ISSN 0378-6986

Official Journal

of the European Communities

C 331

Volume 45

31 December 2002

English edition

Information and Notices

[1] Text with EEA relevance

(Continued overleaf)

This issue closes the C series for 2002.

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EN

I

(Information)

COUNCIL

Communication relating to the opening of the quotas laid down by the Council Decision of 19 December 2002 on trade in certain steel products between the European Community and Ukraine

(2002/C 331/01)

1. Steel products falling within the tariff headings set in the Council Decision (see Appendix 1 of the Annex) and originating in Ukraine may be imported between 1 January 2002 and 31 December 2003 within the limits fixed in Appendix 7 of the Annex.

2. The quantitative limits are managed according to the rules in the Annex.

Applications for licences must be sent to the competent authorities of the Member States as listed in Appendix 5 of the Annex.

ANNEX

Article 1

Scope

1. This Annex applies to imports of the steel products listed in Appendix 1, originating in Ukraine.

2. For the purposes of paragraph 1, the steel products shall be classified in product groups as set out in Appendix 1.

3. The classification of products listed in Appendix 1 shall be based on the combined nomenclature (CN).

4. The origin of the products referred to in paragraph 1 shall be determined in accordance with the rules in force in the Community.

5. The procedures for verification of the origin of the products referred to in paragraph 1 are laid down in the relevant Community legislation in force.

Article 2

Quantitative limits

1. The importation into the Community of the steel products listed in Appendix 1 originating in Ukraine shall be subject to the quantitative limits laid down in Appendix 7. The release for free circulation in the Community of the products set out in Appendix 1 originating in Ukraine shall be subject to the presentation of an import authorisation issued by the Member States' authorities in accordance with the provisions of Article 4.

2. In order to ensure that quantities for which import authorisations are issued do not exceed at any moment the total quantitative limits for each product group, the competent authorities shall issue import authorisations only upon confirmation by the Commission that there are still quantities available within the quantitative limits for the relevant product group of steel products in respect of the supplier country, for which an importer or importers have submitted applications to the said authorities.

3. For the purposes of this Annex, shipment of products shall be considered as having taken place on the date on which they were loaded onto the exporting means of transport.

Article 3

Suspensive arrangements

1. The quantitative limits referred to in Appendix 7 shall not apply to products placed in a free zone or free warehouse or imported under the arrangements governing customs warehouses, temporary importation or inward processing (suspension system).

2. Where the products referred to in paragraph 1 are subsequently released for free circulation, either in the unaltered state or after working or processing, Article 2(2) shall apply and the products so released shall be counted against the relevant quantitative limit set out in Appendix 7.

Article 4

Specific rules for the administration of Community quantitative limits

1. For the purpose of applying Article 2(2), the competent authorities of the Member States, before issuing import authorisations, shall notify the Commission of the amounts of the requests for import authorisations, supported by original export licences, which they have received. By return, the Commission shall notify its confirmation that the requested amount(s) of quantities are available for importation in the chronological order in which the notifications of the Member States have been received ('first come, first served basis').

2. The requests included in the notifications to the Commission shall be valid if they establish clearly in each case the exporting country, the product group concerned, the amounts to be imported, the number of the export licence, the quota period and the Member State in which the products are intended to be put into free circulation.

3. The notifications referred to in paragraphs 1 and 2 shall be communicated electronically within the integrated network set up for this purpose, unless for imperative technical reasons it is necessary to use other means of communication temporarily.

4. As far as possible, the Commission shall confirm to the authorities the full amount indicated in the requests notified for each group of products.

5. The competent authorities shall notify the Commission immediately after being informed of any quantity that is not used during the duration of validity of the import authorisation. Such unused quantities shall automatically be transferred into the remaining quantities of the total Community quantitative limit for each product group.

6. The import authorisations or equivalent documents shall be issued in accordance with Appendix 4.

7. The competent authorities of the Member States shall notify the Commission of any cancellation of import authorisations or equivalent documents already issued in cases where the corresponding export licences have been withdrawn or cancelled by the competent Ukrainian authorities. However, if the Commission or the competent authorities of a Member State have been informed by the competent Ukrainian authorities of the withdrawal or cancellation of an export licence after the related products have been imported into the Community, the quantities in question shall be set off against the quantitative limit set out for the period during which shipment of products took place.

8. The Commission may take any measure necessary to implement the provisions of this Article.

Article 5

Statistics

In respect of the steel products listed in Appendix 1, Member States shall notify the Commission monthly, within one month of the end of each month, of the total quantities that have entered into free circulation during that month, indicating the combined nomenclature code and using the statistical units and, where appropriate, supplementary units used in that code. Imports shall be broken down in accordance with the statistical procedures in force.

Appendix 1

SA Flat-rolled products

SA1 (coils)

7208 10 00
7208 25 00
7208 26 00
7208 27 00
7208 36 00
7208 37 10
7208 37 90
7208 38 10
7208 38 90
7208 39 10
7208 39 90
7211 14 10
7211 19 20
7219 11 00
7219 12 10
7219 12 90
7219 13 10
7219 13 90
7219 14 10
7219 14 90
7225 20 20
7225 30 00

SA2 (heavy plate)

7208 40 10
7208 51 10
7208 51 30
7208 51 50
7208 51 91
7208 51 99
7208 52 10
7208 52 91
7208 52 99
7208 53 10
7211 13 00
7225 40 20
7225 40 50
7225 99 10

SA3 (other flat rolled products)

7208 40 90
7208 53 90
7208 54 10
7208 54 90
7208 90 10
7209 15 00
7209 16 10
7209 16 90
7209 17 10
7209 17 90
7209 18 10
7209 18 91
7209 18 99
7209 25 00
7209 26 10
7209 26 90
7209 27 10
7209 27 90
7209 28 10
7209 28 90
7209 90 10
7210 11 10
7210 12 11
7210 12 19
7210 20 10
7210 30 10
7210 41 10
7210 49 10
7210 50 10
7210 61 10
7210 69 10
7210 70 31
7210 70 39
7210 90 31
7210 90 33
7210 90 38
7211 14 90
7211 19 90
7211 23 10
7211 23 51
7211 29 20
7211 90 11
7212 10 10
7212 10 91
7212 20 11
7212 30 11
7212 40 10
7212 40 91
7212 50 31
7212 50 51
7212 60 11
7212 60 91
7219 21 10
7219 21 90
7219 22 10
7219 22 90
7219 23 00
7219 24 00
7219 31 00
7219 32 10
7219 32 90
7219 33 10
7219 33 90
7219 34 10
7219 34 90
7219 35 10
7219 35 90
7225 40 80

SB Longs

SB1 (beams)

7207 19 31
7207 20 71
7216 31 11
7216 31 19
7216 31 91
7216 31 99
7216 32 11
7216 32 19
7216 32 91
7216 32 99
7216 33 10
7216 33 90

SB2 (wire rod)

7213 10 00
7213 20 00
7213 91 10
7213 91 20
7213 91 41
7213 91 49
7213 91 70
7213 91 90
7213 99 10
7213 99 90
7221 00 10
7221 00 90
7227 10 00
7227 20 00
7227 90 10
7227 90 50
7227 90 95

SB3 (other longs)

7207 19 11
7207 19 14
7207 19 16
7207 20 51
7207 20 55
7207 20 57
7214 20 00
7214 30 00
7214 91 10
7214 91 90
7214 99 10
7214 99 31
7214 99 39
7214 99 50
7214 99 61
7214 99 69
7214 99 80
7214 99 90
7215 90 10
7216 10 00
7216 21 00
7216 22 00
7216 40 10
7216 40 90
7216 50 10
7216 50 91
7216 50 99
7216 99 10
7218 99 20
7222 11 11
7222 11 19
7222 11 21
7222 11 29
7222 11 91
7222 11 99
7222 19 10
7222 19 90
7222 30 10
7222 40 10
7222 40 30
7224 90 31
7224 90 39
7228 10 10
7228 10 30
7228 20 11
7228 20 19
7228 20 30
7228 30 20
7228 30 41
7228 30 49
7228 30 61
7228 30 69
7228 30 70
7228 30 89
7228 60 10
7228 70 10
7228 70 31
7228 80 10
7228 80 90
7301 10 00

Appendix 2

PART I

DOUBLE-CHECKING SYSTEM

(for administering quantitative limits)

Article 1

1. The competent authorities shall issue an export licence in respect of all consignments of steel products subject to the quantitative limits laid down in Appendix 7 up to the level of the said limits.

2. The original of the export licence shall be presented by the importer for the purposes of the issue of the import authorisation referred to in Article 4.

Article 2

1. The export licence for quantitative limits shall conform to the specimen set out in Appendix 3 of this Annex and shall certify, *inter alia*, that the quantity of goods in question has been set off against the quantitative limit established for the product group concerned.

2. Each export licence shall cover only one of the product groups listed in Appendix 1.

Article 3

Exports shall be set off against the quantitative limits established for the period in which the products covered by the export licence have been shipped within the meaning of Article 2(3) of the Annex.

Article 4

1. To the extent that the Commission pursuant to Article 4 of the Annex has confirmed that the amount requested is available within the quantitative limit in question, the competent authorities of the Member States shall issue an import authorisation within a maximum of five working days of the presentation by the importer of the original of the corresponding export licence. This presentation must be effected not later than 31 December 2003 provided that the goods covered by the licence have been shipped before 31 December 2003. Import authorisations shall be issued by the competent authorities of any Member State irrespective of the Member State indicated on the export licence, to the extent that the Commission, pursuant to Article 4 of the Annex, has confirmed that the amount requested is available within the quantitative limit in question.

2. The import authorisations shall be valid for four months from the date of their issue. Upon duly motivated request by an importer, the competent authorities of a Member State may extend the duration of validity for a further period not exceeding two months. Such extensions shall be notified to the Commission.

3. Import authorisations shall be drawn up in the form set out in Appendix 4 of this Annex and shall be valid throughout the customs territory of the Community.

4. The declaration or request made by the importer in order to obtain the import authorisation shall contain:

(a) the full name and address of the exporter;

(b) the full name and address of the importer;

(c) the exact description of the goods and the CN code(s);

(d) the country of origin of the goods;

(e) the country of consignment;

(f) the appropriate product group and the quantity in the appropriate unit as indicated in Appendix 7 of the Annex for the products in question;

(g) the net weight by CN heading;

(h) the cif value of the products at Community frontier by CN heading (as indicated in box 13 of the export licence);

(i) whether the products concerned are seconds or of substandard quality;

(j) where appropriate, dates of payment and delivery and a copy of the bill of lading and of the purchase contract;

(k) date and number of the export licence;

(l) any internal code used for administrative purposes;

(m) date and signature of importer.

5. Importers shall not be obliged to import the total quantity covered by an import authorisation in a single consignment.

Article 5

The validity of import authorisations issued by the authorities of the Member States shall be subject to the validity of and the quantities indicated in the export licences issued by the competent authorities on the basis of which the import authorisations have been issued.

Article 6

Import authorisations or equivalent documents shall be issued by the competent authorities of the Member States in conformity with Article 2(2) and without discrimination to any importer in the Community wherever the place of his establishment may be in the Community, without prejudice to compliance with other conditions required under current rules.

Article 7

The competent authorities of a Member State shall refuse to issue import authorisations for products originating in Ukraine which are not covered by export licenses issued in accordance with the provisions of this Appendix.

PART II

COMMON PROVISIONS

Article 8

1. The export licence referred to in Article 1 of this Appendix and the certificate of origin (specimen attached) may include additional copies duly indicated as such. They shall be made out in English.

2. If the documents referred to above are completed by hand, entries must be in ink and in block letters.

3. The export licences or equivalent documents and certificates of origin shall measure 210 × 297 mm. The paper shall be white writing paper, sized, not containing mechanical pulp and weighing not less than 25 g/m^2. Each part shall have a printed guilloche pattern background making any falsification by mechanical or chemical means apparent to the eye.

4. Only the original shall be accepted by the competent authorities in the Community as being valid for import purposes in accordance with the provisions of this Annex.

5. Each export licence or equivalent document and the certificate of origin shall bear a standardised serial number, whether or not printed, by which it can be identified.

6. This number shall be composed of the following elements:

— two letters identifying the exporting country as follows:

UA = Ukraine

— two letters identifying the Member State of intended destination as follows:

BE = Belgium

DK = Denmark

DE = Germany

EL = Greece

ES = Spain

FR = France

IE = Ireland

IT = Italy

LU = Luxembourg

NL = Netherlands

AT = Austria

PT = Portugal

FI = Finland

SE = Sweden

GB = United Kingdom,

— a one-digit number identifying the quota period corresponding to the last figure in the current year, e.g. '2' for 2002;

— a two-digit number identifying the issuing office in the exporting country;

— a five-digit number running consecutively from 00001 to 99999 allocated to the specific Member State of destination.

Article 9

The export licence and the certificate of origin may be issued after the shipment of the products to which they relate. In such cases they shall bear the endorsement 'issued retrospectively'.

Article 10

In the event of the theft, loss or destruction of an export licence or a certificate of origin, the exporter may apply to the competent authority which issued the document for a duplicate to be made out on the basis of the export documents in his possession. The duplicate licence or certificate issued in this way shall bear the endorsement 'duplicate'.

The duplicate shall bear the date of the original licence or certificate.

PART III

COMMUNITY IMPORT LICENCE — COMMON FORM

Article 11

1. The forms to be used by the competent authorities of the Member States (list in Appendix 5) for issuing the import authorisations referred to in Article 4 shall conform to the specimen of the import licence set out in Appendix 4.

2. Import licence forms and extracts thereof shall be drawn up in duplicate, one copy, marked 'Holder's copy' and bearing the number 1 to be issued to the applicant, and the other, marked 'Copy for the issuing authority' and bearing the number 2, to be kept by the authority issuing the licence. For administrative purposes the competent authorities may add additional copies to form 2.

3. Forms shall be printed on white paper free of mechanical pulp, dressed for writing and weighing between 55 and 65 g/m^2. Their size shall be 210 × 297 mm; the type space between the lines shall be 4,24 mm (one sixth of an inch); the layout of the forms shall be followed precisely. Both sides of copy No 1, which is the licence itself, shall in addition have a red printed guilloche pattern background so as to reveal any falsification by mechanical or chemical means.

4. Member States shall be responsible for having the forms printed. The forms may also be printed by printers appointed by the Member State in which they are established. In the latter case, reference to the appointment by the Member State must appear on each form. Each form shall bear an identification of the printer's name and address or a mark enabling the printer to be identified.

5. At the time of their issue the import licences or extracts shall be given an issue number determined by the competent authorities of the Member State. The import licence number shall be notified to the Commission electronically within the integrated network set up under Article 4 of this Annex.

6. Licences and extracts shall be completed in the official language, or one of the official languages, of the Member State of issue.

7. In box 10 the competent authorities shall indicate the appropriate steel product group.

8. The marks of the issuing agencies and debiting authorities shall be applied by means of a stamp. However, an embossing press combined with letters or figures obtained by means of perforation, or printing on the licence may be substituted for the issuing authority's stamp. The issuing authorities shall use any tamper-proof method to record the quantity allocated in such a way as to make it impossible to insert figures or references (e.g. EUR 1 000).

9. The reverse of copy No 1 and copy No 2 shall bear a box in which quantities may be entered, either by the customs authorities when import formalities are completed, or by the competent administrative authorities when an extract is issued.

If the space set aside for debits on a licence or extract thereof is insufficient, the competent authorities may attach one or more extension pages bearing boxes matching those on the reverse of copy No 1 and copy No 2 of the licence or extract. The debiting authorities shall so place their stamp that one half is on the licence or extract thereof and the other half is on the extension page. If there is more than one extension page, a further stamp shall be placed in like manner across each page and the preceding page.

10. Import licences and extracts issued, and entries and endorsements made, by the authorities of one Member State shall have the same legal effect in each of the other Member States as documents issued, and entries and endorsements made, by the authorities of such Member States.

11. The competent authorities of the Member States concerned may, where indispensable, require the contents of licences or extracts to be translated into the official language or one of the official languages of that Member State.

Appendix 3

1. Exporter (name, full address, country)	**ORIGINAL**	2. No
	3. Quota period	4. Product group
	EXPORT LICENCE (steel products)	
5. Consignee (name, full address, country)	6. Country of origin	7. Country of destination
8. Place and date of shipment — means of transport	9. Supplementary details	

10. Description of goods — manufacturer	11. CN code	12. Quantity (1)	13. Fob value (2)

14. CERTIFICATION BY THE COMPETENT AUTHORITY

I, the undersigned, certify that the goods described above have been charged against the quantitative limit established for the quota period shown in box No 3 in respect of the product group shown in box No 4 by the provisions regulating trade in steel products with the European Community.

15. Competent authority (name, full address, country)	At ..... on .....
	(Signature) (Stamp)

(1) Show net weight (kg) and also quantity in the unit prescribed where other than net weight.
(2) In the currency of the sale contract.

Specimen of certificate of origin referred to in 8(1) of Appendix 2

1. Exporter (name, full address, country)	**ORIGINAL**	2. No
	3. Quota period	4. Product group
	CERTIFICATE OF ORIGIN (steel products)	
5. Consignee (name, full address, country)	6. Country of origin	7. Country of destination
8. Place and date of shipment — means of transport	9. Supplementary details	

10. Description of goods — manufacturer	11. CN code	12. Quantity (1)	13. Fob value (2)

14. CERTIFICATION BY THE COMPETENT AUTHORITY

I, the undersigned, certify that the goods described above originated in the country shown in box No 6 are in accordance with the provisions in force in the European Community.

15. Competent authority (name, full address, country)	At ..... on ..... (Signature) (Stamp)

(1) Show net weight (kg) and also quantity in the unit prescribed where other than net weight.
(2) In the currency of the sale contract.

Appendix 4

EUROPEAN COMMUNITY IMPORT LICENCE

1 Holder's copy 1	1. Consignee (name, full address, country, VAT number)	2. Issue number
		3. Quota period
		4. Authority responsible for issue (name, address and telephone No)
	5. Declarant/representative as applicable (name and full address)	6. Country of origin (and geonomenclature code)
		7. Country of consignment (and geonomenclature code)
		8. Last day of validity
	9. Description of goods	10. CN code
		11. Quantity expressed in quota unit
		12. Security/guarantee (as applicable)
	13. Further particulars	
	14. Competent authority's endorsement Date: ..... (Signature) (Stamp)	

15. ATTRIBUTIONS Indicate the quantity available in part 1 of column 17 and the quantity attributed in part 2 thereof			
16. Net quantity (net mass or other unit of measure stating the unit)		19. Customs document (form and number) or extract No and date of attribution	20. Name, Member State, stamp and signature of the attributing authority
17. In figures	18. In words for the quantity attributed		
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
Extension pages to be attached hereto.			

EUROPEAN COMMUNITY IMPORT LICENCE

2 Copy for the issuing authority 2	1. Consignee (name, full address, country, VAT number)	2. Issue number
		3. Quota period
		4. Authority responsible for issue (name, address and telephone No)
	5. Declarant/representative as applicable (name and full address)	6. Country of origin (and geonomenclature code)
		7. Country of consignment (and geonomenclature code)
		8. Last day of validity
	9. Description of goods	10. CN code
		11. Quantity expressed in quota unit
		12. Security/guarantee (as applicable)
	13. Further particulars	
	14. Competent authority's endorsement Date: ..... (Signature) (Stamp)	

15. ATTRIBUTIONS Indicate the quantity available in part 1 of column 17 and the quantity attributed in part 2 thereof			
16. Net quantity (net mass or other unit of measure stating the unit)		19. Customs document (form and number) or extract No and date of attribution	20. Name, Member State, stamp and signature of the attributing authority
17. In figures	18. In words for the quantity attributed		
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
Extension pages to be attached hereto.			

Appendix 5

LISTA DE LAS AUTORIDADES NACIONALES COMPETENTES

LISTE OVER KOMPETENTE NATIONALE MYNDIGHEDER

LISTE DER ZUSTÄNDIGEN BEHÖRDEN DER MITGLIEDSTAATEN

ΔΙΕΥΘΥΝΣΕΙΣ ΤΩΝ ΑΡΧΩΝ ΕΚΔΟΣΗΣ ΑΔΕΙΩΝ ΤΩΝ ΚΡΑΤΩΝ ΜΕΛΩΝ

LIST OF THE COMPETENT NATIONAL AUTHORITIES

LISTE DES AUTORITÉS NATIONALES COMPÉTENTES

ELENCO DELLE COMPETENTI AUTORITÀ NAZIONALI

LIJST VAN BEVOEGDE NATIONALE INSTANTIES

LISTA DAS AUTORIDADES NACIONAIS COMPETENTES

LUETTELO TOIMIVALTAISISTA KANSALLISISTA VIRANOMAISISTA

LISTA ÖVER KOMPETENTA NATIONELLA MYNDIGHETER

BELGIQUE/BELGIË

Ministère des affaires Économiques
Administration des relations Économiques
Services Licences
Rue Général Leman 60
B-1040 Bruxelles
Fax (32-2) 230 83 22

Ministerie van Economische Zaken
Bestuur van de Economische Betrekkingen
Dienst Vergunningen
Generaal Lemanstraat 60
B-1040 Brussel
Fax (32-2) 230 83 22

DANMARK

Erhvervsfremme Styrelsen
Økonomi- og Erhvervsministeriet
Vejlsøvej 29
DK-8600 Silkeborg
Fax (45) 35 46 64 01

DEUTSCHLAND

Bundesamt für Wirtschaft und Ausfuhrkontrolle (BAFA)
Frankfurter Straße 29—35
D-65760 Eschborn 1
Fax (49-61) 969 42 26

ΕΛΛΑΔΑ

Υπουργείο Εθνικής Οικονομίας
Γενική Γραμματεία Διεθνών Σχέσεων
Διεύθυνση Διεθνών Οικονομικών Ροών
Κορνάρου 1
GR-105 63 Αθήνα
Φαξ (30-1) 328 60 94

ESPAÑA

Ministerio de Economía
Secretaría General de Comercio Exterior
Paseo de la Castellana 162
E-28046 Madrid
Fax (34) 915 63 18 23/913 49 38 31

FRANCE

Setice
8, rue de la Tour-des-Dames
F-75436 Paris Cedex 09
Fax (33-1) 55 07 46 69

IRELAND

Department of Enterprise, Trade and Employment
Import/Export Licensing, Block C
Earlsfort Centre
Hatch Street
Dublin 2
Ireland
Fax (353-1) 631 28 26

ITALIA

Ministero delle Attività produttive
Direzione generale per la Politica commerciale e per la gestione del regime degli scambi
Viale America 341
I-00144 Roma
Fax (39) 06 59 93 22 35/06 59 93 26 36

LUXEMBOURG

Ministère des affaires étrangères
Office des licences
BP 113
L-2011 Luxembourg
Fax (352) 46 61 38

NEDERLAND

Belastingdienst douane
Centrale dienst voor in- en uitvoer
Postbus 30003, Engelse Kamp 2
9700 RD Groningen,
Nederland
Fax (31-50) 523 23 41

ÖSTERREICH

Bundesministerium für Wirtschaft und Arbeit
Außenwirtschaftsadministration
Landstrasser Hauptstraße 55-57
A-1030 Wien
Fax (43-1) 711 00/83 86

PORTUGAL

Ministério das Finanças
Direcção-Geral das Alfândegas e dos Impostos
Especiais sobre o Consumo
Rua Terreiro do Trigo, Edifício da Alfândega de Lisboa
P-1140-060 Lisboa
Fax (351) 218 81 42 61

SUOMI

Tullihallitus
PL 512
FIN-00101 Helsinki
F./fax (358-9) 614 28 52

SVERIGE

Kommerskollegium
Box 6803
S-11386 Stockholm
Fax (46-8) 30 67 59

UNITED KINGDOM

Department of Trade and Industry
Import Licensing Branch
Queensway House — West Precinct
Billingham
Cleveland TS23 2NF
United Kingdom
Fax (44) 1642 53 35 57

Appendix 6

ADMINISTRATIVE COOPERATION

Article 1

The Commission shall supply the Member States' authorities with the names and addresses of authorities in Ukraine competent to issue certificates of origin and export licences together with specimens of the stamps used by these authorities.

Article 2

For the steel products subject to a double-checking system Member States shall notify the Commission within the first ten days of each month of the total quantities, in the appropriate units and by country of origin and group of products, for which import authorisations have been issued during the preceding month.

Article 3

1. Subsequent verification of certificates of origin or export licences shall be carried out at random, or whenever the competent authorities of the Community have reasonable doubt as to the authenticity of the certificate of origin or export licence or as to the accuracy of the information regarding the true origin of the products in question.

In such cases the competent authorities of the Community shall return the certificate of origin or the export licence or a copy thereof to the competent Ukrainian governmental authority, giving, where appropriate, the reasons of form or substance for an enquiry. If the invoice has been submitted, such invoice or a copy thereof shall be attached to the certificate of origin or export licence or copy thereof. The competent authorities shall also forward any information that has been offered suggesting that the particulars given on the said certificate or the said licence are inaccurate.

2. The provisions of paragraph 1 shall also apply to subsequent verifications of declarations of origin.

3. The results of the subsequent verifications carried out in accordance with paragraph 1 shall be communicated to the competent authorities of the Community within three months at the latest. The information communicated shall indicate whether the disputed certificate, licence or declaration applies to the goods actually exported and whether the goods are eligible for export to the Community under this Annex. The competent authorities of the Community may also request copies of all documentation necessary to determine the facts fully, including, in particular, the origin of the goods.

4. Should such verifications reveal abuse or major irregularities in the use of declarations of origin, the Member State concerned shall inform the Commission of this fact. The Commission shall pass the information on to the other Member States. The Community may decide that imports of the products in question to the Community shall be accompanied by a certificate of Ukrainian origin referred to in Article 8(1) of Appendix 2.

5. Random recourse to the procedure specified in this Article shall not constitute an obstacle to the release for free circulation of the products in question.

Article 4

1. Where the verification procedure referred to in Article 2 or where information available to the competent authorities of the Community indicates that the provisions of this Annex are being contravened, the said authorities shall request Ukraine to carry out appropriate enquiries or arrange for such enquiries to be carried out concerning operations which are or appear to be in contravention of the provisions of this Annex. The results of these enquiries shall be communicated to the competent authorities of the Community together with any other pertinent information enabling the true origin of the goods to be determined.

2. In pursuance of the action taken under the terms of this Annex, the competent authorities of the Community may exchange any information with the competent governmental authorities of the Republic of Ukraine which is considered to be of use in preventing the contravention of the provisions of this Annex.

3. Where it is established that the provisions of this Annex have been contravened, the Commission may take such measures as are necessary to prevent recurrence of such contravention.

Article 5

The Commission shall coordinate the action undertaken by the competent authorities of the Member States under the provisions of this Annex. The competent authorities of the Member States shall inform the Commission and the other Member States of action which they have undertaken and the results obtained.

Appendix 7

QUANTITATIVE LIMITS

(tonnes)

Products	1 January 2002 to 31 December 2003
SA flat products	
SA1 (coils)	46 604
SA2 (heavy plate)	178 364
SA3 (other flat products)	14 391
SB long products	
SB1 (beams)	6 273
SB2 (wire rod)	89 624
SB3 (other long products)	112 926

COMMISSION

Euro exchange rates [1]

30 December 2002

(2002/C 331/02)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,0422	LVL	Latvian lats	0,6123
JPY	Japanese yen	124,27	MTL	Maltese lira	0,4179
DKK	Danish krone	7,4281	PLN	Polish zloty	4,0005
GBP	Pound sterling	0,65	ROL	Romanian leu	34925
SEK	Swedish krona	9,1558	SIT	Slovenian tolar	230,1208
CHF	Swiss franc	1,4548	SKK	Slovak koruna	41,688
ISK	Iceland króna	84,24	TRL	Turkish lira	1713000
NOK	Norwegian krone	7,2725	AUD	Australian dollar	1,8515
BGN	Bulgarian lev	1,9546	CAD	Canadian dollar	1,6381
CYP	Cyprus pound	0,57333	HKD	Hong Kong dollar	8,128
CZK	Czech koruna	31,489	NZD	New Zealand dollar	2,001
EEK	Estonian kroon	15,6466	SGD	Singapore dollar	1,8093
HUF	Hungarian forint	235,95	KRW	South Korean won	1247,51
LTL	Lithuanian litas	3,4524	ZAR	South African rand	8,9791

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

DRAFT COMMISSION NOTICE

on the appraisal of horizontal mergers under the Council Regulation on the control of concentrations between undertakings

(2002/C 331/03)

(Text with EEA relevance)

I. INTRODUCTION

1. Article 2 of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings [1] (hereinafter: 'the Merger Regulation') specifies that the Commission shall appraise concentrations within the scope of the Merger Regulation with a view to establishing whether or not they are compatible with the common market.

2. The purpose of this notice is to provide guidance as to how the Commission makes the appraisal of concentrations where the undertakings concerned are active sellers on the same relevant market or potential competitors on that market. In the following these concentrations will be denoted 'horizontal mergers' [2]. The guidance set out in this notice will focus on how the removal of an actual or potential competitor may affect competition in the relevant market [3].

3. The guidance set out in this notice draws and elaborates on the Commission's evolving experience with the appraisal of horizontal mergers under the Merger Regulation since its entry into force on 21 September 1990 as well as the case-law of the Court of Justice and the Court of First Instance of the European Communities. The principles contained here will be applied and further developed and refined by the Commission in individual cases.

4. The Commission's interpretation of the appraisal of 'horizontal mergers' is without prejudice to the interpretation, which may be given by the Court of Justice or the Court of First Instance of the European Communities.

II. OVERVIEW

5. Pursuant to Article 2 of the Merger Regulation, a concentration shall be declared incompatible with the common market if, and only if, it creates or strengthens a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

6. The Commission's appraisal of mergers notified under the Merger Regulation essentially contains two main parts which mutually interact:

   (i) definition of the relevant product and geographic markets;

   (ii) competitive assessment of the merger.

   The main purpose of the market definition is to identify in a systematic way the competitive constraints that the merging firms face. The objective of defining a market in both its product and geographic dimension is to identify those actual competitors of the undertakings involved that are capable of constraining their behaviour and of preventing them from behaving independently of an effective competitive pressure. Guidance on this issue can be found in the Commission's Notice on the definition of the relevant market for the purposes of Community competition law [4]. Many of the considerations leading to the delineation of the relevant markets may also be of importance for the competitive assessment of the merger.

7. The present notice is structured around the following elements:

   (a) the likelihood that the merger would have anti-competitive effects in the relevant markets, in the absence of countervailing factors;

   (b) the likelihood that buyer power would act as a countervailing force to an increase in economic power as a result of the merger;

   (c) the likelihood that entry by new firms would maintain effective competition in the relevant markets;

   (d) the likelihood that efficiencies will result from the merger;

   (e) the conditions for a failing firm defence.

8. In view of these elements, the Commission will determine whether or not the merger would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it. However, not all these elements are relevant to all horizontal mergers. In particular, efficiencies and the failing firm defence are typically only analysed if the notifying parties establish that the necessary conditions are met for those claims to be of relevance (see Sections VI and VII of this notice). Furthermore, analysing all elements in the same detail may not be necessary. For instance, finding that entry would be very easy, timely and effective may be sufficient to conclude that no possible competition problems can arise without detailed analysis of other factors.

III. POSSIBLE ANTI-COMPETITIVE EFFECTS OF HORIZONTAL MERGERS

9. Effective competition brings benefits to consumers, such as low prices, higher quality products, a wide selection of goods and services and technological innovation. Through its control of concentrations, the Commission prevents concentrations that deprive consumers of these benefits but allow concentrations that contribute to fostering these benefits through continued effective competition.

10. In assessing the competitive effects of a merger, the Commission compares the competitive conditions that would follow the merger with the conditions that would prevail absent the merger. In most cases the existing competitive conditions constitute the most relevant comparison for evaluating the effects of a merger. However, the Commission will, for instance, take into account likely entry or exit of firms when considering what constitutes the relevant comparison ([5]).

11. There are three main ways in which horizontal mergers may significantly impede effective competition as a result of the creation or the strengthening of a dominant position:

    (a) A merger may create or strengthen a paramount market position. A firm in such a position will often be able to increase prices ([6]) without being constrained by actions of its customers and its actual or potential competitors.

    (b) A merger may diminish the degree of competition in an oligopolistic market by eliminating important competitive constraints on one or more sellers, who consequently would be able to increase their prices.

    (c) A merger may change the nature of competition in an oligopolistic market so sellers, who previously were not coordinating their behaviour, now are able to coordinate and therefore raise prices. A merger may also make coordinating easier for sellers who were coordinating prior to the merger.

12. The Commission will assess whether the changes brought about by the merger would result in any of these effects. In oligopolistic markets ([7]), a merger can significantly impede effective competition in two ways (b) and (c). They may both be relevant when assessing a particular transaction. In both scenarios increased prices will lower consumer welfare.

Market characteristics and concentration

13. In considering the possible anti-competitive effects of the merger, a number of basic facts about the markets need to be considered. These include elements such as market shares, concentration levels and the importance of innovation.

14. Market shares often provide a useful first indication of the competitive importance of both the merging parties and their competitors ([8]). However, current market shares may be less important if there are indications that the competitive conditions may change in the near future, for instance in the light of likely exit, entry or expansion. This could be the case if the merging firms are likely to lose demand from customers who pursue a multiple sourcing strategy. In bidding markets, market shares may not be informative of the likely competitive impact of a merger ([9]). In these cases it is preferable to obtain direct information about the role of market players in the bidding processes, for example by means of win/loss analyses ([10]). The more precise the customer preference information is, the less weight should be placed on market shares as indicators of the possible competitive effects of a given merger.

15. Changes in historic market shares often provide useful information about the competitive process and the likely future importance of the various competitors, for instance, by indicating which firms have been gaining or losing market shares.

16. The overall concentration in a market also gives useful information about the competitive situation in a market. The Commission will apply the Herfindahl-Hirschman Index ('HHI') as a first indication of the competitive pressure in the market post-merger. The HHI is calculated by summing the squares of the individual market shares of all the firms in the market ([11]). The HHI gives proportionately greater weight to the market shares of the larger firms, in line with their relative importance in the competitive process. The Commission is unlikely to investigate cases where the aggregate HHI after the merger remains below [1 000] ([12]).

17. An important part of the competitive analysis is to establish the main parameters of competition in a particular market. Two broad types of competition are normally distinguished. First, competition primarily in output or capacity occurs in practice in situations where firms choose output or capacity and then, given the level of demand, adjust prices to sell this output. For example, in some commodity industries, price levels are determined by the overall level of output on the market. Second, competition primarily in prices occurs when firms set prices and adjust their production level according to demand.

18. However, in some markets innovation is the main competitive force. In these cases, the Commission examines how the merger will affect the competitive pressure to innovate in the market.

A firm with a paramount market position

19. Some proposed mergers would, if allowed to proceed, leave a firm in a paramount market position. This would occur if, as a result of the transaction, the merged firm ([13]) would not be constrained in any significant way by actions of actual competitors in the relevant market. A paramount market position is found by reference to a number of different criteria.

20. According to well-established case law, very large market shares — in excess of 50 % — may be in themselves, save in exceptional circumstances, evidence of the existence of a dominant market position ([14]), in particular when the other competitors on the market hold much smaller shares. Indeed the smaller firms may not act as a constraining influence if, for example, they do not have the incentive or the ability to increase their production or they do not have a sufficient overall presence in the market. A firm, the market shares of which will remain below 50 % after the merger, may also be considered as holding a paramount market position in view of other factors such as the strength and number of competitors ([15]).

21. Various factors may also be taken into account in order to determine the extent of the merged entity's economic power:

— economies of scale and scope: whenever large-scale production or distribution gives the paramount firm a strategic advantage over smaller competitors ([16]),

— privileged access to supply: the paramount firm may be vertically integrated or may have established sufficient control of the supply of upstream products ([17]) that expansion by the small rival firms may be difficult or costly,

— a highly developed distribution and sales network: the paramount firm may have its own dense outlet network ([18]), established distribution logistics ([19]) or wide geographic coverage ([20]) that would be difficult for rivals to replicate,

— access to important facilities or to leading technologies may give the merging firms a strategic advantage over their competitors ([21]),

— privileged access to specific inputs such as physical or financial capital. In the large majority of cases financial strength is unlikely to be an issue. However, in some cases it may be one of the factors that contribute to a merger giving rise to competition concerns ([22]), in particular in those cases where (i) finance is relevant to the competitive process in the industry under review; (ii) there are significant asymmetries between competitors in terms of their internal financing capabilities; and (iii) particular features of the industry make it difficult for firms to attract external funds,

— other strategic advantages, such as the ownership of the most important brands ([23]), a well-established reputation, or an extensive knowledge of the specific preferences of customers.

22. Some of the factors listed above are likely to benefit the customers of the paramount firm (see Section VI). However, they may also make it difficult for competitors, either individually or in the aggregate, to effectively constrain the paramount firm to a sufficient degree. For instance, they may make expansion of smaller firms or entry of new competitors difficult. The Commission will thus examine whether the merging firms will face sufficient residual competition to make it unprofitable to increase prices or decrease output.

23. A merger may either create a paramount firm or it may strengthen it by further eliminating some of the remaining competitive constraints. To ascertain the specific competitive effects of a merger, it will, inter alia, be appropriate to consider the competitive constraints that the merging firms exert on each other pre-merger and to examine whether the elimination of these constraints will lead the merged firm to significantly raise prices. Thus, the elimination of inter-brand rivalry ([24]), or more generally, the fact that rivalry between the parties has been the main source of competition on the market ([25]), may be an important factor of the analysis. The fact that one of the merging parties, although small, had an important competitive function may also be relevant, in particular when the market is already concentrated ([26]). This analysis would be similar to that described in more detail in the following section on non-collusive oligopolies.

24. In deciding whether a merger creates or strengthens the dominant position such that effective competition is likely to be significantly impeded, the Commission will also take into account whether the analysis of entry barriers, buyer power or efficiencies (see Sections IV to VI) points to a negative conclusion.

Non-collusive oligopolies

25. Many oligopolistic markets exhibit a healthy degree of competition. Nonetheless, under certain circumstances, some mergers may diminish the degree of competition by removing important competitive constraints on one or more sellers, who consequently find it profitable to

increase prices or reduce output post merger. The most direct effect will be the elimination of the competitive constraints that the merging firms exerted on each other. Before the merger, the merging parties may have exercised a competitive constraint on each other. If one of the merging firms had raised its price or reduced output, then it would have lost customers to the other merging firm, making it unprofitable. The merger would thus eliminate this particular constraint ([27]). In addition, non-merging firms can also benefit from the reduction of competitive pressure that results from the merger since the merging firms' price increase or output reduction may switch some demand to the rival firms, which, in turn, may find it optimal to increase prices. The elimination of these competitive constraints could lead to a significant price increase or output reduction in the relevant market.

Market share and concentration thresholds

26. In evaluating horizontal mergers in non-collusive oligopolies, the Commission will consider various measures of concentration. A high concentration level could indicate lack of competitive pressure on the market. The Commission will use different measures depending on whether the goods are relatively homogeneous ([28]) or differentiated ([29]).

27. In the context of relatively homogeneous products, the HHI index provides a particularly good indicator for the competitive situation in the market. A merger is likely to raise serious doubts within the meaning of Article 6(1)(c) ECMR when it leads to an aggregate HHI of [2 000] or more and an increase in HHI of [150] or more ([30]).

28. In a differentiated product market the competitive constraint is determined by the degree of substitutability between the various goods. When data are available, the degree of substitutability may be evaluated through customer preference surveys, the analysis of purchasing patterns, estimation of the cross-price elasticities of the products involved ([31]), or diversion ratios ([32]).

29. Although market shares give an imperfect indication of the intensity of competition in differentiated product market, they may still be informative of the likely competitive pressure in the market. Concentrations leading to a limited combined market share are unlikely to result in a level of economic power that could impede significantly effective competition. This may be the case when the market share of the undertakings concerned does not exceed 25 % either in the common market or in a substantial part of it provided the products of the remaining competitors are sufficiently close substitutes.

Markets where firms compete primarily in output/capacity

30. In markets where output or capacity levels are the most important strategic decisions made by the oligopolists, the important concern for firms is how their output or capacity decision influences the prices in the market. When goods are relatively homogeneous, the merging firms may have an incentive to reduce output or capacity below the combined pre-merger levels, thereby raising the market prices. Before the merger, an increase in the price induced by the contraction of output by one of the merging parties would only benefit this particular party through higher margins on its sales. After the merger the higher margins would also be enjoyed on the sales made by the other merging party. However, the extent of the post-merger price increase will depend on the ability and incentive of the rival firms to expand output.

31. When rival firms have enough capacity, buyers will easily find alternative sources of supply as long as it remains profitable for rival firms to expand output. In this case, the post-merger price increase may be limited, and the Commission may see no reason for concern. However, it may be the case that competitors are unable or unwilling to expand output sufficiently to offset the output reduction from the merging parties. Such output expansion is, in particular, unlikely when competitors face binding capacity constraints or if existing excess capacity is significantly more costly to operate than capacity currently in use ([33]).

32. Also in markets where firms offer differentiated products, output and capacity choices may determine prices. Though the particular price of each product may vary according to its characteristics, the overall price level in this type of market is closely related to the output decisions of the firms, and the aggregate level of demand. In this context, a decrease in output of one of the merging firms' products is likely to lead to increased demand for competing producers. The incentive of the merging firms to reduce output will be stronger the stronger is the degree of substitutability between the merged entity's products. The reactions by rivals are likely to be less significant when they face capacity constraints, and when their products are not good substitutes for the merging firms' products.

33. In order to determine the impact of the merger, the Commission will analyse the ability and the incentive of the merging firms to reduce output as described above. The Commission will analyse also entry barriers, buyer power or efficiencies (see Sections IV to VI).

Markets where firms compete primarily on prices

34. In certain markets, setting prices is the most important strategic decision made by the oligopolists. For example product differentiation may allow firms some price flexibility. Negative effects on competition may arise where, following the merger, the new entity finds it profitable to raise prices as a result of the loss of competition between the merging firms. Before the merger, the merging firms may have exercised a competitive constraint on each other in the sense that if one of the firms raised its prices, it would lose customers to the other firm. The merger would remove this particular constraint.

35. The incentive to increase prices is strongly related to the proportion of lost sales that each merging firm would be expected to recapture in increased sales of the other merging party's product. The Commission will, first, focus on the degree of substitution between the merging firms' products. The higher the degree of substitution between the merging firms' products, the stronger would be the incentive for the merging firms to raise prices and the higher the likely post-merger price increase.

36. The Commission will, second, evaluate the degree of product differentiation between the merging firms and their competitors' products. The merging firms' incentive to raise prices is more constrained when rival firms produce close substitutes than when they offer distant substitutes. The Commission will be less concerned where there exists a high degree of substitution between the merging firms' products and the products supplied by rival producers. For example, a merger between two producers that offer products which consumers view as particularly close substitutes could generate a significant price increase. If rival firms, however, offer products that are close substitutes to those of the merging parties, then the post-merger price increase may be limited.

37. In some markets it may be relatively easy and not too costly for the active firms to reposition their products or extend their product portfolio. The Commission will examine whether the possibility of repositioning or product line extension by the merging parties or competitors may influence the incentive of the merged entity to raise prices. Product repositioning or product line extension is less likely when it entails large sunk cost.

38. In order to determine the impact of the merger, the Commission will analyse the ability and the incentive of the merging firms to increase price as described above. The Commission will analyse also entry barriers, buyer power or efficiencies (see Sections IV to VI).

Bidding markets

39. In situations when sellers compete to make a specific offer to each particular buyer, the competitive effect analysis of a merger may be different from that presented above. In particular, in the case of bidding markets, the main competitive outcome is ensured by the presence of several competitive bids. The Commission will analyse whether there would be bidding contests where the merging firms would likely be each other's most credible contenders. This could be the case when the merging parties are the two bidders with the lowest costs and where no other bidders have sufficiently low costs to exercise a competitive constraint on the winning bidder.

Increased risk of coordination

40. A merger may change the nature of competition in an oligopolistic market so sellers, who previously were not coordinating their behaviour, are now able to coordinate and thus raise their prices, without having to enter into an agreement or resort to a concerted practice within the meaning of Article 81 EC ([34]). The alteration of the market structure may be such that they would consider it possible, economically rational, and hence preferable, to adopt on a lasting basis a course of action on the market aimed at selling at above competitive prices.

41. A merger may also make coordinating easier for sellers who were coordinating already before the merger, either by making the coordination more robust or by further departing from the competitive outcome. It is unlikely that the Commission would approve a merger if coordination were already taking place prior to the transaction unless it determines that the merger is likely to disrupt such coordination.

42. Coordination may take various forms. In some markets the most likely coordination may be on keeping or raising prices above the competitive level. In other markets coordination may aim at limiting the production or the amount of new capacity brought to the market. Firms may also coordinate on dividing the market, for instance by geographic area ([35]) or by other customer characteristics or by taking turns in winning contracts in bidding markets.

43. Coordination is more likely to emerge in markets where it is fairly simple to establish the terms of coordination. This includes both the type of coordination and the implicit rules governing the coordination. Parties should thus be able to arrive at a common perception as to which actions would be considered aggressive ('cheating'), thus justifying countering responses ('punishments') by the other members of the oligopoly.

44. Three basic conditions must be fulfilled for coordination to be sustainable. First, the coordinating firms must be able to monitor to a sufficient degree whether the terms of coordination are being adhered to, that is to detect whether any firm in the group is deviating from the terms of coordination. Second, there must be credible deterrent mechanisms that can be activated in case deviation is detected. Such deterrent mechanisms should be sufficiently severe that they convince the coordinating firms that it is in their best interest to adhere to the terms of coordination. Third, the actions of outsiders, such as current and future competitors, as well as customers, should not be able to jeopardise the results expected from the coordination ([36]).

45. A market where it is reasonably easy to establish the terms of coordination and where the three criteria mentioned above are fulfilled to a sufficient degree, is prone to the emergence of coordinated behaviour. This is not to say that substantial coordination will necessarily occur. However, the fewer firms in the oligopoly, the more likely it is that firms will be able to take advantage of the favourable market condition and establish or improve a situation of mutual coordination. In most cases a merger in this context would thus either strengthen existing coordination or increase the likelihood of it occurring.

46. The Commission examines whether it would be possible to establish the terms of coordination and whether the three necessary conditions are likely to be sufficiently met in the post-merger situation and the changes that the merger brings about in this respect. This will allow the Commission to assess whether a merger would lead to an increased risk of coordination occurring or to coordination being made easier or more successful.

47. The Commission takes into account both the structural features of the markets concerned and the past behaviour of the firms in these markets. Many structural features are important for more than one of the conditions.

48. The analysis of the possibility of coordination in a particular relevant market typically requires considering a large amount of information, which may not all point to the same conclusion. Evidence of past coordination in similar product or geographic markets may then be useful information indicating that the necessary conditions mentioned above are likely to be fulfilled also in the markets relevant to the merger. Similarly, firms may be vigorously competing prior to the merger in ways that make the emergence of coordination unlikely.

Establishing terms of coordination

49. Coordination is more likely to emerge if the members of the oligopoly could easily arrive at a common perception as to how the coordination mechanism works. Members should have similar views regarding what would be considered to be in accordance with the aligned behaviour and which actions would be likely to result in a punishment from the other members of the oligopoly.

50. Generally, the more simple and stable the economic environment, the easier it is for the firms to establish the terms of coordination. It is easier to coordinate on a price for a single, homogeneous product, than on hundreds of prices in a market with many differentiated products. Similarly, it is easier to coordinate on a price when demand and supply conditions are relatively stable than when they are continuously changing. In this context substantial organic growth by some firms in the market may indicate that the current situation is not sufficiently stable to make coordination likely. Coordinating by way of market division will be easier if customers have simple characteristics that allow the coordinating firms to readily allocate them. Such characteristics may be geographically based, based on type of customer or simply based on the existence of customers who typically buy from one specific coordinating firm.

51. Coordinating firms may, however, find ways to overcome problems stemming from complex economic environments. They may, for instance, establish simple pricing rules that reduce the complexity of coordinating on a large number of prices. One example of such a rule is establishing a small number of pricing points, thus reducing the coordination problem drastically. Another example is having a fixed relationship between certain base prices and a number of other prices so that all prices basically move in parallel.

52. Detailed knowledge about the other firms may also help overcome some of the problems in establishing terms of coordination. In particular transparency as to the cost structure may be important. Structural links such as cross-shareholding or participation in joint ventures may help in aligning incentives between the oligopolists. Another way to establish the common terms of coordination would be to publicly exchange strategic information through the press. One such example would be if the firms were confronted with the challenge of coordination on how much extra capacity to put on the market from one year to the next. Stating publicly how much demand is expected to increase could be a way to overcome this challenge. The more complex the market situation is, the more transparency or communication is needed to establish the terms of coordination.

53. Firms will also find it easier to establish terms of coordination, the more symmetric are the firms ([37]). Symmetry among firms enhances the probability that firms have compatible incentives to coordinate and, in particular, that they agree on what are desirable terms of coordination. For instance, firms with similar cost structures and market shares, operating at similar capacity levels and with the same degree of vertical integration, will likely find it relatively easy to coordinate on desirable prices.

54. The Commission will pay particular attention to any change the merger may bring about with respect to how easy firms would find establishing terms of coordination. For instance, a merger may increase the symmetry of a group of firms by making the market shares, the levels of capacity usage, the degree of vertical integration or the cost structures of these firms more similar. A merger may also involve a firm, which consistently in the past has shown to prefer lower prices than its competitors. Such a firm is sometimes termed a maverick. If the merged firm were to follow pricing strategies similar to those of the other competitors, the remaining firms would find it easier to coordinate on desirable prices, and the merger would increase the likelihood of coordination.

Monitoring

55. Coordinating firms are always tempted to increase their share of the market by deviating from the terms of coordinating, for instance by lowering prices, increasing their capacity or trying to win more tenders than envisaged. Only the threat of timely 'punishment' keeps firms from deviating. In order to know when to activate such deterrent mechanisms, the coordinating firms need to be able to monitor to a sufficient degree whether deviation is taking place. Markets therefore need to be sufficiently transparent to allow coordinating firms to observe in a timely way what choices other firms are making.

56. The degree of transparency depends inter alia on how transactions take place in a particular market. Transparency is higher in a market where transactions takes place on a public exchange where offers and demands are matched, than in markets where transactions are confidentially negotiated between buyers and sellers on a bilateral basis. Publicly available price lists may offer transparency insofar as they tend to reflect transaction prices. Transparency may be diminished if actual prices also comprise unobservable discounts.

57. In particular in bidding markets the degree of transparency depends on the type of auction method that is applied. In sealed bid auctions, no bidder may obtain access to information regarding the offers submitted by other bidders. In an open outcry auction, bidding behaviour by one bidder is readily observable by the other bidders. Similarly in other markets, it is of importance for assessing the degree of transparency to investigate what type of information about each transaction is publicly available. In some markets prices are publicly available.

58. When evaluating the level of transparency in the market, the key element is to identify the information about the other oligopolists' actions that can be inferred from the information available. Coordinating firms should be able to interpret with some certainty whether unexpected behaviour is actually the result of deviation from the terms of coordination. For instance, in unstable environments it may be difficult for a firm to know whether its lost sales are due to an overall low level of demand or to a loss of market share to a competitor who is offering particularly low prices. Similarly, in a situation where overall demand or cost conditions fluctuate, it may be difficult to interpret whether a competitor is lowering its price because it expects the coordinated prices to fall or because it is behaving aggressively.

59. In some markets where the general conditions may seem to make monitoring of other firms' behaviour difficult, firms may nevertheless engage in practices, which have the effect of easing the monitoring task, even when these practices may not necessarily be entered into for such purposes. These practices, such as voluntary publication of information or announcements may increase transparency or help competitors interpret the choices made. Cross-directorships, participation in joint ventures and similar arrangements may also make monitoring easier.

60. The Commission will pay particular attention to whether the merger brings about changes to the ability of coordinating firms to monitor each other. For instance, changes in vertical integration may allow a better monitoring of prices. A merger may also involve a firm, which previously has not followed some industry practice, which made monitoring easier.

Deterrent mechanisms

61. Coordinating cannot take place without the existence of deterrent mechanisms that are sufficiently severe to convince all coordinating firms that it is in their best interest to adhere to the terms of coordination. It is thus the threat of future retaliation that keeps the coordination sustainable. However the threat is only credible if, in case deviation by one of the firms is detected, the deterrent mechanisms will indeed be activated. Although deterrent mechanisms often are also called 'punishment' mechanisms, this should not be understood in the strict sense that such a mechanism necessarily punishes individually a firm that has deviated. If firms expect coordination to break down for a sufficient time if anybody deviates, and thus revert to a non-coordinated outcome this constitutes in itself a deterrent mechanism. This mechanism may however not be sufficient to discipline tacit coordination, in which case other mechanisms may have to be involved.

62. A firm would only chose to deviate from the coordinated practice if the discounted rewards from deviating are larger than the discounted cost of the punishment. Compared to the alternative of maintaining the coordinated practice, a deviation would initially lead to a higher profit, but later on to a lower level of profit once the other members of the oligopoly would implement the punishment. Deviations are prevented when the net present value of the loss of future profit during punishment outweigh the net present value of the higher profit that is enjoyed during the period of deviation. The sooner the punishment is likely to be implemented, the smaller is the gain from deviation, and the larger is the loss incurred during punishment.

63. Punishments that only enter into force after some time period, or are not likely to be activated, are less likely to be sufficiently severe. For example, if a market is characterised by infrequent, lumpy orders, a firm may be tempted to deviate in order to gain a large contract. It may be difficult to establish a sufficiently severe deterrent mechanism in such a market, since the gain from deviating is large, certain and immediate, and the losses from being punished may be uncertain and only materialise after some time. The speed with which deterrent mechanisms can be implemented is related to the issue of transparency. If firms are only able to observe their competitors' actions after a substantial delay, then punishment will be similarly delayed and may influence whether it would be sufficient to deter deviation.

64. The deterrence need not necessarily take place in the same market as the deviation. If the members of the oligopoly have commercial interaction in other markets, these may offer various methods of deterrence ([38]). The deterrence can take many forms, including cancellation of joint ventures or other forms of cooperation or selling of shares in jointly owned companies.

65. Members of an oligopoly can only base coordination on a deterrent mechanism if it would be rational for each member to carry it out once a hypothetical deviation occurs. Whether a member of the oligopoly would indeed implement a deterrent mechanism depends on a balancing of short-term and long-term consequences similar to that carried out by the potential deviator. If a deviation is not punished, coordination will break down and future profit levels will likely be low. On the other hand, if the punishment is executed, coordination may be restored thus leading to higher profits in the future. It can thus be rational to implement a punishment mechanism even if it entails some short-term costs for the members of the oligopoly as long as they are outweighed by the long-term increase in profits that the restoring coordination would bring about.

66. In some cases particular punishment mechanisms may not be credible because they intrinsically prevent the reversion to the coordinated outcome. One such example would be in a stagnant market where capacity increases only can take place in big chunks (for instance by building a new factory) and where capacity has no value unless used in this particular market. In this scenario coordination aiming at keeping total capacity below the competitive level, may be unlikely because no credible deterrent mechanism is available in the case one member of the oligopoly deviates by increasing capacity to a level, where further increase in capacity would lead to a permanent oversupply.

67. In some cases the deviation may in itself bring about a durable competitive advantage that no punishment available to the other oligopolists could effectively counter. In a market with strong network effects, i.e. markets where any one consumer prefers to be supplied by the same supplier as the other consumers ([39]), the deviation may bring about an irrevocable shift in the competitive balance in the market that would leave the other competitors permanently behind.

68. The merger may bring about changes as to how severe the punishment can be in a particular market. This could, for instance, result from changes in the distribution of market shares or excess capacity. The Commission will pay particular attention to such changes in the analysis of the competitive effects of the merger.

Reactions of outsiders

69. For coordination to be successful the actions of current and future competitors, as well as customers, should not be able to jeopardise the results expected from coordination. If for example coordination aims at reducing the overall capacity in the market, this will only hurt consumers if there is nobody outside the oligopoly that would respond to this decrease by increasing their own capacity correspondingly. The analysis of these elements is similar to the way they are analysed when other types of impediments to competition from mergers are considered. The effects of entry and buyer power of customers are dealt with in the following sections. However, special consideration should be given to the possible impact of these elements on the stability of coordination. For instance, by changing its commercial practice and concentrating a large amount of its requirements on one supplier or by offering long term contracts, a large buyer may be able to tempt one of the coordinating firms to deviate in order to gain substantial new business.

Particular cases

Innovation

70. In non-collusive oligopoly markets or in markets characterised by a firm with a paramount market position, where innovation is the main competitive force, the Commission examines how the merger will affect the competitive pressure to innovate in the market. The competitive pressure in such markets may be diminished if the merger is between the only two competitors that previously provided the most important innovations. For instance, this may be the case of a merger between two pharmaceutical companies, which were the only ones with pipeline products related to a specific product market. Alternatively, if the merger increases the firms' ability to bring new innovations to the market this may increase the competitive pressure to innovate. In markets where coordination is more likely, innovation make coordination less easy to sustain. The reason is that innovations, particularly drastic ones, may allow one firm to gain a significant advantage over its rivals. Thus, this may reduce both the value of future coordination and the amount of harm that rivals would be able to inflict.

Potential entry

71. Concentrations where an undertaking already active on a relevant market merges with a potential competitor in this market can have similar anti-competitive effects to mergers between two undertakings already active on the same relevant market. The Commission will therefore apply similar methods of analysis to the two types of concentrations.

72. A merger with a potential competitor can generate horizontal anti-competitive effects if the potential competitor significantly constrains the behaviour of the firms active in the market. This is the case if the potential competitor possesses assets that could easily be used to enter the market without incurring significant sunk costs. This is also the case if the potential competitor is very likely to incur the necessary sunk costs to enter the market in a relatively short period of time after which the potential competitor would constrain the behaviour of the firms active in the market.

73. For a merger with a potential competitor to have significant anti-competitive effects, two basic conditions must be fulfilled. First, the potential entrant must already exert a significant constraining influence or there must be a significant likelihood that it would grow into an effective competitive force. Evidence that a potential competitor has plans to enter a market in a significant way could help the Commission to reach such a conclusion ([40]). Second, there should not be a sufficient number of other potential competitors, which could exert the same competitive pressure as the merging potential competitor.

Mergers creating or strengthening buyer power

74. The Commission may also analyse to what extent a merged entity will increase its economic power as buyer in upstream markets. On the one hand, a merger that creates or strengthens the economic power of a buyer may impede effective competition. In particular, the merged firm may be in a position to reduce its purchase of inputs in order to obtain lower prices. This may, in turn, lead it to lower its level of output in the final product market, and thus harm consumer welfare. On the other hand, increased buyer power may often be beneficial for consumers. If increased buyer power lowers input costs without restricting downstream competition or total output, then a proportion of these cost reductions are likely to be passed onto consumers in the form of lower prices. Competition in the downstream markets could also be adversely affected if, in particular, the merged entity could use its buyer power to impose vertical restraints on suppliers, thus foreclosing its rivals.

IV. **COUNTERVAILING BUYER POWER**

75. The competitive pressure on a firm is not only exercised by the competitors but can also come from its customers. The Commission will, when relevant, consider to what extent customers will be in a position to counter the increase in market power that a merger is expected to create.

76. Even firms with very high market shares may not be able to act independently of their customers if the latter possess buyer power ([41]). Buyer power in this context should be understood as the ability of large customers within a reasonable timeframe to resort to credible alternatives if the supplier decides to increase prices or to deteriorate the conditions of delivery ([42]). Examples of such buyer power would be if the buyer could immediately switch to other suppliers, credibly threaten to vertically integrate into the upstream market or to sponsor upstream entry ([43]), for instance by persuading a potential entrant to enter by committing to place large orders with this company. It is more likely that large and sophisticated customers will possess this kind of buyer power than will smaller firms in a fragmented industry. However, it is important to consider the incentives of buyers to utilise their buyer power in this way. For example, a downstream firm may not wish to make an investment in sponsoring new entry if the benefits of such entry in terms of lower input costs could also be reaped by its competitors.

77. The Commission may conclude that buyer power is sufficient to prevent a creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded if the smaller customers without buyer power will not be faced with significantly higher prices or deteriorated conditions after the merger ([44]). Furthermore, it is not sufficient that buyer power exists prior to the merger, it must also exist and remain effective following the merger. This is because a merger of two suppliers may reduce buyer power if it removes a credible alternative.

V. **ENTRY**

78. In a dynamic competitive environment the number and identity of firms in an industry may vary over time in response to changing conditions. If the profit level in an industry is high due to lack of competitive pressure on the incumbents, one should expect entrepreneurs to seek to obtain a part of that profit by entering the industry. When entering the market is particularly easy, the mere threat of potential entry may be sufficient to prevent the merging parties from exercising market power. Indeed, in such a case, any price increase may create the incentives for new entry.

79. In assessing whether new entry can be considered as a sufficient competitive constraint on the merging parties, entry must be shown to be likely, timely and sufficient in its magnitude and scope to prevent the potential anti-competitive effects of the merger. The Commission is unlikely to find competition concerns when there is strong evidence that these conditions are met.

80. As regards the likelihood of new entry, the Commission will examine whether there is a high probability that new entry can be expected after the merger. In this respect, the Commission will have particular regard to the existence of barriers to entry to the relevant market, that is to the specific features of the market, which may give the incumbent firms a decisive advantage over potential competitors. When entry barriers are low, the merging parties will be more likely to be constrained by new entry. Conversely, when entry barriers are high, the merging firms can be expected to exert market power, and raise their prices, without being constrained by new firms entering the market.

81. Barriers to entry can take the form of legal, technical or strategic advantages:

— legal advantages cover situations where regulatory barriers created by legislation limit the number of market participants by, for example, restricting the number of licences,

— the incumbents may also enjoy technical advantages, such as preferential access to essential facilities, natural resources, innovation and R & D, or intellectual property rights, which make it difficult for any firm to compete successfully. For instance, in certain industries, it might be difficult to obtain essential input materials, or patents might protect products or processes. Other factors such as economies of scale and scope, distribution and sales networks, access to important technologies, may also constitute barriers to entry,

— furthermore, strategic barriers to entry may exist because of the established position of the incumbent firms on the market. In particular, it may be difficult to enter a particular industry because experience or reputation is necessary to compete effectively, both of which may be difficult to obtain as an entrant. Factors such as consumer loyalty to a particular brand, the closeness of relationships between suppliers and customers, the importance of promotion or advertising, or other reputational

advantages will be taken into account. Strategic barriers to entry also encompass situations where the incumbents already have committed to large excess capacity, or where the costs faced by customers in switching to a new supplier may also inhibit entry.

82. For entry to be likely, it must be sufficiently profitable when potential responses from the incumbents are taken into account. Entry is thus more difficult if the incumbents will be able to closely monitor which customers the entrant is trying to acquire and to protect their market shares by giving targeted pre-emptive price reductions to those customers.

83. The likely evolution of the market should be taken into account when assessing whether or not entry would be profitable. Entry is more likely to be profitable in a market that is expected to experience high growth in the future relative to a market that is expected to decline. Scale economies or network effects make entry unprofitable unless the entrant can obtain a sufficiently large market share.

84. Entry is particularly likely if suppliers in other markets already possess production facilities that could be used to enter the market in question. Such a reallocation of production facilities is more likely if the two alternatives are approximately equally profitable prior to the merger.

85. The Commission will look carefully at the history of the industry when assessing barriers to entry. It is not likely that the Commission will find barriers to entry in an industry that has experienced frequent and successful examples of entry. On the other hand if previous attempts to enter the market have been unsuccessful, perhaps due to deterring behaviour by incumbents, then entry would appear to be less likely in the future.

86. Any new entry should not only be likely but also timely and of sufficient scope and magnitude. In assessing whether entry would be timely, the Commission will look at whether any such potential new entry will be sufficiently quick and persistent to prevent the exercise of market power. The appropriate time period should depend on the characteristics and dynamics of the market, as well as on the specific capabilities of potential entrants ([45]). Entry which is not of sufficient scope and magnitude is not likely to constitute a constraint on the incumbents and to deter the anti-competitive effects of the merger. For instance, entry into some market 'niche' may not be a credible constraint. The threat of entry must also be sufficiently intense to dissuade the merging parties from increasing prices.

VI. **EFFICIENCIES**

87. The Commission welcomes corporate reorganisations in the form of concentrations as being in line with the requirements of dynamic competition and capable of increasing the competitiveness of European industry, improving the conditions of growth and raising the standard of living in the Community ([46]). Accordingly, the Commission takes into account in its assessment of horizontal mergers the development of technical and economic progress provided that it is to the consumers' advantage and does not form an obstacle to competition ([47]).

88. The Commission considers any substantiated efficiency claim in the overall assessment of the merger. It may decide that, as a consequence of the efficiencies that the merger brings about, this merger does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded. This will be the case when the Commission is in a position to conclude on the basis of sufficient evidence that the efficiencies generated by the merger are likely to enhance the incentive of the merged entity to act pro-competitively for the benefit of consumers, by counteracting the effects on competition which the merger might otherwise have. In the interest of the consumer, it is necessary to ensure that the merged firm will have sufficient incentives not only to realise the efficiencies arising directly from the merger but also to make continuing efforts to enhance efficiency. This presupposes sufficient competitive pressure from the remaining firms and from potential entry.

89. Efficiencies are most likely to make a difference when they are substantial and the possible anti-competitive effects that might otherwise occur are small. The greater these possible negative effects on competition, the more the Commission has to be sure that the claimed efficiencies are substantial, likely to be realised, and to the direct benefit of the consumer. It is unlikely that a market position approaching that of a monopoly can be declared compatible with the common market on efficiency grounds.

90. For the Commission to reach the conclusion that as a consequence of efficiencies, a merger does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded, the efficiencies have to be of direct benefit to consumers and to be merger-specific, substantial, timely, and verifiable.

91. Efficiencies should directly benefit consumers in the relevant markets where it is otherwise likely that a dominant position will be created or strengthened as a result of which conditions of effective competition would be significantly impeded. In line with the need to ascertain whether efficiencies will benefit consumers, cost efficiencies that lead to reductions in variable or marginal costs are more likely to be relevant to the assessment of efficiencies than reductions in fixed costs, since the former are more likely to result in lower consumer prices.

92. Also efficiencies that lead to new or improved products or services may directly benefit consumers. For example, a joint venture company set up in order to develop a new product may bring about the type of efficiencies that the Commission can take into account.

93. Efficiencies are merger specific when they are a direct consequence of the merger. In this respect the Commission concentrates on realistic and attainable alternatives rather than merely theoretical ones. In particular, the Commission takes account of established industry practices as well as the respective capabilities of the merging parties. In the same vein, the Commission does not consider cost reductions, which result from anti-competitive reductions in output as efficiencies.

94. Efficiencies have to be verifiable so that the Commission can be reasonably certain that the efficiencies are likely to materialise. The longer efficiencies are projected into the future, the less weight the Commission can assign to the efficiencies being brought about ([48]). The Commission must also be in a position to assess whether the efficiencies are substantial enough to counteract a merger's potential harm to consumers. Where reasonably possible, efficiencies should therefore be quantified. As indicated above, in order to verify whether cost efficiencies will directly benefit consumers, reductions in variable or marginal costs are likely to be more relevant to the analysis than reductions in fixed costs. Similarly, demonstrable efficiencies leading to new or improved products, which directly benefit consumers, are more likely to be considered by the Commission than mere assertions to this effect.

95. Most of the relevant information, which could allow the Commission to assess whether the merger will bring about the sort of efficiencies allowing to clear a merger, is uniquely in the possession of the merging parties. It is, therefore, incumbent upon the notifying parties to provide in due time all relevant information necessary to demonstrate that the efficiencies are merger specific, substantial, timely, and verifiable. Similarly, it is for the notifying parties to provide the evidence necessary to show why the efficiencies will counteract any adverse effects on competition that might otherwise result from the merger and therefore directly benefit consumers.

VII. FAILING FIRM

96. The Commission may decide that a merger, which creates or strengthens a dominant position, is nevertheless compatible with the common market if one of the undertakings is a failing firm being acquired by another undertaking. The basic requirement is that the deterioration of the competitive structure that follows the merger cannot be said to be caused by the merger ([49]).

97. The Commission considers the following three criteria as relevant for the application of a 'failing firm defence'. First, the acquired undertaking would in the near future be forced out of the market because of financial difficulties if not taken over by another undertaking. Second, there is no less anti-competitive alternative purchase than the notified concentration. Third, absent a concentration the assets of the failing firm would inevitably exit the market. In such circumstances, the merger may be deemed not to cause the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the common market if either the disappearance of the failing firm ([50]) or its acquisition by any other foreseeable potential purchaser ([51]) would equally lead to the creation or strengthening of a dominant position.

98. It is upon the notifying parties to show that the three criteria described above are fulfilled and that the deterioration of the competitive structure that follows the merger is not caused by the merger.

VIII. INVITATION FOR COMMENTS

99. The present public consultation is part of a wider process of review, reform and clarification of the terms and application of the Merger Regulation. Interested parties are invited to submit their views on the present draft Notice. Such comments should reach the Commission no later than 31 March 2003.

By mail to:

European Commission
Directorate-General for Competition
Horizontal Guidelines
B-1049 Brussels

By electronic mail:

Comp-MTF-horizontal-guidelines@cec.eu.int

(1) OJ L 395, 30.12.1989, p. 1, corrected version in OJ L 257, 21.9.1990, p. 13. Regulation as amended by Council Regulation (EC) No 1310/97 of 30 June 1997 (OJ L 180, 9.7.1997, p. 1), corrigenda in OJ L 40, 13.2.1998, p. 17, and OJ L 199, 26.7.1997, p. 69.

(2) The term 'concentration' used in the Merger Regulation covers various types of transactions such as mergers, acquisitions, takeovers, and certain types of joint ventures. In the remainder of this notice, unless otherwise specified, the term 'merger' will be used as synonymous for concentration and therefore cover all the above types of transactions.

(3) This notice does not cover the assessment of the effects of competition that a merger has in other markets including vertical and conglomerate effects. Nor does it cover the assessment of the effects of a joint venture as referred to in Article 2(4) of ECMR.

(4) OJ C 372, 9.12.1997, p. 5.

(5) See sections on merger with a potential entrant, on a merger that increases the buyer power of the merging parties and on the failing firm defence.

(6) In this notice the expression 'increased prices' is often used as shorthand for increased prices, reduced choice and qualities of goods and services, diminished technological innovation, and other possible consequences of a lack of effective competition. The expression should also be understood to cover situations where, for instance, prices are decreased less, or are less likely to decrease, than they otherwise would have absent the merger.

(7) An oligopolistic market refers to a market structure with a limited number of sizeable firms. Because the behaviour of one firm has an appreciable impact on the overall market conditions, and thus indirectly on the situation of each of the other firms, oligopolistic firms are interdependent.

(8) As to the calculation of market share data, see Commission notice on the definition of the relevant market for the purposes of Community competition law (OJ C 372, 9.12.1997, p. 3, paragraphs 54-55).

(9) In many cases the strength of the competitive constraints that exist between the various market players will depend more on the precise characteristics of the market players and the customers concerned than on the share of total sales for which the market players account. Market shares may in such circumstances either understate or overstate the competitive effects.

(10) A win/loss analysis identifies which sellers have been participating in bids for certain groups of customers and the extent to which these sellers have been successful in winning the contract or in obtaining a high position in the customers' ranking of bids.

(11) For example, a market containing five firms with market shares of 40 %, 20 %, 15 %, 15 %, and 10 %, respectively, has an HHI of 2 550 ($40^2 + 20^2 + 15^2 + 15^2 + 10^2 = 2\,550$). The HHI ranges from close to zero (in an atomistic market) to 10 000 (in the case of a pure monopoly). Although it is desirable to include all firms in the calculation, lack of information about small firms is not critical because such firms do not affect the HHI significantly.

(12) The aggregate HHI is the post-merger HHI calculated on the assumption that the two merging parties maintain their respective market shares.

(13) In some exceptional circumstances, a merger may also allow a company which was not a party to the notified transaction to have, or to strengthen, a paramount market position (see Commission Decision of 29 September 1999, IV/M.1383, Exxon/Mobil, recitals 225-229).

(14) Case T-221/95, Endemol/Commission, [1999] ECR II-1299, paragraph 134, and Case T-102/96, Gencor/Commission, [1999] ECR II-753, par. 205; Case IV/M.890, Blokker/Toys 'R' Us (OJ L 316, 25.11.1998, p. 1, paragraph 74).

(15) See, for example, Case IV/M.1221, Rewe/Meinl (OJ L 274, 23.10.1999, p. 1, paragraph 28). See also Case C-250/92, Gottrup-Klim [1994] I-5641, paragraph 48.

(16) Scale and scope economies result from the spreading of fixed costs over larger output or a broader set of products.

(17) See, for example, Case T-102/96, Endemol/Commission, [1999] II-753, paragraph 167.

(18) See, for example, Case T-22/97, Kesko/Commission, [1999], ECR II-3775, paragraphs 141 et seq.

(19) See, for example, Case COMP/M.2097, SCA/Metsa Tissue (OJ L 57, 27.2.2002, p. 1, paragraph 147).

(20) Case COMP/M.2033 Metso/Svedala, 2001, nyr, paragraph 195.

(21) Case IV/M.603, Crown Cork & Seal/Carnaud/MetalBox (OJ L 75, 23.3.1996, p. 38, paragraphs 66 et seq.).

(22) Case T-156/98 RJB Mining/Commission [2001] ECR II-337.

(23) See, for example, Case IV/M.623, Kimberly-Clark/Scott (OJ L 183, 23.7.1996, p. 1).

(24) See, for example, Case M.430, Procter & Gamble/VP Schickedanz (II) (OJ L 354, 31.12.1994, p. 32) and Case T-290/94, Kaysersberg/Commission, [1997] II-2137, paragraph 153.

(25) Case T-310/01, Schneider/Commission, [2002] II-0000, paragraph 418; Case IV/M.1628, TotalFina/Elf Aquitaine (OJ L 143, 29.5.2001, p. 1); Case COMP/M.2097, SCA/Metsä Tissue (OJ L 57, 27.2.2001, p. 1, paragraphs 94-108).

(26) Case IV/M.877, Boeing/McDonnell Douglas (OJ L 336, 8.12.1997, p. 16, paragraph 58 et seq.)

(27) See for example Case COMP/M.2817, Barilla/BPS/Kamps at paragraph 34; Case COMP/M.1672, Volvo/Scania (OJ L 143, 29.5.2001, p. 74, at paragraph 148).

([28]) Although most markets involve some elements of product differentiation, there exist markets in which goods are relatively homogeneous. Goods are relatively homogenous if customers consider the products from one producer as a sufficiently good substitute for the product from any other producer.

([29]) Products may be differentiated in different ways. There may be differentiation in terms of geographic location, based on branch or stores location. For example, location matters for retail distribution, banks, travel agencies, or petrol stations. Differentiation may also be based on brand image, technical specifications, quality or level of service. The level of advertising in a market may be an indicator of the firms' effort to differentiate their products. For other products, buyers may have to incur switching costs to use a competitor's product.

([30]) The increase in concentration as measured by the HHI can be calculated independently of the overall market concentration by doubling the product of the market shares of the merging firms. For example, a merger of two firms with market shares of 30 % and 15 % respectively would increase the HHI by 900 ($30 \times 15 \times 2 = 900$). The explanation for this technique is as follows: before the merger, the market shares of the merging firms contribute to the HHI by their squares individually: $(a)^2 + (b)^2$. After the merger, the contribution is the square of their sum: $(a + b)^2$, which equals $(a)^2 + (b)^2 + 2ab$. The increase in the HHI is therefore represented by $2ab$.

([31]) The cross-price elasticity of demand measures the extent to which the quantity of a product demanded changes in response to a change in the price of some other product, all other things remaining equal. The own-price elasticity measures the extent to which demand for a product changes in response to the change in the price of the product itself.

([32]) The diversion ratio measures the proportion of sales of a product that is lost to another product in the event of a price increase.

([33]) Case COMP/M.1693 — Alcoa/Reynolds.

([34]) Case T-102/96, Gencor/Commission, [1999] ECR II-753, paragraph 277; Case T-342/99, Airtours/Commission, [2002] ECR II-000, paragraph 61.

([35]) This may be the case if the oligopolists concentrated their sales in different areas for historic reasons.

([36]) Case T-342/99, Airtours/Commission, [2002] ECR II-000, paragraph 62.

([37]) Case T-102/96, Gencor/Commission, [1999] ECR II-753, paragraph 222.

([38]) See Case T-102/96, Gencor/Commission, [1999] ECR II-753, paragraph 281.

([39]) For example, the market for game consoles is characterised by strong network effects. The individual consumer will want to buy the game console that is most popular among other users, because the number of games developed for that particular console is likely to be higher and there would be more other users to exchange games with.

([40]) See, for example, Case IV/M.1681 — Akzo Nobel/Hoechst Roussel Vet, paragraph 64.

([41]) See, for example, Case IV/M.1882 — Pirelli/BICC, paragraphs 77-80.

([42]) Case IV/M.1313 — Danish Crown/Vestjyske Slagterier (OJ L 20, 25.1.2000, p. 1, paragraphs 171-173).

([43]) Case IV/M.1225 — Enso/Stora (OJ L 254, 29.9.1999, p. 9, paragraph 89).

([44]) Case IV/M.1225 — Enso/Stora (OJ L 254, 29.9.1999, p. 9, paragraphs 95-96).

([45]) See, for example, Case COMP/M.1693 — Alcoa/Reynolds (OJ L 58, 28.2.2002, p. 25, paragraphs 31-32, 38).

([46]) See Recital 4 of the Merger Regulation.

([47]) See Article 2(1)(b) of the Merger Regulation.

([48]) Benefits from efficiencies that are projected into the future are to be discounted over time. In part this is because in most cases, the longer efficiencies are projected into the future, the less probability the Commission can assign to the efficiencies actually being brought about.

([49]) Case C-68/94 — France/Commission, [1998] ECR I-1375, paragraph 110.

([50]) Case C-68/94 — France/Commission, [1998] ECR I-1375, paragraphs 117-120.

([51]) Cases M.2810 — Deloitte & Touche/Andersen UK; M.2816 — Ernst & Young France/Andersen France; M.2824 — Ernst & Young/Andersen Germany.

List of standards and/or specifications for electronic communications networks, services and associated facilities and services

(interim issue)

(2002/C 331/04)

(Text with EEA relevance)

EXPLANATORY NOTE CONCERNING THE INTERIM ISSUE OF THE LIST OF STANDARDS AND/OR SPECIFICATIONS FOR ELECTRONIC COMMUNICATIONS NETWORKS, SERVICES AND ASSOCIATED FACILITIES AND SERVICES

In accordance with Article 5(1) of Directive 90/387/EEC [1], as amended by Directive 97/51/EC and Article 17 of the Framework Directive 2002/21/EC [2], the Commission shall publish in the *Official Journal of the European Communities* a list of standards and/or specifications which serve as a basis for encouraging the harmonised provision of electronic communications networks, electronic communications services and associated facilities and services (first paragraph of Article 17), to ensure interoperability of services and to improve freedom of choice for users. (second paragraph of Article 17) [3].

This publication replaces the former ONP list of standards (the sixth issue) published on 7 November 1998 [4] under the ONP Directive. The obligations under the current regulatory framework remain applicable until the new regulatory framework is applied from 25 July 2003, in accordance with Article 28 of the Framework Directive.

The new regulatory framework implies a number of changes. All electronic communications networks, services and associated services are now covered. The list of standards needed to be changed accordingly. Major changes in this issue compared with the sixth issue of the ONP list of standards from 1998 are:

— a number of standards have been withdrawn from the ONP list of standards. Most standards associated with the PSDS Recommendation 92/382/EEC and ISDN Recommendation 92/383/EEC have been withdrawn,

— a number of additional standards have been added to the list, in particular in a new broadcasting chapter.

This is a selective list of standards in the areas concerned. In accordance with Art 17(2) of the Framework Directive, in the absence of standards and/or specifications in this list, Member States must encourage the implementation of standards and/or specifications adopted by European standards organisations and, in the absence of such standards and/or specifications, encourage the implementation of international standards or recommendations adopted by the International Telecommunication Union (ITU), the International Organisation for Standardisation (ISO) or the International Electrotechnical Commission (IEC) [5].

PREFACE

1. General

Pursuant to Article 5(1) of Directive 90/387/EEC, as amended by Directive 97/51/EC the Commission publishes a list of standards for harmonised technical interfaces and/or service features in the context of open network provision. Pursuant to Article 17(1) of the Framework Directive the Commission shall draw up and publish in the *Official Journal of the European Communities* a list of standards and/or specifications for encouraging the harmonised provision of electronic communications networks, electronic communications services and associated facilities and services.

The obligations under the current regulatory framework remain applicable until the new regulatory framework is applied from 25 July 2003, in accordance with Article 28 of the Framework Directive.

The list of standards will be revised on a regular basis to take account of requirements resulting from new technologies and market changes. Interested parties are encouraged to comment on this interim issue.

[1] Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (OJ L 192, 24.7.1990), as amended by Directive 97/51/EC of the European Parliament and of the Council of 6 October 1997 (OJ L 295, 29.10.1997).

[2] OJ L 108, 24.4.2002, p. 33.

[3] Equivalent wording is found in Article 5(1) of Directive 90/387/EEC, as amended by Directive 97/51/EC.

[4] OJ C 339, 7.11.1998, p. 6.

[5] Equivalent wording is found in Article 5(2) of Directive 90/387/EEC, as amended by Directive 97/51/EC.

The Communications Committee has been consulted in so far as the list relates to Article 17 of the Framework Directive ([1]).

2. **Structure of the list of standards**

— Chapter I: Reference list for leased lines beyond the minimum set defined in chapter I of the Annex.

— Chapter II: Access and interconnection. Number portability, carrier selection and carrier pre-selection.

— Chapter III: Unbundled access to the local loop.

— Chapter IV: Standards for implementing various user services.

— Chapter V: Standards for implementing data protection requirements.

— Chapter VI: Standards for electronic communications networks established for the distribution of digital broadcasting services including their associated facilities.

Annex

The annex includes, for information purposes only, a list of standards and/or specifications the implementation of which is made mandatory under the current Directives.

— Chapter I: Reference list for the minimum set of leased lines listed in Annex II of Directive 92/44/EEC ([2]) as amended by Directive 97/51/EC ([3]), and in future by Directive 2002/22/EC (Universal Service Directive) ([4]).

— Chapter II: Quality of service parameters, as established in Annex III of Directive 98/10/EC ([5]) as amended by Commission Decision 2001/22/EC ([6]), and in future by Directive 2002/22/EC (Universal Service Directive), for operators with universal service obligations.

([1]) Established under Article 22 of the Framework Directive.

([2]) OJ L 165, 19.6.1992.

([3]) OJ L 295, 29.10.1997, p. 23.

([4]) Article 18(1): 'Where (. . .) a national regulatory authority determines that the market for the provision of part or all of the minimum set of leased lines is not effectively competitive, it (. . .) shall impose obligations regarding the provision of the minimum set of leased lines, as identified in the list of standards published in the *Official Journal of the European Communities* in accordance with Article 17 of Directive 2002/21/EC (Framework Directive), and the conditions for such provision set out in (Annex VII to this Directive (. . .).'.

([5]) OJ L 101, 1.4.1998, p. 24.

([6]) OJ L 5, 10.1.2001, p. 12.

When no version number of the standard is quoted, the version referred to in this list is the version valid at the time that the list is published.

See section 7 of this preface for full references to the above-mentioned Directives.

3. **Status of the standards in the list**

The use of standards listed in Chapters I to VI is encouraged but there is no legal obligation to implement them. According to Article 17(2) of the Framework Directive, 'Member States shall encourage the use of the standards and/or specifications referred to (. . .) for the provision of services, technical interfaces and/or network functions, to the extent strictly necessary to ensure interoperability of services and to improve freedom of choice for users.' ([7]).

In accordance with Article 17 of the framework Directive, the purpose of this list is 'to serve as a basis for encouraging the harmonised provision of electronic communications networks, electronic communications services and associated facilities and services' (first paragraph), 'to ensure interoperability of services and to improve freedom of choice for users.' (second paragraph). This should be borne in mind when implementing standards which contain alternatives or optional clauses.

According to Article 17(5) and (6) of the Framework Directive, 'where the Commission considers that standards and/or specifications (. . .) no longer contribute to the provision of harmonised electronic communications services, or that they no longer meet consumers' needs or are hampering technological development, it shall (. . .) remove them from the list of standards and/or specifications (. . .).'.

4. **Technical standards and/or specifications**

Most of the standards and specifications mentioned in this list are ETSI deliverables under both the previous and current ETSI nomenclature. According to the 'ETSI Directives' ([8]), these deliverables are defined as follows:

Deliverables under the current ETSI nomenclature:

ETSI guide, EG: An ETSI deliverable, containing mainly informative elements, approved for publication by application of the membership approval procedure.

ETSI standard, ES: An ETSI deliverable, containing normative provisions, approved for publication by application of the membership approval procedure.

([7]) Equivalent wording is found in Article 5(1) of Directive 90/387/EEC, as amended by Directive 97/51/EC.

([8]) Available at http://portal.etsi.org/directives/

ETSI technical specification, TS: An ETSI deliverable, containing normative provisions, approved for publication by a technical body.

ETSI technical report, TR: An ETSI deliverable, containing mainly informative elements, approved for publication by a technical body.

European Standard (telecommunications series), EN: An ETSI deliverable containing normative provisions, approved for publication in a process involving the national standards organisations and/or ETSI national delegations with implications concerning standstill and national transposition.

Harmonised standard: An EN (telecommunications series) the drafting of which has been entrusted to ETSI by a mandate from the European Commission under European Directive 98/48/EC (latest amendment to Directive 83/189/EEC) and has been drafted taking into account the applicable essential requirements of the 'New Approach' Directive and whose reference has subsequently been announced in the *Official Journal of the European Communities*.

Special report, SR: An ETSI deliverable, which contains information made publicly available for reference purposes.

Deliverables under the previous ETSI nomenclature to which reference is made in the list:

European telecommunication standard (ETS): An ETSI deliverable, containing normative, provisions approved for publication in a process involving the national standards organisations and/or ETSI national delegations with implications concerning standstill and national transposition.

ETSI technical report, (ETR): An ETSI deliverable, containing informative elements, approved for publication by a technical committee.

5. **The three-stage specification methodology used by ETSI**

In the list stage 1, 2 and 3 standards are included where appropriate. These refer to the three-stage specification methodology used by ETSI (see ETR-010).

Stage 1 is an overall service description from the user's standpoint. Stage 2 is a description of the functional capabilities and the information flows needed to support the service described in stage 1. Stage 3 is the specification of the signalling protocol at the user-network access interface or at the gateway between two public networks.

6. **Addresses where documents referenced can be obtained**

ETSI Publications Office [1] postal address:

F-06921 Sophia Antipolis Cedex
tel. (33-4) 92 94 42 41 or (33-4) 92 94 42 58
fax (33-4) 93 95 81 33
e-mail: publications@etsi.fr
website: http://www.etsi.fr

ITU Sales and Marketing Service (For ITU-T documents) postal address:

Place des Nations
CH-1211 Geneva 20
tel. (41-22) 730 61 41 (English)
(41-22) 730 61 42 (French)
(41-22) 730 61 43 (Spanish)
fax (41-22) 730 51 94
e-mail: sales@itu.int
website: http://www.itu.int

7. **References to EU legislation**

The list refers to the following legislative documents which may be found at http://europa.eu.int/information_society/topics/telecoms/regulatory/index_en.htm.

Directive 2002/21/EC (Framework Directive) of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (OJ L 108, 24.4.2002, p. 33).

Directive 2002/19/EC (Access Directive) of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and services and associated facilities (OJ L 108, 24.4.2002, p. 7).

Directive 2002/22/EC (Universal Service Directive) of the European Parliament and of the Council on Universal service and users' rights relating to electronic communications networks and services (OJ L 108, 24.4.2002, p. 51).

Directive 2002/58/EC (Directive on privacy and electronic communications) of the European Parliament and of the Council on the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201, 31.7.2002, p. 27).

Directive 2002/20/EC (Authorisation Directive) of the European Parliament and of the Council on the authorisation of electronic communications networks and services (OJ L 108, 24.4.2002, p. 21).

[1] ETSI documents can be downloaded from the ETSI publications download area: http://pda.etsi.org/pda/queryform.asp

Recommendation 2000/417/EC of the Commission on unbundled access to the local loop (OJ L 156, 29.6.2000, p. 44).

Regulation EC/2887/2000 of the European Parliament and of the Council on unbundled access to the local loop (OJ L 336, 30.12.2000, p. 4).

Directive 90/387/EEC of the Council on the establishment of the internal market for the telecommunication services through the implementation of open network provision (OJ L 192, 24.7.1990, p. 1), as amended by Directive 97/51/EC of the European Parliament and the Council amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications (OJ L 295, 29.10.1997, p. 23).

Directive 92/44/EEC of the Council on the application of open network provision to leased lines (OJ L 165, 19.6.1992, p. 27), as amended by Directive 97/51/EC of the European Parliament and the Council amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications (OJ L 295, 29.10.1997, p. 23), as amended by Commission Decision of 7 January 1998 on amendment of Annex II to Directive 92/44/EEC of the Council (OJ L 14, 20.1.1998, p. 27).

Directive 95/47/EC (Television standards Directive) on the use of standards for the transmission of television signals (OJ L 281, 23.11.1995, p. 51).

Directive 97/33/EC of the European Parliament and the Council on interconnection in telecommunications with regard do ensuring universal service and interoperability through application of the principles of open network provision (OJ L 199, 26.7.1997, p. 32).

Directive 97/51/EC of the European Parliament and of the Council amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications (OJ L 295, 29.10.1997, p. 23).

Directive 98/10/EC of the European Parliament and the Council on the application of open network provision (ONP) to voice telephony and on universal service for telecommunication in a competitive environment (OJ L 101, 1.4.1998, p. 24) as amended by Commission Decision of 22 December 2000 on amendment of Annex III of the Directive 98/10/EC of the European Parliament and the Council (OJ L 5, 10.1.2001, p. 12).

The present list deals with standards on telecommunication networks and broadcasting networks and associated facilities. It is without prejudice to the Directive 1999/5/EC of the European Parliament and of the Council on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity [1], and any list of standards published pursuant to that Directive.

[1] OJ L 91, 7.4.1999, p. 10.

LIST OF STANDARDS AND/OR SPECIFICATIONS FOR ELECTRONIC NETWORKS, SERVICES AND ASSOCIATED FACILITIES AND SERVICES

The purpose of publishing standards in the list is to encourage the provision of harmonised electronic communications services to the benefit of users throughout the Community, to ensure interoperability and to support the implementation of the current and future regulatory framework. The main guiding principle to include standards is to focus on standards related closely to the provisions in the Directives.

CHAPTER I

Reference list for leased lines beyond the minimum set defined in Chapter I of the Annex

The technical interfaces and/or service features listed in this chapter include those listed in Annex III to Directive 92/44/EEC.

DIGITAL

Technical interfaces and/or service features	Reference	Notes
Notes N x 64 kbit/s	— ETSI EN 300 766	Connection characteristics and network interface presentation

Comments: ETSI EN 300 766 specifies connection characteristics and network interface presentation for multiple 64 kbit/s digital unrestricted leased lines with octet integrity presented at a structured 2 048 kbit/s interface at either of both ends.

Technical interfaces and/or service features	Reference	Notes
34 368 kbit/s — E3	— ETSI EN 300 686 — ETSI EN 300 687	Network interface presentation Connection characteristics

Comments: E3 is the market denomination for this type of leased line. The associated standard for terminal equipment is ETSI EN 300 89. The attachment requirements for terminal equipment to be connected to these leased lines were specified in ETSI TBR 24.

139 264 kbit/s — E4	— ETSI EN 300 686 — ETSI EN 300 688	Network interface presentation Connection characteristics

Comments: E4 is the market denomination for this type of leased line. The associated standard for terminal equipment is ETSI ETS 300 690. The attachment requirements for terminal equipment to be connected to these leased lines were specified in ETSI TBR 25.

SDH VC-based leased digital bandwidth	— ETSI EN 301 164 — ETSI EN 301 165	Connection characteristics Interface presentation

Comments: ETSI EN 301 164 specifies the technical requirements for leased line connections of SDH virtual containers, i.e. VC-4, VC-3, VC-2 and VC12. ETSI EN 301 165 defines the functions relevant for the interface presentations of SDH leased lines with STM-1 (155 520 kbit/s) in both electrical and optical forms and STM-4 (622 080 kbit/s) in optical form.

CHAPTER II

Standards for access and interconnection, number portability, carrier selection and carrier pre-selection

NETWORK INTERCONNECTION

This section contains standards for switched network interconnection, including intelligent network interconnection. The interconnection standards identified are based on Signalling System No 7 (SS7).

Technical interfaces and/or service features	Reference	Notes
ISUP	— ETSI EN 300 356-1 to 12 — ETSI EN 300 356-14 to 20 — ETSI EN 300 356-21	version 3 and 4 version 3 and 4 version 4
SCCP	— ETSI EN 300 009-1	
MTP	— ETSI EN 300 008-1	

Comments: ISUP is the user part of Signalling System No 7 (SS7). SS7 provides common channel signalling for use in circuit switched networks: PSTN, ISDN and GSM. ISUP has been designed first at an international boundary, but is also appropriate for the interconnections of different operators' networks in the same country. ISUP uses the layers 1 to 3 protocols (MTP) and may also use SCCP. Different ETSI versions for ISUP exist. ISUP version 2 of ETSI is specified in the ETS 300 356-series and in ETS 300 344.

The MTP standard ETSI EN 300 008-1 has been designed for international interconnection.

Application of ISUP version 3 for the ISDN-GSM signalling interface	— ETSI EN 302 646-1 to 64	

Comments: EN 302 646 contains modification to ISUP version 3 in order to interconnect ISDN and GSM.

TCAP	— ETSI ETS 300 287-1 to 3	
MAP	— ETSI TS 100 974 — ETSI TS 129 002	Phase 2+, Releases 1996-1998 Phase 2+, Release 1999 and Releases 4 and 5

Comments: MAP is the user part of Signalling system No 7 (SS7) for handling roaming in mobile networks. MAP uses the SS7 protocols MTP, SCCP and TCAP.

INAP	— ETSI EN 301 140-series — ETSI EN 301 193-series — ETSI EN 301 039-series	Capability set 2 (CS2) Capability set 3 (CS3) Capability set 4 (CS4)

Comments: INAP is the user part of Signalling system No 7 (SS7) for intelligent network interconnection. INAP uses the SS7 protocols MTP, SCCP and TCAP. Different ETSI capability set versions exist.

Technical interfaces and/or service features	Reference	Notes
Quality of service parameter definitions and measurement methods	— ETSI TR 101 949	

Comments: ETSI TR 101 949 contains harmonised definitions and measurement methods for a range of quality of service parameters that relate to public network-public network interconnection. The public network can be either fixed or mobile.

ACCESS TO SERVICE PROVIDERS

This section contains standards suitable for access to the network at points other than the network termination points offered to the majority of end-users.

Technical interfaces and/or service features	Reference	Notes
Service provider access requirements	— ETSI EG 201 722 — ETSI EG 201 897	

Comments: ETSI EG 201 722 lists the first set of access requirements that service providers have in delivering services over one or more public telecommunications networks primarily fixed public switched telecommunications networks (PSTNs) and Integrated Services Digital Networks (ISDNs).

ETSI EG 201 897 lists the second set of network access requirements that service providers have in delivering services including mobile, cordless and fixed services, over one or more public telecommunication networks.

Network operators' requirements for the delivery of service provider access	— ETSI EG 201 807	

Comments: ETSI EG 201 807 lists the first set of requirements that public network operators have for the delivery of service provider access to ensure network integrity, security and other aspects such as provisions for charging and billing.

Development of standards to support open inter-network interfaces and service provider access	— ETSI EG 201 916	

Comments: ETSI EG 201 916 contains information to enable service providers and network operators to determine and compare standardised facilities that are available in published ETSI protocols to support the introduction of new services.

NUMBER PORTABILITY AND CARRIER SELECTION AND CARRIER PRE-SELECTION

The technical interfaces and/or services features given in this section are based upon Article 19 of the Universal Service Directive with regard to operator number portability, carrier selection and carrier pre-selection.

Number portability in fixed public networks

Technical interfaces and/or service features	Reference	Notes
High level description of number portability	— ETSI TR 101 119	
High level network architecture and solutions to support number portability	— ETSI TR 101 118	
Guidance on choice of network	— ETSI TR 101 697	
Administrative support for number portability	— ETSI TR 101 698	
Numbering and addressing for number portability	— ETSI TR 101 122	

Technical interfaces and/or service features	Reference	Notes
Signalling requirements to support number portability	— ETSI TR 102 081	
SS7 ISUP: Enhancements for support of number portability	— ETSI EN 302 097	
IN and Intelligence Support for number portability	— ETSI EG 201 367	
Number portability for pan-European services	— ETSI TR 101 073	

Comments: The ETSI deliverables cover geographic as well as non-geographic numbers. Different solutions for number portability exist. An IN solution can provide high functionality with fairly high throughput or traffic handling capability. Depending on the number portability requirements, also other solutions with lower functionality are possible.

Number portability in mobile public networks

Support of mobile number portability — Service description	— ETSI EN 301 715	Stage 1
Support of mobile number portability — Technical Realisation	— ETSI EN 301 716	Stage 2

Comments: ETSI has produced TR 101 621 'Consequences of mobile number portability on the PSTN/ISDN and synergy between geographic and mobile number portability'.

Carrier selection and carrier preselection

Report on carrier selection	— ETSI TR 101 092	

Comments: ETSI TR 101 092 identifies the essential requirements and related network capabilities for introducing carrier selection and carrier pre-selection; a variety of possible methods are considered and the likely impact of each is assessed. ITU-T E.164 (Supplement 1) presents a summary of the potential methods for carrier selection and network identification on the public network.

CHAPTER III

Unbundled access to the local loop

The technical interfaces and/or services features given in this section are related to unbundled access to the local loop in accordance with Recommendation 2000/417/EC and Regulation (EC) No 2887/2000 on unbundled access to the local loop.

Technical interfaces and/or service features	Reference	Notes
Spectral management on metallic access networks	— ETSI TR 101 830-1	

Comments: ETSI TR 101 830-1 gives guidance on a common language for spectral management specifications. It provides a first set of definitions on spectral management quantities and an informative library of signal definitions.

Technical interfaces and/or service features	Reference	Notes
Asymmetrical digital subscriber line (ADSL)	— ETSI TS 101 388	
Symmetrical single-pair high bit rate digital subscriber line (SDSL)	— ETSI TS 101 524	
High bit-rate digital subscriber line (HDSL)	— ETSI TS 101 135	
Very high-speed digital subscriber line (VDSL)	— ETSI TS 101 270-1 — ETSI TS 101 270-2	Functional requirements Transceiver specification

Comments: ETSI TS 101 388 endorses ITU-T Recommendation G.992.1, the contents of which apply together with the addition of the modifications being covered in the specification. In addition ITU has worked out a variant ADSL solution in its Recommendation G.992.2, also known as G.Lite or 'splitter-less' ADSL, that is very easy to deploy in the customer premises. ETSI is developing specifications for DSL splitters in the TS 101 952 series.

CHAPTER IV

Standards for implementing various user services

The technical interfaces and/or services features given in this chapter are those suitable for implementing offerings regarding various user services in accordance with the Universal Service Directive.

SINGLE LINE ANALOGUE INTERFACE AND TELEPHONE TONES

In accordance with Article 4 of the Universal Service Directive Member States shall ensure that all reasonable requests for connection to the public telephone network at a fixed location and for access to publicly available telephone services at a fixed location are met by at least one operator.

Technical interfaces and/or service features	Reference	Notes
PSTN network termination point (NTP) analogue interface	— ETSI ES 201 970	

Comments: The objective of ES 201 970 is to specify the physical and electrical characteristics at a 2-wire analogue presented NTP for short to medium length loop applications, particularly suitable for use by new network operators of public switched telephone networks (PSTN).

Network generated tones	— ETSI TR 101 041-1	

Comments: The objective of ETSI TR 101 041-1 is to review the different existing tones in use. Recommendations are made for the tones most appropriate for harmonisation and for their technical characteristics.

STANDARDS FOR SERVICES AND OTHER MEASURES FOR DISABLED USERS

In accordance with Article 7 of the Universal Service Directive Member States shall, where appropriate take specific measures to ensure equal access to and affordability of publicly available telephone services for disabled users.

Technical interfaces and/or service features	Reference	Notes
Operational and interworking requirements for DCEs operating in the text telephone mode	— ITU-T V.18	

Technical interfaces and/or service features	Reference	Notes
Basic user requirements and recommendations for text telephony	— ETSI ETR 333	
Guidelines for telecommunication relay services for text telephones	— ETSI TR 101 806	

Comments: ETSI has published EG 202 116 'Guidelines for ICT products and services; design for all'.

DIRECTORY ENQUIRY SERVICES

In accordance with Article 5 of the Universal Service Directive Member States shall ensure that at least one telephone directory enquiry service covering all listed subscribers' numbers is available to all users.

Technical interfaces and/or service features	Reference	Notes
Interconnection of computerised directory assistance services	— ITU-T F.510	

Comments: TU-T F.510 was developed for international public directory services but is also suitable for interconnecting national directory databases.

ITU-T E.115 is currently used to implement international public directory services.

CALLER LOCATION

In accordance with Article 26(3) of the Universal Service Directive Member States shall ensure that providers of public telephone networks make caller location information available to emergency services authorities, to the extent technically feasible, for all '112' calls. In fixed networks caller location will be provided by means of CLIP service.

Technical interfaces and/or service features	Reference	Notes
Caller location in GSM networks		

Comments: The Commission services are preparing a recommendation on the implementation of caller location in public telecommunication networks, for calls to emergency services.

EUROPEAN TELEPHONE ACCESS CODE ('3883')

In accordance with Article 27 of the Universal Service Directive Member States shall ensure that all providers of public telephone networks handle all calls to the European telephony numbering space (ETNS).

Technical interfaces and/or service features	Reference	Notes
Routeing of calls to European telephony numbering space (ETNS) services	— ETSI EN 301 160	
Management of the European telephony numbering space.	— ETSI EN 301 161	
Human factors requirements for a European telephony numbering space (ETNS)	— ETSI EN 301 104	
Considerations on network mechanisms for charging and revenue accounting for European telephony numbering space (ETNS) services	— ETSI EN 101 617	

Comments: None.

ADDITIONAL FACILITIES

In accordance with Article 29 of the Universal Service Directive operators operating public telephone networks must support the use of DTMF tones and make available calling-line identification as listed in Annex I part B.

Dual-tone multi-frequency (DTMF)

Technical interfaces and/or service features	Reference	Notes
Specification of dual-tone multi-frequency system	— ETSI ES 201 235-1 — ETSI ES 201 235-3	Part 1 — General Part 3 — Receivers

Comments: Dual-tone multi-frequency transmitters are specified in ETSI ES 201 235-2. Dual-tone multi-frequency transmitters and receivers for use in terminal equipment for end-to-end signalling are specified in ETSI ES 201 235-4.

Calling-line identification in PSTN — Networks

Technical interfaces and/or service features	Reference	Notes
Calling line Identification Presentation (CLIP)	— ETSI ETS 300 648	Stage 1
Calling line identification Restriction (CLIR)	— ETSI ETS 300 649	Stage 1
Signalling protocol for support calling line identification	— ETSI EN 300 659-1 — ETSI EN 300 659-2	On-hook Off-hook
Services	— ETSI EN 300 659-3	Data link message and parameter coding

Comments: European telecommunications platform (ETP) has developed guidelines for CLI to telephone companies and organisations transmitting and receiving CLI information, as well as for terminal and network equipment manufacturers.

The implementation of these guidelines should ensure the ability of public networks to use CLI information for network and/or account management purposes and customer care or, in co-operation with the relevant authorities, handling of emergency calls and the tracing of malicious calls and similar services and activities.

Calling-line identification in ISDN — Networks

Technical interfaces and/or service features	Reference	Notes
Calling line identification Presentation (CLIP)	— ETSI EN 300 089 — ETSI ETS 300 091 — ETSI EN 300 092-1	Stage 1 Stage 2 Stage 3
Calling line identification Restriction (CLIR)	— ETSI EN 300 090 — ETSI ETS 300 091 — ETSI EN 300 093-1	Stage 1 Stage 2 Stage 3

Comments: None.

Calling-line identification in GSM — Networks

Technical interfaces and/or service features	Reference	Notes
Calling line identification	— ETSI GTS GSM 02.81	Stage 1
Supplementary services	— ETSI GTS GSM 03.81	Stage 2
	— ETSI EN 300 951	Stage 3
Comments: None.		

CONTROL OF EXPENDITURE

In accordance with Article 10 and Annex I part A of the Universal Service Directive operators with universal service obligations must offer a number of services so consumers can monitor and control expenditure. As universal service does not include ISDN only standards for services within the PSTN network are listed.

Outgoing call-barring

Technical interfaces and/or service features	Reference	Notes
Outgoing call-barring in PSTN networks		
Comments: The CEPT SF Handbook [1] Section II Chapters 3.1.2 and 3.1.3 contain recommendations for outgoing call-barring.		

CHAPTER V

Standards for implementing data-protection requirements

The technical interfaces and/or services features given in this chapter are those suitable for implementing the offerings in accordance with the Directive on privacy and electronic communications and the Universal Service Directive. However for some of the facilities which are also addressed in the Universal Service Directive the relevant standards are placed elsewhere in this list.

CALLING AND CONNECTED LINE IDENTIFICATION SERVICES

The technical interfaces and/or services features given in this section are related to the calling and connected line identification services required under Article 8 of the Directive on privacy and electronic communications.

Technical interfaces and/or service features	Reference	Notes
Anonymous call rejection (service that rejects incoming call without CLI)	— ETSI EN 301 798	
Comments: ETSI EN 301 798 contains the service description for the anonymous call rejection (ACR) supplementary service.		
Restrict the presentation of the calling line identification of incoming calls		
Comments: No standards exist.		
Restrict the presentation of the connected line identification		
Comments: No standards exist.		

[1] The CEPT SF Handbook can be obtained from ETNO, Avenue Louise 54, B-1050 Brussels.

LOCATION DATA FOR PUBLIC TELEPHONE SERVICES

In accordance with Article 26(3) of the Universal Service Directive, undertakings operating public telephone networks should make caller location information available to the authorities handling emergencies, for all calls to the single European emergency number '112'. In accordance with Articles 9 of the Directive on privacy and electronic communications, the subscriber must have the possibility, via a simple means, to temporarily deny the processing of location data for each connection to the network or for each transmission of a communication. In accordance with Article 10 of the Directive on privacy and electronic communications, the temporary denial of the subscriber may be overridden for the processing of location data for organisations dealing with emergency calls.

Technical interfaces and/or service features	Reference	Notes
Presentation of location data (data format) Restrict presentation of location data		

Comments: The Commission Services are preparing a recommendation on the implementation of caller location in public telecommunication networks, for calls to emergency services.

AUTOMATIC CALL FORWARDING

In accordance with Article 11 of the Directive on privacy and electronic communications Member States shall ensure that any subscriber is provided, free of charge and via a simple means, with the possibility to stop automatic call forwarding by a third party to the subscriber's terminal.

Technical interfaces and/or service features	Reference	Notes
Cancellation of call forwarding by the user that receive the forwarded call		

Comments: No standardised service exists. Requests to cancel call forward are handled by operators in an ad hoc basis.

CHAPTER VI

Standards for electronic communications networks established for the distribution of digital broadcasting services including their associated facilities

This chapter lists the relevant standards for the provision of broadcasting services in accordance with the Access and Interconnection Directive, the Universal Service Directive and the Framework Directive. These carry over or extend the relevant provisions from Directive 95/47/EC on the use of standards for the transmission of television signals (hereafter referred to as the 'television standards Directive').

INTEROPERABILITY OF CONSUMER TELEVISION EQUIPMENT

In accordance with Articles 3 and 4(d) of the television standards Directive, television sets should be fitted with at least one open interface socket (as standardised by a recognised European standardisation body). These obligations are carried over in modified form to Article 24 and Annex VI of the Universal Service Directive.

Technical interfaces and/or service features	Reference	Notes
Open interface for analogue television sets, e.g. peritelevision connector	— Cenelec EN 50049-1	
Open interface for digital television sets, e.g. common interface	— EN 50049-1/A1	
Interface for DVB Integrated receiver decoder	— ETSI TS 102 201	

Comments: As stated in recital 33 of the Universal Service Directive, user requirements and functionality of digital interface sockets are still evolving in line with technological developments.

CONDITIONAL ACCESS SYSTEMS

In accordance with Article 4(a) of the television standards Directive, consumer equipment capable of descrambling digital television signals must allow the descrambling of such signals according to the common European scrambling algorithm, and the display of signals that have been transmitted in clear. This is also required by Article 24 and Annex VI of the Universal Service Directive.

In accordance with Article 6(1) and Annex I of the Access and Interconnection Directive, Member States must ensure the application of the conditions referred to therein regarding access to digital television and radio broadcasting services. These carry over most of the provisions in Article 4 of the television standards Directive and extend their scope to radio services.

Technical interfaces and/or service features	Reference	Notes
DVB-SimulCrypt; Head-end architecture synchronisation and implementation (DVB-SIM)	— ETSI TS 101 197 — ETSI TS 103 197	
Support for use of scrambling and conditional access within digital broadcasting systems (DVB-CS)	— ETSI ETR 289	
Common interface specification for conditional access and other DVB decoder applications (DVB-CI) and one relevant implementation guide	— Cenelec EN 50221 — Cenelec R206-001	

Comments: None.

TRANSMISSION SYSTEMS

Digital television broadcasting

In accordance with Article 2(a) of the television standards Directive 'all television services transmitted to viewers in the Community, whether by cable, satellite or terrestrial means shall (. . .) if they are fully digital, use a transmission system which has been standardised by a recognised European standardisation body.'

Technical interfaces and/or service features	Reference	Notes
Framing structure, channel coding and modulation for 11/12 GHz satellite services (DVB-S)	— ETSI EN 300 421	
Implementation of binary phase shift keying (BPSK) modulation in DVB satellite transmission systems (DVB-S)	— ETSI TR 101 198	
Framing structure, channel coding and modulation for cable systems (DVB-C)	— ETSI EN 300 429	
Framing structure, channel coding and modulation for digital terrestrial television (DVB-T)	— ETSI EN 300 744	
Implementation guidelines for DVB terrestrial services; transmission aspects	— ETSI TR 101 190	
Multipoint video distribution systems:		
— at 10 GHz and above (DVB-MS)	— ETSI EN 300 748	
— below 10 GHz (DVB-MC)	— ETSI EN 300 749	
— based on OFDM modulation (DVB-MT)	— ETSI EN 301 701	
Mega-frame for single frequency networks synchronisation	— ETSI TS 101 191	
MPEG-implementation guidelines for the use of MPEG-2 systems, video and audio in satellite, cable and terrestrial broadcasting applications	— ETSI TR 102 154	
MPEG-implementation guidelines for the use of MPEG-2 systems, video and audio in contribution applications	— ETSI TR 101 154	

Comments: None.

Digital radio broadcasting

This section contains a standard suitable for the transmission of digital radio broadcasts.

Technical interfaces and/or service features	Reference	Notes
Digital audio broadcasting (DAB) to mobile, portable and fixed receivers	— ETSI EN 300 401	

Comments: None.

SERVICES

In accordance with article 18 and Art.17(2) of the Framework Directive Member States shall encourage the interoperability of digital television services.

Technical interfaces and/or service features	Reference	Notes
Specification for service information (SI) in DVB (DVB-SI) and two relevant implementation guidelines	— ETSI EN 300 468 — ETSI TR 101 211 — ETSI ETR 162	

Comments: None.

APPLICATION PROGRAM INTERFACES (APIs)

Article 18(1)(a) of the Framework Directive requires Member States to encourage, in accordance with the provisions of Article 17(2), providers of digital interactive television services for distribution to the public in the Community on digital interactive television platforms, regardless of the transmission mode, to use an open API.

Multimedia home platform

Technical interfaces and/or service features	Reference	Notes
Multimedia home platform (MHP) specification 1.0	— ETSI TS 102 812	
Multimedia home platform (MHP) specification 1.1	— ETSI TS 101 812	

Comments: Work on the multimedia home platform (MHP) technical specification continues in the digital video broadcast group (DVB). DVB has grouped the MHP functionality into three classes of profiles, i.e. enhanced broadcasting, interactive broadcasting (both covered by MHP version 1.0) and Internet access (covered by version MHP 1.1). ETSI has already adopted version MHP 1.0.2 and MHP 1.1.

ANNEX

This annex sets out, for information purposes only, a list of standards and/or specifications the implementation of which is made mandatory under current Directives.

In the present list, the standards and specifications are:

— the leased lines standards that are specified in Annex II of Directive 92/44/EEC,

— quality of service parameters, as established in Annex III of Directive 98/10/EC as amended by Commission Decision of 22 December 2000 on amendment of Annex III of the Directive 98/10/EC.

CHAPTER I

Reference list for leased lines listed in Annex II to Directive 92/44/EEC

In accordance with Article 7 of Directive 92/44/EC, certain organisations are obliged to provide a minimum set of leased lines conforming to the technical specifications given in this list. Following repeal of this Directive on 24 July 2003, these obligations are carried forward in accordance with Article 16(1) of the Universal Service Directive. Obligations regarding the provision of the minimum set of leased lines shall be reviewed in accordance with Article 16(3) and Article 18(1) of that Directive. In accordance with Article 18(2) of the Universal Service Directive, Member States shall withdraw the obligations concerning the provision of leased lines when the relevant market is effectively competitive.

ANALOGUE

Technical interfaces and/or service features	Reference	Notes
Ordinary quality voice bandwidth (2 wire)	— ETSI EN 300 488	Connection characteristics and network interface presentation
Comments: The associated standard for terminal equipment is ETSI EN 300 450. The attachment requirements for terminal equipment to be connected to these leased lines were specified in ETSI TBR 15.		
Ordinary quality voice bandwidth (4 wire)	— ETSI EN 300 451	Connection characteristics and network interface presentation
Comments: The associated standard for terminal equipment is ETSI EN 300 453. The attachment requirements for terminal equipment to be connected to these leased lines were specified in ETSI TBR 17.		

Technical interfaces and/or service features	Reference	Notes
Special quality voice bandwidth (2 wire)	— ETSI EN 300 449	Connection characteristics and network interface presentation
Comments: The associated standard for terminal equipment is ETSI EN 300 450. The attachment requirements for terminal equipment to be connected to these leased lines were specified in ETSI TBR 15.		
Special quality voice bandwidth (4 wire)	— ETSI EN 300 452	Connection characteristics and network interface presentation
Comments: The associated standard for terminal equipment is ETSI ETS 300 453. The attachment requirements for terminal equipment to be connected to these leased lines were specified in ETSI TBR 17.		

DIGITAL

Technical interfaces and/or service features	Reference	Notes
64 kbit/s	— ETSI EN 300 288 — ETSI EN 300 289	Network interface presentation Connection characteristics

Comments: The associated standard for terminal equipment is ETSI EN 300 290. The attachment requirements for terminal equipment to be connected to these leased lines were specified in ETSI TBR 14 and its amendment A1.

2 048 kbit/s — E1 (unstructured)	— ETSI EN 300 418 — ETSI EN 300 247	Network interface presentation Connection characteristics

Comments: E1 is the market denomination for this type of leased line. The associated standard for terminal equipment is EN 300 248. The attachment requirements for terminal equipment to be connected to these leased lines were specified in ETSI TBR 12 and its amendment A1.

2 048 kbit/s — E1 (structured)	— ETSI EN 300 418 — ETSI EN 300 419	Network interface presentation Connection characteristics

Comments: E1 is the market denomination for this type of leased line. The associated standard for terminal equipment is ETSI EN 300 420.The attachment requirements for terminal equipment to be connected to these leased lines were specified in ETSI TBR 13.

CHAPTER II

Quality of service parameters

In accordance with Article 12 of Directive 98/10/EC on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment as amended by Commission Decision of 22 December 2000 on amendment of Annex III of the Directive 98/10/EC, where at least organisations with significant market power must keep up-to-date information concerning performance based on the quality of service parameters laid down in Annex III of this Directive. Following repeal of this Directive on 24 July 2003, these obligations are carried forward, in accordance with Article 11 of the Universal Service Directive, where operators with universal service obligations must publish adequate and up-to-date information concerning their performance in the provision of universal service, based on the quality of service parameters, definitions and measurement methods set out in Annex III of that Directive.

Technical interfaces and/or service features	Reference	Notes
Quality of service parameter definitions and measurement methods	— ETSI EG 201 769-1	Version number is 1.1.1 (April 2000)

Comments: None.

STATE AID — ITALY

Aid C 60/2002 (ex N 747/2001) — Reduction of the greenhouse gases emissions (Tuscany region)

Invitation to submit comments pursuant to Article 88(2) of the EC Treaty

(2002/C 331/05)

(Text with EEA relevance)

By means of the letter dated 2 October 2002, reproduced in the authentic language on the pages following this summary, the Commission notified Italy of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the abovementioned aid.

Interested parties may submit their comments on the aid in respect of which the Commission is initiating the procedure within one month of the date of publication of this summary and the following letter, to:

European Commission
Directorate-General for Competition
State Aid Registry
B-1049 Brussels
Fax (32-2) 296 12 42.

These comments will be communicated to Italy. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

SUMMARY

1. **DESCRIPTION**

The scheme is intended to reduce the greenhouse gases emissions through the promotion of renewable energy sources and energy saving programmes.

The scheme involves two types of aid:

(a) *Investment aid to promote the utilisation of renewable sources of energy to produce electrical power and heat, through the implementation of:*

- new biomass installations, preferably integrated with district-heating networks,
- new solar energy installations,
- new photovoltaic plants,
- new renewable energy installations (wind energy, solid biodegradable municipal waste and biogases) serving the needs of minor islands.

(b) *Energy saving measures:*

- housing sector interventions,
- promotion and spread of heating/conditioning systems and high efficiency electrical components in the housing sector, private and public office buildings,
- implementation of high efficiency electrical components inside factories,
- promotion of a wider utilisation of low environmental impact fuels or a more efficient use of fuel in the industrial sector.

The aid is provided in the form of non-refundable grants.

The intensity of the aid is set as follows.

In the case of investment aid promoting renewable sources of energy:

- 40 % gross of eligible investment costs for new biomass installations,
- 30 % gross of the eligible investment costs for heat production plants from solar energy,
- 75 % gross of the eligible costs relating to new photovoltaic installations,
- 40 % gross of the eligible costs of new renewable sources installations serving the needs of minor islands, using wind, solid biodegradable municipal waste and biogases sources.

As it concerns energy saving investments:

- 40 % gross of the eligible costs for all kinds of intervention.

All undertakings (small, medium and large) are eligible.

The overall budget foreseen is EUR 29 million over the whole duration of the regime (i.e. 2002 to 2007).

2. **ASSESSMENT**

Presence of aid in the meaning of Article 87(1) of the EC Treaty

The scheme involves State aid within the meaning of Article 87(1) of the EC Treaty.

Compatibility of the aid with the EC Treaty

The Commission has assessed the notified measures in the light of the Community guidelines on State aid for environmental protection published in *Official Journal of the European Communities* C 37 of 3 February 2001 (hereinafter referred to as the guidelines), and found that the envisaged aid scheme does not fully comply with the requirements of the guidelines.

As regards submeasures 'new biomass installations', 'new solar energy installations' and 'new renewable energy installations serving the needs of minor islands' of the measure (a) investment aid promoting renewable sources of energy:

The definition of 'renewable sources of energy' and 'biomass' given in Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 (OJ L 283, 27.10.2001, p. 33) on the promotion of electricity from renewable sources in the internal electricity market, will apply.

Investments concerned, eligible costs and aid intensity are in line with the provisions of the guidelines.

Rules on cumulation of aid from different sources, pointed out at point 74 of the guidelines, are observed.

The Commission accordingly considers that the above-mentioned submeasures do not, however, adversely affect trading conditions between Member States to an extent contrary to the common interest and may thus be authorised pursuant to Article 87(3)(c).

Doubts with regard to the submeasure 'new photovoltaic installations' of the measure (a) of the scheme (promotion of renewable sources of energy):

As far as new photovoltaic installations are concerned, an aid intensity of 75 % of eligible costs is set down in the notified scheme. Such intensity has not been justified by the Italian authorities in line with point 32, third subparagraph of the guidelines. Consequently, the Commission has doubts as to whether the conditions laid down in the guidelines are met, with respect to the specific submeasure.

Doubts with regard to the measure (b) of the scheme (energy saving):

Point 30 of the guidelines states that investments in energy saving as defined in point 6 are deemed equivalent to investments to promote environmental protection. The investments concerned have to be in accordance with the requirements set down at point 36 of the guidelines.

On the one hand the Commission has doubts, at the present stage of its assessment, as to whether certain investments, aiming at the energy consumption control and measurement, could qualify as energy saving investments. The Commission finds that they could eventually represent a part of an energy saving project, in connection with other measures, but cannot be deemed to constitute energy saving investments on their own.

On the other hand the Commission has doubts as to whether the substitution of polluting fuels by other kinds of fuel, supposed to be less polluting, could be eligible for environmental aid.

As a consequence, the Commission is not able to evaluate, in the light of the information submitted by the Italian authorities, whether the investments concerned by the measure (b) of the notified scheme comply with the requirements of the guidelines.

TEXT OF THE LETTER

'La Commissione desidera informare l'Italia che, dopo aver esaminato le informazioni fornite dalle vostre autorità sulla misura in oggetto, ha deciso di avviare il procedimento di cui all'articolo 88, paragrafo 2 del trattato CE, in merito ad una parte del regime notificato, vale a dire la misura b) «riduzione dei consumi energetici» e il progetto «nuovi impianti fotovoltaici» della misura a) «produzione di energia da fonti rinnovabili». La Commissione ha deciso di non sollevare obiezioni nei confronti degli altri progetti previsti nella misura a) del regime, cioè «impianti per la produzione di energia con biomasse», «impianti per l'utilizzazione del solare termico» e «impianti nelle isole minori per la produzione di energia da fonti rinnovabili», in quanto essi sono compatibili con il trattato CE, a norma dell'articolo 87, paragrafo 3, lettera c).

I. **PROCEDURE**

Con lettera del 6 novembre 2001, registrata dalla Commissione il 9 novembre 2001 (A/38755), le autorità italiane hanno notificato, ai sensi dell'articolo 88, paragrafo 3, del trattato CE, il regime di aiuto sopra menzionato.

Con lettera D/55204, del 13 dicembre 2001, la Commissione ha chiesto ulteriori informazioni in merito al regime notificato.

Dato che le informazioni fornite dalle autorità italiane con le lettere A/30363 del 18 gennaio 2002 e A/31888 del 12 marzo 2002, erano incomplete, la Commissione ha inviato due solleciti il 21 febbraio (D/50737) e il 25 aprile 2002 (D/51984), ai sensi dell'articolo 5, paragrafo 2, del regolamento (CE) n. 659/1999 del Consiglio [1].

Le autorità italiane, dopo aver chiesto una proroga, hanno trasmesso delle informazioni, in data 6 giugno 2002, con lettera A/34113 (in allegato a quest'ultima veniva fornita per la prima volta la base giuridica) ed inviato ulteriori documenti con lettera A/34291 del 12 giugno 2002.

[1] Regolamento (CE) n. 659/1999 del Consiglio, del 22 marzo 1999, recante modalità di applicazione dell'articolo 93 del trattato CE, pubblicato nella GU L 83 del 27.3.1999 pagg. 1-9.

Con lettera D/53543 del 6 luglio 2002, la Commissione ha chiesto ulteriori informazioni che le autorità italiane hanno trasmesso con lettera A/36074 dell'8 agosto 2002. Nella stessa lettera le autorità italiane dichiaravano di considerare concluso l'esame preliminare della notifica, in seguito alla loro risposta.

In tale caso, ai sensi dell'articolo 5, paragrafo 3, del regolamento di procedura (CE) n. 659/1999 [2], il periodo di due mesi, di cui all'articolo 4, paragrafo 5, dello stesso regolamento, inizia a decorrere dal giorno successivo alla ricezione della suddetta dichiarazione. Di conseguenza, entro tale periodo, la Commissione deve prendere una decisione in merito all'aiuto notificato.

II. DESCRIZIONE DETTAGLIATA DELL'AIUTO

Oggetto dell'aiuto

Il regime di aiuto è finalizzato a ridurre le emissioni di gas a effetto serra promuovendo l'uso di fonti di energia rinnovabili e i programmi di risparmio energetico.

Il regime prevede due tipi di aiuto:

a) *L'aiuto agli investimenti per promuovere l'utilizzo di fonti rinnovabili per la produzione di energia termica ed elettrica, attraverso la realizzazione di:*

   — nuovi impianti per la produzione di energia con biomasse, preferibilmente integrati con reti di teleriscaldamento,

   — nuovi impianti per l'utilizzazione del solare termico,

   — nuovi impianti fotovoltaici per la produzione di energia,

   — nuovi impianti nelle isole minori per la produzione di energia da fonte eolica, dal combustibile derivato da rifiuti solidi urbani e dal biogas;

b) *Misure per la riduzione dei consumi energetici:*

   — interventi nel settore abitativo,

   — promozione e diffusione di sistemi di riscaldamento e condizionamento e di componenti elettrici ad alta efficienza nel settore abitativo, nonché negli uffici privati e pubblici,

   — applicazione di componenti elettrici ad alta efficienza nelle industrie,

   — promozione di un maggiore utilizzo di combustibili a basso impatto ambientale o di un uso più efficiente dei combustibili nell'industria.

Gli obiettivi globali di tipo ambientale perseguiti dal regime in questione, nel periodo 2002-2007, sono i seguenti:

— minore inquinamento atmosferico, causato dai gas ad effetto serra, corrispondente a 700 000 tonnellate di CO_2,

— 3 % del consumo energetico globale ottenuto da fonti rinnovabili,

— risparmio energetico pari a 25 000 tonnellate di petrolio.

Forma dell'aiuto e investimenti interessati

L'aiuto è fornito sotto forma di sovvenzioni a fondo perduto.

Gli investimenti interessati sono i seguenti:

— terreni, quando sono rigorosamente necessari per soddisfare obiettivi ambientali, fino ad una percentuale massima del 10 % dei costi totali ammissibili,

— fabbricati, impianti ed attrezzature destinati a ridurre o ad eliminare l'inquinamento ed i fattori inquinanti o ad adattare i metodi di produzione in modo da proteggere l'ambiente,

— oneri di progettazione, direzione lavori e collaudo direttamente imputabili alle opere, soltanto se obbligatori per legge ed a rendiconto.

Intensità dell'aiuto, beneficiari e costi ammissibili

L'intensità dell'aiuto è la seguente:

Nel caso di aiuti agli investimenti per la produzione di energia da fonti rinnovabili:

— 40 % lordo dei costi di investimento ammissibili per nuovi impianti per la produzione di energia con biomasse,

— 30 % lordo dei costi di investimento ammissibili per la realizzazione di impianti per l'utilizzazione del solare termico,

— 75 % lordo dei costi ammissibili relativi a nuovi impianti fotovoltaici,

— 40 % lordo dei costi ammissibili per la realizzazione di impianti nelle isole minori per la produzione di energia da fonte eolica, dal combustibile derivato da rifiuti solidi urbani e dal biogas.

Per quanto riguarda gli investimenti per la riduzione dei consumi energetici:

— 40 % lordo dei costi ammissibili per tutti i tipi di intervento.

Tutte le imprese (piccole, medie e grandi) sono ammissibili.

Il regime non si applica alle attività connesse alla produzione, trasformazione o commercializzazione di prodotti elencati all'allegato I del trattato.

I costi ammissibili sono rigorosamente limitati ai costi di investimento supplementari necessari per conseguire gli obiettivi di tutela ambientale. Essi verranno calcolati al netto dei vantaggi derivanti dall'eventuale aumento di capacità, dai risparmi di spesa ottenuti nei primi cinque anni di vita dell'impianto e dalle produzioni accessorie aggiuntive realizzate nell'arco dello stesso periodo quinquennale.

[2] Cfr. nota in calce 1.

Bilancio e durata

Il bilancio globale previsto è di 29 milioni di per l'intera durata del regime di aiuti (vale a dire 2002-2007).

Cumulo degli aiuti

L'aiuto relativo ai costi ammissibili nel quadro del presente regime non può essere combinato con altri aiuti ai sensi dell'articolo 87, paragrafo 1, del trattato, né con altri finanziamenti comunitari.

Impegni delle autorità italiane

Nel quanto riguarda gli impianti nel campo delle energie rinnovabili, saranno considerati costi di investimento ammissibili quelli che corrispondono di regola ai sovraccosti sostenuti dall'impresa rispetto a quelli inerenti ad un impianto di produzione di energia tradizionale avente la stessa capacità in termini di produzione effettiva di energia. Le autorità competenti si sono impegnate a notificare separatamente i casi in cui i costi ammissibili verrebbero calcolati in modo diverso.

Esse si sono inoltre impegnate a presentare alla Commissione una relazione annuale sull'applicazione del regime di aiuti.

Base giuridica

La base giuridica è costituita dalla decisione n. 481 del Consiglio regionale della regione Toscana del 20 maggio 2002.

III. **VALUTAZIONE DELL'AIUTO**

Le autorità italiane hanno soddisfatto i loro obblighi ai sensi dell'articolo 88, paragrafo 3, del trattato notificando il regime di aiuti alla Commissione prima della sua entrata in vigore.

Presenza dell'aiuto ai sensi dell'articolo 87, paragrafo 1, del trattato CE

La Commissione ha valutato il regime notificato sulla base dell'articolo 87, paragrafo 1, del trattato CE. L'articolo 87, paragrafo 1, recita «sono incompatibili con il mercato comune, nella misura in cui incidano sugli scambi tra Stati membri, gli aiuti concessi dagli Stati, ovvero mediante risorse statali, sotto qualsiasi forma che, favorendo talune imprese o talune produzioni, falsino o minaccino di falsare la concorrenza».

Gli aiuti previsti nel regime in questione sono attuati attraverso trasferimenti di risorse pubbliche. Tali sovvenzioni sono discrezionali, migliorano la situazione finanziaria delle imprese beneficiarie e possono incidere sugli scambi fra Stati membri. Tali misure ricadono quindi nell'articolo 87, paragrafo 1, del trattato.

Compatibilità dell'aiuto con il trattato CE

La Commissione ha valutato le misure notificate alla luce della disciplina comunitaria degli aiuti di Stato per la tutela dell'ambiente, pubblicata nella *Gazzetta ufficiale delle Comunità europee* C 37 del 3 febbraio 2001 (in appresso «la disciplina») ed ha ritenuto che il regime di aiuti previsto non sia pienamente conforme ai requisiti della disciplina.

Per quanto riguarda i progetti «nuovi impianti per la produzione con biomasse», «nuovi impianti per l'utilizzo del solare termico» e «nuovi impianti per la produzione di energia da fonti rinnovabili nelle isole minori» della misura a) «Aiuto agli investimenti per la produzione di energia da fonti rinnovabili».

Si applica la definizione di «fonti di energia rinnovabili» e «biomassa» contenuta nella direttiva 2001/77/CE del 27 settembre 2001 (GU L 28 del 27 ottobre 2001) sulla promozione dell'energia elettrica prodotta da fonti energetiche rinnovabili nel mercato interno dell'elettricità.

Beneficiari dell'aiuto concesso nel quadro del regime notificato saranno sia le PMI che le grandi imprese, secondo la disciplina.

Gli investimenti in questione sono definiti conformemente ai requisiti fissati al punto 36 della disciplina. La spesa per trasferimenti di tecnologia non costituisce un investimento ammissibile dell'aiuto programmato.

L'intensità dell'aiuto del 40 % lordo, sia per i nuovi impianti di produzione con biomasse che per quelli nelle isole minori per la produzione da fonti rinnovabili, è conforme al massimale di aiuto stabilito al punto 32 della disciplina. Anche l'intensità dell'aiuto del 30 % lordo, riferita ai nuovi impianti per l'utilizzo del solare termico, è conforme alle disposizioni della disciplina.

Il regime non prevede un aumento dell'intensità dell'aiuto, né per le imprese che si trovano nelle aree assistite, né per le PMI.

I costi ammissibili sono calcolati secondo quanto previsto al punto 37; essi verranno calcolati al netto dei vantaggi derivanti dall'eventuale aumento di capacità, dai risparmi di spesa ottenuti nei primi cinque anni di vita dell'impianto e dalle produzioni accessorie aggiuntive realizzate nell'arco dello stesso periodo quinquennale. In tutti i casi, essi saranno rigorosamente limitati ai costi di investimento supplementari necessari per conseguire gli obiettivi di tutela ambientale.

Vengono osservate le regole relative al cumulo di aiuti provenienti da diverse fonti, indicate al punto 74 della disciplina.

La Commissione ritiene pertanto che i progetti «nuovi impianti per la produzione di energia con biomasse», «nuovi impianti per l'utilizzo del solare termico» e «nuovi impianti per la produzione di energia da fonti rinnovabili nelle isole minori» della misura a) «Aiuto agli investimenti per la produzione di energia da fonti rinnovabili», concesso ai sensi della decisione n. 481 del Consiglio regionale della regione Toscana del 20 maggio 2002, ricadono nell'articolo 87, paragrafo 1, del trattato CE. Tuttavia, essi non alterano le condizioni degli scambi fra Stati membri in misura contraria al comune interesse e possono pertanto essere autorizzati ai sensi dell'articolo 87, paragrafo 3, lettera c), del trattato CE.

Dubbi relativi al progetto «nuovi impianti fotovoltaici» della misura a) del regime (promozione di fonti di energia rinnovabili):

Per quanto riguarda i nuovi impianti fotovoltaici, nel regime notificato è fissata una intensità dell'aiuto del 75 % dei costi ammissibili.

A norma del punto 32 della disciplina, gli investimenti nel settore delle energie rinnovabili sono equiparati agli investimenti a favore dell'ambiente realizzati in assenza di norme comunitarie obbligatorie. Pertanto è autorizzato un tasso di aiuto del 40 % dei costi ammissibili per investimenti a sostegno di queste forme di energia.

Con la lettera D/53543 dell'8 luglio 2002, la Commissione ha informato le autorità italiane che l'intensità di aiuto proposta del 75 % non sembra compatibile con la disciplina, salvo che sulla base del punto 32, terzo comma, fermo restando il rispetto di tale norma. Pertanto, le autorità italiane sono state invitate a dimostrare la necessità del tasso di aiuto proposto e ad assumere l'impegno che gli impianti in questione non avranno diritto a ricevere ulteriori aiuti. Mentre tale impegno è stato preso, non sono stati forniti elementi a dimostrazione della necessità dell'intensità dell'aiuto prevista.

Di conseguenza, la Commissione nutre dei dubbi circa il rispetto dei requisiti fissati al punto 32 della disciplina, vale a dire per quanto riguarda la necessità di autorizzare il tasso di aiuto del 75 %, previsto dal regime a sostegno dei nuovi impianti fotovoltaici.

Dubbi relativi alla misura b) del regime (risparmi energetici):

Il punto 30 della disciplina dichiara che gli investimenti nel settore del risparmio energetico ai sensi del punto 6, sono equiparati agli investimenti per la tutela dell'ambiente. Gli investimenti in questione devono essere conformi ai requisiti fissati al punto 36 della disciplina.

Con la lettera D/53543 dell'8 luglio 2002 è stato chiesto alle autorità italiane di spiegare con maggiori dettagli in cosa consistano i singoli tipi di aiuto fissati alla misura b) del regime notificato. Alcuni investimenti ammissibili, infatti, previsti dal regime in questione, riguardanti gli interventi nel settore abitativo e l'applicazione di componenti elettrici ad alta efficienza, sembrano riguardare soltanto il controllo e la misurazione, anziché la riduzione dei consumi di energia. Per quanto riguarda l'aiuto diretto ad un maggiore utilizzo di combustibili a basso impatto ambientale o ad un uso più efficiente dei combustibili nell'industria, esso intende contribuire alla sostituzione dei combustibili inquinanti. Benché situato fra le misure relative al risparmio energetico, esso è finalizzato piuttosto alla riduzione dell'inquinamento.

Da un lato, la Commissione dubita, nella presente fase di valutazione, che i suddetti investimenti, finalizzati al controllo e alla misurazione dei consumi di energia, possano essere considerati come misure per il risparmio energetico. La Commissione ritiene che essi potrebbero eventualmente costituire parte di un progetto di risparmio energetico, in relazione ad altre misure, ma non possono essere considerati investimenti diretti al risparmio di energia in quanto tali.

D'altro lato, la Commissione dubita che la sostituzione di combustibili inquinanti con altri tipi di combustibili, considerati meno inquinanti, possa essere giudicata un aiuto ambientale, in quanto la descrizione della misura in questione è troppo generica e non prevede alcun collegamento evidente fra l'aiuto e la prevista riduzione dell'inquinamento, a livello del singolo beneficiario. Inoltre, anche se tale misura fosse ammissibile, in quanto aiuto diretto alla riduzione dell'inquinamento, il livello di intensità accettabile sarebbe il 30 %, anziché il 40 % notificato. Inoltre, i punti 31 e 32 della disciplina non sono applicabili, in quanto la misura non tiene conto né della produzione combinata di energia elettrica e termica, né della promozione di fonti rinnovabili di energia.

Di conseguenza, la Commissione non é in grado di valutare, alla luce delle informazioni trasmesse dalle autorità italiane, se gli investimenti interessati dalla misura b) «riduzione dei consumi energetici» dell'aiuto previsto siano conformi ai criteri della disciplina.

IV. **CONCLUSIONE**

La Commissione di conseguenza ha deciso:

— di non sollevare obbiezioni nei confronti dell'aiuto ai progetti per «nuovi impianti per la produzione di energia con biomasse», «nuovi impianti per l'utilizzo del solare termico» e «nuovi impianti per la produzione di energia da fonti rinnovabili nelle isole minori» della misura a) «Aiuto agli investimenti per la produzione di energia da fonti rinnovabili», concesso ai sensi della decisione n. 481 del Consiglio regionale della regione Toscana del 20 maggio 2002, in quanto sono rispettati i criteri di compatibilità con il trattato CE ai sensi dell'articolo 87, paragrafo 3, lettera c);

— di avviare il procedimento dell'articolo 88, paragrafo 2, del trattato CE, nei confronti della misura b) «misure per la riduzione dei consumi energetici» e del progetto «nuovi impianti fotovoltaici» della misura a) «produzione di energia da fonti rinnovabili» del regime di aiuti notificato.

Tenuto conto di quanto precede, la Commissione, invita l'Italia a presentare, nell'ambito del procedimento di cui all'articolo 88, paragrafo 2, del trattato CE, le proprie osservazioni ed a fornire tutte le informazioni utili ai fini della valutazione delle misure, entro un mese dalla data di ricezione della presente. La Commissione invita inoltre le autorità italiane a trasmettere senza indugio copia della presente lettera al beneficiario potenziale dell'aiuto.

La Commissione desidera ricordare all'Italia che l'articolo 88, paragrafo 3, del trattato CE ha effetto sospensivo e che, in forza dell'articolo 14 del regolamento del Consiglio (CE) n. 659/1999, essa può imporre allo Stato membro interessato di recuperare ogni aiuto illegale dal beneficiario.'

Notice of the impending expiry of certain anti-dumping measures

(2002/C 331/06)

1. The Commission gives notice that, unless a review is initiated in accordance with the following procedure, the anti-dumping measures mentioned below will expire on the date mentioned in the table below, as provided in Article 11(2) of Council Regulation (EC) No 384/96 of 22 December 1995 [1] on protection against dumped imports from countries not members of the European Community.

2. **Procedure**

Community producers may lodge a written request for a review. This request must contain sufficient evidence that the removal of the measures would be likely to result in a continuation or recurrence of dumping and injury.

Should the Commission decide to review the measures concerned, importers, exporters, representatives of the exporting country and Community producers will then be provided with the opportunity to amplify, rebut or comment on the matters set out in the review request.

3. **Time limit**

Community producers may submit a written request for a review on the above basis, to reach the European Commission, Directorate-General for Trade (Division B-1), J-79 5/16, B-1049 Brussels [2] at any time from the date of the publication of the present notice but no later than three months before the date mentioned in the table below.

4. This notice is published in accordance with Article 11(2) of Regulation (EC) No 384/96.

Product	Country(ies) of origin or exportation	Measures	Reference	Date of expiry
Monosodium glutamate	Brazil Republic of Korea Taiwan Vietnam	Duty	Regulation (EC) No 2051/98 (OJ L 264, 29.9.1998)	30.9.2003

[1] OJ L 56, 6.3.1996, p. 1, as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).
[2] Telex: COMEU B 21877; fax (32-2) 295 65 05.

COMMISSION NOTICE

(2002/C 331/07)

By decision of 27 December 2002, the European Commission renewed the term of office of Mr Eric Verborgh as Deputy Director of the European Foundation for the Improvement of Living and Working Conditions for a period of three months as from 1 January 2003 to 31 March 2003.

EUROPEAN CENTRAL BANK

RECOMMENDATION OF THE EUROPEAN CENTRAL BANK

of 19 December 2002

to the Council of the European Union on the external auditors of the European Central Bank and Suomen Pankki

(ECB/2002/13)

(2002/C 331/08)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular to Article 27.1 thereof,

Whereas:

(1) The accounts of the European Central Bank and of the national central banks of the Eurosystem are audited by independent external auditors recommended by the Governing Council and approved by the Council of the European Union.

(2) The mandate of the current external auditor of the ECB expires in 2003. It is therefore necessary to appoint an external auditor from 2003. The mandate of the external auditor should be for five years.

(3) The mandate of Suomen Pankki's external auditor was not renewed from 2003 due to the closure of the external auditor expected for the middle of 2003 and due to the policy of inviting tenders at regular intervals. It is therefore necessary to appoint an external auditor from 2003. The mandate of the external auditor should be for five years,

HEREBY RECOMMENDS:

KPMG Deutsche Treuhand-Gesellschaft AG Wirtschaftsprüfungsgesellschaft as the external auditor of the ECB;

Ernst & Young Oy as the external auditor of Suomen Pankki.

This recommendation shall be published in the *Official Journal of the European Communities*.

Done at Frankfurt am Main on 19 December 2002.

The President of the ECB

Willem F. DUISENBERG

III

(Notices)

COMMISSION

Texts published in the *Official Journal of the European Communities* C 331 E

(2002/C 331/09)

These texts are available on:

EUR-Lex: http://europa.eu.int/eur-lex

CELEX: http://europa.eu.int/celex

[1] Text with EEA relevance