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Information and Notices

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[1] Text with EEA relevance

(Continued overleaf)

I

(Information)

COMMISSION

Euro exchange rates [1]

17 December 2003

(2003/C 308/01)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,2337	LVL	Latvian lats	0,6649
JPY	Japanese yen	132,76	MTL	Maltese lira	0,4306
DKK	Danish krone	7,4422	PLN	Polish zloty	4,6543
GBP	Pound sterling	0,703	ROL	Romanian leu	40 613
SEK	Swedish krona	9,033	SIT	Slovenian tolar	236,74
CHF	Swiss franc	1,5539	SKK	Slovak koruna	41,16
ISK	Iceland króna	89,84	TRL	Turkish lira	1 764 808
NOK	Norwegian krone	8,275	AUD	Australian dollar	1,6655
BGN	Bulgarian lev	1,9543	CAD	Canadian dollar	1,6418
CYP	Cyprus pound	0,58469	HKD	Hong Kong dollar	9,5774
CZK	Czech koruna	32,356	NZD	New Zealand dollar	1,9041
EEK	Estonian kroon	15,6466	SGD	Singapore dollar	2,1096
HUF	Hungarian forint	263,75	KRW	South Korean won	1 466,44
LTL	Lithuanian litas	3,4524	ZAR	South African rand	8,0059

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

Notice of initiation of an expiry review of the antidumping measures applicable to imports of furfuraldehyde originating in the People's Republic of China

(2003/C 308/02)

Following the publication of a notice of impending expiry ([1]) of the anti-dumping measures in force on imports of furfuraldehyde originating in the People's Republic of China, ('country concerned'), the Commission has received a request for review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 ([2]) as last amended by Council Regulation (EC) No 1972/2002 ([3]) ('the basic Regulation').

1. **Request for review**

The request was lodged on 22 September 2003 by Furfural Español SA ('the applicant') on behalf of producers representing a major proportion, in this case more than 25 %, of the total Community production of furfuraldehyde.

2. **Product**

The product under review is 2-furaldehyde (also known as furfuraldehyde or furfural) originating in the People's Republic of China ('the product concerned'), currently classifiable within CN code 2932 12 00. This CN code is given only for information.

3. **Existing measures**

The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 2722/1999 ([4]).

4. **Grounds for the review**

The request is based on the grounds that the expiry of measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.

In view of the provisions of Article 2(7) of the basic Regulation, the applicant established normal value for the People's Republic of China on the basis of the price in an appropriate market economy country, which is mentioned in paragraph 5.1(d) of this notice. The allegation of continuation of dumping is based on a comparison of normal value, as set out in the preceding sentence, with the export prices of the product concerned when sold for export to the Community under the inward processing regime.

On this basis, the dumping margin calculated is significant.

With regard to the recurrence of dumping it is also alleged that the exports to other third countries, i.e. Thailand and Japan, are made at dumped prices.

The applicant further alleges the likelihood of further injurious dumping. In this respect the applicant presents evidence that, should measures be allowed to lapse, the current import level of the product concerned is likely to increase due to the existence of unused capacity in the country concerned.

In addition, the applicant alleges that the removal of injury is mainly due to the existence of measures and that any recurrence of substantial imports at dumped prices from the country concerned would likely lead to a recurrence of further injury of the Community industry should measures be allowed to lapse.

5. **Procedure**

Having determined, after consulting the Advisory Committee, that sufficient evidence exists to justify the initiation of an expiry review, the Commission hereby initiates a review in accordance with Article 11(2) of the basic Regulation.

5.1. ***Procedure for the determination of likelihood of dumping and injury***

The investigation will determine whether the expiry of the measures would be likely, or unlikely, to lead to a continuation or recurrence of dumping and injury.

(a) *Sampling*

In view of the apparent number of parties involved in this proceeding, the Commission may decide to apply sampling, in accordance with Article 17 of the basic Regulation.

(i) Sampling for exporters/producers in the People's Republic of China

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all exporters producers, or representatives acting on their behalf, are hereby requested to make themselves known by contacting the Commission and providing the following information, in limited and non-limited form on their company or companies within the time limit set in paragraph 6(b)(i) and in the formats indicated in paragraph 7 of this notice:

— name, address, e-mail address, telephone, and fax, and/or telex numbers and contact person,

— the turnover in local currency and the volume in tonnes of the product concerned sold for export to the Community during the period 1 October 2002 to 30 September 2003,

— the turnover in local currency and the sales volume in tonnes for the product concerned to other third countries during the period 1 October 2002 to 30 September 2003,

— the precise activities of the company with regard to the production of the product concerned and the volume in tonnes of the product concerned, the production capacity and the investments in production capacity during the period 1 October 2002 to 30 September 2003,

([1]) OJ C 72, 26.3.2003, p. 2.

([2]) OJ L 56, 6.3.96, p. 1.

([3]) OJ L 305, 7.11.2002, p. 1.

([4]) OJ L 328, 22.12.99, p. 1.

— the names and the precise activities of all related companies [1] involved in the production and/or selling (export and/or domestic) of the product concerned,

— any other relevant information that would assist the Commission in the selection of the sample,

— an indication of whether the company or companies agree to their inclusion in the sample, which implies replying to a questionnaire and accepting an on-the-spot investigation of their response.

In order to obtain the information it deems necessary for the selection of the sample of exporters/producers, the Commission will, in addition, contact the authorities of the exporting country, and any known associations of exporters/producers.

(ii) Final selection of the sample

All interested parties wishing to submit any relevant information regarding the selection of the sample must do so within the time limit set in paragraph 6(b)(ii) of this notice.

The Commission intends to make the final selection of the sample after having consulted the parties concerned that have expressed their willingness to be included in the sample.

Companies included in the sample must reply to a questionnaire within the time limit set in paragraph 6 (b)(iii) of this notice and must co-operate within the framework of the investigation.

If sufficient co-operation is not forthcoming, the Commission may base its findings, in accordance with Articles 17(4) and 18 of the basic Regulation, on the facts available. A finding based on facts available may be less advantageous to the party concerned, as explained in paragraph 8 of this notice.

(b) *Questionnaires*

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the Community industry and to any association of producers in the Community, to the sampled exporters/producers in the People's Republic of China, to any association of exporters/producers, to the importers, to any association of importers named in the request or which co-operated in the investigation leading to the measures subject to the present review, and to the authorities of the exporting country concerned.

In any event, all interested parties should contact the Commission forthwith by fax in order to find out whether they are listed in the request and, if necessary, request a questionnaire within the time limit set in paragraph 6(a)(i) of this notice, given that the time limit set in paragraph 6(a)(ii) of this notice applies to all interested parties.

(c) *Collection of information and holding of hearings*

All interested parties are hereby invited to make their views known, submit information other than questionnaire replies and to provide supporting evidence. This information and supporting evidence must reach the Commission within the time limit set in paragraph 6(a)(ii) of this notice.

Furthermore, the Commission may hear interested parties, provided that they make a request showing that there are particular reasons why they should be heard. This request must be made within the time limit set in paragraph 6(a)(iii) of this notice.

(d) *Selection of the market economy country*

In the previous investigation Argentina was used as an appropriate market economy country for the purpose of establishing normal value in respect of the People's Republic of China. The Commission envisages to use Argentina again for this purpose. Interested parties are hereby invited to comment on the appropriateness of this country within the specific time limit set in paragraph 6(c) of this notice.

5.2. ***Procedure for the assessment of Community interest***

In accordance with Article 21 of the basic Regulation and in the event that the likelihood of a continuation of dumping and injury is confirmed, a determination will be made as to whether to maintain or repeal the anti-dumping measures would not be against the Community interest. For this reason the Community industry, importers, their representative associations, representative users and representative consumer organisations, provided that they prove that there is an objective link between their activity and the product concerned, may, within the general time limits set in paragraph 6(a)(ii) of this notice, make themselves known and provide the Commission with information. The parties which have acted in conformity with the previous sentence may request a hearing, setting the particular reasons why they should be heard, within the time limit set in paragraph 6(a)(iii) of this notice. It should be noted that any information submitted pursuant to Article 21 will only be taken into account if supported by factual evidence at the time of submission.

6. **Time limits**

(a) *General time limits*

(i) For parties to request a questionnaire

All interested parties who did not co-operate in the investigation leading to the measures subject to the present review should request a questionnaire as soon as possible, but not later than 15 days after the publication of this notice in the *Official Journal of the European Union*.

[1] For guidance on the meaning of related companies, please refer to Article 143 of Commission Regulation (EEC) No 2454/93 concerning the implementation of the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

(ii) For parties to make themselves known, to submit questionnaire replies and any other information

All interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views and submit questionnaire replies or any other information within 40 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the aforementioned period

Companies selected in a sample must submit questionnaire replies within the time limit specified in paragraph 6(b)(iii) of this notice.

(iii) Hearings

All interested parties may also apply to be heard by the Commission within the same 40-day time limit.

(b) *Specific time limit in respect of sampling*

(i) The information specified in paragraph 5.1(a)(i) should reach the Commission within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, given that the Commission intends to consult parties concerned that have expressed their willingness to be included in the sample on its final selection within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.

(ii) All other information relevant for the selection of the sample as referred to in 5.1(a)(ii) must reach the Commission within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.

(iii) The questionnaire replies from sampled parties must reach the Commission within 37 days from the date of the notification of their inclusion in the sample.

(c) *Specific time limit for the selection of the market economy country*

Parties to the investigation may wish to comment on the appropriateness of Argentina which, as mentioned in paragraph 5.1(d) of this notice, is envisaged as a market-economy country for the purpose of establishing normal value in respect of the People's Republic of China. These comments must reach the Commission within 10 days of the date of publication of this notice in the *Official Journal of the European Union*.

7. **Written submissions, questionnaire replies and correspondence**

All submissions and requests made by interested parties must be made in writing (not in electronic format, unless otherwise specified, and must indicate the name, address, e-mail address, telephone and fax, and/or telex numbers of the interested party). All written submissions, including the information requested in this notice, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' ([1]) and, in accordance with Article 19(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled 'FOR INSPECTION BY INTERESTED PARTIES'.

Commission address for correspondence:

European Commission
Directorate General for Trade
Directorate B
Office: J-79 5/16
B-1049 Brussels
Fax (32-2) 295 65 05
Telex COMEU B 21877

8. **Non-cooperation**

In cases in which any interested party refuses access to or otherwise does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made, in accordance with Article 18 of the basic Regulation, of the facts available. If an interested party does not cooperate or cooperates only partially, and use of the best facts available is made, the result may be less favorable to the party than if it had cooperated.

([1]) This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 19 of Council Regulation (EC) No 384/96 (OJ L 56, 6.3.1996, p. 1) and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement).

STATE AID — ITALY

Aid C 62/03 (ex NN 7/03) — Urgent measures in favour of employment

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

(2003/C 308/03)

(Text with EEA relevance)

By means of the letter dated 15 October 2003 reproduced in the authentic language on the pages following this summary, the Commission notified Italy of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the abovementioned aid.

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

European Commission
Directorate-General for Competition
State Aid Registry and State Aid Directorate I, Unit G1
B-1049 Brussels
Fax (32-2) 296 12 42.

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

SUMMARY

I. **Procedure**

By letter dated 12 February 2003, the Italian authorities notified, pursuant to Article 88(3) of the Treaty, the abovementioned aid scheme. By letter dated 12 March 2003, the Commission requested additional information and, after a request for extension of the deadline for providing the information, the Italian authorities submitted additional information to the Commission by letter dated 20 May 2003.

As the measure has been implemented before the preliminary approval of the Commission, it has been registered as unlawful aid with the number NN 7/03.

II. **Description of the measure**

The legal basis is law decree 14 February 2003 No 23, converted in law 17 April 2003, No 81. The aim of the measure is to safeguard jobs in undertakings in financial difficulties subject to a specific insolvency proceeding ('amministrazione straordinaria') and having more than 1 000 employees.

Beneficiaries of the aid scheme are purchasers of undertakings having the characteristics mentioned above, who accept to employ up to 550 employees of the old undertaking. The purchaser benefits, for each transferred employee, of:

— a monthly grant equal to 50 % of the special indemnity to which the worker would be entitled in case of the special lay-off scheme 'collocamento in mobilità',

— a reduction for 18 months of social security contribution, which will be due in the reduced measure applicable to trainees ('apprendisti').

The transfer of employees must be included in collective agreements to be signed with the Minister of Labour by 30 April 2003. The purchaser and the undertaking purchased cannot have the same substantial ownership nor be a controlled/linked undertaking.

The scheme is applicable to operations where the transfer of employees has been approved via collective agreements with the Minister of Labour by 30 April 2003. The budget for the year 2003 amounts to EUR 9,5 million.

III. **Assessment of the measure**

The Commission cannot regard, at this stage, the measure under examination as a general measure. Instead, the Commission considers that the measure constitutes State aid according to Article 87(1) of the EC Treaty, therefore it is in principle forbidden and can only be considered compatible with the common market if it can benefit of one of the derogation provided for in the Treaty.

The Commission examined the compatibility of the aid under the rescue and restructuring guidelines [1], under the employment regulation [2], and finally under the regional aid guidelines [3]. However, under all frameworks, the Commission doubts at this stage that the measure can be considered compatible with the common market.

[1] OJ C 288, 9.10.1999.
[2] OJ L 337, 13.12.2002.
[3] OJ C 74, 10.3.1998.

TEXT OF THE LETTER

'la Commissione si pregia informare l'Italia che, dopo avere esaminato le informazioni fornite dalle autorità italiane sulle disposizioni urgenti in oggetto, ha deciso di avviare il procedimento di cui all'articolo 88, paragrafo 2, del trattato CE.

1. **PROCEDIMENTO**

1. Con lettera del 12 febbraio 2003 (registrata a A/31217, il 14.2.03) le autorità italiane hanno notificato, ai sensi dell'articolo 88, paragrafo 3 del trattato, il succitato regime di aiuti.

2. Con lettera del 12 marzo 2003 (D/51642) la Commissione ha chiesto ulteriori informazioni. Con lettera del 23 aprile 2003 la Commissione ha accettato di prorogare il termine fissato per l'invio delle informazioni. Con lettera del 20 maggio 2003 (A/33669 del 23 maggio 2003) le autorità italiane hanno inviato alla Commissione ulteriori chiarimenti.

3. La misura, cui è stata data esecuzione senza l'approvazione preliminare della Commissione, è stata iscritta nel registro degli aiuti illegali con il numero NN 7/03.

2. **DESCRIZIONE DELL'AIUTO**

Base giuridica

4. La base giuridica è costituita dal decreto legge 14 febbraio 2003 n. 23, convertito nella legge 17 aprile 2003, n. 81.

Obiettivo

5. L'obiettivo del regime consiste nella salvaguardia di posti di lavoro in imprese che si trovano in difficoltà finanziarie, sottoposte a procedura di amministrazione straordinaria ed aventi un numero di dipendenti superiore alle 1 000 unità.

Beneficiari

6. I beneficiari del regime di aiuti sono gli acquirenti di imprese aventi le caratteristiche succitate (imprese in difficoltà finanziarie, sottoposte ad amministrazione straordinaria ed aventi come minimo 1 000 dipendenti).

Oggetto

7. In caso di acquisto delle imprese succitate, sono concessi taluni benefici all'acquirente che accetta di assumere fino a 550 lavoratori dell'impresa ceduta. I benefici di cui fruisce l'acquirente per ciascun dipendente trasferito, consistono:

   — in un contributo mensile, pari al 50 % della indennità di mobilità che sarebbe stata corrisposta a ciascun lavoratore in caso di messa in mobilità;

   — in una minore quota di contribuzione (pari a quella prevista per gli apprendisti) a carico del datore di lavoro per i primi 18 mesi.

   I benefici suddetti sono quelli concessi, in virtù della legge n. 223 del 1991, ai datori di lavoro che assumono lavoratori collocati in mobilità, ossia lavoratori che hanno cessato il rapporto occupazionale a causa di una crisi strutturale e in presenza di requisiti precisi.

   In base al regime notificato, tali benefici sono concessi agli acquirenti che accettano di assumere fino a 550 dipendenti dell'impresa ceduta ossia lavoratori non iscritti nel regime speciale di messa in mobilità.

   I benefici sono concessi sino ad un massimo di 550 lavoratori «trasferiti» all'acquirente, purché siano soddisfatte due condizioni specifiche: (i) il trasferimento dei dipendenti deve essere incluso in contratti collettivi da stipulare con il Ministero del Lavoro entro il 30 aprile 2003 e (ii) l'acquirente e l'impresa ceduta non possono presentare aspetti proprietari sostanzialmente coincidenti né essere in rapporto di collegamento o controllo.

Durata e stanziamento

8. Il regime si applica ad operazioni nelle quali il trasferimento di lavoratori è stato approvato mediante accordi collettivi stipulati con il Ministero del Lavoro entro il 30 aprile 2003.

9. Lo stanziamento per l'anno 2003 ammonta a 9,5 mln di EUR.

3. **VALUTAZIONE DELL'AIUTO**

Sussistenza di aiuto

10. Per valutare se la misura costituisca un aiuto ai sensi dell'articolo 87, paragrafo 1 del regime, occorre determinare se favorisca talune imprese, se il vantaggio sia concesso mediante risorse statali, se la misura falsi la concorrenza e se possa incidere sugli scambi intracomunitari.

11. La prima condizione per applicare l'articolo 87, paragrafo 1 prevede che la misura favorisca talune imprese. È quindi necessario determinare se la misura conferisca un vantaggio economico ai beneficiari di cui non avrebbero fruito in normali condizioni di mercato oppure se eviti loro di sostenere oneri che normalmente avrebbero dovuto gravare sul bilancio dell'impresa e se tale vantaggio sia concesso a imprese specifiche.

    La misura disposta dal regime in esame prevede la concessione di sovvenzioni in conto capitale e riduzioni degli oneri sociali per gli acquirenti di imprese in difficoltà, sottoposte alla procedura dell'amministrazione straordinaria, con un numero di dipendenti superiori alle 1 000 unità.

    Ciò costituisce un vantaggio economico per l'acquirente il quale riceve una sovvenzione non rimborsabile per ciascun dipendente «trasferito» e inoltre fruisce di una riduzione per la durata di 18 mesi degli oneri sociali a carico del datore di lavoro.

    In questa fase la Commissione non può escludere che la misura comporti un vantaggio economico anche per l'impresa sottoposta ad amministrazione straordinaria. Infatti il beneficiario effettivo dell'aiuto dipende da una serie di fattori che non sono ancora chiari (se l'impresa in difficoltà finanziarie sia un'impresa attiva, se l'oggetto della vendita siano gli attivi aziendali o l'impresa nel suo complesso, se l'acquirente sia chiaramente distinto dall'impresa in difficoltà finanziarie, le modalità di determinazione del prezzo di vendita, ecc.).

La Commissione ha chiesto alle autorità italiane di indicarle il numero potenziale di beneficiari del regime tenuto conto anche della breve durata del regime notificato (il decreto legge è stato adottato il 14 febbraio 2003 e il termine fissato per l'acquisto dell'impresa e l'accordo ministeriale sul trasferimento dei lavoratori è il 30 aprile 2003).

Le autorità italiane hanno indicato una sola impresa oggetto di cessione in base alle modalità del regime in causa e un solo acquirente per l'intera durata del regime. Per la Commissione non è chiaro se la misura effettivamente costituisca un regime di aiuti a favore di un gruppo generale di beneficiari, o se invece si tratti di una misura destinata ad un beneficiario specifico ben individuato.

In ogni caso la Commissione ritiene che in base al regime in oggetto sia concesso un vantaggio economico ad una categoria specifica di beneficiari, più precisamente:

— agli acquirenti di imprese in difficoltà finanziarie, sottoposte ad amministrazione straordinaria e aventi almeno 1 000 dipendenti, che concludono un contratto collettivo entro il 30 aprile 2003 con il Ministero del Lavoro per approvare il trasferimento dei lavoratori; e/o

— ad imprese in difficoltà finanziaria sottoposte ad amministrazione straordinaria che abbiano almeno 1 000 dipendenti e che formino oggetto di cessione.

In base a quanto sopra la Commissione, in questa fase, non può considerare la misura in esame come una misura di ordine generale. La Commissione ritiene invece che la misura conferisca un vantaggio economico a talune imprese di cui riduce i costi normali e rafforza la posizione finanziaria rispetto ad altri concorrenti che non fruiscono delle stesse misure.

12. La seconda condizione per applicare l'articolo 87 prevede che la misura sia concessa mediante risorse statali. Nella fattispecie l'intervento di risorse statali è dimostrato dal fatto che la misura, da un lato, è finanziata mediante finanziamenti pubblici non rimborsabili e, dall'altro, tramite la rinuncia dello Stato ad una quota dei contributi sociali normalmente dovuti.

13. In base alla terza e quarta condizione di applicazione dell'articolo 87 del trattato, la misura deve falsare o minacciare di falsare la concorrenza ed incidere sugli scambi intracomunitari. Nel regime in esame la misura minaccia di falsare la concorrenza in quanto rafforza la posizione finanziaria di alcune imprese rispetto ai loro concorrenti. In particolare la misura in causa minaccia di falsare la concorrenza e di incidere sugli scambi se i beneficiari si trovano in concorrenza con prodotti provenienti da altri Stati membri quantunque non esportino essi stessi la loro produzione. Se le imprese beneficiarie non esportano, la produzione nazionale risulta avvantaggiata dal fatto che le possibilità delle imprese, situate in altri Stati membri di esportare i loro prodotti sul mercato in questione, ne risultano diminuite ([4]).

14. Per le ragioni suindicate la misura in esame è vietata in linea di principio dall'articolo 87, paragrafo 1 del trattato e può essere considerata compatibile con il mercato comune unicamente se può beneficiare di una delle deroghe previste dal trattato.

Legittimità dell'aiuto

15. Dal momento che la misura costituisce aiuto, la Commissione deplora che le autorità italiane non abbiano adempiuto all'obbligo ad esse incombente ai sensi dell'articolo 88, paragrafo 3 del trattato e vi abbiano dato esecuzione prima dell'approvazione della Commissione.

Valutazione della compatibilità dell'aiuto

16. Dopo aver determinato la natura di aiuto di Stato della misura in questione ai sensi dell'articolo 87, paragrafo 1 del trattato, la Commissione ha esaminato se possa essere considerata compatibile con il mercato comune ai sensi dell'articolo 87, paragrafi 2 e 3 del trattato.

17. La Commissione ritiene che l'aiuto non possa beneficiare della deroga di cui all'articolo 87, paragrafo 2 del trattato in quanto non si tratta di un aiuto a carattere sociale ai sensi dell'articolo 87, paragrafo 2, lettera a) né di un aiuto destinato ad ovviare ai danni arrecati dalle calamità naturali oppure da altri eventi eccezionali, ai sensi dell'articolo 87, paragrafo 2, lettera b) né ricade nell'ambito dell'articolo 87, paragrafo 2, lettera c). Per ovvie ragioni non sono neppure applicabili le deroghe di cui all'articolo 87, paragrafo 3, lettere b) e d).

18. Sulla base delle informazioni disponibili, la Commissione ritiene, ad un primo esame, che la valutazione della misura possa essere effettuata secondo diverse discipline comunitarie. Essa ha quindi esaminato la compatibilità dell'aiuto in base agli orientamenti comunitari sugli aiuti di Stato per il salvataggio e la ristrutturazione di imprese in difficoltà, nonché in base al regolamento in materia di occupazione ed infine in base agli orientamenti sugli aiuti a finalità regionale. Tuttavia, quale che sia la disciplina applicabile, la Commissione nutre dubbi sulla compatibilità del regime con il mercato comune.

Valutazione in base agli orientamenti comunitari sugli aiuti di Stato per il salvataggio e la ristrutturazione di imprese in difficoltà

19. Dal momento che il regime notificato concerne la vendita di imprese in difficoltà finanziarie, le autorità italiane rinviano, ai fini della sua valutazione, agli orientamenti comunitari sugli aiuti di Stato per il salvataggio e la ristrutturazione di imprese in difficoltà ([5]) (in prosieguo gli orientamenti per il salvataggio e la ristrutturazione). La Commissione ha esaminato se il regime di aiuto possa essere valutato in base a detti orientamenti.

20. Gli aiuti al salvataggio e alla ristrutturazione ammettono:

— aiuti al salvataggio e alla ristrutturazione di un'impresa in difficoltà, notificati individualmente alla Commissione, a prescindere dalla dimensione dell'impresa;

— regimi di aiuto al salvataggio e alla ristrutturazione unicamente a favore delle piccole e medie imprese.

([4]) Sentenza del 13 luglio 1988 nella causa 102/87.

([5]) GU C 288 del 9.10.1999.

Le autorità italiane hanno notificato un regime di aiuti che si applica a tutte le imprese, di qualsiasi dimensione. Inoltre, dato che il regime riguarda la vendita di imprese con più di 1 000 dipendenti, esistono elementi per ritenere che possano essere principalmente interessate le grandi imprese. Pertanto la Commissione dubita che il regime di aiuto nella sua forma attuale possa essere considerato compatibile con il mercato comune in base agli orientamenti per il salvataggio e la ristrutturazione di imprese in difficoltà.

21. Qualora l'Italia dovesse ritenere che il regime di aiuto notificato di fatto costituisce una notifica individuale di un aiuto alla ristrutturazione in favore di una singola impresa in difficoltà, allora la misura dovrebbe essere notificata in quanto tale. In questo caso occorrerebbe chiarire se l'impresa in difficoltà finanziaria sia l'effettivo beneficiario dell'aiuto. Inoltre la notifica individuale dovrebbe essere accompagnata dal piano di ristrutturazione per il ripristino della redditività economico finanziaria dell'impresa e dovrebbe soddisfare tutte le condizioni stabilite negli orientamenti succitati.

Valutazione in base al regolamento sugli aiuti di Stato a favore dell'occupazione

22. L'obiettivo del regime di aiuti notificato consiste nel mantenimento di posti di lavoro. Le autorità italiane citano — oltre agli orientamenti sugli aiuti per il salvataggio e la ristrutturazione — il regolamento (CE) n. 2204/2002 della Commissione relativo all'applicazione degli articoli 87 e 88 del trattato CE agli aiuti di Stato a favore dell'occupazione [6] (in prosieguo il regolamento occupazione). A tale proposito, secondo le autorità italiane:

— la misura notificata dovrebbe essere considerata come una «misura di carattere generale, volta a promuovere l'occupazione, che non falsa né minaccia di falsare la concorrenza favorendo determinate imprese o la produzione di determinati beni» (considerando n. 6 del regolamento occupazione) in quanto si tratta di una misura generale ed astratta che riguarda tutte le imprese aventi più di 1 000 dipendenti sottoposte ad amministrazione straordinaria che formano oggetto di vendita;

— i vantaggi concessi sono gli stessi concessi in base al regime di cassa integrazione guadagni straordinari, che non è mai stato considerato come un aiuto di Stato;

— qualora fosse considerata aiuto, la misura in questione dovrebbe essere considerata come un regime di aiuti alla creazione di occupazione. Infatti l'articolo 4, punto 4, lettera c) del regolamento occupazione cita espressamente i «lavoratori assunti per coprire nuovi posti di lavoro creati» che non devono mai aver lavorato prima o devono perso o essere in procinto di perdere l'impiego precedente. Sarebbe questo il caso che ricorre nella fattispecie.

23. Quanto al primo punto succitato, la Commissione non ritiene, in questa fase, che la misura sia di carattere generale per le ragioni già esposte nella presente lettera nel paragrafo relativo alla sussistenza di aiuto.

24. Quanto al secondo punto, la misura in questione non modifica regimi quali il regime di cassa integrazione straordinaria o di collocamento in mobilità. Si tratta, invece, di una misura temporanea destinata ad intervenire in una situazione specifica e unicamente per operazioni realizzate nell'arco di un trimestre. Pertanto non sembrano sussistere motivi per assimilare la misura in questione a regimi generali quali la cassa di integrazione straordinaria o il collocamento in mobilità che non sono mai stati esaminati dalla Commissione in base alle regole sugli aiuti di Stato.

25. Quanto al terzo punto succitato, la Commissione non ritiene necessario, in questa fase, esaminare in maniera approfondita la tesi sostenuta dalle autorità italiane. La Commissione fa presente che in base agli orientamenti sull'occupazione, gli aiuti alla creazione di nuovi posti di lavoro in aree non assistite è permessa unicamente a favore delle piccole e medie imprese. Il regime di aiuti notificato si applica all'intero territorio nazionale e a tutte le imprese, a prescindere dalla loro dimensione. Inoltre giacché la misura riguarda la cessione di imprese aventi più di 1 000 dipendenti, esistono elementi per ritenere che possano essere interessate principalmente le grandi imprese.

26. Pertanto la Commissione in questa fase dubita che la misura notificata possa essere considerata compatibile con il mercato comune in base al regolamento occupazione.

Valutazione in base agli orientamenti relativi agli aiuti di Stato a finalità regionale

27. La Commissione ha inoltre valutato se il regime potesse essere esaminato in base agli orientamenti relativi agli aiuti di Stato a finalità regionale [7]. Conformemente a tali orientamenti, qualora siano rispettate determinate condizioni, è possibile autorizzare aiuti al mantenimento dell'occupazione in quanto rientrano nella definizione di aiuti al funzionamento. È inoltre possibile autorizzare aiuti agli investimenti in capitale fisso, realizzati sotto forma di acquisto di uno stabilimento che ha chiuso o che avrebbe chiuso se non fosse stato acquistato.

28. Tuttavia il regime non rientra nel campo di applicazione degli orientamenti relativi agli aiuti di Stato a finalità regionale in quanto si applica all'intero territorio nazionale. Quand'anche dovesse essere considerata come un pagamento individuale ad hoc ad una singola impresa, la misura non potrebbe comunque essere autorizzata in base agli orientamenti relativi agli aiuti di Stato a finalità regionale giacché la Commissione ritiene che siffatto aiuto individuale non soddisfi i requisiti stabiliti nei succitati orientamenti, salvo prova contraria. Inoltre, l'unico caso noto di applicazione della misura in esame riguarda un'impresa che sembra situata al di fuori delle zone assistite.

[6] GU L 337 del 13.12.2002.

[7] GU C 74 del 10.3.1998.

29. Pertanto la Commissione non può, in questa fase, ritenere che il regime sia compatibile con il mercato comune in base agli orientamenti relativi agli aiuti di Stato a finalità regionale.

30. Infine la Commissione rileva che la misura notificata non contiene alcuna disposizione relativa al cumulo di aiuti provenienti da fonti diverse.

4. **CONCLUSIONE**

31. In base a quanto sopra la Commissione, nel quadro del procedimento di cui all'articolo 88, paragrafo 2 del trattato CE, invita l'Italia a presentarle osservazioni ed a fornire tutte le informazioni utili ai fini della valutazione della misura entro un mese dalla data di ricezione della presente. La Commissione invita le autorità italiane a trasmettere senza indugio copia della presente lettera al potenziale beneficiario dell'aiuto.

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

33. Con la presente la Commissione comunica all'Italia che informerà gli interessati attraverso la pubblicazione della presente lettera e di una sintesi della stessa nella Gazzetta ufficiale dell'Unione europea. Informerà inoltre gli interessati nei paesi EFTA firmatari dell'accordo SEE attraverso la pubblicazione di un avviso nel supplemento SEE della Gazzetta ufficiale e informerà infine l'Autorità di vigilanza EFTA mediante trasmissione di copia della presente. Tutti gli interessati anzidetti saranno invitati a presentare osservazioni entro un mese dalla data di detta pubblicazione.'

STATE AID — ITALY

Aid C 70/03 (ex NN 72/03) — Measure in favour of professional sports clubs — 'Decreto Salva Calcio'

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

(2003/C 308/04)

(Text with EEA relevance)

By means of the letter dated 11.11.2003 reproduced in the authentic language on the pages following this summary, the Commission notified Spain 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
Directorate State Aid II
B-1049 Brussels
Fax (32-2) 296 95 80

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

SUMMARY

In March 2003 the Commission asked for information regarding measures adopted by Italy concerning accounting rules for sports clubs. The Italian authorities were asked to provide information. This information was received in June 2003.

The measure is favouring sports clubs because it first of all avoids a possible re-capitalisation and secondly it may provide for a fiscal advantage. The fiscal arrangement as such may lead to an advantage to certain sports clubs depending on the financial status of the company. Football teams are undertakings which compete internationally with other football clubs in for example selling broadcasting rights and the acquisition of players.

Therefore, at the present stage of procedure the Commission has come to the conclusion that the Italian authorities may grant state aid to sports clubs within the meaning of article 87(1) EC. The derogations provided for in article 87(2) and (3) EC do not seem to apply. Considering its doubts on the compatibility of the aid with the EC-Treaty, the Commission has decided to initiate the formal investigation procedure laid down in Article 88(2) of the EC Treaty.

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 LETTER

'Con la presente la Commissione si pregia informare l'Italia che, dopo avere esaminato le informazioni fornite dalle autorità italiane in merito alla misura menzionata in oggetto, ha deciso di avviare il procedimento di cui all'articolo 88, paragrafo 2, del trattato CE.

IL PROCEDIMENTO

1. Sulla base delle informazioni di cui dispone la Commissione, all'atto della conversione in legge del decreto-legge 24 dicembre 2002, n. 282, il governo italiano ha adottato disposizioni in materia di bilanci delle società sportive professionistiche.

2. Con lettera D/51643 del 12 marzo 2003, la Commissione ha richiesto informazioni sulla misura in oggetto. Con lettera del 22 aprile 2003, protocollo N.5243, le autorità italiane hanno chiesto di prorogare al 14 maggio il termine per la presentazione delle informazioni. Non avendo ricevuto alcuna risposta entro la data menzionata, la Commissione ha sollecitato le informazioni in questione con lettera del 22 maggio 2003. In tale occasione, essa ha inoltre ricordato che, conformemente all'articolo 88, paragrafo 3, del trattato CE, non è consentito dare esecuzione alle misure di aiuto prima che la Commissione abbia formulato le sue osservazioni in proposito. La risposta delle autorità italiane è pervenuta il 26 giugno 2003.

DESCRIZIONE DETTAGLIATA DELLA MISURA

La misura

3. La misura introdotta con l'articolo 3, paragrafo 1 bis del decreto-legge 24 dicembre 2002, n. 282, convertito nella legge 21 febbraio 2003, n. 27, è indirizzata alle società sportive di cui alla legge 23 marzo 1981, n. 91.

4. La misura in questione permette alle società sportive di iscrivere in apposito conto — nel primo bilancio successivamente alla data di entrata in vigore della legge — l'ammontare delle svalutazioni dei diritti pluriennali delle prestazioni sportive degli sportivi professionisti, determinato sulla base di un'apposita perizia giurata. Con il consenso del collegio sindacale, tale posta sarà iscritta tra le componenti attive di bilancio quali oneri pluriennali da ammortizzare.

5. La legge precisa che le società che si avvalgono delle norme speciali introdotte dalla legge devono procedere, ai fini civilistici e fiscali, all'ammortamento della svalutazione iscritta in dieci rate annuali di pari importo.

6. Il seguente esempio illustra gli effetti della misura. Ipotizziamo che un contratto triennale relativo alle prestazioni di un atleta professionista di costo pari a 100 abbia subito una svalutazione del 70 % nell'anno stesso dell'acquisizione. La tabella 1 riporta le norme contabili e fiscali applicate all'operazione in questione nei casi, rispettivamente, di non applicazione e di applicazione della misura in oggetto.

Tabella 1

	Ammortamento/ Sgravi fiscali					
	Anno I	Anno II	Anno III	Anno IV	...	Anno X
Non applicazione della nuova misura						
Costo del contratto	100					
Svalutazione	(70)					
Ammortamento del valore residuo	(10)	(10)	(10)			
= Stato patrimoniale	20	10	0			
Conto economico	(70) + (10) = (80)	(10)	(10)			
Sgravi fiscali	10	10	80			
Applicazione della nuova misura						
Costo del contratto	100					
Svalutazione	(70)					
Ammortamento del valore residuo	(10)	(10)	(10)			
Conto speciale dello stato patrimoniale	70	63	56	49		7
Ammortamento annuo del conto speciale	(7)	(7)	(7)	(7)	...	(7)
= Stato patrimoniale	83	66	49	42		0
Conto economico	(10) + (7) = (17)	(17)	(17)	(7)	...	(7)
Sgravi fiscali	17	17	17	7	...	7

Informazioni e osservazioni trasmesse dalle autorità italiane

7. La Commissione ha invitato le autorità italiane ad illustrare il meccanismo previsto dalla misura con riferimento all'esempio summenzionato. Nella loro risposta, le autorità italiane hanno fornito i dati che figurano nella tabella 1.

8. Le autorità italiane hanno inoltre sottolineato la peculiarità del settore del calcio, soggetto, a loro avviso, a rischi maggiori rispetto ad altre attività. Esse hanno ad esempio fatto riferimento alla vulnerabilità dei calciatori e ai danni che un infortunio può causare alle società sportive. Esse hanno altresì menzionato la falsificazione di *gadget*, la vendita dei biglietti al di fuori dei canali ufficiali e la pirateria sul mercato della pay-TV.

VALUTAZIONE DELLA MISURA

Aiuto di Stato ai sensi dell'articolo 87, paragrafo 1

9. Al fine di stabilire se la misura costituisce un aiuto di Stato ai sensi dell'articolo 87, paragrafo 1, del trattato CE, la Commissione deve stabilire se la misura in questione favorisca talune imprese o la produzione di taluni beni accordando un vantaggio di natura economica. Essa deve quindi valutare se tale vantaggio sia selettivo, e dunque tale da falsare o minacciare di falsare la concorrenza, se sia concesso mediante risorse statali e se incida sugli scambi tra Stati membri.

Talune imprese/attività economiche risultano favorite

10. Le società sportive destinatarie della misura esercitano un'attività economica e devono pertanto essere considerate imprese ai sensi dell'articolo 87, paragrafo 1. Le società di calcio professionistiche, ad esempio, vendono i biglietti di ingresso alle partite, i diritti di trasmissione radiofonica e televisiva delle partite e le licenze su film, prodotti musicali, libri e video interattivi, concludono accordi di sponsorizzazione, percepiscono i compensi derivanti da contratti relativi a manifestazioni sportive internazionali e acquistano i diritti relativi alle prestazioni di atleti professionisti.

Vantaggio economico

11. La misura comporta un duplice vantaggio economico per i beneficiari.

12. Da un lato, essa consente alle società sportive di registrare la svalutazione dei contratti, riducendo quindi i costi di ammortamento, senza far apparire le perdite nello stato patrimoniale e nel conto economico. In tal modo vengono evitati i possibili effetti previsti dagli articoli 2446 e 2447 del codice civile, vale a dire la riduzione del capitale della società ed il possibile obbligo di procedere all'iniezione di nuovi capitali.

13. Il secondo vantaggio è di natura fiscale. La misura potrebbe essere definita come un ammortamento straordinario, quale menzionato anche nella comunicazione della Commissione sulle misure di tassazione diretta delle imprese [1]. Di norma, le perdite di capitale sono deducibili ai fini fiscali quando sono «realizzate», vale a dire, in questo caso, alla scadenza, naturale o anticipata, del contratto. Come risulta dalla tabella 1, in caso di non applicazione della disposizione in oggetto, le deduzioni non sarebbero possibili oltre la scadenza del contratto [2]. Il profilo delle deduzioni è diverso in caso di applicazione della misura: le società possono infatti beneficiare di parte degli sgravi per un periodo di dieci anni. Le società saranno pertanto autorizzate a compensare perdite registrate in passato con profitti futuri per un periodo molto più lungo. Gli effetti sulla posizione fiscale della singola società dipendono dal suo profilo di reddito e dalla durata del contratto, ma in alcuni casi, in particolare in presenza di una bassa redditività, o addirittura di perdite di esercizio, nell'anno in cui si registrano le perdite di capitale e negli anni immediatamente successivi, la possibilità di prorogare il periodo di deducibilità delle perdite rappresenta un vantaggio economico.

14. Si osserva inoltre che l'applicazione della norma è facoltativa. Essa consente pertanto alle società sportive di optare per il regime speciale solo quando consenta loro di beneficiare di un vantaggio economico.

Presenza di risorse statali

15. La misura implica l'uso di risorse statali in termini di rinuncia al gettito fiscale. Come già menzionato, la disposizione consente alle società sportive di riportare le perdite deducibili su un periodo di tempo più lungo rispetto al passato, a fronte di una riduzione delle rate d'ammortamento possibili nei primi anni. Permettendo alle società sportive di scegliere tra due metodi alternativi di imposizione, lo Stato consente a questi contribuenti di optare per il metodo per loro più conveniente e accetta quindi di rinunciare a parte del gettito fiscale.

16. Inoltre, l'attuale situazione economica delle società di calcio professionistiche, molte delle quali sono fortemente indebitate, induce a ritenere che nella maggior parte dei casi esse approfitteranno della possibilità di riportare le perdite per un periodo più lungo. Ove le società divenissero nuovamente redditizie, esse potrebbero beneficiare della modifica della legge, avvalendosi delle deduzioni fiscali alle quali non avrebbero avuto diritto altrimenti.

Carattere selettivo della misura

17. In terzo luogo, la misura è selettiva in quanto indirizzata solo alle società sportive di cui alla legge 23 marzo 1981, n. 91 e costituisce pertanto un aiuto settoriale.

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[1] Comunicazione della Commissione sull'applicazione delle norme relative agli aiuti di Stato alle misure di tassazione diretta delle imprese (GU C 384 del 10.12.1998, pag. 3).

[2] Fatta salva la possibilità di riportare le perdite per cinque anni, qualora la società non realizzi utili sufficienti per avvalersi della totalità delle deduzioni fiscali. Questa possibilità, tuttavia, è presente anche nel quadro della nuova misura e non modifica il profilo relativo delle deduzioni fiscali.

18. Inoltre, possono beneficiare della misura solo le società sportive che abbiano registrato minusvalenze in relazione ai contratti con atleti professionisti e che possano iscriverle nel primo bilancio da approvare successivamente alla data di entrata in vigore della legge. La misura non ha infatti carattere permanente, ma una tantum. Essa introduce pertanto una distorsione della concorrenza non solo tra settori diversi, ma anche all'interno del settore cui si applica, in quanto favorisce le società che hanno registrato perdite rispetto a quelle che hanno i conti in ordine o che hanno già contabilizzato tali perdite in passato.

Distorsione della concorrenza e incidenza sugli scambi tra Stati membri

19. Come già menzionato al punto 10, le società sportive professionistiche esercitano svariate attività economiche. Perlomeno talune società esercitano alcune di queste attività su mercati internazionali. Da un lato, si tratta della vendita dei diritti di trasmissione, degli accordi pubblicitari e di sponsorizzazione e della partecipazione alle competizioni europee, come la *Champions League*, che danno origine a compensi relativi ai contratti stipulati dagli organizzatori. Poiché su questi mercati sono presenti anche società sportive e altri operatori economici di altri Stati membri, la misura in questione può incidere sugli scambi intracomunitari.

20. Dall'altro lato, anche quello dell'acquisizione dei diritti relativi alle prestazioni dei giocatori è un mercato internazionale. È opportuno ricordare che i giocatori professionisti presenti nei campionati europei provengono da tutto il mondo, hanno un'elevata mobilità e sono molto contesi. La disponibilità di giocatori di talento è decisiva per il successo di una società sportiva professionistica, sia in termini sportivi che commerciali. Su questo mercato operano anche società sportive di altri Stati membri e, anche per tale ragione, la misura può incidere sugli scambi tra Stati membri.

Valutazione provvisoria in merito all'esistenza di una nuova misura d'aiuto

21. Sulla base dell'analisi precedente, in questo stadio, la misura sembra soddisfare tutte le condizioni perché la si consideri un aiuto di Stato. Poiché la misura è stata introdotta per la prima volta con il decreto-legge 24 dicembre 2002, n. 282, convertito nella legge 21 febbraio 2003, n. 27 e poiché essa avvantaggia imprese operanti su mercati già aperti agli scambi intracomunitari, la Commissione ritiene, in questo stadio, che la misura in oggetto costituisca un nuovo aiuto.

Compatibilità

22. Nei casi in cui la misura costituisce un aiuto ai sensi dell'articolo 87, paragrafo 1, del trattato CE, vi sono dubbi sulla compatibilità dell'aiuto di Stato concesso in tal modo alle società sportive. Va inoltre ricordato che non possono essere autorizzati aiuti di Stato che costituiscano una violazione della legislazione comunitaria, come avviene nel caso in esame per le direttive contabili.

23. L'aiuto non sembra soddisfare le condizioni previste per una delle deroghe di cui all'articolo 87, paragrafo 2 o 3, o all'articolo 86, paragrafo 2. Quanto alla compatibilità ai sensi dell'articolo 87, paragrafo 3, lettera c), non è possibile stabilire se le condizioni per l'applicazione degli Orientamenti comunitari sugli aiuti di Stato per il salvataggio e la ristrutturazione di imprese in difficoltà siano soddisfatte. Ad ogni modo, la misura non sembra essere limitata alle imprese in difficoltà, né sembra esigere la presentazione e la realizzazione di un piano di ristrutturazione da parte del beneficiario.

24. Più in generale, la misura costituisce un aiuto al funzionamento, in quanto è destinata a permettere alle società beneficiarie di eliminare o ridurre le spese — nel caso in esame, le imposte — che avrebbero di norma dovuto sostenere in relazione alla gestione quotidiana delle loro normali attività e determina pertanto, in linea di principio, distorsioni della concorrenza (cfr. causa C-301/87, *Francia/Commissione (Boussac Saint Frères)*, Raccolta 1990, pag. I-307; causa C-86/89, *Italia/Commissione*, Raccolta 1990, pag. I-3891 e causa C-156/98, *Germania/Commissione*, Raccolta 2000, pag. I-6857). Anche qualora si accertasse che la misura agevola lo sviluppo di talune attività economiche, la Commissione ritiene pur sempre, in questo stadio, che essa incida sulle condizioni degli scambi in misura contraria al comune interesse, considerato che i beneficiari non sono tenuti a compensare la distorsione mediante un contributo al comune interesse.

25. Le autorità italiane non hanno finora invocato nessuna delle deroghe di cui all'articolo 87, paragrafo 2 o 3, o all'articolo 86, paragrafo 2, del trattato CE.

Violazione delle direttive contabili

26. Secondo la giurisprudenza costante della Corte, il procedimento ai sensi dell'articolo 88 non deve mai pervenire a un risultato contrario a norme del trattato. Pertanto, un aiuto di Stato che, in considerazione di determinate sue modalità, contrasti con altre disposizioni del diritto comunitario non può essere dichiarato dalla Commissione compatibile con il mercato comune (cfr. a tale proposito causa 73/79, *Commissione/Italia*, punto 11, Raccolta 1980 pag. 1533; causa C-225/91, *Matra/Commissione*, punto 41, Raccolta 1993, pag. I-3203; causa C-156/98, *Germania/Commissione*, punto 78, Raccolta 2000, pag. I-6857).

27. Nel caso in esame, la misura stessa sembra comportare una violazione della Quarta e della Settima direttiva contabile ([3]). Le società sportive di cui alla legge 23 marzo 1991, n. 91 sono costituite nella forma di società per azioni o società a responsabilità limitata e sono pertanto soggette alle disposizioni della Quarta direttiva. Esse sono soggette inoltre alle disposizioni della Settima direttiva qualora appartengano ad un gruppo e soddisfino le condizioni di cui all'articolo 1 di detta direttiva.

([3]) Quarta direttiva 78/660/CEE del Consiglio, del 25 luglio 1978, basata sull'articolo 54, paragrafo 3, lettera g), del Trattato e relativa ai conti annuali di taluni tipi di società (GU L 222 del 14.8.1978, pag. 11) e Settima direttiva 83/349/CEE del Consiglio del 13 giugno 1983 basata sull'articolo 54, paragrafo 3, lettera g), del Trattato e relativa ai conti consolidati (GU L 193 del 18.7.1983, pag. 1).

28. La misura nazionale di cui trattasi sembra violare i principi fondamentali di cui all'articolo 2, paragrafo 3, della Quarta direttiva e all'articolo 16 paragrafo 3, della Settima direttiva, in base ai quali i conti consolidati devono fornire un quadro fedele della situazione patrimoniale, di quella finanziaria nonché del risultato economico della società. In particolare, se i contratti con i giocatori sono considerati come immobilizzazioni immateriali, l'articolo 35, paragrafo 1, lettera b), della Quarta direttiva e l'articolo 29 della Settima direttiva dispongono che siano ammortizzati durante il periodo della loro utilizzazione. Ammortizzarli su un periodo più lungo della loro utilizzazione non è pertanto conforme alle disposizioni delle direttive contabili, considerato che l'utilizzazione di un contratto non dovrebbe di norma essere superiore alla durata del contratto. L'articolo 35, paragrafo 1, lettera c) bb), della Quarta direttiva e l'articolo 29 della Settima direttiva dispongono inoltre che, indipendentemente dal fatto che la loro utilizzazione sia o non sia limitata nel tempo, gli elementi delle immobilizzazioni devono essere oggetto di rettifiche di valore per dare a tali elementi il valore inferiore che deve essere ad essi attribuito alla data di chiusura del bilancio qualora si preveda che la svalutazione sia duratura. La misura nazionale sembra consentire alle società sportive di non effettuare le rettifiche di valore relative ai diritti sulle prestazioni di atleti professionisti anche quando si preveda che la svalutazione sia duratura. Un esame più dettagliato delle modifiche in questione può fare emergere ulteriori elementi di incompatibilità con le direttive contabili. La Commissione fa infine osservare che la misura nazionale sembra violare anche i principi contabili internazionali, (IAS) 38.

29. Di conseguenza, la modifica prevista dalla legge italiana è, ad un primo esame, contraria ai requisiti delle direttive contabili. Anche per tale ragione, la Commissione ritiene, in questo stadio, che la misura non possa essere dichiarata compatibile con il mercato comune.

CONCLUSIONE

Tenuto conto di quanto precede, la Commissione invita l'Italia a presentare, nell'ambito del procedimento di cui all'articolo 88, paragrafo 2, del trattato CE, le proprie osservazioni e a fornire tutte le informazioni utili ai fini della valutazione delle misure, entro un mese dalla data di ricezione della presente.

La Commissione invita inoltre le autorità italiane a trasmettere senza indugio copia della presente lettera ai beneficiari potenziali dell'aiuto.

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

Con la presente la Commissione comunica all'Italia che informerà gli interessati attraverso la pubblicazione della presente lettera e di una sintesi della stessa nella *Gazzetta ufficiale dell'Unione europea*. Informerà inoltre gli interessati nei paesi EFTA firmatari dell'accordo SEE attraverso la pubblicazione di un avviso nel supplemento SEE della *Gazzetta ufficiale*, e informerà infine l'Autorità di vigilanza EFTA inviandole copia della presente. Tutti gli interessati anzidetti saranno invitati a presentare osservazioni entro un mese dalla data di detta pubblicazione.'

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

Cases where the Commission raises no objections

(2003/C 308/05)

(Text with EEA relevance)

Date of adoption of the decision: 11.10.2002

Member State: Greece

Aid No: N 187/02

Title: Article 17 of Law 2941/2001, modifying Law 2601/1998 on Private Investments for the Country's Economic and Regional Development and Other Provisions

Objective: Regional development

Budget: The annual budget of the scheme is EUR 304 million

Aid intensity or amount: Regional aid ceilings as laid down in the Regional aid map for Greece (N 349/02; Commission letter SG(2002) D/230827 of 19.7.2002)

Duration: The original aid scheme was approved for an unlimited period

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

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

Date of adoption of the decision: 31.10.2003

Member State: Denmark

Aid No: N 223/03

Title: Prolongation of the Danish CO_2 quota scheme

Objective: Environmental protection

Legal basis: Lov om ændring af lov om CO_2-kvoter for elproduktion (Fastsættelse af CO_2-kvote fra 2004)

Duration: 1.1.2004-31.12.2004

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

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

Date of adoption of the decision: 11.11.2003

Member State: The Netherlands

Aid No: N 297/03

Title: Genomics

Objective: To promote national and international technological co-operation between enterprises and research centres in the field of genomics

Legal basis: NWO wet en Kaderregeling — subsidiëring projecten ten behoeve van onderzoek en wetenschap

Budget: EUR 62,4 million

Aid intensity or amount: 33,3 %

Duration: Up to 31 December 2007

Other information: Annual report

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

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

Date of adoption of the decision: 12.11.2003

Member State: Denmark

Aid No: N 343/03

Title: Aid for Research in Working Conditions

Objective: To strengthen the work environment research in Denmark through the elaboration of a research strategy and by providing aid to R & D activities

Legal basis: Finansloven, tekstanmærkning nr. 124 § 17; Bekendtgørelse nr. 610 af 25. juni 2003

Budget: In total DKK 122,6 million (ca. EUR 16,4 million)

Aid intensity or amount: 100 %

Duration: Maximum 6 years

Other information: Annual report

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

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

Prior notification of a concentration

(Case COMP/M.3344 — Bain Capital/Interfer — Brenntag)

Candidate case for simplified procedure

(2003/C 308/06)

(Text with EEA relevance)

1. On 10 December 2003 the Commission received a 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 Bain Capital Investors, LLC ('Bain Capital', USA) acquires, within the meaning of Article 3(1)(b) of the Regulation, control of the whole of the undertakings Brenntag Group ('Brenntag', Germany) and Interfer Group ('Interfer', Germany) by way of purchase of shares from Stinnes AG ('Stinnes', Germany).

2. The business activities of the undertakings concerned are:

— Bain Capital: management of private equity, venture capital, hedge and high yield funds,

— Brenntag: mixing, trading and distribution of chemical substances,

— Interfer: processing, storage, transportation and trade of steel, metal, plastic and ferrous products, non ferrous metals and their alloys, tools and machines.

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 a simplified procedure for treatment of certain concentrations under 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.3344 — Bain Capital/Interfer — Brenntag, to:

European Commission,
Directorate-General for Competition,
Merger Registry,
J-70,
B-1049 Brussels.

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

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

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

EUROPEAN ECONOMIC AREA

EEA CONSULTATIVE COMMITTEE

RESOLUTION ON THE 'ENLARGEMENT OF THE EUROPEAN ECONOMIC AREA (EEA) — INSTITUTIONAL AND LEGAL ISSUES'

(2003/C 308/07)

The Consultative Committee of the European Economic Area (EEA-CC) is composed of representatives of the key socio-economic interest groups in the eighteen EEA Member States. The Committee acts as a voice for workers, employers and organisations representing various interests in these countries and forms part of the EEA institutional set-up.

In light of the forthcoming enlargement of the EU and the attendant need to make adjustments to the Agreement on the European Economic Area, the EEA Consultative Committee issues the following resolution on the 'Enlargement of the European Economic Area (EEA) — institutional and legal issues'. The resolution was adopted at the 11th meeting of the EEA-CC in Brussels, on 20 March 2003. The rapporteurs were Mr Arno Metzler from the European Economic and Social Committee (EESC) and Mr Knut Arne Sanden from the EFTA Consultative Committee (EFTA CC).

1. PREAMBLE

1.1. The Agreement on the European Economic Area (EEA) of 2 May 1992, as amended by the Protocol of 17 March 1993 adjusting the Agreement on the European Economic Area, came into force on 1 January 1994.

1.2. The EEA's 18 Member States (Belgium, Denmark, Germany, Finland, France, Greece, UK, Ireland, Iceland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Austria, Portugal, Sweden and Spain) now constitute the largest coherent single market in the world. This market stretches from the Arctic to the Mediterranean and comprises some 380 million consumers.

2. IMPACT OF EU ENLARGEMENT ON THE EEA

2.1. On 1 May 2004, ten new Member States are expected to join the European Union, bringing the total number of Member States to 25. At the European Council in Athens on 16 April 2003, the following states are expected to sign their respective accession treaties: Estonia, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, the Czech Republic, Hungary and Cyprus, since both the European Commission and the European Parliament have indicated that they will give their agreement in the spring of 2003. The present intention is that Romania and Bulgaria will join the EU in 2007, provided they have, by then, followed the example of the current accession states in meeting the accession criteria set out at the Copenhagen European Council. The European Council in December 2004 will present a report on the reform process in Turkey, which will provide a basis for deciding to what extent accession negotiations will get underway with Turkey.

2.2. The enlargement of the EU will impact upon the agreement on the EEA since the accession states need to be included in it, in order to ensure the seamless continuation of the operation of an open, effective single market embracing not only the enlarged EU but also the whole of the EEA. The EEA-CC warmly welcomes the imminent enlargement of the EEA.

3. PRINCIPLES OF THE EEA AGREEMENT

3.1. The EEA Agreement extended the four basic freedoms of the EU single market, namely the free movement of goods, services, persons and capital, to three of the member states of the European Free Trade Association (EFTA) — Norway, Iceland and Liechtenstein, but excluding Switzerland. Austria, Finland and Sweden, former EFTA members, have since become members of the European Community. Citizens of all 18 EEA states therefore enjoy freedom of movement throughout the EEA and may, subject to certain exceptions in a number of specific fields, reside, work, establish a business, invest and purchase property throughout the EEA.

3.2. The EEA EFTA states have therefore adopted all the directives, regulations and decisions required for the operation of the single market. They are also very strongly involved in the horizontal policies in fields such as research, education, the environment, culture, consumer protection, labour law and social policy.

The common agricultural policy and the common fisheries policy are not covered by the EEA Agreement; there are separate provisions in the EEA Agreement covering these fields.

Unlike the Treaty of Rome, the EEA Agreement does not lead to the establishment of a customs union. It therefore does not include provisions governing external trade policy.

3.3. A number of bodies, similar to the EU institutions in their function and working methods, have been established to implement and develop the EEA Agreement.

3.4. The EEA EFTA states contribute to the EU budget through their participation in nearly 30 EU programmes and activities. The contribution from the EFTA states, which is calculated on the basis of GDP, currently amounts to some EUR 100 million, the bulk of which is devoted to research and education programmes. Furthermore, the EFTA states have twice agreed to implement a five-year plan to provide financial support for the least-developed states and regions of the EU (comparable with the European Cohesion Fund). The current financial aid plan, which covers the period 1999 to 2003, provides project assistance totalling in excess of EUR 24 million to Greece, Portugal, and particular regions of Spain (comparable with the European Cohesion Fund).

4. GENERAL REFLECTIONS AND RECOMMENDATIONS WITH REGARD TO THE ENLARGEMENT OF THE EEA

4.1. Under Article 128 of the EEA Agreement, the countries acceding to the EU have to apply to become parties to the EEA Agreement. No particular deadline is specified for such an application. In the interests of the smooth running of the extended EEA, the accession of the new EU member states to the EEA should, however, take place simultaneously with their accession to the EU. Following the receipt by the President of the EEA Council in December 2002 of applications from ten candidate states, the negotiations got under way on 9 January 2003 and should be completed by 16 April 2003 (the date on which the EU Accession Treaties are to be signed), in order to ensure that the process of ratifying the extended EEA Agreement can proceed in parallel with that of ratifying the EU Accession Treaties in the accession states.

4.2. In order to maintain the effectiveness of the EEA institutions, it will be necessary, in connection with the process of EEA enlargement for the (constitutional) debate on the shaping of comparable decision-making processes in the EU to go hand in hand with a debate on the future membership of the EEA bodies and a substantive reform of the corresponding provisions of the EEA Agreement (cf. in respect of the EEA Council: Article 89 of the EEA Agreement; in respect of the Joint Committee: Article 93 of the EEA Agreement and Protocol 36 to the EEA Agreement; in respect of the Joint EEA Parliamentary Committee: Article 95 of the EEA Agreement). In the view of the EEA-CC, bearing in mind the fact that the structure of these bodies is comparable to that of the parallel institutions in the EU, the findings of the European Convention should also be applied to the EEA bodies.

In addition — and the EEA Consultative Committee already rightly referred to this matter in its resolution on Enlargement and the Future of the EEA of 26 June 2002 — in the interests of safeguarding the legal homogeneity of the single market and in the light of the changes made to the EC Treaty by the Treaties of Maastricht and Amsterdam, it has become necessary to incorporate the attendant changes into the EEA Agreement, insofar as they affect the EEA. As regards the free movement of workers in an enlarged EEA, the EEA Consultative Committee refers to its resolution on this topic from 28 November 2001 where the free movement of workers was welcomed.

4.3. Turning to the field of fish and other marine products, compensation is sought by the EEA EFTA States in the EEA enlargement negotiations, with due regard to Protocol 9 to the EEA Agreement, to make up for the loss of market access opportunities in the accession states. The current free trade agreements between the EFTA states and the accession states are based on the principle of freedom from customs duties in the area of fisheries. The negotiations on the subject, now underway, should aim for simple, comprehensible and transparent solutions.

In the view of the EEA Consultative Committee, this is a technical issue for negotiation; it appears to be a problem, which could probably be quickly solved through talks between experts as part of the new negotiations. One possibility would be to introduce a clause providing for flexible and dynamic solutions.

4.4. The negotiations on adaptation of the EEA Agreement also include agriculture and agricultural products as covered by Article 19 and Protocols 3 to the Agreement, as well as suitable compensatory measures for the trade between the EFTA states participating in the EEA and the accession countries, which for historical reasons have enjoyed preference.

4.5. In autumn 2002, the European Commission informed the three EFTA States belonging to the EEA that the adjustments to be made to the EEA Agreement would involve considerably higher contributions aimed at reducing economic and social disparities in the EU. The argument put forward is the EEA EFTA States' obligation to provide (moral) support in connection with the enlargement of the EU. A 20 to 30-fold rise in contributions is sought. Under the EEA Agreement, the EU has no legal entitlement to demand a sharp increase in the previous level of payments. It should be borne in mind that the EEA EFTA States do not receive any payments from the Cohesion Fund. Nor do they receive any payments from other solidarity funds in the event of natural or other disasters.

More than ten years have passed since the signing of the EEA Agreement in Porto on 2 May 1992; in the course of this period efforts have been made to establish, at least in the areas covered by the four freedoms of the single market, a European Economic Area which is ready and able to ensure that the same conditions as regards competition and market access prevail throughout the EEA. The EEA EFTA States have all displayed pan-European solidarity. They have also all indicated their readiness, in principle, to go along with an increase in the previous level of payments, in order to support the enlargement of the internal market.

The EEA-CC regrets that cooperation in the EEA, which was previously marked by trust and dependability, could suffer long-term damage as a result of an approach geared solely to boosting income, without granting any powers of co-determination or joint decision-making in return. The EEA Consultative Committee calls for emphasis to be placed on reciprocal benefits and opportunities when discussing increases in the levels of contribution to be paid in this field. The aim should be to strengthen the relations of the EFTA states participating in the EEA with the EU, rather than distancing them further.

4.6. In the course of the EU accession negotiations the chapters dealing with the alignment of the laws of the accession states have already been completed; because of this the accession of the new EU member states to the EEA Agreement will be basically straightforward. In the context of enlargement, account will, however, need to be taken of the transitional periods laid down pending full application of the four single market freedoms between the EU and the accession countries.

4.7. In connection with the debate on the European Convention and the White Paper on European Governance, the EU is seeking to enter into more direct communication with civil society and civil society organisations, as well as local and regional authorities, in the context of the decision-making processes at EU level. Both the EEA and the EU have at their disposal bodies, such as the EESC and the EEA-CC, which enable the various groups making up civil society to be consulted on a one-off basis. In order to heighten public awareness in all the eighteen EEA States of the whole range of EU processes and enhance public acceptance of the decisions to be taken, it would be a good idea to improve further the public availability in the EEA of decisions in electronic form and to ensure that ordinary people throughout the EEA are involved in the implementation process at an early stage.

With a view to building a more competitive and forward-looking Europe, the European Union and the European Economic Area need to place even more emphasis on the principles of freedom, democracy and solidarity.

4.8. A new EEA Agreement should create a balanced relationship between the contracting parties and, with regard to fisheries, agriculture and financing, ensure that the principles enshrined in the existing EEA Agreement are continued in an enlarged EU.

4.9. The EEA Consultative Committee underlines the particular importance of enlarging the EU and the EEA simultaneously. The Committee looks forward to welcoming all the accession countries in the EU and the EEA on 1 May 2004.

RESOLUTION ON THE FOLLOW-UP OF THE LISBON STRATEGY

(2003/C 308/08)

1. BACKGROUND

1.1. The Consultative Committee of the European Economic Area (EEA-CC) is composed of representatives of the key socio-economic interest groups in the eighteen EEA Member States. The Committee acts as a voice for workers, employers and organisations representing various interests in these countries and forms part of the EEA institutional set-up.

1.2. The following resolution on the Follow-up of the Lisbon Strategy was adopted at the 11th meeting of the EEA-CC in Brussels, on 20 March 2003. The rapporteurs were Mr Peter J. Boldt from the European Economic and Social Committee (EESC) and Ms Katarina Sætersdal from the EFTA Consultative Committee (EFTA CC).

2. THE LISBON STRATEGY

2.1. Those who question the relevance of the Lisbon Strategy should consider the following points: a European country that does not participate in the effort to be part of the most competitive knowledge-based economy in the world might be ignored by investors. At the same time competitive economies are the prerequisite for more and better jobs and a strengthened European social model. This is why the EEA Social Partners and other representatives of civil society urge the EEA states to continue, and step up, their follow-up of the Lisbon Strategy.

2.2. The Lisbon Strategy will make the Union stronger and provides it with an opportunity to show global leadership. It remains the right course for an enlarged European Union. Its added value lies in its coordinated, comprehensive and mutually reinforcing approach. Past achievements — ten years of the Internal Market, five years of a European Employment Strategy, and four years with the third phase of the EMU and the first anniversary of the arrival of the euro — show the Union's capacity to deliver ambitious reforms. In many areas, they are already driving growth and job creation within flexible, strong and open markets.

2.3. The importance of the Lisbon strategy is proclaimed by the EEA-EFTA States. On 18 February, as Chairman of EFTA, Prime Minister Bondevik, sent a letter to the President of the European Council, Prime Minister Simitis; stating that 'The EEA-EFTA States value the close cooperation with the EU [. . .] and look forward to identifying further means of cooperation to achieve the important objectives of the Lisbon Strategy.'

2.4. Successfully transforming the Union by the end of the decade depends on improving the Union's potential to grow. This requires action that increases employment and improves productivity. While progress has been seen in almost all areas of the Lisbon agenda, it has generally neither been fast enough nor sufficiently coordinated to produce the results that Heads of State and Government signed up to three years ago.

2.5. The Lisbon strategy also embraced the macroeconomic dimension. The main problem in achieving the strategic goals has been the slow economic growth, slack productivity growth and falling investments. This poor performance has been a problem for reaching the short-term goals in the Lisbon strategy.

2.6. The EEA Consultative Committee agrees that the Lisbon strategy must continue to lay the foundations for new opportunities for future generations.

3. EUROPE NEEDS SOCIALLY RESPONSIBLE ENTERPRISES, SOCIAL COHESION AND AN ENVIRONMENTAL FRIENDLY PRODUCTION AND CONSUMPTION

3.1. The EEA-CC urges enterprises to take their corporate social responsibility seriously, i.e. to look for environmentally friendly production alternatives, respect human rights, including core labour standards as defined by the ILO, make life-long learning a reality for their workforce and participate in the efforts to increase the R & D intensity in Europe.

3.2. The European experience is that social cohesion, social dialogue, tripartite cooperation and functioning social networks are central elements of the European model and important for adaptability and productivity growth and in creating an inclusive and socially stable environment for companies and citizens alike.

3.3. The EEA-EFTA states and the EU must make the responsibility for the environment an integral part of all policies, from the utilisation of natural resources, including energy conservation, to the protection of biodiversity and the atmosphere.

3.4. These efforts are all the more urgent taking the forthcoming enlargement(s) of the EU and the EEA into account.

4. ENLARGEMENT AND THE LISBON STRATEGY

4.1. Ten years after it was signed, the EEA Agreement still performs satisfactorily in that it fulfils the objective formulated at the outset. However, the context in which the Agreement operates has changed considerably with wide-ranging changes to the EC Treaty introduced at Maastricht and Amsterdam, in addition to the challenges in the Lisbon Strategy. All these changes affect the functioning of the Internal Market.

4.2. The Lisbon strategy will assist the ten countries that will join the European Union in 2004 in their efforts to sustain a healthy economic outlook and favourable growth prospects, to improve employment and social cohesion and to prepare the transition to a knowledge-based economy. In spite of the progress made in recent years, the ten future Member States face a real challenge in contributing to the achievement of the Lisbon targets. All acceding countries will have to further intensify their efforts in order to contribute to the realisation of the Lisbon strategic goal.

4.3. The acceding countries have already come a long way in making the transition to market economies. They are already relatively well integrated in terms of international trade and have generally made good progress in their efforts to improve the functioning of the economy. Nevertheless, the need for further efforts on structural reforms is apparent if an enlarged Union is to achieve the strategic goal of Lisbon.

4.4. While the challenges faced by the acceding and candidate countries do not differ fundamentally in nature from those in the current Member States, the scale of these challenges is in general greater. In particular, these countries have low employment rates and high unemployment rates and on the whole, competition is still relatively limited.

5. THE OPEN METHOD OF COORDINATION IN THE LISBON STRATEGY

5.1. An important and integral part of the Lisbon Strategy is the new open method of coordination.

5.2. The new open method of coordination entails a shift from traditional regulations, directives and decisions which given their EEA relevance would be incorporated into the EEA Agreement. The new open method of coordination implies extensive use of guidelines, quantitative and qualitative indicators, benchmarks and fixed timetables to achieve the goals. As members of the EEA, the EEA-EFTA States are already involved in a number of initiatives. However, a large part of the Lisbon initiatives are carried out through new mechanisms where the EEA-EFTA States have no access.

5.3. The structural indicators used by the Commission to monitor and assess the progress for the Council spring Summit shows the development both between the EU countries, but also compared with the US and Japan. There is a clear focus on the member countries' performances. However, on some indicators, both the US and the EEA-EFTA countries perform better than most EU member states. The Commission could therefore benefit from looking at the functioning of framework conditions also in other areas. Third-country trading partners may have comparable benchmarks and valuable best practices from which to learn.

5.4. According to The World Competitiveness Scoreboard 2002 Finland, Luxembourg and the Netherlands were the most competitive countries in the world next to USA, with Denmark as no. 6 and the other EU countries ranking between no. 10 and 36. Of the new member states, Estonia and Hungary ranked higher than the least competitive present member states. However, the Lisbon goal for 2010 will be more of a challenge for the accession countries. This does not mean that achieving the Lisbon Agenda for the current member states will be easy. The current EEA-18 should do their utmost to reach the highest levels of global top performers. In this way, the whole average will be pulled up.

5.5. The average productivity per hour worked is approximately the same in EU-15 as in the USA but will fall somewhat after enlargement. But at the same time the potential to catch up is much greater in the new member states, so productivity growth might not be a problem, if overall economic growth kicks off.

6. EMPLOYMENT

6.1. The Commission states that despite the rise in unemployment in response to the downturn, there are strong signs that reforms over the last five years have produced important structural changes in many, but not all, European labour markets. Nevertheless, performance varies considerably and reforms have not been pursued in a sufficiently comprehensive way in all Member States.

6.2. The picture is also mixed as regards progress towards providing the workforce with the skills needed to drive a knowledge-based economy or improving not only the number of jobs, but their quality as well; both crucial factors for better productivity.

6.3. The EEA-EFTA social partners support a European-wide focus on lifelong learning as a means of raising people's opportunities in a knowledge-based economy. The ageing population and higher levels of education of younger generations mean that opportunities for all age groups must be ensured if significant increases in qualification and skills levels are to be achieved. Lifelong learning can contribute to the development of an inclusive society and the promotion of equal opportunities. The EEA-EFTA states have good scores in all of the structural indicators on employment and unemployment rates, and for Iceland an especially high rate on the lifelong learning indicators. Using the open method of coordination, lessons could be learned looking at best practices also in the EEA-EFTA states.

7. **REFORMS OF PRODUCT, SERVICE AND CAPITAL MARKETS**

7.1. Significant parts of the Internal Market have worked well over the last decade. But in others the benefits have had less impact. This is why the Lisbon strategy targets areas such as services, public procurement, transport, energy, financial services and the modernisation of competition rules, as well as in certain areas of taxation. Agreement on important reforms for many of those has however been seen over the last twelve months.

7.2. A risk — in contrast to last year's European Council in Barcelona — is not the lack of decisions at European level, but the failure by member states to ensure that agreed rules and new policies are effectively implemented and applied. This means that in many key areas the Union has yet to unleash the full potential of the Internal Market. Each EEA member state must do much more to ensure that agreed measures are implemented properly and on time.

7.3. Several of the structural indicators illustrate the effect of the reforms in the Single Market, among them measures to dismantle trade barriers and market reforms. The EEA-EFTA states have substantially higher price levels than the EU-15, but Norway has lower price levels both on telecommunication and electricity. Reducing state aid is an important goal of the strategy. Norway, however, has levels of state aid far above the EU-level.

8. **KNOWLEDGE, INNOVATION AND BUSINESS DYNAMISM**

8.1. Knowledge, innovation and business dynamism are keys to opening up new opportunities for growth, stimulating competition, and delivering new, more effective ways of approaching common problems such as disease or climate change. Many of the Union's knowledge industries have been badly hit by current conditions, and business and industry as a whole is still held back by a complex and incomplete regulatory environment. Business is not investing sufficiently in knowledge and innovation. The proposed Community Patent — a touchstone for the Union's commitment to innovation — may soon have a breakthrough.

8.2. Research and development is of limited value if it fails to result in new products and processes. R & D should result in value creation and job opportunities. The framework conditions and initiatives to promote commercialisation from research and development are therefore of vital importance.

8.3. Despite current strains on national budgets, all EEA states should create the conditions for more public and private investment in education, research and the knowledge economy, as these are essential for medium-term and long-term growth. Fiscal and regulatory incentives, as well as a competitive environment are therefore needed to ensure that private spending follows these priorities. Establishing bridges between knowledge and the market place and putting in place the right environment for innovation is the new competitiveness challenge. A more co-ordinated and consistent approach is needed if European businesses are to take advantage of new opportunities, create jobs and drive growth.

9. **CONCLUSIONS**

9.1. The EEA-CC strongly supports the Lisbon Strategy focus on economic, ecological and social sustainable development. We share the vision of a comprehensive reform agenda. Progress up till now has not been satisfactory, and the EEA-CC urges all parties with responsibility to realise this vision, to take the necessary steps for its success. The Lisbon strategic goals cannot be achieved without full cooperation between EEA governments and the social partners. The social dialogue should be vigorously pursued throughout the EEA as well as in the accession countries.

9.2. A constructive approach to corporate social responsibility is important to create a socially cohesive economy that stimulates growth and opportunities, in a sustainable manner. Lifelong learning needs to be made widely available, as it will contribute to the development of an inclusive society and the promotion of equal opportunities. It is vital to continue a strong focus on an employment strategy to create more and better jobs.

9.3. Conditions that stimulate innovation and entrepreneurship are vital so that new and existing businesses thrive in Europe. We wish to see smart innovators and entrepreneurs choose Europe when deciding where to locate the businesses which will commercialise their innovations.

9.3.1. A willingness to accept risks and reward innovators is lacking. Penalties for those who try and fail are high. Europe needs a less hostile environment for entrepreneurs.

9.3.2. Public authorities in Europe could encourage contact between businesses and schools in order to awaken the entrepreneurial spirit in Europe's youth.

9.3.3. Conditions for commercialising research from universities and colleges can be improved. There may be insufficient contact between business and the research communities.

9.3.4. To improve the conditions for commercialisation and innovations the EEA-Consultative committee suggests that the following elements are considered:

— Priority should be given to diminish legal and regulatory hinders for innovation and entrepreneurship in businesses and industries.

— We should look at the availability of seed capital throughout Europe.

— Commercialisation could be promoted in universities and colleges by securing ownership in innovations and patenting and thereby income from new products and processes.

— There is an urgent need for incentives that stimulate private risk capital meant for start-ups. Private capital markets must have incentives to promote commercialisation and the creation of new firms.

— Business Angel Network, after the common American model should also be established in a broader fashion in Europe. These networks help in commercialisation of innovation and entrepreneurship.

— Commercialisation can be promoted by establishing well functioning infrastructures. Exchange of best practice in support of incubators is one example.

EFTA SURVEILLANCE AUTHORITY

Invitation to submit comments pursuant to Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement concerning aid measure — State guarantee in favour of deCODE Genetics in relation to the establishment of a drug development department (SAM 030.02.006 — Iceland)

(2003/C 308/09)

By means of Decision 139/03/COL of 16 July 2003, reproduced in the authentic language on the pages following this summary, the EFTA Surveillance Authority initiated proceedings pursuant to Article 1(2) of Protocol 3 of the Surveillance and Court Agreement concerning the above mentioned aid measure. The Icelandic Government has been informed by means of a copy of the decision.

The EFTA Surveillance Authority hereby gives the EFTA States, EU Member States and interested parties notice to submit their comments on the measure in question within one month from the publication of this notice to:

EFTA Surveillance Authority
Rue de Trèves/Trierstraat 74
B-1040 Brussels

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

SUMMARY

Procedure

By letter dated 27 May 2002, the Icelandic Government notified, pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, a proposal to provide a guarantee to deCODE Genetics Inc. (US) in connection with a research and development project which the company intends to undertake in the field of biotechnology in Iceland.

In the course of the investigation, the Icelandic Government submitted an expert report on the estimation of the net grant equivalent of the planned aid and informed the Authority that the Icelandic Government had decided to request deCODE Genetics Inc. (US) to pay an annual guarantee fee amounting to [. . .] (*) % of the nominal value of the bonds.

In September 2002, the Authority received a complaint against the proposed State aid in favour of deCODE Genetics. The complainant argued that the proposed State guarantee constituted incompatible State aid. The complainant argued, in particular, that the project would have to be qualified as 'pre-competitive development'. As such, the proposed aid granted for the notified project would exceed the permissible aid ceiling of 25 % of eligible costs. The complainant *inter alia* also claimed that due to recent development within the company, it was unlikely that the proposed State aid would contribute to the European industry's competitiveness.

In December 2002, the Authority awarded a contract to an external expert, concerning the evaluation of the notified R & D project under the R & D Guidelines. The external expert delivered his final report on 10 April 2003.

In a letter dated 9 May 2003, the Authority informed the Icelandic Government of its doubts concerning the compatibility of the notified aid for R & D projects which had not been clearly identified. It also informed the Icelandic Government that, due to the lack of sufficiently precise information regarding the individual R & D projects, the Authority was not in a position to verify that the proposed State aid would be in compliance with Article 61(3)(c) of the EEA Agreement, in combination with the R & D Guidelines.

(*) Business secret — deleted figures.

Description of the aid measure — State guarantee

In May 2002, the Icelandic Parliament authorised the Ministry of Finance to issue a guarantee to deCODE Genetics Inc. (US) in relation to a bond amounting to USD 200 million. DeCODE is a population genetics company working to identify the genetic causes of common human diseases and to apply this knowledge to discover novel means of treating, diagnosing and preventing disease. DeCODE also provides drug discovery services to third parties, typically major pharmaceutical or biotechnology companies. The proceeds of the bond would be passed down to deCODE's wholly owned subsidiary, deCODE erfðagreining ehf., located in Reykjavik and then be utilised to establish a new department for developing bio-pharmaceutical products in Iceland.

The Icelandic authorities informed the Authority about the main characteristics of the bond and the State guarantee. However, the terms of the bond, as well as the terms under which the State guarantee would be issued, would only be finally fixed after the Authority had approved the aid. The Icelandic authorities informed the Authority that contrary to what was initially notified, the bond would have a duration of five years (instead of the initially foreseen seven years). The bond could be converted into deCODE stock in the event that the price of the shares would exceed USD 18. In addition, deCODE would have the right to reduce the conversion price. If the bonds were converted into stocks, they would be regarded as paid up and the State guarantee would lapse.

At the time the proposed guarantee was notified to the Authority, the price of the company's stocks was in the range of USD 5 per share. Since then, the share price havs fallen to below USD 2 per share and they are currently traded at around USD 3.5 per share.

The R & D project, the financing of which should be secured through the notified State guarantee, consists of the establishment of a new drug development department based on research carried out by deCODE in population genomics and genealogy-based genetic research.

DeCODE uses population genomics to discover how genetic factors contribute to the cause of diseases. DeCODE's access to an extensive genealogical database and associated bioinformatics is the core of DeCODE's approach to identifying human disease genes and associated drug targets. deCODE hopes that working with the Icelandic population puts it in a position to accelerate the discovery and development of new proprietary diagnostic and therapeutic products.

According to the information submitted, deCODE has successfully isolated genes related to specific diseases [. . .]. For certain drug targets, deCODE has concluded collaborative agreements with pharmaceutical companies in relation to several of the disease genes discovered. DeCODE now wishes to develop a portfolio of drug targets for in-house drug development based on the results from its genetic research.

The R & D activities covered by the notified State support consist of 'target validation' and 'drug development'. The Icelandic authorities explained that after a drug target for a specific disease has been identified, the fundamental research under the current project would start. Once deCODE succeeded in identifying a disease gene it would conduct fundamental research within the scope of the proposed project to define molecular pathways in which the disease gene plays a role. In the next phase of the project, drug development really begins. During this phase, research is carried out to identify the drug leads (i.e. work on the initial chemicals which have been identified during the screening assays phase and which showed positive results in acting against the drug target).

Appreciation of the aid

According to an evaluation carried out by the expert in July 2002 on behalf of the Icelandic State, the State guarantee would allow deCODE to borrow money on the market at conditions more favourable than without the proposed State guarantee. The Authority considers that it is reasonable to assume that the State guarantee would give deCODE a financial benefit and strengthen deCODE's position in relation to its competitors within the EEA. Consequently, the proposed State guarantee is liable to distort competition and affect trade between the Contracting Parties within the meaning of Article 61(1) EEA Agreement.

According to the Icelandic Government, the proposed State guarantee would be compatible under Article 61(3)(b) of the EEA Agreement, according to which 'aid to promote the execution of an important project of common European interest' may be considered to be compatible with the functioning of the EEA Agreement. According to relevant practice of the European Commission, this derogation may apply particularly to 'transnational projects of major qualitative and, in principle, quantitative significance'. Since the proposed State aid would benefit only the establishment of a drug development department by deCODE, the Authority has doubts as to whether the notified aid can be regarded as compatible with Article 61(3)(b) of the EEA Agreement.

The Authority has then assessed the aid according to Article 61(3)(c) of the EEA Agreement in conjunction with Chapter 14 of the Authority's State Aid Guidelines. In line with point 14.2.1(1), 14.5.1 and 14.7 the Authority needs to assess the scope and nature of the research activity, the aid intensity and the incentive effect of the aid.

Proposed State aid for specific R & D projects

The Authority has doubts as regards to the exact number of target validation and drug discovery programmes which would be carried out by deCODE under the R & D project for which State support is sought.

According to the information submitted to the Authority, deCODE has not taken a decision on which specific drug targets would be included in the project for which State support is sought. Given the lack of a decision on the part of deCODE as well as the Icelandic authorities on which specific R & D projects would be carried out, the Authority is not in a position to ascertain that the proposed State aid would be used to carry out a specific R & D project. The Authority cannot therefore exclude that the proposed State aid could be used by deCODE to cover running expenses with respect to the establishment of a drug development department. Any such aid not linked to a specific R & D project bears the risk of constituting operating aid.

The Authority has doubts as to whether State aid may be approved with respect to R & D programmes which have not been clearly identified as being included in the project (with explicit reference to disease targets) and which may only later materialise (possibly years after the request for State support was submitted) and then be possibly included in the overall R & D project. In addition, the Authority has doubts as to whether deCODE is willing and capable of carrying out the R & D programmes (as regards both target validation and drug discovery) which have been identified by the Icelandic authorities as being candidates for drug development under the envisaged research project.

As regards target validation, the Icelandic authorities submitted that this can only start after a disease gene has been identified. Disease genes with respect to which target validation work should be carried out, have, however, only been established for a certain number of diseases. The Authority has doubts as to whether target validation could be carried out with respect to diseases for which the disease genes have not yet been identified and whether the costs related to this work can be determined without having identified the disease gene.

As regards the drug discovery programmes, the Authority has doubts as to whether deCODE would actually carry out drug discovery with respect to all drug discovery programmes identified by the Icelandic authorities.

Incentive effect

Based on the information in the Authority's possession, and in light of the evaluation made by the external expert, the Authority currently sees no reason to question the incentive effect of the proposed Sate aid.

Eligible costs

In the absence of more detailed information, the Authority cannot verify whether it is reasonable to expect that the kind of research activity which is described in general terms will actually be carried out with respect to individual disease programmes. The information submitted by the Icelandic authorities rather indicates that the nature and scope of the research activities may differ quite significantly, depending on the disease target in question. Consequently, in the absence of an individualised work plan for a specific programme, the Authority is not in a position to clearly identify the eligible costs.

Permissible aid ceilings

Given the absence of verifiable information concerning the eligible costs for individual R & D programmes, it is not possible for the Authority to ascertain that the proposed State aid respects the permissible aid ceilings. The various concerns expressed above rather indicate that the proposed State aid would exceed the permissible aid intensities.

Conclusions

The aid proposed for the project constitutes aid within the meaning of Article 61(1) of the EEA Agreement. The Authority has doubts as to whether the notified aid may be regarded as compatible with the functioning of the EEA Agreement, and in particular Article 61(3)(c), because the information submitted by the Icelandic authorities does not demonstrate that the conditions set out in Chapter 14 of the Authority's State Aid Guidelines are fulfilled.

Consequently, and in accordance with Chapter 5.2 of the Authority's State Aid Guidelines, the Authority is obliged to open the formal investigation procedure provided for in Article 1(2) of Protocol 3 to the Surveillance and Court Agreement against the proposed State aid in the form of a guarantee in favour of deCODE Genetics Inc.

I. **FACTS**

A. **Procedure**

Notification by the Icelandic Government

By letter from the Ministry of Finance dated 27 May 2002, received and registered by the Authority on 30 May 2002 (Doc. No 02-4055-A), the Icelandic Government notified, pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, a proposal to provide a guarantee to deCODE Genetics Inc. (US) in connection with a research and development project which the company intends to undertake in the field of biotechnology in Iceland.

By letter dated 24 July 2002, the Authority acknowledged receipt of the notification and requested additional information to be submitted within one month from receipt of that letter (Doc. No 02-5620-D).

By letter from the Ministry of Finance dated 13 August 2002, received and registered by the Authority on 19 August 2002 (Doc. No 02-6060-A), the Icelandic Government submitted a report on the estimation of the net grant equivalent of the planned aid (hereinafter referred to as the '[. . .] (**) Report') and informed the Authority that the Icelandic Government had decided to request deCODE Genetics Inc. (US) to pay an annual guarantee fee amounting to [. . .] % of the nominal value of the bonds.

The Authority acknowledged receipt of this information by letter dated 22 August 2002 (Doc. No 02-6078-D).

After several requests for an extension of the deadline (cf. letter from the Ministry of Finance dated 6 September 2002, received and registered by the Authority on 10 September 2002 (Doc. No 02-6456-A); letter from the Ministry of Finance dated 4 October 2002, received and registered by the Authority on 7 October 2002 (Doc. No 02-7176-A) and letter from the Ministry of Finance dated 17 October 2002, received and registered by the Authority on 18 October 2002 (Doc. No 02-7574-A)), the Icelandic Government responded to the questions raised in the Authority's letter of 24 July 2002, by letter from the Ministry of Finance dated 30 October 2002, received and registered by the Authority on 31 October 2002 (Doc. No 02-7905-A) and the letter from the Icelandic Mission dated 8 November 2002, received and registered by the Authority on that same day (Doc. No 02-8063-A). In addition, the Authority was informed of certain amendments to the initial notification.

By letter dated 25 November 2002 (Doc. No 02-8459-D), the Authority acknowledged receipt of this information. In this letter, the Authority informed the Icelandic Government that the notification could not be regarded as complete since the final terms for the guarantee, the convertible bonds and the security arrangements, were not then available. The Authority further informed the Icelandic Government that it would engage an external expert in order to assess, inter alia, the qualification of the nature of the project, the suitability of the project's budget, as well as the State aid's incentive effect for the project in question in light of Chapter 14 of the Authority's State Aid Guidelines ('R & D Guidelines').

In December 2002, the Authority awarded a contract to an external expert concerning the evaluation of the notified R & D project under the R & D Guidelines.

In February 2002, the external expert submitted his draft report. The expert's statements revealed the need for further information.

By letter dated 10 February 2003 (Doc. No 03-808-D), the Authority requested the Icelandic Government to submit additional information. The Icelandic Government responded to this request by letter dated 10 March 2003, received and registered by the Authority on that same day (Doc. No 03-1443-A).

The external expert delivered his final report on 10 April 2003.

In a letter dated 9 May 2003 (Doc. No 03-2990-D), the Authority informed the Icelandic Government of its doubts concerning the compatibility of the notified aid for R & D projects which had not been clearly identified. It also informed the Icelandic Government that, due to the lack of sufficiently precise information regarding the individual R & D projects, the Authority was not in a position to verify that the proposed State aid would be in compliance with Article 61(3)(c) of the EEA Agreement, in combination with the R & D Guidelines.

Following this letter, several meetings were held between representatives from the Icelandic Government and the Authority in which the Icelandic authorities presented proposals of how the Authority's concerns could be allayed. The arguments presented by the Icelandic Government were, however, not regarded as dispelling the Authority's doubts.

Complaint

In September 2002, the Authority received a complaint against the proposed State aid in favour of deCODE Genetics. The complainant argued that the proposed State guarantee constituted State aid within the meaning of Article 61(1) of the EEA Agreement. In the complainant's view, the proposed State guarantee was incompatible with the functioning of the EEA Agreement. In this respect, the complainant maintained that the conditions as laid down in Article 61(3)(c) of the EEA Agreement, in combination with the R & D Guidelines were not fulfilled. The complainant argued, in particular, that the project would have to be qualified as 'pre-competitive development'. As such, the proposed aid granted for the notified project would exceed the permissible aid ceiling of 25 % of eligible costs. The complainant also considered that the proposed State aid would not have the required incentive effect.

In a further submission of May 2003, the complainant pointed to, in his view, significant changes in the market which would imply that the value of the State guarantee would have increased significantly. The complainant also claimed that due to recent development within the company, it was unlikely that the proposed State aid would contribute to the European industry's competitiveness.

B. **Description of the aid measure — State guarantee**

In May 2002, the Icelandic Parliament authorised the Ministry of Finance to issue a guarantee to deCODE Genetics Inc. (US) in relation to a bond amounting to USD 200 million. The proceeds of the bond would be passed down to the wholly owned subsidiary, deCODE erfðagreining ehf., located in Reykjavik and then be utilised to establish a new department for developing biopharmaceutical products in Iceland [1].

The Icelandic authorities informed the Authority about the main characteristics of the bond and the State guarantee. However, the terms of the bond, as well as the terms under which the State guarantee would be issued, would only be finally fixed after the Authority would have approved the aid.

[1] Whereas the guarantee is proposed to be granted to deCODE Genetics Inc. (US), proceeds from the State guaranteed bond will go to deCODE ehf. (Iceland). The direct aid recipient and the aid beneficiary are therefore two legally distinct entities. In the following, reference will be made to 'deCODE' without making a distinction between the mother and the daughter company.

The Icelandic authorities informed the Authority that contrary to what was initially notified, the bond would have a duration of five years (instead of the initially foreseen seven years). The bond could be converted into deCODE stock in the event that the price of the shares would exceed USD 18. In addition, deCODE would have the right to reduce the conversion price. If the bonds were converted into stocks, they would be regarded as paid up and the State guarantee would lapse.

At the time the proposed guarantee was notified to the Authority, the price of the company's stocks was in the range of USD 5 per share. Since then, the shares price fell to below USD 2 per share and is currently traded at around USD 3,5 per share ([2]).

According to the Icelandic Government, deCODE would have to pay a guarantee premium. Even though the exact amount had not been finally decided upon, the notification was based on the assumption of a possible guarantee premium of [. . .] %.

The Icelandic Government asked an independent expert [. . .] to evaluate the guarantee. The expert based its assessment of the value of the proposed State guarantee, *inter alia*, on the preliminary terms of the guarantee and the bond (this assessment was based on a duration of the bond of seven years and the payment of a guarantee premium) and the financial information available about deCODE at the time of the assessment. The value of the State guarantee was determined by comparing the estimated cost of capital based on a CAPM ([3]) analysis without the State guarantee, with the estimate cost of debt based on the proposed State guarantee for the USD 200 million bond. The expert came to the conclusion that the value of the State guarantee ('net grant equivalent') would be in the range between USD [. . .] and USD [. . .] (the midpoint of this range being USD [. . .]).

C. **Description of the aid beneficiary**

DeCODE Genetics Inc. was incorporated in Delaware (US) in 1996. Its wholly owned subsidiary, deCODE erfðagreining ehf. has its headquarters in Reykjavik. DeCODE is a population genetics company working to identify the genetic causes of common human diseases and to apply this knowledge to discover novel means of treating, diagnosing and preventing disease. DeCODE also provides drug discovery services to third parties, typically major pharmaceutical or biotechnology companies. In addition to its genetics research and drug discovery services, deCODE commercialises database services and healthcare informatics products. With the acquisition of MediChem Life Sciences Inc. in March 2002, deCODE has access to advanced drug discovery and development capabilities. In addition, in November 2000, deCODE acquired Encode, to launch pharmacogenomics studies in Iceland and to conduct clinical trials for new and existing therapeutics as a Contract research organisation.

The company has, according to the information provided in the notification, around 600 employees worldwide (as of 31 December 2001) ([4]).

According to the Annual Report for 2001, deCODE had an annual turnover amounting to USD 31,5 million, a net loss of USD 47,8 million and a balance sheet total of USD 256,4 million. Operating expenses for R & D development amounted to USD 71,8 million.

D. **Description of the R & D project**

1. *Project description*

(a) General outline and objectives

The R & D project, the financing of which should be secured through the notified State guarantee, consists of the establishment of a new drug development department based on research carried out by deCODE in population genomics and genealogy-based genetic research.

DeCODE uses population genomics to discover how genetic factors contribute to the cause of diseases. DeCODE's access to an extensive genealogical database and associated bioinformatics is the core of deCODE's approach to identifying human disease genes and associated drug targets. DeCODE hopes that working with the Icelandic population puts it in a position to accelerate the discovery and development of new proprietary diagnostic and therapeutic products.

According to the information submitted, deCODE has successfully isolated genes related to specific diseases [. . .]. For certain drug targets, deCODE has concluded collaborative agreements with pharmaceutical companies in relation to several of the disease genes discovered.

DeCODE now wishes to develop a portfolio of drug targets for in-house drug development based on the results from its genetic research. DeCODE will continue its genetic research to identify disease genes responsible for other diseases for which it has already mapped genetic loci. This research is not covered by the proposed State aid.

In the company's view, the development of a portfolio of several drug targets at any given time is necessary in order to be successful in bringing even a few products to the market. Therefore, the scope of the overall R & D project for which State support has been notified, is not limited to the R & D projects for which disease genes have already been identified. The scope of the R & D project for which State support is sought is therefore intended to cover also possible future drug candidates which could be included at a later stage depending on the progress made by deCODE in identifying new disease genes.

The R & D activities covered by the notified State support consist of 'target validation' and 'drug development' (for a more detailed description of these activities, please see below). Clinical research required to put new drugs on the market will not be covered by the notified State support. The envisaged State support project would only cover a period of 5 years up to the filing of an Investigatory New Drug filing with the US Food and Drugs Administration or its equivalent in other jurisdictions.

([2]) Information from http://www.nasdaq.com/ (date 11 July 2003).

([3]) Capital Asset Pricing Model.

([4]) The Authority notes that the actual number of deCODE employees in Iceland is not entirely clear, since the company had to lay off around 200 employees worldwide in the autumn 2002.

Based on the information submitted by the Icelandic authorities, deCODE has identified at present [. . .] target validation and [. . .] drug discovery programmes as being candidates for research (so-called 'initial programmes'). However, the overall R & D project for which State support is sought consists of, in total, [. . .] target validation and [. . .] drug discovery programmes.

(b) 'Target Validation'

The Icelandic authorities explained that after a drug target for a specific disease has been identified, the fundamental research under the current project would start. Once deCODE succeeded in identifying a disease gene it would conduct fundamental research within the scope of the proposed project to define molecular pathways in which the disease gene plays a role [. . .].

(c) 'Drug development'

In the next phase of the project, drug development really begins. During this phase, research is carried out to identify the drug leads (i.e. work on the initial chemicals which have been identified during the screening assays phase and which showed positive results in acting against the drug target).

This phase can be divided into the following phases [. . .].

2. *Eligible costs*

According to the financial schedule submitted by the Icelandic authorities, the project for which State support is sought comprises in total [. . .] R & D programmes ([. . .] target validation programmes and [. . .] drug discovery programmes). The costs to be incurred in the first five years of the project (i.e. the duration of the project covered by the proposed State guarantee) are estimated to amount to ISK 34 billion. Of this amount, ISK 20 billion (approximately USD 200 million, based on a conversion rate of USD 1 = ISK 100) would be raised through the issue of convertible bonds with the proposed State guarantee. The remaining costs of the project shall be financed by deCODE Genetics.

These overall cost estimates are broken down into operating expenses, interest costs and investment costs. Operating costs consist of personnel costs amounting to [. . .], chemicals and consumables amounting to [. . .], contractor services amounting to [. . .], and overhead expenses amounting to [. . .]. Net interest costs were estimated to amount to [. . .] and investments costs [. . .].

For the five-year period, the costs related to 'target validation' (which was regarded by the Icelandic authorities as fundamental research) were estimated to amount to [. . .], and for 'drug development' (which was regarded as industrial research) [. . .].

Whereas personnel costs were in addition allocated to the specific research programmes (i.e. research into a specific disease/drug candidate), and further broken down with respect to the specific activity within either target validation or drug discovery, no such comparable cost allocation was done for other cost items. Other costs were only allocated to what was regarded by the Icelandic authorities to constitute either fundamental or industrial research.

3. *Incentive effect*

According to the Icelandic authorities, the proposed aid has the required incentive effect. In this respect, the Icelandic authorities refer to the risks involved in the project which would exceed those risks faced by other companies engaged in a more conventional approach to drug discovery and development.

In the Icelandic Government's view, the project would be extremely ambitious in scope and its aims. The project would entail the creation of the world's first proprietary drug discovery operation based largely upon fundamental research in human genetics. What makes the project so ambitious is, according to the Icelandic authorities, the aim of bringing a steady stream of the targets isolated and verified through subsequent drug development and into clinical testing and to sustain several projects at any one time at various stages of development over a period of many years. Given the lack of precedent for successful drugs developed from population genetics research, and the large investment in terms of finance and time required to follow through such a project, the Icelandic authorities consider the project to be extremely ambitious.

As regards the comparison between the envisaged project and deCODE's current activities, the Icelandic authorities informed the Authority that the project would only extend to target validation and drug development of disease targets that are not currently a part of deCODE's ordinary business activities (i.e. covering only those drug targets which are not subject to collaborative arrangements with pharmaceutical companies).

Finally, and as regards the quantifiable factors as referred to in point 14.7(2) of Chapter 14 of the Authority's State Aid Guidelines, the Icelandic authorities point to an increase in R & D spending, based on current R & D spending amounting to USD 71,8 million in 2001 and the projected R & D spending over the first five years of the project. Furthermore, and according to the amended notification, deCODE would envisage recruiting up to 350 new employees to undertake fundamental and industrial research (compared to the envisaged 300 additional employees referred to in the initial notification). All the 350 employees would be new staff dedicated solely to the new research and development activity.

II. APPRECIATION

A. State aid within the meaning of Article 61(1) of the EEA Agreement

By virtue of Article 61(1) of the EEA Agreement, '*any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between the Contracting Parties, be incompatible with the functioning of this Agreement.*'

According to an evaluation carried out by the expert in July 2002 on behalf of the Icelandic State, the State guarantee would allow deCODE to borrow money on the market at conditions more favourable than without the proposed State guarantee. The expert came to the conclusion that the aid element contained in the proposed State guarantee would amount to approximately [. . .] (the average being [. . .]). Apparently not included in this evaluation, is the guarantee premium of [. . .] % (i.e. approximately [. . .] expressed in net present value terms ([5])). The financial benefit to deCODE after taking into account the payment of a guarantee premium would consequently be reduced to [. . .] (the average being [. . .]).

Without it being necessary at this stage to assess in more detail whether the evaluation which was made in July 2002 would still be valid, the Authority considers that it is reasonable to assume that the State guarantee would give deCODE a financial benefit and strengthen deCODE's position in relation to its competitors within the EEA. Consequently, the proposed State guarantee is liable to distort competition and affect trade between the Contracting Parties.

In light of these considerations, the Authority has concluded that the proposed State guarantee constitutes aid within the meaning of Article 61(1) of the EEA Agreement

B. **Notification requirement and standstill obligation**

Pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, *'[t]he EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid . . . The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision'*.

The Act authorising the Ministry of Finance to issue a guarantee in favour of deCODE does not, in the Authority's understanding, confer any right on deCODE with respect to the guarantee. It is still for the Icelandic Government to take a decision whether or not and, if so, under which conditions to issue a guarantee to deCODE. Since no such decision has been taken, the Authority considers that the proposed State aid has not yet been put into effect.

C. **Compatibility of the aid measures**

1. *Assessment of the aid measure under Article 61(3)(b) of the EEA Agreement*

According to the Icelandic Government, the proposed State guarantee would be compatible under Article 61(3)(b) of the EEA Agreement.

By virtue of Article 61(3)(b) of the EEA Agreement, *'aid to promote the execution of an important project of common European interest'* may be considered to be compatible with the functioning of the EEA Agreement.

As stated in Chapter 14 of the Authority's State Aid Guidelines, this provision has been applied in the field of R & D by the European Commission, only in a limited number of cases. According to relevant Commission practice, this derogation may apply particularly to *'transnational projects of major qualitative and, in principle, quantitative significance'* ([6]). Aid granted for a project the results of which only benefit a single undertaking, without a co-operation with other companies in the EEA and without a dissemination of the results, which would result in the formulation of EEA wide industry standards as referred to in the guidelines, would not seem to be covered by this exemption.

Since the proposed State aid would benefit only the establishment of a drug development department by deCODE, the Authority has doubts as to whether the notified aid can be regarded as compatible with Article 61(3)(b) of the EEA Agreement.

2. *Assessment of the aid measure under Article 61(3)(c) of the EEA Agreement*

The Icelandic Government claimed that the proposed State guarantee was justified under Article 61(3)(c) of the EEA Agreement. It would be in the common interest of the EEA to strengthen the position of Europe in the field of biotechnology. According to the Icelandic Government, the aid would provide a significant boost to the competitiveness of the European biotechnology industry by opening up a completely new way of approaching genetic research. The reason for the project being undertaken in Iceland was because of the unique genetic pool of its inhabitants. This project would lead the way to other companies in the EEA being able to build on this foundation. This would provide the EEA an advantage in the development of novel pharmaceutical products developed from genetic and biotechnological research and would give the European industry a competitive advantage compared to the US.

Article 61(3)(c) of the EEA Agreement regards aid to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the interests of the Contracting Parties, as compatible with the functioning of the EEA Agreement. Aid granted for R & D activities is assessed under Chapter 14 of the Authority's State Aid Guidelines.

According to point 14.2.1(1) of Chapter 14 of the Authority's State Aid Guidelines, *'The closer the R & D is to the market, the more significant may be the distortive effect of the State aid. In order to determine the proximity to the market of the aided R & D, the EFTA Surveillance Authority makes a distinction between fundamental research, industrial research and precompetitive development activity.'*

([5]) The Authority's calculation of the net present value of the guarantee premium is based on the reference rate of interest which was, as from 1 January 2002, fixed for Iceland at 9,54 %.

([6]) See e.g. State aid case N 692/2001 — Germany.

According to point 14.5.1 of Chapter 14 of the Authority's State Aid Guidelines, *'The allowable intensity of aid will be determined by the EFTA Surveillance Authority on a case-by-case basis. The Authority's assessment in each case will take into consideration the nature of the project or programme, overall policy considerations relating to the competitiveness of European industry, the risk of distortion of competition and the effect on trade between the Contracting Parties. A general evaluation of such risks leads the Authority to consider that fundamental research and industrial research may qualify for higher levels of aid than precompetitive development activities, which are more closely related to the market introduction of R & D results and, if aided, could therefore more easily lead to distortions of competition and trade.'*

According to point 14.7 of Chapter 14 of the Authority's State Aid Guidelines, *'State aid for R & D should serve as an incentive for firms to undertake R & D activities in addition to their normal day-to-day operations. It may also encourage firms not carrying out research and development to undertake such activities. Where this incentive effect is not evident, the EFTA Surveillance Authority may consider such aid less favourably than it usually does.'*

Against this background, the Authority needs to assess the scope and nature of the research activity, the aid intensity and the incentive effect of the aid.

(a) Proposed State aid for specific R & D projects

The Icelandic Government notified the Authority of the intention to grant a State guarantee to deCODE Genetics in relation to a bond amounting to USD 200 million. The proceeds from the bond shall be used to finance deCODE's project of establishing a biopharmaceutical research and development department in Iceland [. . .].

According to the information submitted to the Authority, deCODE has not taken a decision on which specific drug targets would be included in the project for which State support is sought. Given the lack of a decision on the part of deCODE as well as the Icelandic authorities on which specific R & D projects would be carried out, the Authority is not in a position to ascertain that the proposed State aid would be used to carry out a specific R & D project. The Authority cannot, therefore exclude that the proposed State aid could be used by deCODE to cover running expenses with respect to the establishment of a drug development department. Any such aid not linked to a specific R & D project bears the risk of constituting operating aid.

Furthermore, an assessment of the R & D projects benefiting from the proposed State support under the R & D Guidelines is difficult since the Icelandic authorities failed to submit detailed work plans for specific R & D projects (in particular when it comes to determining and evaluating the reasonableness of the proposed R & D budget; see below).

According to the financial schedule submitted by the Icelandic authorities, the overall project deCODE wants to embark upon, consists of [. . .] target validation programmes and [. . .] drug discovery programmes. However, the Authority also notes, that out of the [. . .] target validation programmes and the [. . .] drug discovery programmes, only [. . .] target validation programmes and [. . .] drug discovery programmes have been clearly identified as possible candidates for research to be carried out with the proposed State support. The remaining programmes (i.e. [. . .] target validation programmes and [. . .] drug discovery programmes) would possibly become part of the project at a later stage.

As pointed out above, the Authority has doubts as to whether State aid may be approved with respect to R & D programmes which have not been clearly identified as being included in the project (with explicit reference to disease targets) and which may only later (possibly years after the request for State support was submitted) materialise and be possibly included in the overall R & D project.

In addition, the Authority has doubts as to whether deCODE is willing and capable of carrying out the R & D programmes (as regards both target validation and drug discovery) which have been identified by the Icelandic authorities as being candidates for drug development under the envisaged research project.

Based on the description given by the Icelandic authorities, target validation work can only start after a disease gene has been identified. Disease genes with respect to which target validation work shall be carried out under the project have, however, only been identified for [. . .] diseases [. . .]. As regards other diseases mentioned by the Icelandic authorities in the financial schedule for the project [. . .], the information submitted shows that even though genetic loci have been mapped/candidate genes identified, a disease gene has not been discovered yet. The Authority has, therefore, doubts as to whether target validation could be carried out with respect to diseases for which the disease genes have not yet been identified.

Furthermore, based on the explanations provided by the Icelandic authorities, it is the nature of the disease gene which is determining for the scope and nature of research work. Therefore, the Authority has doubts as to whether the research work to be carried out by deCODE with respect to a specific disease target, and thus the costs related to this work, can be determined without having identified the disease gene.

In addition, the Authority has doubts as to whether deCODE would actually carry out drug discovery with respect to all drug discovery programmes identified by the Icelandic authorities [. . .]. These doubts result from information about deCODE's financial performance in 2002, according to which, drug discovery work for Myocardial Infarct and Hypertension may not be necessary (cf. deCODE Genetics Annual report (SEC form 10-K) presented on 15 April 2003: *'. . . in our drug discovery work on our findings in myocardial infarction and hypertension, we believe we may be able to bypass much of the drug discovery process and enter directly into phase II clinical trials as early as mid-2003.'*).

Against this background, the Authority has doubts as regards to the exact number of target validation and drug discovery programmes which would be carried out by deCODE under the R & D project for which State support is sought. Based on the concerns raised above, eligible research projects might be limited only to [. . .] target validation programmes and [. . .] drug discovery programmes.

(b) Assessment of the type of research

According to the initial notification, the project for which State support is sought consists of elements of fundamental research ('target validation') and industrial research ('drug discovery').

According to the external expert, 'target validation' qualifies as 'fundamental research'. This activity is designed to increase scientific and technical knowledge about the diseases being studied. It is primarily linked to understanding some of the mechanisms involved in disease initiation and progression and is not necessarily leading to the development of new commercial products. According to the external expert, this activity is very much upstream in the R & D process, and there is a significant risk that it may not lead to the identification of drug targets and the development of new products, processes or services. Time-to-market may be greater than 10 years.

As regards 'Drug Development', the external expert considers that phases 1-4 [. . .] could be classified as 'industrial research'. On the other hand, phases 5 and 6 [. . .] would qualify as 'pre-competitive development activity'. In his view, the objective of phases 5 and 6 is to create initial prototypes of drugs that provide a strong basis for patent filing and that will direct the development of new products.

The Authority sees no reason to deviate from this assessment as regards 'target validation' and parts of 'drug development'. However, the Authority has doubts as to whether certain activities forming part of the 'drug development' (i.e. phases 5 and 6) can be qualified as 'industrial research' as claimed by the Icelandic authorities ([7]).

(c) Assessment of the incentive effect of the aid

The external expert agreed that the proposed State aid would have an incentive effect, since a large proportion of deCODE's project corresponds to a new activity (i.e. large-scale drug discovery effort performed by deCODE alone). According to the external expert, the aid would indeed induce deCODE to pursue new R & D activities that imply a considerable increase in R & D spending. The proposed aid would permit deCODE to widely expand the scope of its research to drug discovery and drug development.

In the expert's view, the incentive effect of the aid specifically relied on the fact that the aid would allow deCODE to embark upon a large-size drug development program, in particular to hire a large number of scientists and to secure high financial input. The project exceeded in risk and ambition what is normally done by other companies in the same industry, strictly because of the large number of simultaneous research programs, especially if considering that deCODE would invest heavily and immediately in activities (drug development) for which the company has previously not demonstrated success. On the other hand, the expert pointed out that the risks associated with the individual target validation and drug discovery programs planned by deCODE, do not exceed in nature and intensity those faced by other companies in the same industry. Individual target validation and drug discovery programs comprised in deCODE's project were not 'extremely ambitious' as compared to other programs foreseen or being performed by other companies in the same industry.

Based on the information in the Authority's possession, and in light of the evaluation made by the external expert, the Authority currently sees no reason to question the incentive effect of the proposed Sate aid.

(d) Assessment of the eligible costs

The information submitted by the Icelandic Government does not allow the Authority to determine the exact amount of eligible costs given that the R & D programmes have not been clearly identified by the Icelandic authorities and given that no detailed work plan has been submitted which could have been used as a basis for evaluating the reasonableness of the proposed R & D budget.

The Icelandic authorities have merely described in abstract terms the kind of activities that need to be carried out in the context of target validation and drug discovery, without specifying the kind of activities that will actually be carried out with respect to individual programmes.

It is the kind of activity which will be carried out by deCODE which will determine the eligible costs for a specific R & D programme. In the absence of more detailed information, the Authority cannot verify whether it is reasonable to expect that the kind of research activity which is described in general terms will actually be carried out with respect to individual disease programmes. The information submitted by the Icelandic authorities rather indicates that the nature and scope of the research activities may differ quite significantly, depending on the disease target in question. Consequently, in the absence of an individualised work plan for a specific programme, the Authority is not in a position to clearly identify the eligible costs.

Even though the external expert was able to provide the Authority with average figures concerning the personnel required for target validation and drug discovery activities in general, the Authority cannot, due to the uncertainties referred to above, exclude the possibility that the requirements for individual programmes may differ substantially from these average figures. In this context, the Authority also notes that, according to the external expert, the estimates regarding required personnel as well as other cost items were overstated.

In addition to the lack of detailed information as referred to above, the exact determination of the eligible costs has not been possible because the Icelandic Government has not allocated all cost items to specific R & D programmes (most cost items have only been shared between fundamental research and industrial research without being allocated to individual R & D programmes or activities) and because certain cost items have not been properly justified (in particular building costs).

([7]) According to the external expert, activities related to phases 5 and 6 qualify as 'pre-competitive development'. As such, they could benefit from aid up to 25 % of eligible costs. It would, however, appear that the notified aid should not cover 'pre-competitive development' activities.

The Icelandic authorities have only submitted detailed information as regards personnel costs. Based on the information submitted, it is not possible to allocate other cost items to individual research programmes and activities within each programme.

The Authority also notes that the Icelandic authorities have not provided a satisfactory explanation concerning the extraordinary building expenses which are supposed to be incurred in the first two years of the project [. . .].

(e) Assessment of the permissible aid ceilings

Given the absence of verifiable information concerning the eligible costs for individual R & D programmes, it is not possible for the Authority to ascertain that the proposed State aid respects the permissible aid ceilings. The various concerns expressed above rather indicate that the proposed State aid would exceed the permissible aid intensities.

In this respect, the Authority observes that the project's budget of ISK 34 billion was based on [. . .] target validation programmes (for which a budget of ISK [. . .] was foreseen) and [. . .] drug discovery programmes (for which a budget of ISK [. . .] was foreseen). In the following, the Authority would like to illustrate the effects of a limitation of the scope of the R & D project on the budget and thus the permissible aid. The figures presented are based on average cost figures for target validation and drug development programmes, respectively, and do not necessarily reflect the exact consequences of a limitation of the eligible R & D projects on the budget.

If the R & D projects which can be regarded as sufficiently concrete would be limited to those clearly identified by the Icelandic authorities as being candidates for the project (i.e. [. . .] target validation programmes and [. . .] drug discovery programmes), the budget would be reduced as regards target validation to approximately ISK [. . .] and as regards drug discovery to approximately ISK [. . .]. If in addition, as pointed out above by the Authority, eligible R & D projects would be limited to [. . .] target validation and [. . .] drug discovery programmes, the budget would be reduced as regards target validation to approximately ISK [. . .] and as regards drug discovery to approximately ISK [. . .]. It is also noted that building costs amounting to ISK [. . .] have not been properly justified by the Icelandic authorities. Any such costs would therefore, based on the information currently available, not be included in the eligible costs. Finally, it is noted that, according to the external expert, personnel costs, in particular, were overestimated.

Whereas costs regarding target validation could benefit as fundamental research from 100 % aid intensity, the costs regarding drug discovery were regarded by the external expert, only to a certain extent, as falling within the definition of industrial research, for which the permissible aid intensity is 50 %. The remaining activities which were regarded as pre-competitive development could only benefit from 25 % aid.

Taking all this into account, it appears that the proposed State guarantee, with an estimated aid element amounting to USD [. . .], or on average USD [. . .] (which at a conversion rate of 100 would amount to ISK [. . .]), may exceed substantially what could, based on the information currently available to the Authority, be regarded as permissible.

(f) Assessment of the nature of the project or programme, overall policy considerations relating to the competitiveness of European industry, the risk of distortion of competition and the effect on trade between the Contracting Parties

The Icelandic Government took the view that the proposed aid was unlikely to lead to any significant distortion of competition. In its view, the relevant market was that of biotechnological research. According to the Icelandic Government, the biotechnological research market was 'wide open and not as easily prone to distortion as the pharmaceutical product market', given the extremely high level of risk and lack of investment across the EEA. It is further maintained that the market for biotechnological research was '*a growth market with the bounds for exploitation on the open market in a worldwide context almost limitless*'.

According to the external expert, deCODE's project concerns a large number of common diseases that are targeted by virtually all biotech companies (especially if they are initially genomic companies) and bio-pharmaceutical companies worldwide. Some of deCODE's direct competitors (i.e. genomic firms including Millenium, Celera, HGS, Myriad Genetics, Lexicon genetics and Incyte) have been, or are in the process of, moving into the therapeutic business.

In the external expert's view, the market potentially affected by the proposed aid is that of drugs that will reach clinical phases and will be best positioned to be acquired by big pharmaceutical companies. With the expectation of 200 drugs to be derived from genomic targets and considering not more than 10-20 players in the market which will be able to develop these drugs, the market size would appear to be rather limited, allowing each player to struggle for approximately 10 % of the market. The grant equivalent of the proposed aid as calculated by the expert's report amounting to USD [. . .], would represent, according to the external expert, [. . .] of either the one-year revenues or available cash for most of deCODE's direct competitors. Based on the market size and the aid intensity, the external expert considered the risk for distortive effects of the proposed aid to be significant.

In addition to gaining operational and strategic advantages over its competitors, deCODE would be able to attract investors that might no longer consider investing significantly in other European drug discovery companies, a situation that may last for a significant period of time. Human resources and facilities available to sustain the development of the emerging biomedicine sector in Iceland (basically in the Reykjavik area) were obviously limited. There is a significant number of companies that are emerging in this sector. In particular, there were at least 5 emerging pharmaceutical companies that employ 30-150 people and that develop activities in the field of therapeutics (noticeably production of generics, and design of drug delivery systems). When deCODE is allocated the proposed aid, the emerging biomedicine companies in Iceland may encounter serious difficulties in attracting investors, qualified personnel, and in accessing relevant facilities.

In light of the external expert's comments in this respect, the Authority has doubts as to whether the propose State aid in favour of deCODE would risk distorting competition and trade to an extent contrary to the common interest.

D. **Conclusions**

The aid proposed for the project constitutes aid within the meaning of Article 61(1) of the EEA Agreement. The Authority has doubts as to whether the notified aid may be regarded as compatible with the functioning of the EEA Agreement, and in particular Article 61(3)(c), because the information submitted by the Icelandic authorities does not demonstrate that the conditions set out in Chapter 14 of the Authority's State Aid Guidelines are fulfilled.

Consequently, and in accordance with Chapter 5.2 of the Authority's State Aid Guidelines, the Authority is obliged to open the formal investigation procedure provided for in Article 1(2) of Protocol 3 to the Surveillance and Court Agreement against the proposed State aid in the form of a guarantee in favour of deCODE Genetics Inc.

The Icelandic Government is invited to submit its comments to this decision.

The Icelandic Government is further requested to submit all information necessary to assess the compatibility of the proposed State guarantee with the functioning of the EEA Agreement.

The Icelandic Government is reminded not to put the proposed State aid into effect.

The Icelandic Government is invited to notify without delay the potential aid beneficiary of the initiation of the proceedings.

Finally, the Authority would like to point out that the decision to open the formal investigation procedure is without prejudice to the final decision (cf. point 5.2(2) of Chapter 5 of the Authority's State Aid Guidelines).

HAS ADOPTED THIS DECISION:

1. The Authority opens the formal investigation procedure pursuant to Article 1(2) of Protocol 3 to the Surveillance and Court Agreement against the proposed State guarantee in favour of deCODE Genetics Inc.
2. The Icelandic Government is invited, pursuant to point 5.3.1(1) of Chapter 5 of the Authority's State Aid Guidelines, to submit its comments to the present decision within two months from receipt of the present decision.
3. The Icelandic Government is requested to submit all information necessary to enable the Authority to examine the compatibility of the proposed State aid under Article 61(3)(c) of the EEA Agreement, in combination with Chapter 14 of the Authority's State Aid Guidelines, within two months from receipt of the present decision.
4. The Icelandic Government is invited to notify without delay the potential aid beneficiary of the initiation of the proceedings.
5. Other EFTA States, EC Member States and interested parties shall be informed by the publishing of this decision in the EEA Section of the *Official Journal of the European Union* and the EEA Supplement thereto, inviting them to submit comments within one month from the date of publication.
6. This decision is authentic in the English language.

Done at Brussels, 16 July 2003

For the EFTA Surveillance Authority

Einar M. BULL	Hannes HAFSTEIN
President	*College Member*

Authorisation of State aid pursuant to Article 61 of the EEA Agreement and Article 1 (3) in Part I of Protocol 3 to the Surveillance and Court Agreement

The EFTA Surveillance Authority has decided that the notified measure is compatible with the EEA Agreement

(2003/C 308/10)

Date of adoption:	22 October 2003
EFTA State:	Norway
Aid No:	SAM 030.03.005
Title:	The temporary regional loan scheme
Objective:	To support economic development in less favoured and outlying regions in Norway
Legal basis:	State Budget (St.prp. nr. 1 (2002-2003) and Budsjett-innst. S nr. 8 (2003-2004)) and Act of 3 July 1992 No 97 (Lov om Statens nærings- og distriktsutviklingsfond)
Budget:	Credit line of NOK 500 million (some EUR 61 million) and a loss fund of NOK 75 million (some EUR 9 million)
Duration:	Until loans of NOK 500 million have been granted or the end of 2004

The authentic text of the Decision, from which all confidential information has been removed, can be found at:

http://www.eftasurv.int/fieldsofwork/fieldstateaid/stateaidregistry/

Authorisation of State aid pursuant to Article 61 of the EEA Agreement and Article 1 (3) in Part I of Protocol 3 to the Surveillance and Court Agreement

The EFTA Surveillance Authority has decided that the notified measure is compatible with the EEA Agreement

(2003/C 308/11)

Date of adoption: 8 October 2003

EFTA State: Norway

Aid No: SAM 030.03.002

Title: A new temporary grant scheme for the shipbuilding industry

Objective: To offset the adverse effects caused by the unfair competitive practices of the Republic of Korea

Legal basis: Act relating to State aid ('Lov om offentlig støtte av 27 november 1992') and Regulation amending Regulation on State Aid to Shipbuilding ('Forskrift om endring av forskrift 19. mars 1999 nr. 246 om gjennomføring av EØS-avtalens bestemmelser om offentlig støtte til skipsbyggingsindustrien') implementing Council Regulation No 1177/2002 of 27 June 2002 concerning a temporary defensive mechanism to shipbuilding, as adopted by the EEA Joint Committee decision No 170/2002

Budget: NOK 300 million (some EUR 37 million)

Duration: From 15 March 2003 until 31 March 2004

EEA JOINT COMMITTEE

Decisions of the EEA Joint Committee for which the constitutional requirements under Article 103 of the EEA Agreement have been fulfilled

(2003/C 308/12)

Since March 2000, Decisions of the EEA Joint Committee indicate in a footnote whether their date of entry into force depends on the fulfilment of constitutional requirements by any of the Contracting Parties. Such requirements were notified as regards the Decisions listed below. The Contracting Parties in question have now notified the other Contracting Parties that they have completed their internal procedures. The dates of entry into force of the Decisions are as indicated.

Decision number	Date of adoption	Publication reference	Legal act(s) integrated	Date of entry into force
140/2002	8.11.2002	OJ L 19, 23.1.2003, p. 5 and EEA Supplement No 4, p. 5	Committee for Orphan Medicinal Products (Regulation (EC) No 141/2000 of the European Parliament and of the Council)	1.7.2003
142/2002	8.11.2002	OJ L 19, 23.1.2003, p. 9 and EEA Supplement No 4, p. 8	Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents	1.8.2003
164/2002	6.12.2002	OJ L 38, 13.2.2003, p. 22 and EEA Supplement No 9, p. 17	Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings	1.6.2003
165/2002	6.12.2002	OJ L 38, 13.2.2003, p. 24 and EEA Supplement No 9, p. 18	Directive 2002/12/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 79/267/EEC as regards the solvency margin requirements for life assurance undertakings	1.6.2003
166/2002 [1]	6.12.2002	OJ L 38, 13.2.2003, p. 26 and EEA Supplement No 9, p. 19	Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings	1.8.2003
167/2002	6.12.2002	OJ L 38, 13.2.2003, p. 28 and EEA Supplement No 9, p. 20	Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions	1.8.2003
168/2002	6.12.2002	OJ L 38, 13.2.2003, p. 30 and EEA Supplement No 9, p. 21	Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services	1.8.2003
169/2002	6.12.2002	OJ L 38, 13.2.2003, p. 32 and EEA Supplement No 9, p. 22	Regulation (EC) No 484/2002 of the European Parliament and of the Council of 1 March 2002 amending Council Regulations (EEC) No 881/92 and (EEC) No 3118/93 for the purposes of establishing a driver attestation	1.8.2003

Decision number	Date of adoption	Publication reference	Legal act(s) integrated	Date of entry into force
171/2002	6.12.2002	OJ L 38, 13.2.2003, p. 36 and EEA Supplement No 9, p. 24	Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art	1.8.2003
172/2002	6.12.2002	OJ L 38, 13.2.2003, p. 38 and EEA Supplement No 9, p. 25	Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community	1.8.2003
175/2002	6.12.2002	OJ L 38, 13.2.2003, p. 44 and EEA Supplement No 9, p. 28	Directive 2002/3/EC of the European Parliament and of the Council of 12 February 2002 relating to ozone in ambient air	1.7.2003
10/2003	31.1.2003	OJ L 94, 10.4.2003, p. 61 and EEA Supplement No 19, p. 13	Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products	1.7.2003
13/2003	31.1.2003	OJ L 94, 10.4.2003, p. 67 and EEA Supplement No 19, p. 16	Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC	1.6.2003
33/2003	14.3.2003	OJ L 137, 5.6.2003, p. 35 and EEA Supplement No 29, p. 23	Commission Regulation (EC) No 1360/2002 of 13 June 2002 adapting for the seventh time to technical progress Council Regulation (EEC) No 3821/85 on recording equipment in road transport	1.8.2003

(1) *Ad referendum*: confirmed.

III

(Notices)

COMMISSION

PROGRAMME FOR POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS (PROGRAMME AGIS)

Annual work programme and call for applications for 2004 (Operating grants)

(2003/C 308/13)

I. INTRODUCTION

Under Article 3(5) of the Council Decision 2002/630/JHA of 22 July 2002, establishing a framework programme on police and judicial cooperation in criminal matters [1], the Commission can subsidise the activities of non-governmental organisations whose main activity contributes significantly to the implementation of the EU's priorities in the areas covered under Title VI of the Treaty on European Union.

II. OBJECTIVES AND TARGET GROUPS

Grants made available under this heading are not intended to co-finance the implementation of a particular project, but to support the activities of non-governmental organisations that contribute significantly to the implementation of the EU's priorities in the areas covered under Title VI of the Treaty on European Union.

Applications will be examined only from organisations or representative European networks of bodies which:

— have been legally established in accordance with the law of one of the Member States,

— are non-governmental,

— are non-profit-making,

— pursue activities with a European dimension and involve, as a general rule, at least eight Member States,

— have a work programme geared to the following objectives:

  — Improving the professional skills of magistrates and judicial practitioners and defining training curricula,

  — Cooperation between public authorities and associations in the field of victim assistance,

  — Cooperation between public authorities and associations in the field of rehabilitation of offenders,

  — Production and dissemination of information on access to interpretation and translation,

  — Production and dissemination of information on access to legal assistance and advice,

  — Development of restorative justice and mediation.

The total amount available for these grants is EUR 400 000.

III. GENERAL FINANCIAL RULES APPLICABLE TO THESE GRANTS

Acceptance of an application by the Commission does not constitute an undertaking to award a financial contribution equal to the amount requested by the beneficiary. The awarding of a grant does not establish any entitlement for subsequent years.

The rate of Commission funding may not exceed 50 % of total operating costs and the grant will not exceed EUR 50 000. In the framework of the improvement of the professional skills of magistrates and judicial practitioners, the European network for the training of magistrates could benefit from a maximum financial support of EUR 200 000 (70 % of total operating costs).

In the event of final approval by the Commission, a grant agreement, drawn up in euro and detailing the conditions and level of funding, will be concluded between the Commission and the beneficiary. This contract must be signed and returned to the Commission immediately. The beneficiary will receive a prefinancing payment of 80 % within 45 days of the date when the last of the two parties signs the agreement.

The Commission will establish the amount of the final payment to be made to the beneficiary on the basis of the final reports. If the eligible costs actually incurred by the organisation in 2004 are lower than anticipated, the Commission will apply its rate of funding to the actual costs, and the beneficiary will, where applicable, be required to repay any excess amount already transferred by the Commission under the advance payment. The Commission grant may not have the purpose or effect of producing a profit for the beneficiary. Profit is defined as a surplus of receipts over costs. The amount of the grant will be reduced by the amount of any surplus.

[1] OJ L 203, 1.8.2002, p. 5.

The person in charge of the organisation must, by his signature, undertake to provide proof of the correct use of the grant and enable the Commission and/or the European Court of Auditors, and any qualified external body designated by the Commission, to verify the organisation's accounts. To this end, supporting documents must be kept by the beneficiary for five years after the final payment.

The Commission can require any organisation which has been awarded a grant to furnish in advance a guarantee from an approved bank or financial organisation based in one of the Member States or an audit report. The guarantee must be denominated in euros.

Double financing

Applicants may receive only one grant towards their operating costs from the budget of the European Institutions. To ensure this, they must give details in their application form of any other grant requests which they have submitted or intend to submit to the European Institutions for the same year, stating in each case the budget heading, the Community programme and the amount requested.

IV. ELIGIBILITY OF COSTS

Grant applications must include an estimate in euro of the organisation's operating costs for 2004, based on the actual costs incurred in the previous year and on those required for carrying out the activity programme in 2004. The budget must be balanced and mention all sources of funding.

The activity programme and the financial section in the application will form an integral part of the contract, if a grant is awarded. Organisations are therefore asked to complete these sections clearly, fully and scrupulously.

Since a grant must not give rise to any profit, the Commission will take account of all income used for funding both the organisation's actual operating costs and its activities in 2004. To this end, in February 2005, beneficiaries must submit a financial report showing their actual income and expenditure for 2004 and a report on their actual activities.

If at the end of the year the beneficiary has not carried out any part of the activities envisaged in the application, the amount of the grant will be reduced in proportion to the quantity of activities not carried out and to the volume of budget used up.

1. Eligible expenditure

For the purposes of fixing the maximum amount of the grant to be awarded, the Commission will take account of the operating budget presented by the applicant. In its analysis, only the costs anticipated by the organisation to cover its own normal activities will be taken into consideration, i.e.:

— personnel costs,

— general rental and charges for services, equipment (in the case of purchases of durable equipment, only annual depreciation may be taken into account), telecommunications and postage, office supplies,

— travel and subsistence costs for the organisation's staff in relation to its statutory meetings and any other working meetings necessary for the organisation's normal activities,

— costs of meetings,

— publication, information and dissemination costs.

The deadline for submitting an application being set at 15 January 2004, the grant will not cover costs that occur before 15 January 2004.

2. Ineligible expenditure

The following costs will not be taken into account:

— expenditure on infrastructure purchases,

— expenditure not linked to the functioning or normal activities of the organisation,

— clearly unnecessary or excessive expenditure.

Organisations receiving an operating grant should note that indirect costs are no longer eligible when presenting applications for cofinancing of projects.

V. EVALUATION CRITERIA FOR PROPOSALS

1. Criteria and eligibility

To be eligible, a grant application must meet the following criteria:

— it must relate to one of the objectives listed in Section II,

— it must include a sufficiently clear description of the scope of intervention, the specific objectives, the activities foreseen by the organisation in that very same field of intervention,

— it must be submitted using the specific grant application form made available by the Commission in electronic format; no other form will be accepted; all sections of the form must be completed,

— it must meet the formal requirements and be accompanied by all the documents listed in Section VI,

— it must include a detailed budget of the operating costs (ordinary expenditure of the organisation); total anticipated operating costs must be equal to the total sources of financing including the grant request presented to the Commission under the AGIS Programme.

2. **Exclusion criteria**

Non-Governmental organisations shall be excluded from participating in this call for proposals if:

— they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations,

— they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*,

— they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify,

— they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed,

— they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests,

— following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations,

— they are subject to a conflict of interest,

— they are guilty of misrepresentation in supplying the information required or fail to supply this information.

3. **Selection criteria**

The following elements will be examined:

— the non-governmental organisation' operational and professional capability, including evidence of its know-how,

— the non-governmental organisation' financial capability.

Only proposals which meet the above selection criteria will be examined in detail.

4. **Award criteria**

Proposals will be assessed on the basis of the following criteria:

— conformity with the programme's objectives (A),

— whether the activities have a European dimension and are open to participation by the candidate countries (B),

— compatibility with work undertaken or planned under the EU's policy priorities in the field of judicial cooperation on general and criminal-law matters (C),

— complementarity with other past, present or future activities (D),

— ability of the organiser to implement the activities (E),

— the inherent quality of the activities in terms of its conception, organisation, presentation and expected results (F),

— the amount of the subsidy requested under the programme and whether it is proportionate with the expected results (G),

— short-term results and impact in the medium-term (H).

Proposals will be ranked on the basis of points. The maximum allocation of points for each of the above criteria is described below.

Criterion	Maximum number of points
A	5
B	15
C	10
D	5
E	15
F	35
G	5
H	10

VI. PRACTICAL INFORMATION ABOUT SUBMITTING AN APPLICATION

Applications must be submitted with the specific application form and model forward budget which are available on the Europa website.

http://europa.eu.int/comm/justice_home/jai/prog_en.htm

The applicant must fill in the fields indicated and send back the document on a diskette or CD-ROM and in three paper copies.

Applications submitted on an application form that has been altered or used before, as well as forms completed by hand, will be disqualified.

1. Documents to be submitted

The following documents must be submitted in triplicate:

— the application form, duly completed, dated and signed by the person authorised to enter into legally binding commitments on behalf of the applicant,

— a forward budget, dated and signed, presented on the specific budget form for the programme, including a detailed breakdown of expected expenditure and revenue (the relevant budget form can be found on the Commission's website).

A single copy of the following documents is required:

— the financial identification form, dated and signed, and signed and stamped by the bank concerned,

— an external audit report produced by an approved auditor and certifying the organisation's annual accounts for the latest available financial year,

— the organisation's annual activity programme for 2004 describing the planned activities in detail,

— the activity report for the latest available year,

— an organisation chart and a description of the tasks of the staff, including the CVs of staff members responsible for carrying out the activities,

— evidence of legal status, as well as the status duly registered,

— the forward budget for 2004 showing a detailed breakdown of the association's expected expenditure and revenue.

Applicants are free to provide any other documentation which they consider appropriate in support of their application.

2. Deadline for submitting applications

Applications must be received in a sealed envelope by registered mail, by express messenger or by hand-delivery (a signed and dated certificate of receipt will be given to the deliverer) to:

Postal address

European Commission
Directorate-General Justice and Home Affairs
Unit B5: Management of Title VI programmes (Treaty on European Union)
AGIS 2004 — Call for proposals/OG
Office LX-46 3/159
B-1049 Brussels

Address for hand delivery

European Commission
Directorate-General Justice and Home Affairs
AGIS 2004 — Call for proposals/OG
Office LX-46 3/159
Mail Department
Rue de Genève 1
B-1140 Brussels-Evere

Applications must be:

— either by registered mail, posted no later than 15 January 2004 (postmark),

— or by hand-delivery (in person or by an authorised representative or private courier service) not later than 15 January 2004 at 12.00 (Brussels time), in which case a receipt must be obtained as proof of submission, signed and dated by the official who took delivery.

Any application received after the deadline will be automatically rejected.

3. **Acknowledgement of receipt**

Following the opening of proposals, the Commission will send an acknowledgement of receipt to all applicants, indicating whether or not the application was received prior to the deadline and informing them of the reference number of their application.

VII. **FURTHER INFORMATION**

Applicants are invited to consult the 'Guide for AGIS applicant' at the following address:

http://europa.eu.int/comm/justice_home/jai/prog_fr.htm

Questions may be sent by e-mail or by fax to the address or number listed below, indicating clearly the reference of the call for proposals:

e-mail address: JAI-AGIS@cec.eu.int
Fax (32-2) 299 82 15

VIII. **TIMETABLE**

The evaluation committee expects to complete pre-selection by the end of February 2004. The committee of representatives of the Member States set up by the Decision establishing the programme will then be consulted. The Commission will finalise pre-selection in April 2004.

All applicants will be informed in writing of the decision taken on their application by 30 April 2004 at the latest.

For beneficiaries of a grant agreement, a pre-financing payment of 80 % will be issued after the signature of the convention by both parties. The exact calculation of the final amount of the subvention will be done when the activities have ended, on the basis of supporting documents provided by the beneficiary. Expenditure incurred before 15 January 2004 is not considered eligible.

IX. **EX-POST PUBLICITY**

All grants awarded in the course of a financial year must be published on the Internet site of the Community institutions during the first half of the year following the closure of the budget year in respect of which they were awarded. The information may also be published by any other appropriate medium, including the *Official Journal of the European Union*. The following will be published with the agreement of the beneficiary:

(a) the name and address of the beneficiaries;

(b) the subject of the grant;

(c) the amount awarded and the rate of funding of the costs of the project or approved work programme.

The European Commission may waive the above obligations if publication of the information could threaten the safety of the beneficiaries or harm their business interests.

Beneficiaries of grants must clearly display acknowledgement of the support received from the EU.

PROGRAMME FOR POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS (PROGRAMME AGIS)

Annual work programme and call for applications for 2004 (Co-funding of projects)

(2003/C 308/14)

I. OBJECTIVES OF THE AGIS PROGRAMME (2003-2007)

The aim of the AGIS framework programme [1], adopted on 22 July 2002, is to promote police and judicial cooperation in criminal matters and to support the contributions of practitioners to develop European policy in this area. Covering the period 2003-2007, the programme extends the work of the programmes that formerly operated under Title VI (TEU [2]), which expired in December 2002, and incorporates the activities previously funded under budget heading B5-831 (drugs).

The general objectives of the programme are [3]:

— to develop, implement and evaluate European policies in the field of police and judicial cooperation in criminal matters,

— to promote and strengthen networking, mutual cooperation on general subjects of common interest to the Member States, the exchange and dissemination of information, experience and best practice, local and regional cooperation, and the improvement and adaptation of training and technical and scientific research,

— to encourage Member States to step up cooperation with the applicant countries, other third countries and appropriate regional and international organisations.

The AGIS programme supports projects and activities associated with the following specific objectives:

— the development of a European criminal judicial area and the introduction of European instruments to promote cross-border cooperation,

— improving the professional skills of practitioners in judicial services, police forces and customs authorities, through better knowledge of the legislation, procedures and strategies in operation in the different European states,

— developing methodologies, instruments and knowledge to support cooperation between authorities,

— promoting cooperation between similar types of authorities and the exchange of information between departments,

— developing multidisciplinary strategies and activities for cooperation between law enforcement/judicial authorities and between these authorities and non-governmental organisations, civil society, the business sector, the professions and the world of science and research,

— studies and research, particularly into strategies and techniques for fighting particular types of crime, and evaluation of the policies pursued,

— the exchange of information and experience and the dissemination of best practice.

The general objectives will be pursued in the following areas:

— developing the European criminal judicial area,

— strengthening cooperation between the judicial authorities and between legal practitioners, judicial cooperation in general and in criminal matters, promoting defence rights,

— strengthening cooperation between law enforcement authorities,

— preventing and combating organised crime; partnerships and cooperation between public authorities and the private sector,

— preventing and fighting drugs trafficking,

— crime prevention,

— protection of victims' rights,

— crime-proofing, economic risk and threat assessment; comparability and circulation of information, and statistics.

II. PROGRAMME ACTIVITIES AND TARGET GROUPS

The AGIS programme provides financial support for projects in the field of police, customs and judicial cooperation in criminal matters, intended to improve the professional skills of practitioners, cooperation between the various authorities, respect for the law and prevention of cross-border crime.

1. PROGRAMME ACTIVITIES

The following types of project are referred to in Article 4 of the Decision:

— training,

— setting up and launching exchange and placement schemes,

[1] Council Decision 2002/630 JHA (OJ L 203, 1.8.2002, p. 5).

[2] Grotius II Criminal, Oisin II, Stop II, Hippocrates, Falcone.

[3] Article 2 of the Council Decision.

— studies and research (including applied research supporting political developments),

— dissemination of the results obtained under the programme,

— encouraging cooperation between law enforcement authorities, judicial authorities or other public or private organisations in the Member States involved in preventing and fighting crime, for instance by giving assistance for the establishment of networks,

— conferences and seminars.

2. TARGET GROUPS

The AGIS programme targets the following groups:

— legal practitioners: judges, public prosecutors, barristers, solicitors, public officers, law officials, court officials, bailiffs, experts, court interpreters and other professionals associated with the administration of justice,

— officials and officers of law-enforcement authorities and of public bodies in Member States responsible under national law for preventing, detecting and combating criminal offences,

— officials in other government departments and representatives of associations, professional organisations, research and business engaged in fighting and preventing crime, organised or otherwise,

— representatives of victim assistance services, including public departments responsible for immigration and social services.

The programme is not open to students, but young professionals in training may be involved.

Participants in projects may come from the Member States, the countries set to join in 2004 (acceding countries) and candidate countries and possibly also from other non-EU countries if the project justifies it.

3. ELIGIBLE ORGANISATIONS

Grants can be awarded to national, regional or local public or private bodies or institutions, private operators, associations, professional organisations or organisations representing business, non-profit-making organisations or training or research institutes, with legal status and established in one of the EU's Member States or in one of the acceding countries, as well as to Eurojust and Europol.

Applications from natural persons are not eligible.

III. AREAS OF ACTIVITY AND SPECIFIC TOPICS

A. *COOPERATION PROJECTS (MAXIMUM FUNDING 70 %)*

1. DEVELOPING THE EUROPEAN CRIMINAL JUDICIAL AREA

Scope

The projects are intended to develop, implement and evaluate European instruments and policies. They may relate to substantive criminal law, procedural law, the amendments required in national legislation, the organisation and operation of services, the role and activities of the European cooperative structures (Europol, Eurojust, the European Judicial Network).

Projects covering the objective of improving mutual knowledge of the Member States' legal systems may cover any of the aspects of judicial cooperation in criminal matters (procedural systems, the administration and operation of the justice system, penal sanction systems, the admissibility of evidence, etc.).

Topics

1.1. **Implementation of European instruments and development of European policies in the area of police and judicial cooperation in criminal matters**

(a) Activities to raise awareness and provide information and training about the European Union instruments on mutual recognition of decisions in criminal matters, such as the existing and forthcoming framework decisions on:

— the application of the principle of mutual recognition to financial penalties (OJ C 278, 2.10.2001, p. 1),

— the execution in the European Union of orders freezing assets or evidence (OJ L 196, 2.8.2003, p. 45),

— the execution in the European Union of confiscation orders (OJ C 184, 2.8.2002, p. 8),

— the implementation of the European arrest warrant (OJ L 190, 18.7.2002),

— pollution of criminal origin caused by vessels in the field of environmental protection (COM(2003) 227 final);

(b) improving cooperation between law enforcement and judicial authorities and other players in connection with the introduction and development of provisions relating to the situation and protection of witnesses or members of criminal gangs who wish to cooperate with the judicial authorities;

(c) developing instruments to assess and measure the application, effectiveness and impact of the instruments in force;

(d) implementation of the conclusions of peer evaluation based on the joint action of 1997 and of evaluation based on the Council Decision of 28 November 2002 establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism (OJ L 349, 24.12.2002, p. 1);

(e) training of persons in charge of training on the activities and working methods of Eurojust;

(f) cooperation with the structures of Europol, Eurojust and the European Judicial Network;

(g) a study of basic requirements for qualifications of judicial experts and the setting-up of projects at Union level to facilitate access to such expertise, in particular in matters with implications in more than one Member State;

(h) a comparative study on the application of criminal sanctions in the acceding countries to complement the existing study on Member States.

1.2. **Promoting defence rights and procedural guarantees for suspects and defendants in cases throughout the European Union**

(a) Activities connected with drafting, translating and publishing a letter of rights to be given to suspects/prisoners;

(b) activities to improve access to interpretation, translation and legal advice.

1.3. **Improving mutual knowledge of the Member States' legal systems**

(a) Organising training courses and seminars to improve the skills of legal professionals and their knowledge of legal systems, the working methods and procedures of the judicial, police and customs authorities of the Member States, acceding and candidate countries ([4]);

(b) organising seminars and case studies comparing the application of principles such as:

— presumption of innocence,

— burden of proof,

— disclosure of evidence,

— admissibility of evidence,

— protection of witnesses and informers,

— rehabilitation procedures for criminals and alternative sentencing models,

— treatment of victims,

— criminality relating to minors, including comparative research on national criminal legislation applicable to minors,

— criminal liability of legal persons,

— responsibilities of States in cases of miscarriages of justice, acquittal or where the case is dropped;

(c) support for setting up and testing transnational exchange programmes (between Member States and between Member States and acceding countries); exchanges of three to six months serving the specific needs of the departments concerned ([5]);

(d) on-site or virtual language and terminology training courses ([6]), including the development and testing of specialised modules;

(e) information seminars on national policies of the 15 Member States, acceding and candidate countries;

(f) comparative studies of Member States and acceding and candidate countries' legislation, with a view to suggesting improvements in legislation or procedure in the following areas:

— replacing the principle of mutual assistance with that of mutual recognition,

([4]) Two types of measure are possible:
— training for national officials in the rules and methods of European cooperation and in the criminal law and procedures of other Member States: a maximum of EUR 30 000 in aid to cover travel, subsistence and interpretation expenses for a number of speakers from partner countries. The project should cover at least six training seminars each lasting three to four days; the expenses of the national participants will be met by the country making the request,
— training for national officials in the rules and mechanisms of cross-border cooperation and/or national procedural law, in particular for magistrates and police officers of the acceding and candidate countries. The training will take place in the requesting country and will last at least a week; it will be attended by participants from several countries. The project will offer in return an information seminar about the law and procedures in two partner countries for trainers and practitioners from the host country.

([5]) The Commission must be informed of the candidate profile and the type of qualifications and experience being sought before the selection is made. A detailed description of the project to be carried out with the authority of the host country must be enclosed with the grant application.

([6]) Successful applicants will receive a grant of up to EUR 30 000 for developing a course and training modules, including language training. The modules must be developed in partnership with a training centre in a country of the language being taught and must be made available free of charge to training institutions in the areas of justice and the police that fall directly under the responsibility of a public authority or are directly funded from public resources.

— responsibilities of States in cases of miscarriages of justice, acquittal or where the case is dropped,

— enforcement in the Member States of rights of access to legal assistance and advice,

— enforcement in the Member States of rights to access to interpretation and translation,

— prosecuting or disrupting organised crime groups.

1.4. **Activities to promote the development of a data protection policy**

2. STRENGTHENING COOPERATION BETWEEN LAW ENFORCEMENT AUTHORITIES

Scope

Projects in this category are intended to strengthen cooperation between the different law enforcement services (national and local police, customs, etc.) to promote the exchange of experience, to develop practical and operational projects and to improve practitioners' knowledge of the strategies and legislation in operation in the different European states.

Projects may also target the exchange of experience and practices between Member States, acceding and candidate countries and, where appropriate, certain other third countries. As a general rule, a project should include the various law enforcement authorities of the State where the applicant organisation is based and, as far as possible and depending on the topics dealt with, of other participating countries.

Topics

(a) Training in police and criminal investigation techniques, development of analytical techniques or methods in innovative or in highly specialised areas (NBCR risks, bank card fraud, synthetic drugs, identification of severely disfigured corpses, networked computer crime, etc.);

(b) operational training exercises serving identified requirements, so as to develop the ability of professionals to participate in operations conducted by law enforcement services from Member States and acceding countries; training connected with opening or developing joint police/customs posts at the frontiers or police/customs cooperation centres; production of bilingual or trilingual practical guides for law enforcement services in border areas and tourist locations;

(c) activities supporting and further developing the ability of Member States' and acceding countries' law-enforcement agencies to participate in joint investigation teams, as the Council Framework Decision of 13 June 2002 on joint investigation teams [7] should have been implemented by Member States before 1 January 2003;

(d) development of a joint programme of common specialist training for police and customs services with similar or complementary responsibilities and tasks;

(e) specialised training measures for customs officials exercising law-enforcement functions in the context of the cooperation set out in Title VI TEU;

(f) creation of ad-hoc multinational teams to gather information on terrorists;

(g) development of techniques for criminal and terrorist profiling with practical applications (for example in airports, railway stations and international ports) and exchanging the results; development of profiling techniques to identify natural or legal persons trafficking in prohibited goods, with a view to improving checks at external borders, ports and international airports;

(h) practical cooperation between forensic departments (e.g. setting-up methods for cooperation with forensic departments of other Member States known to have special expertise in a particular area, for the purpose of supporting crime investigation);

(i) development of IT tools to assist cooperation between the Member States in criminal investigations;

(j) improving cooperation between intelligence and law enforcement agencies in combating organised crime and terrorism, especially in the area of trafficking in high-risk goods, such as NRBC, explosives;

(k) stepping up cooperation between customs services in combating trafficking in illegal goods; joint customs surveillance operations (with possible participation by other law enforcement services and Europol); developing best practice in customs controls (e.g. producing practical guides and comparative analyses);

(l) assessment of the application of the Naples II Convention and distribution of the operational manual in electronic form and in all languages for the use of the law enforcement services;

(m) evaluation of the way the law enforcement services use EU instruments; identification and removal of obstacles to cooperation between law enforcement services in the area of combating organised crime;

[7] OJ L 162, 20.6.2002, p. 1.

(n) development of language and terminology training courses, including the development and testing of specialised modules for law enforcement agencies;

(o) comparative study of the powers of the different law-enforcement services in the Member States in the areas of police cooperation in criminal matters listed in Article 30 (a) and (b) TEU, with a view to identifying overlaps and other obstacles to more effective cooperation, both within and among Member States;

(p) exchanges of two to six months in one of the areas referred to above, where specific requirements are identified in the departments involved ([8]).

3. PREVENTING AND COMBATING ORGANISED CRIME; PARTNERSHIPS AND COOPERATION BETWEEN PUBLIC AUTHORITIES AND THE PRIVATE SECTOR

Scope

Projects in this category are intended to improve the response to certain types of crime through better knowledge of criminal circles and the techniques they employ; to improve the skills and operational methods leading to the arrest and punishment of the criminals; and to develop multidisciplinary cooperation ([9]) and cooperation between public authorities and the private sector.

These activities must involve practitioners and public authorities.

Topics

3.1. **Analysis of the effects of crime on economic development and measures to reinforce crime-prevention cultures**

(a) Analysis of the economic impact of organised crime and of the risk factors and vulnerability to penetration by organised crime in sectors of the legitimate economy, including an analysis of the types and causes of corruption in the public sector, identification of the companies most at risk, features of the labour market (informal work, underemployment, etc.), and the situation of the regions/economies concerned;

(b) introduction of instruments to prevent regional economies being penetrated by crime and the creation of regional platforms for universities, economic operators, public authorities and non-governmental organisations, with a view to improving awareness of these phenomena and developing means of preventing them;

(c) evaluation and dissemination of best practice as applied by economic and social development programmes (Structural funds, World Bank, etc.);

(d) developing strategies, methods and good practices to prevent and fight activities of organised criminal groups; dissemination of results and evaluation of means for replication, including support for the implementation of the Palermo Convention and its monitoring;

(e) analysis of links between organised crime networks and companies, public authorities, etc.;

(f) setting indicators and measuring changes in the level of harm caused by this crime;

(g) identifying organised criminal groups' take up of new technologies and expertise both to frustrate interception of communications and to branch into new crime areas.

3.2. **Trafficking in human beings and the sexual exploitation of children**

(a) Support for and protection of victims who cooperate with the authorities as witnesses;

(b) investigation techniques and procedures and types of evidence;

(c) research into and analysis of demand and ways of reducing it;

(d) coordination between police investigations and administrative control measures aimed at suspect organisations;

(e) involvement of enterprises such as employment organisations, marriage bureaux, travel, escort, au-pair or adoption agencies, in combating trafficking in human beings in order to facilitate appropriate penalties and administrative checks;

(f) measures in criminal law and appropriate penalties for trafficking in human beings and the sexual exploitation of women and children;

(g) reduction of security risks with regard to the activities of personnel from NGOs;

(h) awareness-raising initiatives in source, transit and destination countries.

3.3. **Measures to prevent and combat drugs trafficking** ([10])

(a) Developing measures to improve the effectiveness of the fight against drug trafficking, including trafficking in new synthetic drugs;

([8]) The Commission must be informed of the candidate profile, the qualifications, experience and knowledge of languages being sought, before candidates are selected. A detailed description of the work to be carried out should be enclosed with the grant application. Concerning the exchange of customs officers, the applicant is invited to consult also the Customs 2002 programme.

([9]) Priority will be given to multidisciplinary projects and to activities leading to realistic proposals for projects and to activities aimed at defining procedures and arrangements to promote cooperation between public and private-sector partners.

([10]) See also point III.4 — Crime prevention.

(b) strengthening measures and instruments for monitoring movements of chemical precursors from the pharmaceutical industry to the production of drugs in the Member States, the acceding and candidate countries and third countries;

(c) research into the links between drug trafficking and the funding of terrorism;

(d) research into the effectiveness of strategies for disrupting supplies to the drugs market.

3.4. **Firearms**

(a) Cooperation and exchange of information between the competent authorities of the Member States, acceding and candidate countries and/or third countries on the illegal firearms trade, taking into account the UN Protocol on the Illicit Manufacturing of and Trafficking in Firearms;

(b) training and handbook for employees of the law-enforcement and customs services on illegal trafficking in firearms;

(c) evaluation of existing tools and if necessary development of IT tools to encourage cooperation between the Member States in tracing firearms;

(d) a study of the threat that the illegal firearms trade represents for the European Union for preventing and fighting this phenomenon.

3.5. **Information and communication technology crime (ICT crime)**

(a) Enhancing the operational capacity of the law enforcement agencies to preventing and fighting ICT-related crime, particularly as regards information collection and specialised ICT-training;

(b) analysing the demand for and systems of emergency assistance in investigating ICT-crime, in particular on the necessary safeguards as concerns the collection of electronic evidence;

(c) identifying and using the results of successful pilot projects, in particular to develop a European manual for reporting ICT-attacks and criminal activities;

(d) cooperation in Member States, acceding, candidate and third countries on private-public partnership for exchange of experiences, as well as for the collection, the processing and the exchange of information on ICT-related crime;

(e) analysis of the current situation in respect of ICT-related crime and the requirements for the establishment of European guidelines for the Protection of the Information Infrastructure.

3.6. **Financial crime** [11]

(a) Identifying best practices and methodologies in financial fraud investigations;

(b) assessment of cooperation between financial intelligence units or law-enforcement agencies and the organisations required to report and to identify good practice;

(c) identifying scope for and means to prevent the misuse of charitable organisations and other non-profit bodies for purposes of financing terrorism or organised crime;

(d) identifying the distribution of money laundering risks across the financial services industry including the banking, insurance and stockbroking sectors. This would indicate vulnerabilities and measures to be taken to address these;

(e) developing methodologies and identifying best practices for financial investigations i.e. investigations which cover the economic, financial and fiscal aspects of crime;

(f) identifying the possible benefits of criminalising failure to report suspicious transactions including non-compliance with other aspects of anti-money laundering legislation;

(g) best practices in detection and reporting of suspicious transaction reports, including the contents of such reports, and best practices in provision of general and specific feedback to reporting bodies;

(h) identifying best practices and methodologies in intelligence-led law enforcement technique;

(i) identifying the obstacles and potential benefits to the introduction throughout the EU of liability for corporations on basis of (i) administrative liability and (ii) criminal liability as a generic sanction for financial crimes committed by corporations including breach of anti-money laundering rules;

(j) identifying best practice in police, administrative and judicial methods and procedures in the effective freezing and confiscation of assets derived from criminal activity, including the feasibility of national asset recovery bodies and the optimum remit and powers of these;

[11] Applicants are also invited to consider the possibilities offered by the financial aid programmes in the specific field of the protection of Community financial interests. See in particular the Hercules programme, to be adopted in 2004.

(k) comparative analysis and/or policy development on fiscal fraud as an instrument to finance organised crime activities, with specific focus on the identification of legal loopholes and scope for harmonisation in the legislation of Member States., i.a. with regards to penal sanctions in VAT fraud, the 'whole trader' approach in the area of assets tracing, freezing, seizure and confiscation.

3.7. **Corruption** ([12])

(a) Fighting and preventing corruption by developing standards of integrity in public administration, including law enforcement and judicial services, for example based on the resolution adopted by the EU heads of administration in Strasbourg in November 2000 or building upon GRECO recommendations; introducing and supporting integrity programmes and exchanges on the results of such programmes;

(b) creating multidisciplinary teams specialised in anti-corruption inquiries and monitoring procedures for awarding contracts;

(c) research into links between organised crime and corruption;

(d) assessment of the cost of corruption and the link between corruption and long-term development and the impact corruption has on it;

(e) assessment of risk factors for corruption on a large scale, particularly in situations of conflict of interests and influence-peddling between the public and the private sectors;

(f) assessment of specific legislative and technical measures to obtain proof more easily in cases of corruption;

(g) assessment of risk factors for corruption in political party funding and election campaigns;

(h) identifying best practice related to civil and other procedural remedies to obtain real redress for the victims of corruption practices.

3.8. **Counterfeiting** ([13])

(a) Raising awareness, information and training for practitioners in:

— infringements of intellectual property rights, counterfeiting of trade marks, software piracy; protection of the film and music industry,

— counterfeiting of products which poses a risk for the security of consumers (pharmaceutical products, industrial products, food, wine and spirits),

— counterfeiting ([14]) of means of payment;

(b) encouraging public-private partnerships for the exchange and processing of information on certain types of counterfeiting;

(c) sectoral pilot studies on ways of eliminating the risk of counterfeiting.

3.9. **Fight against criminal activities that threaten the environment**

(a) Improving cooperation between law enforcement services and other administrations, drawing on experiences in Member States, in fighting criminal activities that threaten the environment;

(b) developing investigation techniques and procedures and types of evidence in the field of criminal activities that threaten the environment, in particular pollution by ships.

3.10. **Illegal trade in cultural goods and stolen works of art**

Examining the obstacles to cooperation between the police, customs and other specialised law enforcement agencies in the Member States, the judicial authorities, the cultural authorities and other players, and the private sector, in the fight against the illegal trade in cultural goods and stolen works of art, including the problems caused by differences and shortcomings in national legislation and/or practices;

3.11. **Trafficking in human organs or tissues**

(a) Analysis of Member States' legislation and practices concerning the trade in tissues and cells of human origin; drafting of recommendations for combating illegal trafficking;

(b) analysis of recent developments in legislation and practice in the Member States, as regards trafficking in human organs;

(c) analysis of legislation and practices in acceding and candidate countries as regards trafficking in human organs;

(d) gathering of statistics and instances of trafficking in organs, tissues and cells of human origin in order to determine the nature of the channels used in the illegal trade and the extent to which the Member States are affected.

([12]) Applicants are also invited to consider the possibilities offered by the financial aid programmes in the specific field of the protection of Community financial interests. See in particular Hercules programme, to be adopted in 2004.

([13]) Applicants are reminded that counterfeiting is covered also under the 1st pillar of the Treaty and should be aware of the possibilities existing within the Customs 2002 programme to avoid duplication.

([14]) Applicants are also invited to consider the possibilities offered by the Pericles programme specifically adopted for the protection of the euro against counterfeiting.

4. CRIME PREVENTION

Scope

Projects in this category are intended to develop methods for identifying and exchanging best practice, as part of an analysis of prevention strategies and their impact, to improve the professional skills of the practitioners in the services concerned and to improve the response to certain types of crime by improving understanding of criminal circles and the techniques they use.

Topics

4.1. **Prevention policy**

(a) Examination of methods and procedures to implement best practice in crime prevention at European level; development of a common European inventory of priority sub-themes within the areas of urban crime, drug-related crime and juvenile delinquency, and, in this context, drawing up a list of best practices;

(b) research into the effects of crime prevention on the long-term development of regional and local economies;

(c) analysis and measurement of the effects of public-private partnerships on levels of crime at local/regional level and by sector of activity;

(d) development of a better understanding of conditions prior to the adoption of effective crime-prevention measures at national level;

(e) development of a conceptual model (which can be used for terminology and standard definitions, cooperation and the sharing of knowledge) for organising descriptions of know-how in the field of crime prevention;

(f) research into the circumstances and structural opportunities in the existing legislative and administrative environments with a view to crime prevention; research into methods of identifying and detecting risks and gaps in the law in new legislative proposals and in the instruments associated with them;

(g) study of cultural differences in the Member States on causalities and responsibilities with regard to crime prevention and differences in approach.

4.2. **Preventing urban crime**

(a) Analysis of the role of the business world in the field of crime prevention and how it could be developed (i.e. public-private partnerships in controlling and preventing crime);

(b) research into workplace violence and strategies to prevent it and to increase the personal safety of employees;

(c) developing new prevention strategies in response to social change and the changing nature of crime; designing new approaches to crime and crime prevention to deal with developments in the future;

(d) systematic integration of design features in new products to make them less susceptible to crime;

(e) analysis of developments and trends in the field of public and private crime control and their respective roles in crime prevention at European level;

(f) analysis of the impact of urban planning and renovation policies.

4.3. **Preventing drug-related crime**

(a) Examination of drug use among arrestees brought into police stations (arrestee drug abuse monitoring);

(b) research into the costs of drug-related crime by type of crime (e.g. acquisitive crime);

(c) an overview of the effectiveness of harm-reduction programmes in order to reduce the probability of drug-related crimes;

(d) an overview of the effectiveness of substance-abuse education programmes for young people.

4.4. **Preventing juvenile delinquency**

(a) Meta analyses of the economic value of early prevention programmes to promote the use of early intervention schemes for children to prevent future offending behaviour;

(b) analysis of the quantitative development of (criminal) victimisation as well as delinquent behaviour of second and third generation immigrants at European level;

(c) analysis of the gender dimension in juvenile delinquency.

5. PROTECTION OF VICTIMS' INTERESTS

Scope

Projects in this category are intended to improve the professional skills of practitioners in the services concerned and to strengthen cooperation between public authorities and between them and the private sector.

Topics

(a) Public information on access to justice and monitoring proceedings;

(b) raising legal practitioners' awareness of victims' rights;

(c) information and training for law enforcement services on understanding the victim's situation and the use of appropriate techniques for conducting inquiries and collecting evidence;

(d) structures for assisting the victims of crime;

(e) mediation policies.

6. CRIME-PROOFING AND RISK ANALYSIS; COMPARABILITY AND CIRCULATION OF INFORMATION — STATISTICS

Scope

Projects in this category are intended to develop methodologies and instruments for analysing the susceptibility of proposed policies and measures to crime, to determine the technical and legal feasibility of regulations and standards for the collection, analysis and use of general or specific data required by the police services, the courts or other public or private partners associated with the prevention of certain types of crime.

Topics

6.1. **Crime-proofing and risk assessment**

(a) Assessing the threat of crime and discussion of mechanisms to help Member States and the Commission focus their activities in this area;

(b) analysis to establish methodologies and formulas for assessing the risks and opportunities which proposed legislation and policy initiatives may represent for organised crime. This may include a methodology for establishing a cost-benefit analysis of proposals;

(c) reinforcing threat assessment mechanisms at EU level in the area of cybercrime:

— analysis of the current situation and evaluation of existing data at national, EU, regional and international levels,

— a feasibility study on setting up an EU correspondents' system as a basis for an EU monitoring and benchmarking mechanism,

— using the results of research and technological development programmes in the area of statistical analysis; improving the quality of statistics on computer-related crime through the comparability of data and indicators, including the use of private-sector statistics,

— designing a standard tool for the analysis of costs and benefits of deploying specific measures, given the potential security risk that information management poses for the police and national ministries;

(d) analysis of long-term threats, including likely future trends as regards organised crime;

(e) analysis of logistics of organised crime to obtain a better understanding of criminal strategies and tactics;

(f) analysis of the feasibility of methodologies for the computer industry or specific areas to develop crime-proofing of products, including crime impact assessment, predictors of criminal behaviour and the introduction of systematic features to protect against crime in the development of new products;

(g) studying the challenges of organised crime through the development of national forums to assess the threats, exchange best practice, carry out national and cross-border research, define priorities for protecting (crime-proofing) against crime and terrorism; assessing the feasibility and added value of such forums.

6.2. **Comparability and circulation of information and intelligence — Statistics**

(a) Developing an EU policy on data collection for the police and criminal investigations:

— redefining what constitutes relevant data; use of data from external sources; better exploitation of internal data through enhanced database networking and centrally coordinated data monitoring,

— content, functioning, organisation, storage and exchange of data held by European and international law enforcement information systems and related questions such as central/decentralised organisation of computer and data exchange systems,

— establishing guidelines for setting up law enforcement information systems, technical standards for the equipment and methods of data analysis,

— feasibility study on the legal, operational, financial and technical aspects of information collection and exchange of information and intelligence between the police forces of the Member States;

(b) feasibility studies on the harmonisation/integration of EU law enforcement databases;

(c) elaboration of a comprehensive approach to the production of criminal statistics and indicators, taking into account work done by Eurostat;

(d) harmonisation of national statistics on crime and victims of crime.

B. *SPECIFIC PROJECTS AND COMPLEMENTARY MEASURES (PROJECTS QUALIFYING FOR FUNDING OF UP TO 100 %)*

Specific projects and complementary measures differ from ordinary projects in content and because they can be co-financed up to 100 %.

The maximum grant proposed for specific projects in 2004 is EUR 1 447 000 and for complementary measures EUR 723 500. Projects belonging to these categories cannot contain 'indirect costs' and the costs accepted for the general coordination, organisation and management of the project are limited to 5 % of the total eligible costs.

Scope

The specific projects and complementary measures identified by the Commission for 2004 relate to the topics indicated below with reference to the description made in Section III of this call for applications.

Unless stated otherwise, the type of projects that may be carried out may cover all types of projects as described in Section II.1.

1. SPECIFIC PROJECTS

To be eligible specific projects must include partners in a minimum of seven countries (eight including the promoter, Member States or acceding countries); financing should be limited to external expenses (subsistence and travel expenses), expenses connected with the preparation, running and conclusions to be drawn from these activities. The applicant shall indicate reasons why a financing from other sources is not possible for such activities.

The activities and areas that qualify for funding under the heading of specific projects are the following:

— operational exercises in the field of police cooperation,

— joint custom surveillance operations,

— cooperation projects between police and judicial authorities established in Euroregions,

— development of techniques for criminal profiling,

— development of practical cooperation of scientific police services,

— comparative study on responsibilities of Member States and acceding countries in cases of miscarriage of justice, acquittal or where the case is dropped. This study shall cover all Member States and acceding countries.

2. COMPLEMENTARY MEASURES

The following activities are regarded as priorities for 2004:

(a) optimising the results achieved under previous Title VI programmes;

(b) aid for translating documents presenting good practices, based on an evaluation of such practices or statistics measuring their impact;

(c) adapting manuals on cooperation procedures and practices, used by the national authorities of another Member State to the needs of a Member State and/or an acceding country, subject to prior assessment of their quality;

(d) study of the networks, databases, information sites and structures operating in the field of the prevention of human trafficking, in order to identify targets, areas of complementarity or duplication, and practical results.

IV. **PRIORITIES OF THE PROGRAMME IN 2004**

The proposals corresponding to the specific topics mentioned in Section 3 will benefit from extra points (priority points) when:

— they associate and reinforce cooperation with the acceding countries in order to facilitate their integration and the implementation of the 'acquis communautaire',

— they contribute to strengthening stability and the safety of the Union (and the fight against crime), in particular:

  — proposals which can cope with international challenges in the area of organised crime and terrorism, including financing of terrorism,

  — proposals for operational training activities,

  — proposals directly connected with the implementation of EU legislative acts.

V. **EVALUATION CRITERIA FOR PROPOSALS**

1. CRITERIA AND ELIGIBILITY

To be eligible, a grant application must meet the following criteria:

— it must relate to one of the specific objectives of the AGIS programme,

— it must involve at least three partners (the applicant plus two others) based in three different Member States (or in two Member States and one acceding country); it must be submitted using the grant application form made available by the Commission in electronic format; no other form will be accepted; all sections of the form must be completed,

— it must meet the formal requirements and be accompanied by all the documents listed in Section VII,

— it must submit a budget in euro, balanced in income and expenditure, in which the amount of Community funding requested may not exceed 70 % of the cost of the project; it must include a minimum contribution of 30 % of the total cost of the project (from the applicant, partners, other sponsors and revenue) except in the case of specific projects and complementary measures,

— it must meet the following conditions:

  — the project must not last more than two years,

  — the project cannot already be completed and it must begin between 1 July 2004 and 31 December 2004 (except for customs operations, which may begin on 1 May 2004).

2. EXCLUSION CRITERIA

Candidates shall be excluded from participating in this call for proposals if:

— they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations,

— they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*,

— they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify,

— they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed,

— they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests,

— following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations,

— they are subject to a conflict of interest,

— they are guilty of misrepresentation in supplying the information required or fail to supply this information.

3. SELECTION CRITERIA

The following elements will be examined:

— the applicant's operational and professional capability to implement the proposed project, including evidence of its know-how and that of its partners to complete the project and to access the information or participants as planned,

— the applicant's financial capability.

Only proposals which meet the above selection criteria will be examined in detail.

4. AWARD CRITERIA

Proposals will be assessed by the evaluation committee, on the basis of the following criteria:

— conformity with the programme's objectives (A),

— whether the project has a European dimension and is open to participation by the acceding and candidate countries (B),

— compatibility with work undertaken or planned under the EU's policy priorities in the field of judicial cooperation on general and criminal-law matters (C),

— complementarity with other past, present or future activities (D),

— ability of the organiser to implement the project (E),

— the inherent quality of the project in terms of its conception, organisation, presentation and expected results (F),

— the amount of the subsidy requested under the programme and whether it is proportionate with the expected results (G),

— short-term results and impact in the medium-term (H).

Proposals will be ranked on the basis of points. The maximum allocation of points for each of the above criteria is described below.

Criterion	Maximum number of points
A	5
B	15
C	10
D	5
E	15
F	35
G	5
H	10

A maximum of five priority points may also be added in accordance with Section IV.

VI. INDICATIVE DISTRIBUTION FOR THE 2004 BUDGET

The financial reference amount for the AGIS programme in the period 2003-2007 is EUR 65 million. The proposed budget for 2004 is EUR 15 270 000, of which 14 470 000 for project grants, 400 000 for the operating grants and 400 000 for evaluation.

Type of project	Maximum indicative amount
Projects qualifying for funding of up to 70 %	12 299 500
Specific projects	1 447 000
Complementary measures	723 500
TOTAL	14 470 000

VII. PRACTICAL INFORMATION ABOUT SUBMITTING AN APPLICATION

Applications must be submitted with the application form and model forward budget which are available on the Europa website:

http://europa.eu.int/comm/justice_home/jai/prog_en.htm

The applicant must fill in the fields indicated and send back the document on a diskette or CD-ROM and in three paper copies.

Applications submitted on an application form that has been altered or used before, as well as forms completed by hand, will be disqualified.

1. DOCUMENTS TO BE SUBMITTED

The following documents must be submitted in triplicate:

— the application form, duly completed, dated and signed by the person authorised to enter into legally binding commitments on behalf of the applicant; the applicant may wish to transmit a translation of his application in another language,

— a timetable for implementation of the project,

— a forward budget, dated and signed, presented on the standard budget form for the programme, including a detailed breakdown of expected expenditure and revenue (the relevant budget form can be found on the Commission's website),

— declarations by partners, standard forms for which can be found on the JAI-AGIS site.

A single copy of the following documents is required:

— the financial identification form, dated and signed, and signed and stamped by the bank concerned,

— the latest financial statements (balance sheet, profit and loss account), including audited accounts where available (not requested from public authorities and bodies),

— an external audit report if the amount of grant awarded exceeds EUR 300 000.

In the case of an association (NGO),

— the applicant organisation's annual activity programme for 2004 describing the planned activities in detail,

— a report or description of the activities carried out or being carried out by the organisation in 2001 and 2002,

— an organisation chart and a description of the tasks of the staff, including the CVs of staff members responsible for carrying out the activities,

— evidence of legal status, including articles of association,

— the forward budget for 2004 showing a detailed breakdown of the association's expected expenditure and revenue.

In the case of a university or university department, evidence that the applicant can enter into financial commitments on behalf of the university.

Applicants are free to provide any other documentation which they consider appropriate in support of their application.

2. DEADLINE FOR SUBMITTING APPLICATIONS

Applications must be received in a sealed envelope by registered mail, by express messenger or by hand-delivery (a signed and dated certificate of receipt will be given to the deliverer) to the address indicated below:

Postal address

European Commission
Directorate-General Justice and Home Affairs
Unit B5: Management of Title VI programmes (Treaty on European Union)
AGIS 2004 — Call for proposals
Office LX-46 3/159
B-1049 Brussels

Address for hand delivery

European Commission
Directorate-General Justice and Home Affairs
AGIS 2004 — Call for proposals
Office LX-46 3/159
Mail Department
Rue de Genève 1
B-1140 Brussels-Evere

Applications must be:

— either by registered mail, posted not later than 13 February 2004 (postmark),

— or by hand-delivery (in person or by an authorised representative or private courier service) not later than 13 February 2004 at 15.00 (Brussels time), in which case a receipt must be obtained as proof of submission, signed and dated by the official who took delivery.

Any application received after the deadline will be automatically rejected.

3. ACKNOWLEDGEMENT OF RECEIPT

Following the opening of proposals, the Commission will send an acknowledgement of receipt to all applicants, indicating whether or not the application was received prior to the deadline and informing them of the reference number of their application.

VIII. **FURTHER INFORMATION**

Applicants are invited to consult the 'Guide for the AGIS programme' at the following address:

http://europa.eu.int/comm/justice_home/jai/prog_fr.htm

Questions may be sent by e-mail or by fax to the address or number listed below, indicating clearly the reference of the call for proposals:

E-mail address: JAI-AGIS@cec.eu.int
Fax (32-2) 299 82 15.

In addition, the European Commission has the task of promoting equality between women and men and must aim in all its activities to eliminate gender inequalities (Articles 2 and 3 of the EC Treaty). In this context, women are particularly encouraged either to submit proposals or to be involved in their submission. As regards studies or research projects, the Commission would also like to draw your attention to the importance of a systematic breakdown by sex of all statistics used and of an analysis of the potentially different impact of policies on men and women, even if they appear at first sight to be gender neutral.

1. EXAMINATION OF APPLICATIONS

The Commission may contact applicants to request additional information at any time prior to taking its final decision. Failure to respond to such requests by the deadline set may lead to disqualification of the application. Applicants must take the necessary steps to ensure that they can be contacted rapidly up to the end of the selection process. Where the Commission contacts an applicant, this does not in any way constitute or reflect a pre-selection of the proposal on the part of the Commission.

The evaluation committee expects to complete its work by the end of April 2004. It will then consult the committee of representatives of the Member States set up by the Decision establishing the programme.

The Commission will take its decision on the pre-selection and all applicants will be informed in writing of the outcome as concerns their application no later than 30 June 2004.

The Commission will not give any pre-information to applicants concerning the outcome of the selection before the final decision has been made.

As concern projects submitted by organizations from the countries acceding to the European Union in 2004 and projects involving such countries to meet the criteria on the number of Member States involved, the decision will only become final once actual accession has taken place.

For beneficiaries of a grant agreement under this programme, a pre-financing payment of 60 % will be issued after the signature of the grant agreement by both parties. The exact calculation of the final amount of the subvention will be done when the project has ended on the basis of supporting documents provided by the beneficiary.

2. EX-POST PUBLICITY

All grants awarded in the course of a financial year must be published on the Internet site of the Community institutions during the first half of the year following the closure of the budget year in respect of which they were awarded. The information may also be published by any other appropriate medium, including the *Official Journal of the European Union*. The following will be published with the agreement of the beneficiary:

(a) the name and address of the beneficiaries;

(b) the subject of the grant;

(c) the amount awarded and the rate of funding of the costs of the project or approved work programme.

The European Commission may waive the above obligations if publication of the information could threaten the safety of the beneficiaries or harm their business interests.

Beneficiaries of grants must clearly display acknowledgement of the support received from the EU.