ISSN 1725-2423

Official Journal

of the European Union

C 100

Volume 46

26 April 2003

English edition

Information and Notices

[1] Text with EEA relevance

(Continued overleaf)

EN

[1] Text with EEA relevance

I

(Information)

COUNCIL

COUNCIL DECISION

of 14 April 2003

appointing the Portuguese member of the Management Board of the European Centre for the Development of Vocational Training

(2003/C 100/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Regulation (EEC) No 337/75 of 10 February 1975 establishing the European Centre for the Development of Vocational Training, and in particular Article 4 thereof [1],

Having regard to the nomination submitted by the Portuguese Government,

Whereas:

(1) By its Decision of 6 March 2003 [2], the Council appointed the members of the Management Board of the European Centre for the Development of Vocational Training for the period from 6 March 2003 to 5 March 2006, except for the Portuguese representative.

(2) The Portuguese member of the Management Board of the aforementioned Centre should be appointed for the remainder of the current term of office, which expires on 5 March 2006,

HAS DECIDED AS FOLLOWS:

Article 1

The following person is hereby appointed member of the Management Board of the European Centre for the Development of Vocational Training for the period from **14 April 2003 to 5 March 2006**:

I. **GOVERNMENT REPRESENTATIVE**

PORTUGAL: Mr José Carlos FRIAS GOMES

Article 2

This Decision shall be published, for information, in the *Official Journal of the European Union*.

Done at Luxembourg, 14 April 2003.

For the Council

The President

A. GIANNITSIS

[1] OJ L 39, 13.2.1975, p. 1. Regulation as last amended by Regulation (EC) No 354/95 (OJ L 41, 23.2.1995, p. 1).
[2] OJ C 64, 18.3.2003, p. 4.

COMMISSION

Euro exchange rates [1]

25 April 2003

(2003/C 100/02)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,0973	LVL	Latvian lats	0,6334
JPY	Japanese yen	132,73	MTL	Maltese lira	0,425
DKK	Danish krone	7,4234	PLN	Polish zloty	4,2773
GBP	Pound sterling	0,6914	ROL	Romanian leu	36 660
SEK	Swedish krona	9,1095	SIT	Slovenian tolar	232,3872
CHF	Swiss franc	1,5021	SKK	Slovak koruna	40,925
ISK	Iceland króna	83,24	TRL	Turkish lira	1 749 000
NOK	Norwegian krone	7,812	AUD	Australian dollar	1,782
BGN	Bulgarian lev	1,9461	CAD	Canadian dollar	1,599
CYP	Cyprus pound	0,5888	HKD	Hong Kong dollar	8,5586
CZK	Czech koruna	31,555	NZD	New Zealand dollar	1,9821
EEK	Estonian kroon	15,6466	SGD	Singapore dollar	1,9611
HUF	Hungarian forint	245,73	KRW	South Korean won	1 358,35
LTL	Lithuanian litas	3,4533	ZAR	South African rand	8,0487

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

STATE AID — GERMANY

Aid C 16/03 (ex NN 89/02) and (ex CP 49/02) — Rescue aid in favour of Herlitz AG

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

(2003/C 100/03)

(Text with EEA relevance)

By means of the letter dated 19 February 2003 reproduced in the authentic language on the pages following this summary, the Commission notified Germany 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 Greffe
Rue de la Loi/Wetstraat 200
B-1049 Brussels
Fax (32-2) 296 12 42.

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

SUMMARY

I. **Procedure**

Following a complaint in March 2002, the Commission asked Germany to provide information on possible aid to Herlitz AG. Germany denied any such aid on repeated occasions. Finally, on 19 July 2002, Germany informed the Commission about the award of a loan of some EUR 1 million to Herlitz PBS AG from the Investment Bank of the Land Brandenburg (ILB). On 29 January 2003, Germany informed the Commission that the loan had been fully repaid and that the insolvency proceedings for Herlitz PBS AG had been closed.

II. **Description**

Herlitz PBS AG and other subsidiaries, notably Falken Office Products GmbH, are part of the Herlitz AG group, Germany's market leader in stationery, office equipment, greetings cards, etc. The shares of Herlitz AG are held to approximately 65 % by a bank consortium. For the year 2001, the group had a turnover of EUR 438 million and an annual deficit (Jahresfehlbetrag) of EUR 60 million.

In July 2002 Herlitz AG, Herlitz PBS AG, as well as other subsidiaries filed for insolvency. It was in this context that a loan of some EUR 1 million had been awarded to Herlitz PBS AG by the ILB in May 2002 and disbursed on 24 July 2002. The loan was intended to ensure the fulfilment of a sales contract with Falken Office Products GmbH, which was still solvent and to keep it from also going bankrupt. According to Germany, the beneficiary of the measure is Herlitz PBS AG. On 24 January 2003, Herlitz PBS AG fully repaid the loan to the ILB.

Germany has provided an insolvency plan for Herlitz PBS AG dated 15 July 2002. This plan foresees several measures to bring the company out of insolvency by means of structural measures and a settlement agreement to reduce the company's pending debts. The Commission has been informed that the insolvency proceedings have been closed on 31 August 2002 since the insolvency plan had been accepted.

The sole measure considered by Germany as State aid is a loan. However, the information received describes other measures involving the public hand. The information indicates that in 1988/89, the Land Berlin offered Herlitz AG the use of real estate in Berlin-Borsig and granted an interest-free loan of DEM 6 million for ten years linked to the transfer of its plant to the Borsigsite. In the insolvency procedure Berlin has waived this loan. For the real estate at Borsig the company had to pay a fee (Erbbauzinsen). Berlin waived the payment of this fee for the period October 2001 to 30 June 2002 amounting to EUR 84 000. Berlin also refrained from the possibility of increasing this fee from 3 to 7,5 %.

III. **Assessment**

The loan is regarded as aid in the sense of Article 87(1) of the EC Treaty.

As regards the insolvency plan, several public creditors (tax authorities, employment institutions, social security and public owned or controlled financial institutions) waive partially or fully their claims. On the basis of the information available the Commission cannot exclude that these waivers constitute aid.

As regards the offer of use of real estate, the waiver of payment of fee for its use (Erbbauzinsen), the fact that the land refrained from increasing this fee and both the interest-free loan and its waiver, the Commission cannot exclude that they constitute State aid.

The aid falls to be assessed as ad hoc aid. As the primary objective of the aid is the rescuing of an undertaking in difficulty, only the exemptions of Article 87(3)(c) of the EC Treaty apply. The aid should be assessed under the Community Guidelines on aid for rescue and restructuring of firms in difficulty. However, since it is not clear who the beneficiary is, the Commission cannot assess the eligibility.

The loan has been notified by Germany as rescue aid. However, the objective of rescue aid — to keep a firm afloat until its future could be envisaged — is not fulfilled. Moreover, any aid contained in the settlement agreement would not be compatible as rescue aid since a waiver of debt does not fulfil most conditions. As loan and settlement agreement are simultaneous, the measures constitute a package, which should be assessed together.

The Commission tried to examine the compatibility of the loan and of any aid contained in the settlement agreement as restructuring aid. However, the Commission does not have any evidence that the measures were granted under these premises.

The Commission does not have sufficient information on the other measures and their purpose and is thus not able to assess them.

In accordance with Article 14 of Council Regulation (EC) No 659/1999, all unlawful aid can be subject to recovery from the recipient.

TEXT OF THE LETTER

'Die Kommission teilt der Bundesrepublik Deutschland hiermit mit, dass sie nach Prüfung der ihr von den deutschen Behörden zu vorerwähnter Maßnahme übermittelten Informationen beschlossen hat, das Verfahren nach Artikel 88 Absatz 2 EG-Vertrag einzuleiten.

I. **VERFAHREN**

(1) Im März 2002 reichte einer der Hauptkonkurrenten der Herlitz AG bei der Kommission Beschwerde ein. Die Beschwerde bezog sich auf eine geplante Bürgschaft des Landes Berlin zugunsten der Herlitz AG. Die Kommission bat die Bundesregierung mit Schreiben vom 25. März 2002 um nähere Auskünfte zu dieser Maßnahme. Die Bundesregierung bestritt in ihrem Schreiben vom 17. April 2002 (Eingangsvermerk vom 18. April 2002) jedwede Pläne zur Gewährung einer solchen Beihilfe. Im Anschluss an einen Zeitungsartikel vom 24. April 2002, in dem berichtet wurde, dass die Herlitz-Tochter Falken Office Products GmbH vom Land Brandenburg ein Darlehen in Höhe von 1 Mio. EUR erhalten habe, forderte die Kommission die Bundesregierung mit Schreiben vom 8. Mai 2002 erneut auf, ihr Näheres zu der geplanten Beihilfe zugunsten der Herlitz AG mitzuteilen. Die Bundesregierung verneinte in ihrem Schreiben vom 4. Juni 2002 (Eingangsvermerk vom 5. Juni 2002) nochmals jegliche Beihilfepläne.

(2) Mit Schreiben vom 17. Juli 2002 (Eingangsvermerk vom 19. Juli 2002) teilte die Bundesregierung der Kommission schließlich mit, dass die Herlitz PBS AG eine Beihilfe erhalten habe. Die InvestitionsBank des Landes Brandenburg habe der Herlitz PBS AG ein Darlehen über ca. 1 Mio. EUR gewährt. Den Informationen der Bundesregierung zufolge war die Maßnahme bereits durchgeführt worden, so dass die Sache als nicht notifizierte Beihilfe NN 89/2002 registriert wurde. Mit Schreiben vom 19. Juli 2002 (Eingangsvermerk vom 25. Juli 2002) wurden Anlagen übermittelt, die mit Schreiben vom 1. August 2002 (Eingangsvermerk vom selben Tag) vervollständigt wurden (darunter auch der Insolvenzplan).

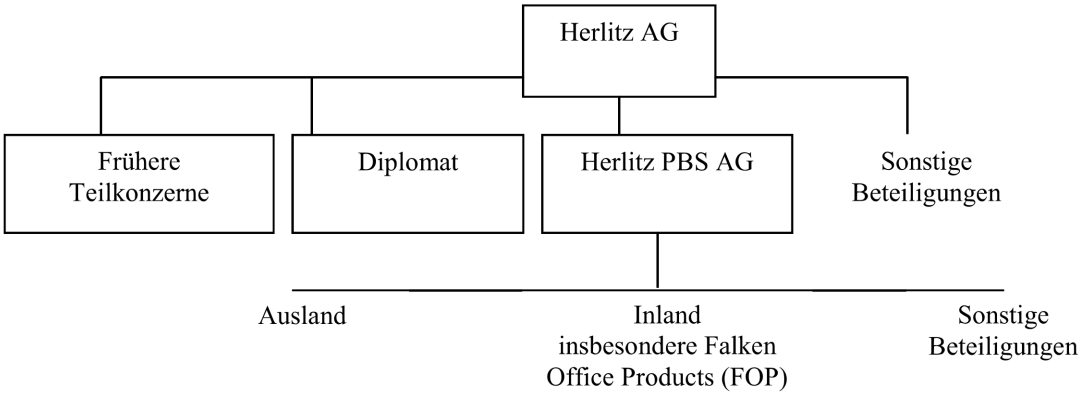
(3) Am 8. August 2002 übermittelte die Kommission der Bundesregierung eine Reihe von Fragen zu der gewährten Beihilfe mit der Bitte um Klärung. Die Bundesregierung antwortete hierauf mit Schreiben vom 4. September 2002 (Eingangsvermerk vom selben Tag).

(4) Mit Schreiben vom 29. Januar 2003 (Eingangsvermerk vom selben Tag) teilte die Bundesregierung der Kommission mit, das der Herlitz PBS AG gewährte Darlehen sei vollständig an die InvestitionsBank des Landes Brandenburg (ILB) zurückgezahlt worden. Des weiteren wurde mitgeteilt, dass das Insolvenzverfahren gegen die Herlitz PBS AG abgeschlossen ist, der Insolvenzplan angenommen wurde und umgesetzt wird.

II. **BESCHREIBUNG**

A. DAS BEGÜNSTIGTE UNTERNEHMEN

(5) Bei der Beihilfeempfängerin handelt es sich nach deutschen Angaben um die Herlitz PBS (Papier-, Büro- und Schreibwaren) AG. Die Herlitz PBS AG und deren Tochtergesellschaften gehören zum Herlitz-Konzern. Der Konzern hat folgende Struktur:



(6) Das Unternehmen ging aus einer 1904 in Berlin gegründeten Schreibwarenhandlung hervor, wurde 1976 in die Herlitz AG (den „Herlitz-Konzern") umgewandelt und ist seit 1977 an der Börse notiert. Das operative Herzstück des Konzern ist jedoch die Herlitz PBS AG; eine Verschmelzung der Herlitz AG und der Herlitz PBS AG wurde beschlossen, aber noch nicht vollzogen. Die Falken Office Products GmbH produziert für den Konzern den größten Teil der Büroartikel. Der Bundesregierung zufolge ist der Herlitz-Konzern Marktführer in Deutschland bei Schreibwaren, Bürobedarf, Glückwunschkarten usw. Die Herlitz PBS AG hat ihren Sitz in Berlin. Sie und ihre Tochtergesellschaften verfügen über Werke in Berlin, Falkensee (Brandenburg), Peitz (Brandenburg), Cunewald (Sachsen), Poznan (Polen) und Most (Tschechische Republik). Die Herlitz PBS AG und die Falken Office Products haben beide ihren Sitz in Fördergebieten (Berlin/Ziel 2 nach Artikel 87 Absatz 3 Buchstabe c), Brandenburg nach Artikel 87 Absatz 3 Buchstabe a)).

(7) Rund 65 % der Herlitz-Aktien werden nach deutschen Angaben von einem Bankenkonsortium gehalten, zu dem die DB Industrial Holding (Deutsche Bank), die Landesbank Berlin (Bankgesellschaft Berlin), die Hypo Vereinsbank, die Bayerische Landesbank, die DZ Bank (vormals: DG), die Dresdner Bank, die HSBC, die IKB und die West LB gehören. Zu den Besitzverhältnissen bei den verbleibenden 35 % wurden keine Angaben gemacht. Nach Aussage der Bundesregierung beschäftigte die Herlitz PBS AG zum 3. April 2002 1 883 Mitarbeiter. Im Jahr 2001 belief sich der Jahresfehlbetrag des Konzerns auf 60 Mio. EUR bei einem Jahresumsatz von 438 Mio. EUR.

Einen Überblick über die wirtschaftliche Entwicklung des Konzerns gibt nachstehende Tabelle:

	1997	1998	1999	2000	2001
Jahresumsatz in Mio. EUR	714	630	567	490	438
Jahresfehlbetrag in Mio. EUR	51	37	46	51	60
Mitarbeiter	5 420	4 483	4 228	3 380	2 961
Kapital in Mio. EUR	171	123	70	18	17
Bankverbindlichkeiten in Mio. EUR	172	365	373	356	297

(8) Nach den bei der Kommission im Juli 2002 eingegangenen Informationen waren die Herlitz AG und die Herlitz PBS AG sowie einige Tochtergesellschaften (Diplomat, HKV und Susy) zahlungsunfähig. Die Falken Office Products GmbH hingegen galt weiterhin als solvent. Die Herlitz PBS AG meldete beim Amtsgericht Charlottenburg Konkurs an. Am 5. Juni 2002 eröffnete das Gericht das Insolvenzverfahren.

(9) Neueren Informationen zufolge ist die Herlitz PBS AG nicht mehr insolvent: das Insolvenzverfahren ist am 31. August 2002 abgeschlossen worden, da der Insolvenzplan akzeptiert wurde. Die Durchführung des Insolvenzplans wird überwacht.

B. FINANZMASSNAHMEN

(10) Die einzige Maßnahme, die von der Bundesregierung als staatliche Beihilfe angesehen wird, ist ein Darlehen. Die eingegangenen Informationen weisen jedoch noch weitere Maßnahmen aus, an denen die Öffentliche Hand beteiligt ist.

Rettungsbeihilfe in Form eines Darlehens

(11) Am 10. Mai 2002 schlossen der Insolvenzverwalter der Herlitz PBS AG und die Investitionsbank des Landes Brandenburg (kurz „ILB") einen Kreditvertrag, aufgrund dessen die ILB der Herlitz PBS AG ein Darlehen in Höhe von 930 232 EUR gewährte. Mit Schreiben vom 29. Mai 2002 wurde dieser Betrag auf 963 855 EUR erhöht.

(12) Den von Deutschland übermittelten Angaben und dem Kreditvertrag zwischen der ILB und dem Insolvenzverwalter der Herlitz PBS AG zufolge sollte das Darlehen der Bezahlung von Verbindlichkeiten aus einem Kaufvertrag mit der Falken Office Products GmbH sicherstellen.

(13) Das Darlehen wurde für sechs Monate zu einem Jahreszinssatz von 7,5 % ausgereicht und war binnen sechs Monaten nach Auszahlung zu tilgen. Das Darlehen wurde in voller Höhe am 24. Juli 2002 ausgezahlt. Es ist durch die Abtretung der Rückgewährungsansprüche der Falken Office Products GmbH in Höhe von 2,5 Mio. EUR und der auf dem Betriebsgrundstück der Falken Office Products GmbH eingetragenen Grundschulden in Höhe von 13 549 234,85 EUR besichert.

(14) Nach deutschen Angaben wurde das Darlehen am 24. Januar 2003 vollständig an die InvestitionsBank des Landes Brandenburg zurückgezahlt.

Insolvenzplan

(15) Die Bundesregierung hat einen Insolvenzplan für die Herlitz PBS AG vom 15. Juli 2002 vorgelegt. Dieser Insolvenzplan läuft parallel zu dem Insolvenzplan für die Herlitz AG. Der Bundesregierung zufolge ist der Insolvenzplan identisch mit dem Umstrukturierungs- bzw. Sanierungsplan. Der Plan sieht einen Abbau von Überkapazitäten, die Ausgliederung von Betriebsgrundstücken, die Schließung unrentabler Konzerntöchter, den Abbau des negativen Finanzergebnisses, Maßnahmen zur Kostensanierung und Betriebsoptimierung sowie die Suche nach einem strategischen Partner vor.

(16) Außerdem sollen die Verbindlichkeiten des Unternehmens durch Reduzierung der gesicherten Gläubigerforderungen auf den Wert der Absonderungsrechte, Teilverzicht ungesicherter Gläubiger, vollständigen Verzicht bestimmter Gläubiger und einen Sanierungsbeitrag der Arbeitnehmer reduziert werden. In Bezug auf die zahlreichen unterschiedlichen Verbindlichkeiten sieht der Plan somit einen Vergleich vor.

(17) Der Kommission wurde mitgeteilt, das Insolvenzverfahren sei mit Annahme des Insolvenzplans am 31. August 2002 abgeschlossen worden. Im Folgenden wird der Plan kurz beschrieben.

Verbindlichkeiten gegenüber Lieferanten

(18) Die Verbindlichkeiten gegenüber den Lieferanten wurden nicht im Einzelnen aufgeschlüsselt und es wurden auch keine Angaben zu ihrer Höhe gemacht. Es wird jedoch erklärt, dass sämtliche Lieferanten entweder im Wege der Ablösung oder durch Rückgabe der Ware vollständig befriedigt werden sollen.

Verbindlichkeiten gegenüber den Arbeitnehmern

(19) Am 10. November 1998 und am 15. Dezember 1999 wurde mit dem Betriebsrat ein Sozialplan ausgehandelt. Zum 31. Dezember 2001 belief sich die verbleibende Rückstellung auf 865 Mio. EUR. Inzwischen stehen offenbar nur noch geringfügige Restzahlungen aus. Dem Plan zufolge leisten die Arbeitnehmer darüber hinaus einen Beitrag von 2,8 Mio. EUR im Jahr 2002 und ca. 4,4 Mio. EUR jährlich ab 2003. Das Sonderopfer der Arbeitnehmer besteht aus: 1. einer Anhebung der Wochenarbeitszeit von 35 auf 38,5 Stunden (2,52 Mio. EUR jährlich), 2. einer Reduzierung des Weihnachtsgeldes von 95 % auf maximal 45 % des Monatsgehalts (rund 995 000 EUR jährlich) und 3. einer Reduzierung des zusätzlichen Urlaubsgeldes (ca. 400 000 EUR im Jahr 2002 und 900 000 EUR ab dem Jahr 2003).

Verbindlichkeiten gegenüber institutionellen Gläubigern

(20) Der Plan sieht einen Forderungsverzicht des Finanzamtes für Körperschaften in Berlin, der Bundesanstalt für Arbeit, der Krankenkassen und des Liegenschaftsfonds vor. Zur genauen Art und Höhe der Verbindlichkeiten wurden keine näheren Angaben gemacht. Es wird jedoch erklärt, dass die genannten Behörden in voller Höhe auf ihre Forderungen verzichten.

Verbindlichkeiten gegenüber verbundenen Unternehmen/Beteiligungsunternehmen

(21) Der Insolvenzplan sieht vor, dass die übrigen Konzerngesellschaften in vollem Umfang auf ihre Ansprüche gegen die Herlitz PBS AG verzichten. Gleichzeitig wird der Unternehmensvertrag mit der Herlitz AG aufgehoben, die dafür von der Herlitz PBS AG eine Zahlung in Höhe von 1 Mio. EUR erhält.

Verbindlichkeiten gegenüber sonstigen nicht nachrangigen Gläubigern

(22) Der Insolvenzplan weist weder die Forderungen noch die Gläubiger aus, doch sollen diese 10 % ihrer Außenstände erhalten.

Verbindlichkeiten gegenüber nachrangigen Gläubigern

(23) Zu den nachrangigen Forderungen gehören laut Insolvenzplan Zinsen, Kosten, Geldstrafen, unentgeltliche Ansprüche usw., die durch den Insolvenzplan erlassen werden.

Verbindlichkeiten gegenüber Kreditinstituten

(24) Erstens weist der Plan Verbindlichkeiten in Höhe von 65,4 Mio. EUR gegenüber einem Bankenkonsortium aus, dessen Zusammensetzung weitgehend mit den in Randziffer 5 genannten Aktionären identisch ist. Der Kredit wurde bis zu einer Höhe von 53,9 Mio. ausgeschöpft und verteilt sich wie folgt auf die beteiligten Banken (Tabelle 1):

(in Mio. EUR)

Bank	Höhe des Kredits	Inanspruchnahme
Hypo Vereinsbank	12,8	10,56
Landesbank Berlin	11,6	9,51
Deutsche Bank	11,3	9,26
West LB	10,8	8,89
Dresdner Bank	5,9	4,86
Bayerische Landesbank	5,7	4,74
DZ-Bank AG	2,2	1,80
Delbrück & Co.	2,0	1,66
HSBC Trinkaus	1,4	1,17
Berliner Bank	1,0	0,84
Lampe (aus dem Konsortium ausgeschieden)	0,7	0,61
Gesamt	65,4	53,9

(25) Die Herlitz PBS AG setzte zur Besicherung des Kredits sämtliche verfügbaren Vermögenswerte ein: eine Gesamtgrundschuld (169 Mio. EUR) auf den Grundstücken Tegel und Falkensee, eine Sicherungsübereignung von Warenlager und Anlagevermögen, eine Globalzession, die Abtretung der Rechte an Markenwarenzeichen und Patenten, die Verpfändung von Guthaben und wesentlichen Beteiligungen (vor allem an FOP, Susy, Diplomat) sowie eine Vorauszession sämtlicher Beteiligungsveräußerungserlöse.

(26) Zweitens haben die meisten dieser Banken weitere Kredite in Höhe von insgesamt 156,6 Mio. EUR ausgereicht, die bis zu einer Höhe von 134,11 Mio. EUR ausgeschöpft wurden. Die Tilgung dieser Kredite wurde wegen des Insolvenzverfahrens ausgesetzt (Tabelle 2):

(in Mio. EUR)

Bank	Höhe des Kredits	Inanspruchnahme
Hypo Vereinsbank	34,8	31,01
Landesbank Berlin	27,6	24,66
Deutsche Bank	26,3	23,50
West LB	29,0	25,85
Dresdner Bank	14,5	12,92
Bayerische Landesbank	17,5	9,88
DZ-Bank AG	4,1	3,69
HSBC Trinkaus	2,0	1,84
Berliner Bank	0,8	0,77
Gesamt	156,6	134,11

(27) Zur Art der Besicherung dieser Kredite wurden keine näheren Angaben gemacht.

(28) Nachstehende Tabelle weist die Verbindlichkeiten gegenüber den einzelnen Gläubigerbanken und deren Anteil an der Gesamtschuld aus:

Bank	Ungetilgter Kredit (in Mio. EUR)	Anteil an den Gesamtverbindlichkeiten
Hypo Vereinsbank	41,57	21,5 %
Landesbank Berlin	34,17	17,7 %
Deutsche Bank	32,76	17,0 %
West LB	39,8	20,6 %
Dresdner Bank	17,78	9,2 %
Bayerische Landesbank	14,62	7,6 %
DZ-Bank AG	5,49	2,8 %
Delbrück & Co.	1,80	0,9 %
HSBC Trinkaus	3,01	1,6 %
Berliner Bank	1,61	0,8 %
Lampe (aus dem Konsortium ausgeschieden)	0,61	0,3 %
Gesamt	193,22	

(29) Dem Insolvenzplan zufolge verzichten die in den Tabellen 1 und 2 genannten Banken auf die Durchsetzung ihrer Forderungen, soweit diese einen Betrag von 76,714 Mio. EUR übersteigen. Da sich die Forderungen, wie oben aufgezeigt, auf insgesamt 193,22 Mio. EUR belaufen, bedeutet dies, dass die Banken bei dem Konsortialkredit auf die Rückzahlung von 116,506 Mio. EUR verzichten. Ob die Banken jeweils proportional zu dem von ihnen gegebenen Kredit Verzicht leisten, geht aus dem Plan nicht hervor. Auch ist völlig unklar, wie die in Rdnr. 23 beschriebenen Sicherheiten praktisch genutzt werden können.

(30) Im Insolvenzplan werden noch andere Kredite erwähnt, die offenbar in den in den Tabellen 1 und 2 aufgelisteten Krediten nicht inbegriffen sind. Hierzu gehören zum einen so genannte „nicht gesicherte Kredite“: ein Kredit von 7 Mio. EUR von der Hypovereinsbank (Irland), ein Kredit von 10,2 Mio. EUR von der Bayerischen Landesbank und ein Kredit von 10,2 Mio. EUR von der Landesbank Berlin. Hier verzichten die genannten Banken auf jegliche Rückzahlung. Des Weiteren werden erwähnt: ein Kredit der Hypovereinsbank von 15,4 Mio. EUR sowie ein Kredit der Eurohypobank in Höhe von 30,8 Mio. EUR. Diese Kredite sind durch vorrangige Grundpfandrechte im Wert von 50 Mio. EUR gesichert und daher auch nicht Gegenstand des Vergleichs, da kein Forderungsverzicht stattfindet.

(31) Ferner ist die Rede von einem weiteren Darlehen in Höhe von 15 Mio. EUR, das von einem nicht näher bezeichneten Bankenkonsortium am 15. April 2002 ausgereicht wurde. Vermutlich handelt es sich um dasselbe Konsortium, das in Tabelle 1 beschrieben wurde. Das Darlehen wird als Massedarlehen bezeichnet.

(32) Die Bundesregierung vertritt die Ansicht, dass sämtliche Gläubiger durch den Plan besser gestellt sind als bei Zerschlagung des Unternehmens. Nach einer Schätzung des Unternehmensberaters Roland Berger stünden im Zerschlagungsfall lediglich 3,9 Mio. EUR zur Ausschüttung an die Gläubiger zur Verfügung. Deutschland legte hierzu folgende Übersicht vor, die jedoch einer genaueren Erläuterung bedarf:

(in Mio. EUR)

Vermögen	Wert	Absonderungsrecht	9 % 171 II	16 % Umsatzsteuer	Freie Masse
Grundstücke	49,5	49,5	0	0	0
Sachanlagevermögen	2,7	2	0,3	0,4	0,7
Finanzielles Anlagevermögen	0	0	0	0	0
Vorräte	8,5	6,6	0,8	1,1	1,9
Forderung	3,5	3,2	0,3	0	0,3
Zwischensumme: Freie Masse im Zerschlagungsfall					2,9
Zuzüglich weiterer im Zerschlagungsfall anfallender freier Masse					1
Insgesamt					3,9

Sonstige Maßnahmen

(33) Aus den der Kommission vorliegenden Unterlagen geht hervor, dass das Land Berlin der Herlitz AG im Jahr 1988 das Borsig-Grundstück in Berlin-Tegel zur Nutzung überlassen hat. Ferner erhielt die Herlitz AG im Jahr 1989 vom Land Berlin ein zinsloses Darlehen in Höhe von 6 Mio. DEM mit einer Laufzeit von 10 Jahren im Zusammenhang mit der Verlagerung ihrer Werke Berlin-Tiergarten und Berlin-Spandau auf das Borsig-Grundstück. Der Maßnahme liegt offenbar keine Beihilferegelung zugrunde und sie wurde der Kommission auch nicht gemeldet.

(34) Im Rahmen des Insolvenzverfahrens hat das Land Berlin zur Rettung des Unternehmens auf seine Forderung in Höhe von 6 Mio. DEM verzichtet.

(35) Für das der Herlitz AG im Jahr 1988 zur Verfügung gestellte Borsig-Grundstück muss das Unternehmen Erbbauzinsen zahlen. Berlin verzichtete auf die Zahlung dieser Zinsen in der Zeit zwischen Oktober 2001 und 30. Juni 2002, was einem Betrag von 84 000 EUR entspricht. Ferner hat das Land Berlin von einer Anhebung der Zinsen von 3 auf 7,5 % abgesehen.

III. WÜRDIGUNG

A. VORLIEGEN EINER BEIHILFE

(36) Gemäß Artikel 87 Absatz 1 EGV sind staatliche oder aus staatlichen Mitteln gewährte Beihilfen gleich welcher Art, die durch die Begünstigung bestimmter Unternehmen oder Produktionszweige den Wettbewerb verfälschen oder zu verfälschen drohen, mit dem Gemeinsamen Markt unvereinbar, soweit sie den Handel zwischen Mitgliedstaaten beeinträchtigen. Die Kommission hat also zu prüfen, ob die betreffenden Maßnahmen eine staatliche Beihilfe darstellen.

(37) Die Herlitz PBS AG stellt Schreibwaren, Büroartikel und Grußkarten her. Da es sich dabei um Handelswaren handelt, die Gegenstand eines Wettbewerbs zwischen Mitgliedstaaten sind, können staatliche Finanzmaßnahmen, die ein marktwirtschaftlich handelnder Wirtschaftsteilnehmer nicht bereit gestellt hätte, den Handel beeinträchtigen und den Wettbewerb im Gemeinsamen Markt verfälschen. Derartige Maßnahmen würden eine Beihilfe im Sinne von Artikel 87 Absatz 1 EGV darstellen.

Das Darlehen

(38) Das Darlehen wurde von der ILB ausgereicht. Die ILB wurde 1992 als Körperschaft öffentlichen Rechts mit dem Ziel gegründet, das Land Brandenburg bei der Förderung der heimischen Industrie zu unterstützen. Die ILB ist keine Geschäftsbank im Sinne des deutschen Handelsgesetzes, da der Hauptzweck ihrer Tätigkeit nicht in der Gewinnerzielung besteht. Sie fungiert als Entwicklungs- und Strukturbank des Landes Brandenburg und unterliegt der Aufsicht durch das Finanzministerium des Landes. Über die einzelnen Projekte wird im Rahmen von Förderausschüssen beraten [1]. Daher ist beim derzeitigen Kenntnisstand die fragliche Maßnahme dem Staat zuzurechnen [2].

(39) Das Darlehen verschafft der Herlitz PBS AG Vorteile, die ein Unternehmen in Schwierigkeiten auf dem freien Markt so nicht erhalten hätte. Da die Bundesregierung das Darlehen als Beihilfe betrachtet, erübrigt sich nach Ansicht der Kommission eine Prüfung nach dem Grundsatz des nach marktwirtschaftlichen Gesichtspunkten handelnden Investors.

(40) Nach einer ersten vorläufigen Prüfung lässt sich somit sagen, dass das Darlehen staatliche Beihilfeelemente im Sinne von Artikel 87 Absatz 1 EGV enthält und diese zu prüfen sind.

Der Vergleich

(41) Die Kommission stellt fest, dass von dem Insolvenzplan mehrere öffentliche Gläubiger betroffen sind: Finanz- und Arbeitsämter, Krankenkassen und staatliche oder staatlich kontrollierte Kreditinstitute. Der Insolvenzplan sieht vor, dass alle diese Einrichtungen ganz oder teilweise auf ihre Forderungen verzichten. Über die genaue Höhe und Art der Forderungen wurde die Kommission jedoch im Unklaren gelassen. Außerdem wurde nicht im Einzelnen erläutert, unter welchen Bedingungen der Forderungsverzicht erfolgt ist bzw. erfolgen soll. Ferner fehlen Angaben darüber, wie die verbleibenden Verbindlichkeiten zurückgezahlt werden sollen. Aus den Unterlagen geht auch nicht genau hervor, wie viel die einzelnen Gläubiger bei einem Vergleich und im Zerschlagungsfall erhalten. Schließlich wurde die Herlitz PBS AG aus der Insolvenz herausgeführt, doch ist die Kommission nicht darüber informiert worden, wie dies im einzelnen erreicht worden ist.

(42) Eine Beurteilung des Verhaltens der öffentlichen Gläubiger nach den Maßstäben eines privaten Gläubigers ist unter diesen Umständen nicht möglich. Zum jetzigen Zeitpunkt kann jedoch nicht ausgeschlossen werden, dass Herlitz durch den bedingungslosen Forderungsverzicht der Finanz- und Arbeitsämter sowie der Krankenkassen begünstigt wurde, weil ein privater Gläubiger gegenüber einem insolventen Unternehmen nicht in derselben Weise gehandelt hätte. Dasselbe gilt für den Teilverzicht der staatlichen oder staatlich kontrollierten Banken. Nach einer ersten Prüfung betrachtet die Kommission diese Forderungsverzichte daher als Beihilfe im Sinne von Artikel 87 Absatz 1 EGV.

Sonstige Maßnahmen

(43) Obwohl nur sehr unzureichende Angaben vorliegen, besteht Grund zu der Annahme, dass die Überlassung eines Grundstücks einer staatlichen Beihilfe gleichkommen könnte und zumindest teilweise eine neue Beihilfe darstellen könnte. Vor allem wegen des Verzichts auf die Zahlung von Erbbauzinsen und der Tatsache, dass diese nicht angehoben wurden, kann die Kommission anhand der unvollständigen Angaben nicht ausschließen, dass sie eine staatliche Beihilfe darstellen, da es grundsätzlich nicht dem Verhalten eines privaten Kreditgebers entspricht, auf Außenstände zu verzichten und von einer Anhebung der Zinssätze abzusehen, wenn dies möglich ist. Des Weiteren ist die Kommission der Ansicht, dass das zinsfreie Darlehen von 1989 wahrscheinlich Elemente staatlicher Beihilfe enthält, da es aus staatlichen Mitteln gewährt wurde und zweifelhaft ist, dass ein privater Darlehensgeber ein zinsfreies Darlehen mit einer Laufzeit von zehn Jahren bereitgestellt hätte. Da diese Maßnahmen jedoch auf das Jahr 1989 zurückreichen, scheinen sie unter die Zehn-Jahres-Frist zu fallen und könnten als bestehende Beihilfe im Sinne von Artikel 1 Buchstabe b) iv) der Verordnung 659/1999 gelten. Daher ist diese Maßnahme von der anstehenden Entscheidung nicht betroffen.

---

[1] www.ilb.de.

[2] Siehe Cargolifter AG (NN 85/2002).

(44) Was den Verzicht auf Rückzahlung des zinsfreien Darlehens von 1989 im Rahmen des laufenden Insolvenzverfahrens anbelangt, so sind der Kommission keine Angaben zu dem ausstehenden Betrag, der zurückgezahlt werden sollte, mitgeteilt worden. Die Kommission stellt fest, dass das Darlehen für einen Zeitraum von zehn Jahren gewährt wurde, der inzwischen abgelaufen ist. Daher hat es den Anschein, dass die Laufzeit entweder verlängert oder die Rückzahlung bereits vor dem Insolvenzverfahren aufgeschoben wurde. Anhand der unzureichenden Angaben kann die Kommission nicht ausschließen, dass dieser Verzicht ebenfalls Beihilfeelemente enthält, da es grundsätzlich nicht dem Verhalten eines privaten Kreditgebers entspricht, auf Außenstände zu verzichten.

(45) Im Rahmen der vorläufigen Würdigung ist daher sowohl der Verzicht auf das Darlehen als auch der Verzicht auf die Zahlung von Erbbauzinsen und die Tatsache, dass das Land die Zinsen nicht angehoben hat, als Beihilfe im Sinne des Artikels 87 Absatz 1 EG-Vertrag anzusehen.

B. BEGÜNSTIGTES UNTERNEHMEN

(46) Nach deutschen Angaben wurde das Darlehen der Herlitz PBS AG gewährt und diente dem Zweck, die Verbindlichkeiten aus einem Kaufvertrag mit Falken Office Products GmbH zu erfüllen und das Unternehmen vor dem Konkurs zu bewahren. Deutschland teilt in seinem Schreiben vom 4. September 2002 mit, der Begünstigte des Darlehens sei weder die Herlitz PBS AG noch Falken Office Products GmbH, sondern der Insolvenzverwalter gewesen. Daher ist unklar, wem diese Maßnahme zugute kam und welche Kosten gedeckt wurden. Den deutschen Angaben zufolge ist die Herlitz PBS AG als Begünstigte der Vergleichsvereinbarung und die Herlitz AG als Begünstigte der sonstigen Maßnahmen zu sehen. Doch kann die Kommission in diesem Stadium nicht ausschließen, dass alle zur Prüfung anstehenden Maßnahmen dem Herlitz-Konzern als Ganzes zugute kommen könnten.

C. VEREINBARKEIT DER BEIHILFE MIT DEM GEMEINSAMEN MARKT

(47) Da die potenzielle Beihilfe offensichtlich nicht auf Grundlage einer von der Kommission genehmigten Regelung gewährt wurde, ist sie als Ad-hoc-Beihilfe zu prüfen. Artikel 87 Absatz 2 und Absatz 3 EG-Vertrag sehen Ausnahmen von dem generellen Beihilfeverbot des Absatzes 1 vor.

(48) Die Ausnahmen des Artikels 87 Absatz 2 EG-Vertrag sind im vorliegenden Fall nicht anwendbar, da die Beihilfen weder sozialen Charakter haben noch an einzelne Verbraucher gewährt werden und auch nicht zur Beseitigung von Schäden, die durch Naturkatastrophen oder sonstige außergewöhnliche Ereignisse entstanden sind bzw. zum Ausgleich der durch die Teilung Deutschlands verursachten wirtschaftlichen Nachteile beitragen.

(49) Weitere Ausnahmen sind in Artikel 87 Absatz 3 Buchstaben a) und c) EG-Vertrag vorgesehen. Da die Beihilfe, d. h. das angebliche Rettungsbeihilfedarlehen und der Forderungsverzicht, nicht regionalpolitischen Zielen dient, sondern zur Rettung eines Unternehmens in Schwierigkeiten gewährt wurde, gelangen lediglich die Ausnahmebestimmungen des Artikels 87 Absatz 3 Buchstabe c) EG-Vertrag zur Anwendung. Artikel 87 Absatz 3 Buchstabe c) lässt die Genehmigung staatlicher Beihilfen zur Förderung der Entwicklung bestimmter Wirtschaftszweige zu, soweit sie die Handelsbedingungen nicht in einer Weise verändern, die dem gemeinsamen Interesse zuwiderläuft. Für die Beurteilung von Rettungs- und Umstrukturierungsbeihilfen hat die Kommission besondere Vorschriften („Leitlinien für die Beurteilung von staatlichen Beihilfen zur Rettung und Umstrukturierung von Unternehmen in Schwierigkeiten“) ([3]) (in der Folge Gemeinschaftsleitlinien) erlassen. Die Kommission hat bei ihrer Prüfung festgestellt, dass keine anderen Gemeinschaftsschriften, beispielsweise für Forschung und Entwicklung, Umweltschutz, kleine und mittlere Unternehmen oder Beschäftigung und Ausbildung zur Anwendung gelangen könnten.

(50) Ziffer 2.1 der Gemeinschaftsleitlinien enthält die Definition eines Unternehmens in Schwierigkeiten. Nach Randnummer 6 der Gemeinschaftsleitlinien gehören zu den typischen Symptomen zunehmende Verluste, sinkende Umsätze, wachsende Lagerbestände, Überkapazitäten, verminderter Cashflow, zunehmende Verschuldung und Zinsbelastung sowie Abnahme oder Verlust des reinen Vermögenswerts. Weiter heißt es, in akuten Fällen sei das Unternehmen bereits insolvent oder befinde sich wegen Zahlungsunfähigkeit in einem Kollektivverfahren nach innerstaatlichem Recht. Im letzteren Fall finden die vorliegenden Leitlinien nur auf Beihilfen Anwendung, die im Rahmen eines solchen Verfahrens gewährt werden und den Fortbestand des Unternehmens sichern.

(51) Es ist nicht klar, wem die anstehenden Beihilfemaßnahmen zugute kommen. Die Herlitz AG und die Herlitz PBS AG sind bzw. waren zahlungsunfähig und können bzw. könnten als Unternehmen in Schwierigkeiten angesehen werden; Falken Office Products hingegen ist nicht zahlungsunfähig, so dass unklar ist, ob das Unternehmen für Rettungs- oder Umstrukturierungsbeihilfen in Betracht käme. Ebenfalls zweifelhaft ist, ob der Herlitz-Konzern als Unternehmen in Schwierigkeiten angesehen werden kann.

(52) Das Darlehen wurde von Deutschland als Rettungsbeihilfe notifiziert. Um genehmigungsfähig zu sein, muss eine Rettungsbeihilfe die in Ziffer 3.1 der Gemeinschaftsleitlinien beschriebenen Kriterien erfüllen.

(53) Es muss sich um Liquiditätsbeihilfen in Form von Kreditbürgschaften oder Krediten handeln. In beiden Fällen muss für den Kredit ein Zinssatz verlangt werden, der mindestens den von der Kommission festgelegten Referenzzinssätzen vergleichbar ist. Das Darlehen in Höhe von 963 855,42 EUR wird von der ILB zu einem Zinssatz von 7,5 % bereitgestellt und liegt damit über dem anwendbaren Referenzzinssatz der Kommission von 5,06 %.

(54) Die Beihilfe muss mit Krediten verbunden sein, deren Restlaufzeit nach der Auszahlung des letzten Teilbetrags der Kreditsumme an das Unternehmen längstens 12 Monate beträgt. Das betreffende Darlehen wurde am 10. Mai 2002 gewährt und am 24. Juli 2002 ausgezahlt. Das Darlehen wurde der InvestitionsBank des Landes Brandenburg am 24. Januar 2003, d. h. sechs Monate nach der Auszahlung, in vollem Umfang zurückgezahlt.

([3]) ABl. C 288 vom 9.10.1999.

(55) Die Beihilfe muss aus akuten sozialen Gründen gerechtfertigt sein und darf keine gravierenden Ausstrahlungseffekte in anderen Mitgliedstaaten haben. Nach deutschen Angaben waren durch die Zahlungsunfähigkeit der Herlitz PBS AG 1 883 Arbeitsplätze gefährdet. Daher kann gefolgert werden, dass die Beihilfe aus akuten sozialen Gründen gerechtfertigt war. Allerdings liegen der Kommission keine hinreichenden Angaben darüber vor, ob die Beihilfe keine gravierenden Ausstrahlungseffekte in anderen Mitgliedstaaten hatte.

(56) Die Beihilfe muss auf den Betrag begrenzt sein, der erforderlich ist, um das Unternehmen weiterführen zu können, bis eine Lösung gefunden wird. Das Darlehen wurde jedoch gleichzeitig mit der Verständigung über einen Insolvenzplan gewährt. Deutschland ist der Auffassung, dass dieser Plan den einschlägigen Leitlinien genügt und als Umstrukturierungsplan angesehen werden kann. Sollte dieser Plan als Umstrukturierungsplan betrachtet werden, dann wäre die Gewährung einer angeblichen Rettungsbeihilfe kaum zu rechtfertigen, da über die Zukunft des Unternehmens bereits entschieden worden wäre. Das Ziel einer Rettungsbeihilfe, d. h. die Weiterführung des Unternehmens bis über dessen Zukunft entschieden wird, würde verfehlt. Darüber hinaus ist unklar, ob es sich bei dem Begünstigten des Darlehens um die Herlitz PBS AG oder Falken Office Products GmbH bzw. den Herlitz-Konzern als Ganzes handelt und welche Kosten gedeckt wurden.

(57) Darüber hinaus wären etwaige Beihilfeelemente der Vergleichsvereinbarung nicht als Rettungsbeihilfe vereinbar, da ein Forderungsverzicht die in Ziffer 3.1 der Leitlinien festgelegten Bedingungen nicht erfüllt. Da das Darlehen und die Vergleichsvereinbarung gleichzeitig erfolgten, stellen die Maßnahmen ein Paket dar, das als solches zu würdigen ist. Die Kommission wird versuchen, die Vereinbarkeit des Darlehens und etwaige Beihilfeelemente der Vergleichsvereinbarung als Umstrukturierungsbeihilfe zu prüfen.

(58) Die Gewährung einer Umstrukturierungsbeihilfe hängt davon ab, dass sich der Mitgliedstaat zur Durchführung eines Umstrukturierungsplans verpflichtet. Dieser Plan muss verschiedene Voraussetzungen erfüllen und auch Maßnahmen umfassen, um nachteilige Auswirkungen der Beihilfe auf Wettbewerber auszugleichen. Die auf Grundlage eines solchen Plans gewährte Beihilfe muss sich auf das für die Umstrukturierung notwendige Mindestmaß beschränken. Des Weiteren muss der Beihilfeempfänger aus eigenen Mitteln oder durch Fremdfinanzierung zu Marktbedingungen einen bedeutenden Beitrag leisten. Darüber hinaus ist die Beihilfe so zu gewähren, dass dem Unternehmen keine überschüssige Liquidität zugeführt wird, die zu einem aggressiven und marktverzerrenden Verhalten in Tätigkeitsbereichen verwendet werden könnte, die vom Umstrukturierungsprozess nicht betroffen sind.

(59) Allerdings liegen der Kommission keine Belege dafür vor, dass die fraglichen Maßnahmen diese Voraussetzungen erfüllen. So wurde der Kommission nicht mitgeteilt, ob der vorgelegte Insolvenzplan von den Gläubigern wie vom Insolvenzverwalter präsentiert oder in einer geänderten Fassung genehmigt wurde. Außerdem liegt der Insolvenzplan nicht in Form eines Umstrukturierungsplans vor, zu dem sich der Mitgliedstaat verpflichtet hat. Mit dem Insolvenzplan sollte die Herlitz PBS AG aus der Zahlungsunfähigkeit herausgeführt werden, doch ist unklar, ob die langfristige Rentabilität gesichert ist. Ebenso ist unklar, ob der Plan Maßnahmen einbezieht, um nachteilige Auswirkungen der Beihilfe auf Wettbewerber möglichst abzumildern. Außerdem wurde nicht nachgewiesen, ob die gewährte Beihilfe auf das zur Umstrukturierung des Unternehmens notwendige Mindestmaß beschränkt ist und ob der Beihilfeempfänger einen bedeutenden Beitrag zu den Umstrukturierungskosten aus eigenen Mitteln oder durch Fremdfinanzierung zu Marktbedingungen leistet. Unklar ist auch, ob die Beihilfe so gewährt wird, dass dem Unternehmen keine überschüssige Liquidität zugeführt wird, die zu einem aggressiven und marktverzerrenden Verhalten in Tätigkeitsbereichen verwendet werden könnte, die vom Umstrukturierungsprozess nicht betroffen sind.

(60) Der Kommission liegen keine hinreichenden Angaben zu den sonstigen Maßnahmen und deren Zielsetzung vor, so dass diese nicht gewürdigt werden können.

IV. SCHLUSSFOLGERUNG

(61) Die Kommission bezweifelt, dass die genannten Maßnahmen, die im Rahmen dieser vorläufigen Würdigung als Beihilfe angesehen werden, als mit dem Gemeinsamen Markt vereinbar eingestuft werden könnten. Daher hat die Kommission beschlossen, das förmliche Prüfverfahren einzuleiten.

(62) Im Lichte der vorstehenden Ausführungen fordert die Kommission Deutschland auf, innerhalb eines Monats nach Eingang dieses Schreibens alle sachdienlichen Unterlagen, Informationen und Angaben für die Beurteilung der Vereinbarkeit der Maßnahme zu übermitteln. Benötigt werden insbesondere Angaben zu:

a) den Besitzverhältnissen der Herlitz AG und der Struktur des Herlitz-Konzerns,

b) detaillierte Angaben zur derzeitigen Solvenzlage der Herlitz AG und ihrer Tochterunternehmen, zum Insolvenzplan, zu den Liquidations- oder

c) Umstrukturierungsplänen und dazu, ob diese von den Gläubigern akzeptiert wurden,

d) detaillierte Angaben zu dem Darlehen und dessen Rückzahlung,

e) detaillierte Angaben zu der Vergleichsvereinbarung und allen weiteren Vereinbarungen, die zwischen dem Insolvenzverwalter und anderen Gläubigern geschlossen wurden,

f) detaillierte Angaben zu den sonstigen Maßnahmen, insbesondere den Auflagen für die Überlassung des Grundstücks in Berlin-Borsig und zu den Umständen des Verzichts auf die Forderungen aus dem zinsfreien Darlehen von 1989.

(63) Die Kommission erinnert Deutschland an die Sperrwirkung des Artikels 88 Absatz 3 EG-Vertrag und verweist auf Artikel 14 der Verordnung (EG) Nr. 659/1999, wonach alle rechtswidrigen Beihilfen von dem Empfänger zurückgefordert werden können.'

Notice of the impending expiry of certain anti-dumping measures

(2003/C 100/04)

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 of 22 December 1995.

Product	Country(ies) of origin or exportation	Measures	Reference	Date of expiry
Hardboard	Bulgaria Estonia Latvia Lithuania Poland Russia	Duty	Regulation (EC) No 194/1999 (OJ L 22, 29.1.1999) as last amended by Regulation (EC) No 1899/2001 (OJ L 261, 29.9.2001)	29.1.2004
	Bulgaria Estonia Lithuania Poland	Undertaking	Decision No 1999/71/EC (OJ L 22, 29.1.1999) as last amended by Decision No 2001/707/EC (OJ L 261, 29.9.2001)	

[1] OJ L 56, 6.3.1996, p. 1, as last amended by Council Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).

[2] Telex COMEU B 21877; Fax (32-2) 295 65 05.

Publication in accordance with Article 3a(2) of Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as amended by Directive 97/36/EC of the European Parliament and of the Council

(2003/C 100/05)

The measures taken by Ireland pursuant to Article 3a(1) of the Directive and notified to the Commission in accordance with the procedure laid down in Article 3a(2) of the Directive:

Number 28 *of* 1999

BROADCASTING (MAJOR EVENTS TELEVISION COVERAGE) ACT, 1999

ARRANGEMENT OF SECTIONS

Section

Acts Referred to
European Communities Act, 1972, No 27
European Communities (Amendment) Act, 1993, No 25

BROADCASTING (MAJOR EVENTS TELEVISION COVERAGE) ACT, 1999

AN ACT TO PROVIDE FOR TELEVISION COVERAGE OF EVENTS OF MAJOR IMPORTANCE TO SOCIETY, TO GIVE EFFECT TO ARTICLE 3a OF COUNCIL DIRECTIVE 89/552/EEC OF 3 OCTOBER 1989, AS AMENDED BY COUNCIL DIRECTIVE 97/36/EC OF 30 JUNE 1997, AND TO PROVIDE FOR OTHER RELATED MATTERS. [13 *November* 1999] BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.

(1) In this Act

'broadcaster' has the meaning assigned in the Council Directive;

'Council Directive' means Council Directive 89/552/EEC of 3 October 1989 [1] as amended by Council Directive 97/36/EC of 30 June 1997 [2];

'EEA Agreement' has the meaning assigned in the European Communities (Amendment) Act, 1993;

'event' means an event of interest to the general public in the European Union, a Member State or in the State or in a significant part of the State that is organised by an event organiser who is legally entitled to sell the broadcasting rights to the event;

[1] OJ L 298, 17.10.1989.
[2] OJ L 202, 30.7.1997.

'free television service' means television broadcasting service for the reception of which no charge is made by the person providing the service;

'Member State' means a member state of the European Communities (within the meaning of the European Communities Act, 1972) and includes a state that is a contracting state to the EEA Agreement;

'the Minister' means the Minister for Arts, Heritage, Gaeltacht and the Islands;

'near universal coverage' means

(a) free television service, reception of which is available to at least 95 per cent of the population of the State, or

(b) if at any time fewer than three broadcasters are able to provide the coverage required under *paragraph (a)*, free television service, reception of which is available to at least 90 per cent of the population of the State;

'qualifying broadcaster' means a broadcaster who is deemed under *subsection (2)* to be a qualifying broadcaster;

'television broadcasting' has the meaning assigned in the Council Directive.

(2) The following broadcasters are deemed to be qualifying broadcasters:

(a) until the 31st day of December, 2001, a broadcaster who provides free television service coverage of a designated event to which at least 85 per cent of the population of the State have access;

(b) on and after the 1st day of January, 2002, a broadcaster who provides near universal coverage of a designated event.

(3) For the purpose of *subsection (2)*, two or more broadcasters who enter into a contract or arrangement to jointly provide near universal coverage of a designated event shall be deemed to be a single broadcaster with respect to that event.

(4) A broadcaster may request the Minister to resolve any dispute as to the extent of free television service being provided by a broadcaster in the State for the purpose of *subsection (2)* and the definition of 'near universal coverage' *in subsection (1)*.

(5) The Minister may consult with any technical experts or other persons or bodies he or she considers appropriate before resolving a dispute under *subsection (4)*.

(6) In this Act

(a) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactment including this Act;

(b) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended; and

(c) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

2.

(1) The Minister may by order

(a) designate events as events of major importance to society for which the right of a qualifying broadcaster to provide coverage on free television services should be provided in the public interest, and

(b) determine whether coverage on free television services of an event designated under *paragraph (a)* should be available

(i) on a live, deferred or both live and deferred basis, and

(ii) in whole, in part or both in whole and in part.

(2) The Minister shall have regard to all the circumstances and in particular each of the following criteria in making a designation under *subsection (1)(a)*:

(a) the extent to which the event has a special general resonance for the people of Ireland;

(b) the extent to which the event has a generally recognised distinct cultural importance for the people of Ireland.

(3) In order to determine the extent to which the criteria in *subsection (2)* have been met, the following factors may be taken into account by the Minister:

(a) whether the event involves participation by a national or non-national team or by Irish persons;

(b) past practice or experience with regard to television coverage of the event or similar events.

(4) The Minister shall consider the following in making the determination under *subsection (1)(b)*:

(a) the nature of the event;

(b) the time within the State at which the event takes place;

(c) practical broadcasting considerations.

(5) The Minister may by order revoke or amend an order under this section.

(6) The Minister shall consult with the Minister for Tourism, Sport and Recreation before making, revoking or amending an order under this section.

(7) Where it is proposed to make, revoke or amend an order under this section, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving the draft has been passed by each House.

3.

(1) Before making an order under *section 2*, the Minister shall

(a) make reasonable efforts to consult with the organisers of the event and with broadcasters who are under the jurisdiction of the State for the purpose of the Council Directive,

(b) publish a notice of the event which the Minister intends to designate under that section in at least one newspaper circulating in the State, and

(c) invite comments on the intended designation from members of the public.

(2) The inability to establish who is the organiser of an event or the failure of the organiser or a broadcaster under the jurisdiction of the State to respond to the Minister's efforts to consult shall not preclude the making of an order under *section 2*.

4.

(1) Where a broadcaster under the jurisdiction of the State who is not a qualifying broadcaster acquires exclusive rights to broadcast a designated event, that broadcaster shall not broadcast the event unless the event has been made available to a qualifying broadcaster, in accordance with the order under *section 2*, on request and the payment of reasonable market rates by the qualifying broadcaster.

(2) Where a qualifying broadcaster acquires the right to broadcast a designated event (under this section or directly), the qualifying broadcaster shall broadcast the event on a free television service providing near universal coverage in accordance with the order under *section 2*.

(3) In this section, 'designated event' means an event that is designated in an order under *section 2*.

5.

Where another Member State has designated an event as being of major importance to society in that Member State and the European Commission has communicated the measures taken by that Member State in accordance with Article 3a(2) of the Council Directive, no broadcaster under the jurisdiction of the State who acquires exclusive rights to the designated event shall exercise the exclusive rights in such a way that a substantial portion of the public in that Member State is deprived of the possibility of following the events in accordance with the measures taken.

6.

(1) Where it is alleged by a broadcaster (the 'aggrieved broadcaster') that any activity or conduct prohibited by *section 4* or *5* is being, has been or is about to be carried on by one or more other broadcasters (the 'other broadcaster'), the aggrieved broadcaster shall be entitled to apply to the High Court for the following remedies against the other broadcaster:

(a) an order restraining the other broadcaster from carrying on or attempting to carry on the activity or conduct prohibited by *section 4* or *5*;

(b) a declaration that the contract under which the other broadcaster received exclusive rights to the designated event is void;

(c) damages from the other broadcaster;

(d) a direction that the right to provide television coverage of the event shall be offered to the aggrieved broadcaster at reasonable market rates.

(2) An application to the High Court for an order referred to in *subsection (1)* shall be by motion and the court, when considering the matter, may make such interim or interlocutory order as it considers appropriate.

7.

(1) For the purpose of *section 4(1)*, if broadcasters are unable to agree on what constitutes reasonable market rates with respect to television coverage of an event, either of the broadcasters may apply to the High Court in a summary manner for an order determining reasonable market rates for an event.

(2) An order under *subsection (1)* may contain such consequential or supplementary provisions as the High Court considers appropriate.

8.

This Act may be cited as the Broadcasting (Major Events Television Coverage) Act, 1999.

Statutory Instruments

S.I. No 99 of 2003

Broadcasting (Major Events Television Coverage) Act 1999 (Designation of Major Events) Order 2003

I, Dermot Ahern, Minister for Communications, Marine and Natural Resources, in exercise of the powers conferred on me by subsection (1) of section 2 of the Broadcasting (Major Events Television Coverage) Act 1999 (No 28 of 1999) and the Broadcasting (Transfer of Departmental Administration and Ministerial Functions) Order 2002 (S.I. No 302 of 2002) (as adapted by the Marine and Natural Resources) (Alteration of Name of Department and Title of Minister) Order 2002 (S.I. No 307 of 2002)) after consultation with the Minister for Arts, Sport and Tourism as provided for by subsection (6) (as adapted by the Tourism, Sport and Recreation (Alteration of Name of Department, Title of Minister) Order 2002 (S.I. No 307 of 2002)) of that section, hereby make the following order with respect to which, pursuant to subsection (7) of that section, a draft has been laid before each House of the Oireachtas and a resolution approving the draft has been passed by each such House:

1. This Order may be cited as the Broadcasting (Major Events Television Coverage) Act 1999 (Designation of Major Events) Order 2003.

2. The events specified in the Schedule to this Order are designated as events of major importance to society for which the right of a qualifying broadcaster to provide coverage on a live basis on free television services should be provided in the public interest.

3. Each of Ireland's games in the Six Nations Rugby Football Championship is designated as an event of major importance to society for which the right of a qualifying broadcaster to provide coverage on a deferred basis on free television services should be provided in the public interest.

SCHEDULE

Regulation 2

The Summer Olympics

The All-Ireland Senior Inter-County Football and Hurling Finals

Ireland's home and away qualifying games in the European Football Championship and the FIFA World Cup Tournaments

Ireland's games in the European Football Championship Finals Tournament and the FIFA World Cup Finals Tournament

The opening games, the semi-finals and final of the European Football Championship Finals and the FIFA World Cup Finals Tournament

Ireland's games in the Rugby World Cup Finals Tournament

The Irish Grand National and the Irish Derby

The Nations Cup at the Dublin Horse Show

GIVEN under my Official Seal,

13 March 2003.

Dermot Ahern

Minister for Communications, Marine and Natural Resources

Publication of an application for registration pursuant to Article 6(2) of Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin

(2003/C 100/06)

This publication confers the right to object to the application pursuant to Article 7 of the abovementioned Regulation. Any objection to this application must be submitted via the competent authority in the Member State concerned within a time limit of six months from the date of this publication. The arguments for publication are set out below, in particular under 4.6, and are considered to justify the application within the meaning of Regulation (EEC) No 2081/92.

COUNCIL REGULATION (EEC) No 2081/92

APPLICATION FOR REGISTRATION: ARTICLE 5

PDO ( ) — PGI (X)

National application No: IG/16/97

1. **Responsible department in the Member State**

Name: Ministère de l'agriculture et de la pêche — Direction des politiques économique et internationale
Bureau des signes de qualité et de l'agriculture biologique

Address: 3, rue Barbet-de-Jouy, F-75349 Paris 07 SP

Tel. (33-149) 55 81 01

Fax (33-149) 55 57 85

2. **Applicant group**

2.1. *Name:* Union Interprofessionnelle de la Fraise du Périgord (UIFP)

2.2. *Address:* Mairie de Vergt — F-24380 Vergt

2.3. *Composition:* Producer (X) Other = Consignor (X)

3. **Type of product:** Chapter 8, Edible fruit and nuts; peel of melons or citrus fruit, Annex II to the Treaty of Rome.

4. **Specification**

(Summary of requirements under Article 4(2))

4.1. *Name: Fraise du Périgord*

4.2. *Description:* The name *Fraise du Périgord* applies to a product produced in the whole of the geographical area.

Périgord strawberries are grown entirely in open fields, categories Extra or I.

The varieties are selected by the UIFP (Union Interprofessionnelle de la Fraise du Périgord), according to agronomic qualities and taste.

They must also meet specific criteria as regards sugar levels, colour, firmness, size, shine, shape and presentation. All of these criteria are checked for each lot.

The strawberries are sold in punnets of 500 g and 250 g, under the name *Fraise du Périgord*.

4.3. *Geographical area:* The area is made up of 32 cantons of the Dordogne Département (Beaumont, Belvès, Bergerac, Bergerac 2, Carlux, Domme, Issigeac, La Force, Lalinde, Le Bugue, Le Buisson de Cadouin, Montpazier, Montagrier, Montignac, Montpon-Menesterol, Mussidan, Neuvic, Périgueux, Périgueux Nord-Est, Périgueux Ouest, Ribérac, Saint-Astier, Saint-Aulaye, Saint-Cyprien, Saint-Pierre de Chignac, Sainte-Alvère, Salignac-Eyvignes, Sarlat-la-Cadena, Thenon, Vergt, Villamblard, Villefranche du Périgord), the 51 Dordogne communes (Agonac, Antonne-et-Trigonant, La Bachellerie, Bertric-Burée, Biras, Bourdeilles, Bourg-des-Maisons, Bussac, La Cassagne, Cercles, Le Change, Chavagnac, Chourgnac, Coly, Condat-sur-Vézère, Cornille, Coulaures, Coutures, Cubjac, La Dornac, Escoire, Gardonne, La Gonterie-Boulouneix, Granges-d'Ans, Hautefort, Lamonzie-Saint-Martin, Le Lardin-Saint-Lazare, Leguillac-de-Cercles, Lisle, Lusignac, Mayac, Monbazillac, Moulin Neuf, Port-Sainte-Foy-et Ponchapt, Ribagnac, Sadillac, Saint-Aubin-de-Cadelech, Saint-Capraise-d'Eymet, Saint-Géraud-de-Corps, Saint-Julien-de-Bourdeilles, Saint-Laurent-des-Vignes, Saint-Martin-de-Gurçon, Saint-Méard-de-Gurçon, Saint-Paul-Lizonne, Saint-Rabier, Saint-Rémy, Sainte-Eulalie-D'Ans, Savignac-les-Églises, Sencenas-Puy-de-Fourche, Temple-Laguyon, Tourtoirac) adjacent to these cantons, nine communes of the Lot Département (Anglars Nozac, Fajoles, Gourdon, Leobard, Masclat, Milhac, Peyrignac, Rouffilhac, St-Cirq-Madelon).

The geographical production area is therefore in the heart of the Périgord Region, the area known as Périgord Central. This is an homogenous area with chalky soils of secondary origin, with a clay-siliceous covering and with a regular, temperate climate.

4.4. *Proof of origin:*

— The selected strawberry producers are entered in a register kept up-to-date by marketing organisations.

— The areas used for strawberry plantations situated in the defined geographical area are listed in an inventory and identified by their cadastral number.

— The strawberries are packed in punnets of 500 g or 250 g bearing the individual identification number of the producer, which allows them to be traced until they reach the consumer. In addition, the certified characteristics and the words *Fraise du Périgord* are printed on the lid or the plastic cover of the punnets.

— In addition, each pallet is identified by a record stating the variety, number of punnets, destination and transporter, and a consignment note is made out to accompany each lot; finally, accompanying documents are filled out for each order.

4.5. *Method of production:* What makes the production of *Fraise du Périgord* special is the fact that it is carried out in an area of hills and chestnut trees. The following method of production is used:

— Selection and inventory of the fields or plots according to their geographic location, their cultivation history and soil and climate characteristics.

— Reasonable amount of manure before each planting.

— Varieties selected by the UIFP for their taste characteristics.

— Exclusive use of certified seedlings with a planting density of no more than 6 per m^2.

— Reasonable irrigation and phytosanitary protection; use of products listed by the UIFP.

— Harvest made when ripe and must be under cover from the beginning of the harvest until mid-June and from mid-September to the end of October; minimum sugar content of 6° to 7,5° according to variety and time of year.

— Selection of best fruit at harvest.

— Classification of each lot on arrival at the packing station according to a score system: a minimum of 9 points needed in order to qualify for the *Fraises du Périgord* seal.

— The fruit is systematically cooled on arrival.

— Packed in padded punnets or other similar containers.

— Packed and stored in warehouses with a controlled temperature of 12 °C maximum.

— Shipped out a maximum of 48 hours after arrival, in refrigerated lorries (between 6 and 12 °C).

4.6. *Link:*

1. *Particular characteristics of the product:* The specificity of the *Fraise du Périgord* is linked to the soil and climate characteristics of the plots or fields; chalky soil, covering of a clay-silicious layer, an undulating, even hilly landscape, in addition to almost total forest-cover. The potential of these characteristics is harnessed by the knowledge and skills of the producers and, mainly, by the development of cultivation methods which use the humus available after tree-felling.

   The climate, equable and not subject to extremes, also plays a part, allowing even growth and ripening.

   Moreover, the qualities of the Périgord strawberry are linked to the selection of varieties according to three criteria: a good adaptation to the Périgord soil, taste and good presentation.

2. *A reputation past and present:* The production of strawberries in Périgord goes back to 1895, when the strawberries were cultivated between rows of vines, and sold at local markets. This practice greatly developed after the Second World War, slowly moving from production for retail to mass production, particularly thanks to the development of transport and the organisation of trade. The reputation and the quality of these strawberries increased demand and they were prized on all French markets. The past fame and present reputation of the Périgord strawberry gives it a place in the Inventory of French Culinary Heritage (l'Inventaire du Patrimoine Culinaire français).

4.7. *Inspection body*

Name: SGS ICS (Direction «Certification de produits et de services»), the certification mark is Qualicert.

Address: 191, Avenue Aristide Briand, F-94237 Cachan Cedex.

Accreditation number of Cofrac for the certification of agricultural and food products according to the standard NF EN 45011: 7-019/98

4.8. *Labelling:* The products are sold under the name *Fraise du Périgord*, marked 'Certifié', with the following certified characteristics:

Produced in Périgord

Harvested at optimum maturity

Selected varieties

Guaranteed traceability from producer to consumer

4.9. *National requirements:* None.

EC No: FR/00133/2001.02.23.

Date of receipt of the full application: 19 December 2002.

Notification according to Article 95(4) of the EC Treaty

Request for authorisation to maintain national provisions incompatible with a Community Harmonisation Measure

(2003/C 100/07)

(Text with EEA relevance)

1. By letter of 17 January 2003, the Government of the Kingdom of the Netherlands, pursuant to Article 95(4) of the EC Treaty, notified to the Commission its national provisions concerning the use of Short Chain Chlorinated Paraffins (SCCP) with a view to maintaining them, by way of derogation from the provisions of Directive 2002/45/EC [1] of the European Parliament and of the Council amending for the twentieth time Council Directive 76/769/EEC [2] relating to restrictions on the marketing and use of certain dangerous substances and preparations (short-chain chlorinated paraffins). The Commission received the Dutch notification on 21 January 2003.

2. Article 95(4) provides that 'if, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them'.

3. According to Article 95(6), 'the Commission shall, within six months of the notification approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction to trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market'.

4. The national provisions [3] implement Parcom Decision 95/1 of June 1995 on the Phasing out of SCCPs, which was in turn taken in the framework of the Convention for the Prevention of Marine Pollution from Land-Based Sources (OSPAR Convention). They prohibit the use of SCCP in three applications, i.e. as plasticisers in paints, coatings or sealants, in metal-working fluids and as flame-retardant in rubber, plastics or textiles, with certain limited temporary derogations.

5. The Dutch Government deems it necessary to maintain its national provisions on grounds of human health and environmental protection and, to this effect, refers to a study on the ecotoxicological effects of chlorinated paraffins [4]. The Dutch Government also indicates that the maintenance of those provisions is necessary to allow the Kingdom of the Netherlands to continue to comply with the obligations arising from the OSPAR Convention as well as Decision 95/1, to which it is a contracting party.

6. The Commission reminds interested parties that possible observations on the Dutch notification received later than one month after the publication of this Notice in the *Official Journal of the European Union* are in principle unlikely to be considered. Furthermore, the Commission reserves the right to communicate any observations that may be submitted to it to the Kingdom of the Netherlands.

---

[1] OJ L 177, 6.7.2002, p. 21.

[2] OJ L 262, 27.9.1967, p. 201.

[3] Decision of 3 November 1999 laying down rules prohibiting the use of short-chain chlorinated paraffins (Chlorinated Paraffins Decision, Chemical Substances Act (WMS)), *Staatsblad van het Koninkrijk der Nederlanden, Jaargang 1999, 478.*

[4] 'Ecotoxicological advice on chlorinated paraffins', D. F. Kalf and E. J. van de Plassche, February 1996 (carried out on behalf of the Directorate for Environmental Protection, Directorate for Chemicals, External Safety, and Radiation Protection within the framework of project 'Existing chemicals: National Program *(MAP Milieu, Bestaande Stoffen Nationaal, nr. 601503)*').

7. Further information regarding the notification can be obtained from:

Janine van Aalst (tel. (31-70) 351 93 06),
Wini Broadbelt (tel. (31-70) 351 83 68)

Contact point in the European Commission:

Giovanni Indirli
European Commission
Directorate-General 'Enterprise'
Unit E3 'Chemicals'
AN 88 4/39
B-1049 Brussels
tel. (32-2) 295 12 65
fax (32-2) 295 02 81
e-mail: giovanni.indirli@cec.eu.int

Prior notification of a concentration

(Case COMP/M.3130 — Arla Foods/Express Dairies)

(2003/C 100/08)

(Text with EEA relevance)

1. On 16 April 2003 the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ([1]), as last amended by Regulation (EC) No 1310/97 ([2]), by which the undertaking Arla Foods amba (Arla Foods), Denmark, acquires, within the meaning of Article 3(1)(b) of the Regulation, control of the whole of the undertaking Express Dairies plc (Express Dairies), United Kingdom, by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— Arla Foods: production and supply of various dairy products such as fresh milk, butter and cheese primarily in Denmark, Sweden and the United Kingdom,

— Express Dairies: production and supply of various dairy products primarily fresh liquid milk and cream in the United Kingdom.

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

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

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference COMP/M.3130 — Arla Foods/Express Dairies, to:

European Commission,
Directorate-General for Competition,
Directorate B — Merger Task Force,
J-70,
B-1049 Brussels.

([1]) OJ L 395, 30.12.1989, p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.
([2]) OJ L 180, 9.7.1997, p. 1; corrigendum: OJ L 40, 13.2.1998, p. 17.

Prior notification of a concentration

(Case COMP/M.3114 — Unión Fenosa/ENI/Unión Fenosa Gas)

Candidate case for simplified procedure

(2003/C 100/09)

(Text with EEA relevance)

1. On 11 April 2003 the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 [1], as last amended by Regulation (EC) No 1310/97 [2], by which the Italian undertaking ENI SpA (ENI), acquires, within the meaning of Article 3(1)(b) of the Regulation, joint control of the Spanish undertaking Unión Fenosa Gas SA (UF Gas), controlled by the Spanish undertaking Unión Fenosa SA (UF), by way of purchase of shares. Following the concentration UF Gas will be jointly controlled by ENI and UF.

2. The business activities of the undertakings concerned are:

— ENI: exploration and production of oil and natural gas worldwide,

— UF: generation and sale of electricity; activities related to the gas sector, telecommunications, engineering and information technology and management consulting,

— UF Gas: gas related activities.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved. Pursuant to the Commission Notice on simplified procedure for treatment of certain concentrations under Council Regulation (EEC) No 4064/89 [3] it should be noted that this case is a candidate for treatment under the procedure set out in the notice.

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

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference COMP/M.3114 — Unión Fenosa/ENI/Unión Fenosa Gas, to:

European Commission,
Directorate-General for Competition,
Directorate B — Merger Task Force,
J-70,
B-1049 Brussels.

---

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

[2] OJ L 180, 9.7.1997, p. 1; corrigendum: OJ L 40, 13.2.1998, p. 17.

[3] OJ C 217, 29.7.2000, p. 32.

Non-opposition to a notified concentration

(Case COMP/M.3100 — Mediaset/Telecinco/Publiespaña)

(2003/C 100/10)

(Text with EEA relevance)

On 28 March 2003 the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in Spanish and will be made public after it is cleared of any business secrets it may contain. It will be available:

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

— in electronic form in the 'CES' version of the CELEX database, under document No 303M3100. CELEX is the computerised documentation system of European Community law.

For more information concerning subscriptions please contact:

EUR-OP,
Information, Marketing and Public Relations,
2, rue Mercier,
L-2985 Luxembourg.
Tel. (352) 29 29 427 18, fax (352) 29 29 427 09.

Non-opposition to a notified concentration

(Case COMP/M.3139 — Carlyle/Breed Technologies)

(2003/C 100/11)

(Text with EEA relevance)

On 10 April 2003, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

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

— in electronic form in the 'CEN' version of the CELEX database, under document No 303M3139. CELEX is the computerised documentation system of European Community law.

For more information concerning subscriptions please contact:

EUR-OP,
Information, Marketing and Public Relations,
2, rue Mercier,
L-2985 Luxembourg.
Tel. (352) 29 29 427 18, fax (352) 29 29 427 09.

II

(Preparatory Acts pursuant to Title VI of the Treaty on European Union)

Initiative of the Hellenic Republic with a view to adopting a Council Framework Decision concerning the application of the 'ne bis in idem' principle

(2003/C 100/12)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29, Article 31(d) and Article 34(2)(b) thereof,

Having regard to the initiative of the Hellenic Republic [1],

Having regard to the opinion of the European Parliament [2],

Whereas:

(1) The principle of '*ne bis in idem*', or the prohibition of double jeopardy, i.e. that no one should be prosecuted or tried twice for the same acts and for the same criminal behaviour, is established as an individual right in international legal instruments concerning human rights, such as the Seventh Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 4) and the Charter of Fundamental Rights of the European Union (Article 50) and is recognised in all legal systems which are based on the concept of respect for and protection of fundamental freedoms.

(2) The principle of '*ne bis in idem*' assumes a special significance at a time when transborder crime is on the increase and problems of jurisdiction in connection with criminal prosecutions are becoming more complicated. The importance of this principle is furthermore apparent in the areas of asylum, immigration and extradition and within the framework of the European Union and in agreements between the Union or certain Member States and third countries.

(3) Point 49(e) of the Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice [3] provides that measures will be established within five years of the entry into force of the Treaty 'for the coordination of criminal investigations and prosecutions in progress in the Member States with the aim of preventing duplication and contradictory rulings, taking account of better use of the *ne bis in idem* principle'.

(4) In the Programme of measures to implement the principle of mutual recognition of decisions in criminal matters [4] established by the Council and the Commission the '*ne bis in idem*' principle is included among the immediate priorities of the Union, in particular as regards the taking into account of final criminal judgments delivered by a court in another Member State. Measure No 1 in that programme recommends a reconsideration of Articles 54 to 57 of the Convention implementing the Schengen Agreement, which reiterate the corresponding articles of the Convention between the Member States of the European Communities on Double Jeopardy, signed in Brussels on 25 May 1987, with a view to the full application of the principle of mutual recognition, which has, however, not been ratified by the Member States.

(5) The Communication from the Commission to the European Parliament and the Council of 26 July 2002 on the mutual recognition of final criminal judgments acknowledges the positive contribution of the application of the '*ne bis in idem*' principle to the mutual recognition of judgments and the strengthening of legal certainty within the Union, which presupposes confidence in the fact that judgments recognised are always delivered in accordance with the principles of legality, subsidiarity and proportionality.

(6) In the legal systems of a number of States the principle of '*ne bis in idem*' is recognised only at national level, i.e. vertically, observing the criminal procedure followed in the State in question. Such recognition is provided for either in constitutional provisions or in legal provisions and is based: (a) on Article 14(7) of the International Covenant on Civil and Political Rights of 19 December 1966; and (b) on Article 4 of the Seventh Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. Transnational application of the principle, i.e. horizontally, is established by Articles 54 to 57 of Chapter 3 of the Convention implementing the Schengen Agreement.

(7) The application of the '*ne bis in idem*' principle has thus far raised many serious questions as to the interpretation or acceptance of certain substantive provisions or more general rules (e.g. the concept of *idem*) because of the different provisions governing this principle in the various international legal instruments and the difference in practices in national law. The aim of this Framework Decision is to provide the Member States with common legal rules relating to the '*ne bis in idem*' principle in order to ensure uniformity in both the interpretation of those rules and their practical implementation.

---

[1] ...

[2] ...

[3] OJ C 19, 23.1.1999, p. 1.

[4] OJ C 12, 15.1.2001, p. 10.

(8) Since the above objectives of the Framework Decision cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity. In accordance with the principle of proportionality, this Framework Decision does not go beyond what is necessary in order to achieve those objectives.

(9) As regards Iceland and Norway this Framework Decision constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis [1] which fall within the scope of Article 1(B) of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement [2].

(10) The United Kingdom is taking part in this Framework Decision in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community and with Article 8(2) of Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis [3].

(11) Ireland is taking part in this Framework Decision in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community and with Article 6(2) of Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis [4],

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Definitions

For the purposes of this Framework Decision:

(a) 'criminal offences' shall mean:

— acts which constitute crimes under the law of each Member State,

— acts which constitute administrative offences or breaches of order that are punished by an administrative authority by a fine, in accordance with the national law of each Member State, provided that they fall within the jurisdiction of the administrative authority and the person concerned is able to bring the matter before a criminal court;

(b) 'judgment' shall mean any final judgment delivered by a criminal court in a Member State as the outcome of criminal proceedings, convicting or acquitting the defendant or definitively terminating the prosecution, in accordance with the national law of each Member State, and also any extrajudicial mediated settlement in a criminal matter; any decision which has the status of *res judicata* under national law shall be considered a final judgment;

(c) 'Member State of the proceedings' shall mean a Member State in which the proceedings took place;

(d) *'lis pendens'* shall mean a case where, in respect of a criminal offence, a criminal prosecution has already been brought against a person, without a judgment having been delivered and where the case is already pending before a court;

(e) 'idem' shall mean a second criminal offence arising solely from the same, or substantially the same, facts, irrespective of its legal character.

Article 2

Right of any person not to be prosecuted or convicted twice for the same criminal offence

1. Whoever, as a result of committing a criminal offence, has been prosecuted and finally judged in a Member State in accordance with the criminal law and the criminal procedure of that State cannot be prosecuted for the same acts in another Member State if he has already been acquitted or, if convicted, the sentence has been served or is being served or can no longer be enforced, in accordance with the law of the Member State of the proceedings.

2. The procedure may be repeated if there is proof of new facts or circumstances which emerged after the judgment or if there was a fundamental error in the previous procedure which could have affected the outcome of the proceedings, in accordance with the criminal law and the criminal procedure of the Member State of the proceedings.

Article 3

Lis pendens

If, while a case is pending in one Member State, a criminal prosecution is brought in respect of the same criminal offence in another Member State, the following procedure applies:

[1] OJ L 176, 10.7.1999, p. 36.
[2] OJ L 176, 10.7.1999, p. 31.
[3] OJ L 131, 1.6.2000, p. 43.
[4] OJ L 64, 7.3.2002, p. 20.

(a) preference is given to the forum Member State which will better guarantee the proper administration of justice, taking account of the following criteria:

(aa) the Member State on whose territory the offence has been committed;

(bb) the Member State of which the perpetrator is a national or resident;

(cc) the Member State of origin of the victims;

(dd) the Member State in which the perpetrator was found;

(b) where a number of Member States have jurisdiction and the possibility of bringing a criminal prosecution in respect of a criminal offence based on the same actual events, the competent authorities of each of those States may, after consultation taking account of the criteria mentioned in paragraph (a), choose the forum Member State to be given preference;

(c) where preference is given to the forum of one Member State, proceedings pending in the other Member States shall be suspended until a final judgment is delivered in the Member State whose forum was preferred. Where proceedings are suspended in a Member State, the competent authorities of that State shall immediately inform the corresponding authorities of the Member State whose forum was preferred. If for any reason no final judgment is delivered in the Member State whose forum was preferred, the competent authorities of the latter shall without delay inform the corresponding authorities of the first Member State which suspended proceedings.

Article 4

Exceptions

1. A Member State may make a declaration informing the General Secretariat of the Council and the Commission that it is not bound by Article 2(1) and (2) if the acts to which the foreign judgment relates constitute offences against the security or other equally essential interests of that Member State or were committed by a civil servant of the Member State in breach of his official duties.

2. A Member State which makes a declaration pursuant to paragraph 1 shall specify the categories of offence to which the exception may apply.

3. A Member State may at any time revoke the declaration concerning the exceptions set out in paragraph 1. Such revocation shall be notified to the General Secretariat of the Council and to the Commission and will take effect from the first day of the month following the date of notification.

4. An exception which may be the subject of a declaration pursuant to paragraph 1 will not be applied if the Member State concerned has asked for the same offences to be prosecuted by the other Member State or has ordered the extradition of the person involved.

Article 5

Accounting principle

If a new prosecution is brought in a Member State against a person who has been definitively convicted for the same offences in another Member State the period of deprivation of freedom or fine handed down by that State in respect of those offences shall be deducted from the sentence which he would probably receive. As far as allowed by national law, any penalties other than deprivation of freedom which have been imposed, or penalties imposed in the framework of administrative procedures, shall also be included.

Article 6

Exchange of information between competent authorities

1. If a prosecution has been brought against a person in a Member State and the competent authorities of the latter have reasons to believe that the charge concerns the same acts for which he has been definitively convicted in another Member State, those authorities shall request the relevant information from the competent authorities of the Member State of the proceedings.

2. The requested information shall be provided as soon as possible using all available technical means and shall be taken into account in order to determine whether the procedure is to be continued.

3. Each Member State shall make a declaration to the General Secretariat of the Council and to the Commission indicating the authorities which are authorised to request and receive the information referred to in paragraph 1.

Article 7

Application of broader provisions

The provisions of Articles 1 to 6 shall not preclude the application of broader national provisions on the rule of '*ne bis in idem*' when it is connected with judgments delivered abroad.

Article 8

Application

1. Member States shall take the measures necessary to comply with this Framework Decision before . . . (*).

(*) Two years after the date of entry into force of this Framework Decision.

2. Member States shall transmit by the date referred to in paragraph 1 at the latest to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.

3. On the basis of this information the Commission shall submit before [. . .] a report to the European Parliament and the Council on the application of this Framework Decision, accompanied where necessary by legislative proposals.

4. The Council shall assess before [. . .] the measures adopted by the Member States in order to comply with the provisions of this Framework Decision.

Article 9

Repeal

Articles 54 to 58 of the 1990 Schengen Convention shall be repealed upon the entry into force of this Framework Decision.

Where a Member State transposes this Framework Decision before that date, pursuant to Article 8(1), the provisions in question shall cease to apply to the Member State concerned from the date of transposition.

Article 10

Entry into force

This Framework Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, . . .

For the Council

The President

. . .

Initiative of the Hellenic Republic with a view to adopting a Council Framework Decision concerning the prevention and control of trafficking in human organs and tissues

(2003/C 100/13)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 29, 31(e) and Article 34(2)(b) thereof,

Having regard to the initiative of the Hellenic Republic [1],

Having regard to the opinion of the European Parliament [2],

Whereas:

(1) The Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice [3], the Tampere European Council on 15 and 16 October 1999 and the Santa Maria da Feira European Council on 19 and 20 June 2000, as listed in the scoreboard, indicate or call for legislative action against trafficking in human beings, including common definitions, incriminations and sanctions.

(2) Trafficking in human organs and tissues is a form of trafficking in human beings, which comprises serious violations of fundamental human rights and, in particular, of human dignity and physical integrity. Such trafficking is an area of activity of organised criminal groups who often have recourse to inadmissible practices such as the abuse of vulnerable persons and the use of violence and threats. In addition, it gives rise to serious risks to public health and infringes on the right of citizens to equal access to health services. Finally, it undermines citizens' confidence in the legitimate transplantation system.

(3) Opposition to the sale of the human body and its parts has been addressed repeatedly by many international organisations and has been the subject of regulation by international conventions. As early as 1978, the Council of Europe in its Decision (78)29 on harmonisation of legislation of Member States relating to removal, grafting and transplantation of human substances, which was adopted by the Committee of Ministers of the Council of Europe on 11 May 1978, declared that no human substance may be offered for profit. This declaration was confirmed at the third Conference of European Health Ministers, which was held in Paris on 16 and 17 November 1987, the final statement of which stressed that a human organ may not be offered for profit by any organ exchange body, organ storage centre or any other organisation or private individual.

---

[1] OJ C . . .

[2] OJ C . . .

[3] OJ C 19, 23.1.1999, p. 1.

(4) An important step in the attempt to combat trafficking in human organs and tissues and, more generally, as regards opposition to the sale of the human body and its parts is the Convention of the Council of Europe on human rights and biomedicine which was signed in Oviedo on 4 April 1997 and came into force on 1 December 1999. Article 21 of this Convention contains a prohibition on drawing financial gain from the human body and its parts. Article 25 requires the signatory States to make provision for sanctions, not necessarily of a penal nature, against anyone who infringes the provisions of the Convention. To this Convention was annexed an Additional Protocol concerning transplantation of organs and tissues of human origin, which was drawn up on 24 January 2002, but has not entered into force to date. In Article 21 of the Additional Protocol it is specified that the human body and its parts may not give rise to financial gain or comparable advantage. It also prohibits any advertising of the need for, or availability of, organs or tissues, with a view to offering or seeking financial gain or comparable advantage. Article 22 of the Additional Protocol lays down the obligation to prohibit organ and tissue trafficking.

(5) Trafficking in human organs and tissues has also been condemned repeatedly by the World Health Organisation (WHO). It was first condemned in Resolution WHA 40.13 of May 1987. Furthermore, Resolution WHA 42.5 of May 1989 condemned the purchase and sale of human organs and, pointing to the lack of success in preventing the phenomenon, called on the national legislators to intensify their efforts. Resolution WHA 44.25 of May 1991 declared that no organ should be removed from the bodies of minors save in exceptional cases, considered the advertising of human organs against payment to be prohibited and introduced the principle of equality as regards organ donations.

(6) The Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organised Crime, includes the removal of human organs in the definition of exploitation, which characterises trafficking in persons. This Protocol represents a decisive step towards international cooperation to combat trafficking in human organs.

(7) Nevertheless, the recent Council Framework Decision 2002/629/EC of 19 July 2002 on combating trafficking in human beings [1] did not include trafficking in human organs.

(8) The important work performed by international organisations, especially the UN, the World Health Organisation and the Council of Europe, should be complemented by that of the European Union.

(9) It is necessary that the serious criminal offence of trafficking in human organs and tissues be addressed not only through individual action by each Member State but by a comprehensive approach, of which the definition of the elements of the offence, common to all the Member States, and effective, proportionate and dissuasive penalties should form an integral part.

(10) Since the above objectives of the Framework Decision cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity. In accordance with the principle of proportionality, this Framework Decision does not go beyond what is necessary in order to achieve those objectives.

(11) It is necessary to introduce penalties on perpetrators sufficiently severe to allow for trafficking in human organs and tissues to be included within the scope of instruments already adopted for the purpose of combating organised crime, such as Council Joint Action 98/699/JHA of 3 December 1998 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime [2] and Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union [3],

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Definitions

For the purposes of this Framework Decision:

1. the term 'transplantation' covers the complete process of removal of an organ or tissue from one person and implantation of that organ or tissue into another person, including procedures for preparation, preservation and storage;

2. the term 'tissues' also covers cells, including haematopoietic stem cells;

3. the term 'human organs and tissues' does not cover:

   (a) reproductive organs and tissues;

   (b) embryonic organs and tissues;

   (c) blood and blood derivatives;

[1] OJ L 203, 1.8.2002, p. 1.

[2] OJ L 333, 9.12.1998, p. 1. Joint Action as last amended by Framework Decision.

[3] OJ L 351, 29.12.1998, p. 1.

4. The term 'minor' shall mean anyone of less than 18 years of age.

Article 2

Offences concerning trafficking in human organs

Each Member State shall take the necessary measures to ensure that the following acts are punishable:

1. the recruitment, transportation, transfer, harbouring or reception of a person, including any exchange or transfer of control over that person, where

   (a) use is made of force or threats, including abduction; or

   (b) use is made of fraudulent means; or

   (c) there is an abuse of authority or of a position of vulnerability which is such that the person concerned has no real or reasonable possibility of avoiding such abuse; or

   (d) payments, or benefits are given or received in order to obtain the consent of a person having control over another person with the aim of removal of an organ or tissues from the latter;

2. (a) the removal of an organ from a living donor effected using force, threats or fraud;

   (b) the removal of an organ from a donor who has consented thereto further to the payment or promise of financial consideration;

   (c) the payment, offer or promise of a financial consideration, directly or via third parties, to a donor in order to obtain his consent to the removal of an organ;

   (d) the receipt of or demand for financial consideration by a donor or a third party so that the donor will agree to the removal of an organ;

   (e) action as an intermediary in carrying out any of the acts set out in points (a), (b), (c) and (d);

   (f) the demand for, receipt, payment, offer or promise of financial consideration with the aim of offering or acquiring or, more generally, trafficking in human organs and tissues;

3. (a) the purchase, possession, storage, transport, import, export or transfer of possession of human organs removed by means of one of the acts set out in paragraphs 1 and 2;

   (b) participation by medical or nursing staff in the transplantation of an organ in the knowledge that it has been the object of one of the abovementioned acts.

Article 3

Instigation, aiding and abetting or attempt

Each State shall take the necessary measures to ensure that the instigation of, aiding and abetting or attempt to commit an offence referred to in Article 2 is punishable.

Article 4

Penalties

Each Member State shall take the necessary measures to ensure that an offence referred to in Articles 2 and 3 is punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.

Each Member State shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by terms of imprisonment with a maximum penalty that is not less than ten years where it has been committed in any of the following circumstances:

(a) the offence has deliberately or by gross negligence endangered the life of the victim;

(b) the offence has been committed against a minor;

(c) the offence has caused further serious physical harm to the victim;

(d) the offence has been committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA, apart from the penalty level referred to therein.

Article 5

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for an offence referred to in Articles 2 and 3, committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

(a) a power of representation of the legal person; or

(b) an authority to take decisions on behalf of the legal person; or

(c) an authority to exercise control within the legal person.

2. Apart from the cases provided for in paragraph 1 of this Article, each Member State shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in the said paragraph 1 have rendered possible the commission of an offence referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 of this Article shall not exclude the punishment of persons who are perpetrators, instigators or accessories in an offence referred to in Articles 2 and 3.

4. For the purposes of this Framework Decision, the term 'legal person' shall mean any entity having such status under the applicable law, except for States or other public bodies in the exercise of State authority and for public international organisations.

Article 6

Penalties against legal persons

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5 is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines, and may include other penalties such as:

(a) exclusion from entitlement to public benefits or aid; or

(b) temporary or permanent disqualification from the practice of commercial activities; or

(c) placing under judicial supervision;

(d) a judicial winding-up order; or

(e) temporary or permanent closure of establishments which have been used for committing the offence.

Article 7

Jurisdiction and prosecution

Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 2 and 3 where:

(a) the offence is committed in whole or in part within its territory;

(b) the perpetrator is one of its nationals; or

(c) the offence is committed for the benefit of a legal person established in its territory.

Article 8

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision before [. . .].

2. Before the date referred to in paragraph 1, the Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.

3. Before [. . .], on the basis of a report established on the basis of this information and a written report from the Commission, the Council shall assess the extent to which Member States have complied with the provisions of this Framework Decision.

Article 9

Entry into force

This Framework Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, . . .

For the Council

The President

. . .

III

(Notices)

COMMISSION

CALL FOR PROPOSALS (VP/2003/015)

Budget-headings B3-4102/B5-806: 'Analysis of and studies on the social situation, demographics and the family' and 'European Year of People with Disabilities'

(2003/C 100/14)

1. BACKGROUND

On the basis of Article 143 of the Treaty on European Union, the Commission shall draw up a report each year on progress in achieving the objectives of Article 136, including the demographic situation in the Community. Article 145 states that the Commission shall include a separate chapter on social developments within the Community in its annual report to the European Parliament. Moreover, the Social Policy Agenda calls for policy analyses and research in order to underpin the implementation of the social priorities it has defined.

The priority areas set in this Call aim to promote the development of comparative analysis, the exchange of views and experiences, the development of evidence and understanding of the social trends and their policy implications in relevant policy areas.

In particular, Priority 5 of this Call for proposals is based on the Council Decision 2001/903/EC of 3 December 2001 establishing the European Year of People with Disabilities (EYPD) 2003 (OJ L 335, 19.12.2001). The objectives of the EYPD are stipulated in Article 2 of the decision. They are focussed on awareness raising, the exchange of good practice, the encouragement of reflection and discussion and the reinforcement of cooperation with regard to the rights of people with disabilities to protection against discrimination and to full and equal enjoyment of their rights. Meetings, events, surveys and studies can be carried out in the framework of the EYPD (Article 3).

Under this call for proposals, grants will only be awarded to transnational approaches that make a significant contribution to improving the Union's knowledge on social phenomena and their changing patterns.

2. PRIORITY AREAS FOR ACTION IN 2003

More detailed information on each item can be found in the Guidelines

Under this call, measures such as transnational research projects and organisation of seminars and workshops can be supported. These activities must concern one of the following priorities:

1. THE SOCIAL SITUATION IN THE ENLARGED UNION

The aim will be to analyse developments in the social situation (including demographic trends) and their implications for social welfare in the enlarged Union. Particular attention should be paid to the new Member States. The activities should promote comparative analysis and exchange of experience on these issues at the EU-25 level. The areas for analysis should be within the framework of the European Social Agenda. The projects should explore the interaction between socioeconomic trends and social welfare policies. They can focus at specific issues in living conditions, income distribution, health, mobility and migration, education and skills (human and social capital formation), family, gender equality, social inclusion and anti-discrimination, social protection, social dialogue and civil society.

2. FAMILY AND CHILDREN ISSUES

Different behavioural patterns in households across the Union may be determining for economic and social activities (e.g. work participation, social care for dependant persons). The aim will be to analyse and promote the exchange of knowledge and experience on more recent trends in household and family structures and their impact on fertility, employment and living conditions, social participation and social protection. It should also be required to invest in identifying the key policy challenges for the future in this area. Particular attention should be paid to analysis of these issues with regard to the new Member States.

3. TIME USE AND LIVING CONDITIONS

The reorganisation of time use throughout the (working) life is increasingly seen as an important element in order to increase the living conditions and the quality of life of the EU citizens. This issue also has consequences in some of the most relevant EU economic and social policies: pensions, labour market participation and employability of the workforce, lifelong learning, reconciliation of work, family and caring tasks, equal opportunities, etc. By its nature it is a very complex subject, as the actual use of time is the outcome of combining both individual and collective pref-

erences and constraints. Therefore priority will be given to projects focusing time use in relation to relevant EU policies with the aim of providing policy-support analysis. Projects should analyse time use from one of the two following perspectives: the 'longitudinal' or life-cycle perspective, i.e. the analysis of the individual use of time over the life course; and the 'cross-sectional' one, which compares the use of time of different population categories depending on age, sex, occupation, education, income, etc.

4. MIGRATION IN THE CONTEXT OF DEMOGRAPHIC TRENDS

Over the last 15 years there has been an important change on migratory movements in the EU as a result of specific events such as the collapse of Communism in Eastern Europe and the war in former Yugoslavia. Other more permanent factors such as the existing north-south gap and the globalisation process also play an important role. In addition, over the next decades, demographic ageing will constitute a pull factor for immigration growth. Therefore, a successful economic and social integration of third country nationals is already crucial.

The aim will be to develop a better understanding of these trends and to develop a prospective view on their demographic, economic and social implications across the Union. Particular emphasis should be laid on aspects, which are relevant for integration. This comprises, for example, the provision of detailed information about the skill levels of second generation migrants and information on how successful receiving EU countries are in transferring educational and occupational skills into the EU.

5. SITUATION OF PEOPLE WITH DISABILITIES IN RESIDENTIAL INSTITUTIONS

A considerable number of people with disabilities live in residential institutions. Disabled people in those institutions are usually the most 'invisible' citizens. Whereas the residential institutions have been designed to hosting people with severe or multiple disabilities, there is great ignorance about their practical conditions of living and how their needs and rights can be matched with those conditions. Therefore, in its sitting of 19 December 2002 (budget amendment 0099), the European Parliament has specifically asked for a study to be conducted to analyse the situation of people with disabilities in institutions in Europe, including the candidate countries.

The objective would be taking stock of the situation of people with disabilities in institutions in the largest possible number of EU/EEA and Candidate Countries and understanding how the institutions hosting people with disabilities operate while elaborating an overview with regard to institutionalised care in these countries, including as regards human rights related issues.

Building on existing materials and on the basis of interviews with key players and stakeholders such as disability organisations and experts, care providers, health authorities, local authorities, particular emphasis should be given to large residential institutions with more than 30 people of which at least 80 % are mentally or physically disabled persons. Visits to places where de-institutionalisation solutions articulated around community-based services and open support systems have been successfully developed should also be performed. As a result of these researches, recommendations should be formulated on how the quality of life of People with Disabilities could be improved e.g. through alternative community-based forms of care and support.

3. **AVAILABLE BUDGET**

The maximum budget made available for priorities 1 to 4, (Budget heading B3-4102) will be of around EUR 500 000. The Commission expects to fund approximately four to six projects from this budget-line, depending on the quality of applications.

For priority 5 (Budget heading B5-806, European Year of People with Disabilities) around EUR 450 000 will be available. The Commission expects to fund one project (a research study including possible seminars) from this budget-line, depending on the quality and relevance of applications.

4. **ELIGIBILITY CRITERIA**

4.1. **Applications**

Consideration will be given only to proposals:

— posted before the 13 June 2003 for the attention of the Commission in accordance with the procedure described below,

— submitted in accordance with the requirements mentioned below and **more precisely in the Guidelines**.

4.2. **Eligibility of applicants**

— applicants must enjoy legally established non-profit status,

— applicants must be properly constituted and registered in a Member State. (Organisations from applicant countries may participate as partners in operations supported under this budget-line),

— Applicants must certify that they are not in one of the situations listed in Article 93 of the Financial Regulation (OJ L 248, 16.9.2002) (more precisely in the Guidelines).

4.3. **Eligibility of operation**

— only applications in which partners from at least three Member States or applicant countries participate will be considered,

— it must focus on one of the priorities of the call,

— operations may not have a duration exceeding 12 months and must start in 2003,

— compliance with the Community co-financing percentage maximum of 80 %,

— the operation proposed by the applicant must not receive financing from any other Community funding for the same activity.

4.4. **Ineligible measures**

— proposals consisting essentially of the development of purely academic research,

— applications or parts thereof relating to funding for ordinary running costs, costs of statutory meetings and events, or costs of standard services which are usually delivered by local, regional or national bodies or authorities,

— applications or parts thereof relating to funding for activities taking place outside the territory of the Union and the applicant countries or exclusively at local, regional or national level,

— operations that carry a profit.

5. SELECTION CRITERIA

— applicants must submit evidence of legal and financial viability and professional integrity, as required in order to complete the activity for which funding is requested,

— applicants must be able to co-finance the operation,

— applicants must have the technical and managerial capacity to complete the operation to be supported.

6. ASSESSMENT CRITERIA

At the assessment stage, beneficiaries will be selected on the basis of the intellectual qualities of the proposals and their consistency with the objectives defined in sections 1 and 2, in particular according to:

— the contribution of the proposed activities to increasing the knowledge of the social situation particularly by addressing the priorities listed above and demonstrating added value at the European level,

— the quality of the proposed approach, its pertinence in tackling the relevant policy areas and, in particular, the clarity of the aims to be pursued and a realistic timeframe for their achievement,

— the transnational dimension of the operation (example: partners or countries involved),

— the innovative aspect and transferability of the approach,

— the visibility of the operation and dissemination of the results,

— the cost-effectiveness of the operation.

7. FINANCIAL CONDITIONS

The Community's financial contribution will not exceed 80 % of the total eligible costs. The partnership must guarantee co-financing of the remaining 20 % in **cash**.

Contributions in kind are not accepted.

8. ESTIMATED TIME SCHEDULE AND DURATION OF THE MEASURE

It is envisaged that measure should start as soon as the Grant Agreement is signed by both parties, which is estimated to be end July to mid August 2003 [1]. The period of performance will be 12 calendar months from the date of effect. The duration of the agreement may be extended once, by the agreement in writing of both parties, for a maximum of three calendar months.

9. FINAL DATE FOR THE SUBMISSION OF PROPOSALS

The final date for the submission of proposals is 13 June 2003 (date as per postmark). **Applications not sent by the appropriate deadline will be rejected.**

10. PRACTICAL PROCEDURES

10.1. **Grant application form**

Applicants must submit a full dossier in compliance with the instructions given in the specially produced forms. The application form (which is made up of four separate parts) and all documents forming part of the application (text of the call for proposals and guidelines for applicants) can be obtained by mail:

European Commission
DG Employment and Social Affairs
Directorate E.1
JII 27 1/122 (Costas Fotakis)
B-1049 Brussels

By e-mail: empl-e1-unite@cec.eu.int; indicating in the 'subject' field 'Request for application form VP/2003/015'.

[1] A grant may be awarded for an action which has already begun only where the applicant can demostrate the need to start the action before the agreement is signed. In such cases, expenditure eligible for financing may not have been incurred prior to the date of submission of the grant application.

Downloaded:

http://europa.eu.int/comm/dgs/employment_social/tender_en.htm

The application form is to be sent **in duplicate** by registered letter before the stipulated deadline (date as per postmark) to the above address, bearing the wording 'Candidature à l'appel à propositions **No VP/2003/015**'. In addition, the application form must also be submitted by electronic mail, quoting the number of the call for proposals, the name of the organisation submitting the proposals and the country of origin to the following address: empl-e1-unite@cec.eu.int

10.2. **The procedure for the appraisal of applications**

1. Receipt and registration by the Commission;

2. Examination and selection by a selection committee. Only eligible applications will be evaluated against selection and assessment criteria specified in the Call and the Guidelines.

3. Adoption of the final decision and communication of the result to the applicants.

4. The grant agreements will be signed by **the end July – mid August 2003**.

MEDIA PLUS (2001-2005)

Implementation of the programme to encourage the development, distribution and promotion of European audiovisual works

Call for proposals DG EAC/35/03

Support for the implementation of Pilot Projects

(2003/C 100/15)

I. **Introduction**

This call for proposals is based on Council Decision 2000/821/EC of 20 December 2000 on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works (MEDIA PLUS — Development, Distribution and Promotion — 2001-2005) that was published in the *Official Journal of the European Communities* L 13 of 17 January 2001, p. 35.

The measures covered by the Decision include the implementation of Pilot Projects.

II. **Subject**

This call for proposals is open to applications from operators located in the Member States of the European Union, the EEA members (Norway, Iceland and Liechtenstein) and from those countries that satisfy the conditions laid down in Article 11 of Decision 2000/821/EC, involved in one of the activities specified below.

1. *Distribution: new ways of distributing and promoting European content via personalised services.*

2. *Exhibition: stimulate the use of digital technologies for the distribution and theatrical exhibition of European audiovisual works and alternative content across Europe.*

3. *On-line access and exchange of information related to European audiovisual works.*

4. *Previously funded Projects: Projects which have received funding under a previous MEDIA Plus Pilot Project Call for Proposals.*

III. **Financing**

The overall budget of the present call is EUR 6,4 million.

IV. **Applications**

The Commission service responsible for managing this call for proposals is Unit C3 of Directorate-General 'Education and Culture'.

Operators who wish to respond to this call for proposals and to receive the document 'Guidelines for submitting proposals to obtain Community funding for the implementation of Pilot Projects' should address their requests by post or facsimile to:

European Commission
Jacques Delmoly (office B100-4/20)
Head of Unit DG EAC/C3
B-1049 Brussels
Fax (32-2) 299 92 14

or download the documents from the following website:

http://europa.eu.int/comm/avpolicy/media/index_en.html

The final date for submitting proposals to the above address is 11 July 2003.

V. **Consideration of applications**

The procedure for considering applications will be as follows:

— receipt, registration and acknowledgement by the Commission — July/August,

— consideration by Commission departments — July/August,

— evaluation and proposal selection by the Technical Advisory Group — September,

— preparation of the Commission proposal — September,

— consideration and final decision by the MEDIA Committee — October,

— notification of the results and closure of the award procedure — October,

— contractualisation — November/December.

No information will be issued before the final decision is taken.

The Commission will publish the name and address of each beneficiary, the subject of the grant and the amount and rate of financing. This will be done in agreement with each beneficiary, unless publication of the information may threaten the safety of the beneficiary or harm his or her business interests. In the event that the beneficiary does not agree to this publication, they should attach a detailed justification, which the Commission will consider in the process of deciding on the award of the grant.

Freedom – Security – Justice
Building Europe without borders

Directorate-General
for Justice and Home Affairs

Follow step by step…
Each day, thanks to our work and yours, Europe is growing and prospering as an area of freedom, security and justice for all.
To bring us even closer together, to respond more effectively to all your queries and to enable you to follow our common evolution, the new website *Freedom - Security - Justice* is a source of information you should consult. The site, built by the European Commission's Directorate-General for Justice and Home Affairs, offers you a unique tool to navigate through the teeming European debate and follow each step in the construction of the new area of freedom, security and justice.

… the construction of Europe.
A wealth of information, from the general to the specific, is at your fingertips thanks to the site's simple navigation. It is organised into 13 major chapters:

- Asylum
- Immigration
- Police
- Customs
- Crime
- Drugs
- Civil law
- Criminal law
- Fundamental rights
- Citizenship
- Free movement
- Foreign affairs
- Enlargement

Cross the threshold of tomorrow's Europe and see how our common area of freedom, security and justice will look.

http://europa.eu.int/comm/justice_home/

Making the European Union into a place of freedom, security and justice.

European Commission