(2000/C 121/10)

At the European Conference on combating racism at European level, held in Brussels on 24 and 25 February 2000, the Commission launched an innovation prize for projects on matters relating to discrimination on the basis of race and ethnic origin.

The prize, provided for in the Action Plan against racism presented by the Commission in March 1998, is intended to reward the best projects dealing with discrimination on the basis of race and ethnic origin.

The prize will be open to projects financed under the 1998/1999 budget for which results are available by 30 June 2000 and which meet the criteria set out in the competition rules.

The competition will be divided into three separate categories corresponding to the following types of project:

(a) promotion of anti-discrimination measures in and by public administrations (education, training, health, social services, social security, police, justice, etc.);

(b) removal of discriminatory barriers to participation in decision-making and democratic life;

(c) elimination of discrimination in employment.

The winning projects will be selected by 30 November 2000 by a competition jury made up of prominent pesonalities. The three prizes will be awarded at a European event in Spring 2001.

The competition rules and application forms can also be obtained at Internet site
http://europa.eu.int/comm/dg05/fundamri/index_fr.htm

Timetable

February 2000: introduction of the prize at the Conference

30 June 2000: deadline for submission of entries

30 November 2000: jury's decision

COMPETITION RULES

1. The competition is open to projects which have produced known and analysable results by 30 June 2000.

   It is open to initiatives financed under Community instruments or programmes.

2. Entries may be submitted by private or public bodies or organisations situated in the Member States.

   They must relate to projects which have taken place within the European Union.

   Only one project per promoter may be submitted across all three categories.

   Deadline for submission of entries: 30 June 2000, date as postmark (entries sent by fax or e-mail will not be accepted).

   Entries must contain a detailed description of the project and its results, including a copy of products developed, a clear indication of the project's objectives, target group, partners involved, timetable and evaluation method. Promoters must also indicate how, in the event of winning a prize, they would go about publicising the project. This is for information purposes only and will not affect the jury's assessment.

3. A European jury made up of prominent personalities involved in the fight against racism will judge the entries and select a winner in each category. The jury will make its decision by 30 November 2000, and the prize will be awarded in Spring 2001 at a European event.

4. The three categories are:

   (a) promotion of anti-discrimination measures in and by public administrations (education, training, health, social services, social security, police, justice, etc.);

   (b) removal of discriminatory barriers to participation in decision-marking and the democratic process in various sectors;

   (c) elimination of discrimination in employment.

5. The jury's decision is final.

6. Factors other than the innovatory nature of the project which will be taken into account by the jury are:

   (a) the project's impact at local, regional or national level;

(b) its added value at European level, including the feasibility of 'reproducing' the project in other national contexts or other fields;

(c) involvement in the project of people or groups of people subject to discrimination on the basis of race or ethnic origin;

(d) the quality of publications, documents and events developed during the project;

(e) the project's contribution to increasing awareness of discrimination in its various forms.

7. The prizes, which will be officially awarded in Spring 2001, are intended to enable the project to be promoted, the results to be publicised and the project to be compared with other experiments within the Union.

Depending on the availability of funds and the annotations to the applicable budget headings, the amount envisaged for the prize in each category is EUR 60 000.

8. The Commission reserves the right to reproduce or distribute for non-commercial purposes the documentation relating to the selected projects.

CORRIGENDA

Corrigendum to the Community guidelines on State aid for rescuing and restructuring firms in difficulty

(Notice to Member States including proposals for appropriate measures)

(Official Journal of the European Communities C 288 of 9 October 1999)

(2000/C 121/11)

Paragraph 98 should read:

'Aid for rescuing and restructuring SMEs notified before 30 April 2000 (whether individually notified or as schemes) will be assessed in the light of the guidelines in force before adoption of this text. The extension of those guidelines, which was notified to Member States and published in the *Official Journal of the European Communities* on 10 March 1999 (see footnote 2) is therefore renewed for such aid.'

Notice from the Commission on a call for proposals for indirect RTD actions under the specific programme for research, technological development and demonstration on a user-friendly information society (1998 to 2002) (The IST Programme)

(Official Journal of the European Communities C 38 of 10 February 2000)

(2000/C 121/12)

1. The European Commission recently published a call for proposals for indirect RTD actions under the specific programme for research, technological development (RTD) and demonstration on a user-friendly information society (1998 to 2002) (*Official Journal of the European Communities* C 38 of 10 February 2000, p. 11). Under Part 1(a) of point 4 of this call, proposers were invited to submit proposals addressing data fusion and smart sensor technologies for humanitarian demining (Action Line I.4.2 therein).

2. A study on 'Operational needs and equipment requirements for mine action in south eastern Europe' was carried out by the Geneva International Centre for Humanitarian Demining on behalf of the Joint Research Centre of the European Commission, the results of which could prove useful to proposers intending to address the abovementioned action linc. Information on this study and related information is available at www.cordis.lu/ist/calls/200001.htm

3. In order to allow the results of the study to be taken into consideration by proposers, the deadline now applicable to proposals for Action Line I.4.2 is 12 June 2000 at 5 p.m. (Brussels local time) — one month later than originally foreseen. This change should be borne in mind when consulting, for example, the Guide for Proposers. All other conditions, including those that apply to deadlines, remain the same as those given in the abovementioned call.