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### Information and Notices

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## I

(Information)

## COMMISSION

Euro exchange rates <sup>(1)</sup>

13 January 2006

(2006/C 9/01)

1 euro =

Currency	Exchange rate	Currency	Exchange rate		
USD	US dollar	1,2039	SIT	Slovenian tolar	239,49
JPY	Japanese yen	138,13	SKK	Slovak koruna	37,520
DKK	Danish krone	7,4592	TRY	Turkish lira	1,6160
GBP	Pound sterling	0,68140	AUD	Australian dollar	1,6040
SEK	Swedish krona	9,3063	CAD	Canadian dollar	1,3972
CHF	Swiss franc	1,5491	HKD	Hong Kong dollar	9,3316
ISK	Iceland króna	74,01	NZD	New Zealand dollar	1,7344
NOK	Norwegian krone	8,0475	SGD	Singapore dollar	1,9648
BGN	Bulgarian lev	1,9558	KRW	South Korean won	1 189,03
CYP	Cyprus pound	0,5737	ZAR	South African rand	7,3170
CZK	Czech koruna	28,840	CNY	Chinese yuan renminbi	9,7144
EEK	Estonian kroon	15,6466	HRK	Croatian kuna	7,3750
HUF	Hungarian forint	250,51	IDR	Indonesian rupiah	11 282,95
LTL	Lithuanian litas	3,4528	MYR	Malaysian ringgit	4,502
LVL	Latvian lats	0,6960	PHP	Philippine peso	63,072
MTL	Maltese lira	0,4293	RUB	Russian rouble	34,3200
PLN	Polish zloty	3,8138	THB	Thai baht	47,643
RON	Romanian leu	3,6308			

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

**Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty**  
**Cases where the Commission raises no objections**

(2006/C 9/02)

**Date of adoption of the decision:** 2.6.2004

**Member State:** Germany (Schleswig-Holstein)

**Aid No:** N 9/2004

**Title:** Aid for destruction of carcasses

**Objective:** to compensate livestock farmers for the disposal of fallen stock at farm level

**Legal basis:**

— Richtlinien für die Gewährung von Beihilfen für die Tierkörperbeseitigung (VIII 35 — 7280.321)

— § 9, Abs 1 n. 7 'Ausführungsgesetz zum Tierkörperbeseitigungsgesetz' (GVObl. Schl. H.S.)

**Budget:** EUR 5,5 million per year

**Aid intensity:** 100 %

**Duration:** until 2013

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/](http://europa.eu.int/comm/secretariat_general/sgb/state_aids/)

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

**Cases where the Commission raises no objections**

(2006/C 9/03)

(Text with EEA relevance)

**Date of adoption of the decision:** 3.8.2004

**Member State:** Netherlands

**Aid No:** N 127/2004

**Title:** Promotional measures for plaice

**Objective:** Financing for promotional measures for plaice through parafiscal charges

**Legal basis:**

- Instellingsverordening Productschap Vis
- Wet op de bedrijfsorganisatie
- Verordening instelling van een fonds voor scholpromotie en verordening financiering scholpromotie 2004

**Budget:** EUR 200 000 per year

**Duration:** Unlimited (the scheme will be notified again to the Commission not later than 10 years following its entry into force)

**Rate of aid/amount:** Within the limits laid down in the Guidelines for the examination of State aid to fisheries and aquaculture (OJ C 19, 20.1.2001, p. 7)

**Other details:** 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/](http://europa.eu.int/comm/secretariat_general/sgb/state_aids/)

**Date of adoption:** 7.10.2005

**Member State:** Spain (Principado de Asturias)

**Aid No:** N 173/2005

**Title in original language:** Proyecto de ayudas para la ejecución de proyectos de investigación del Plan I+D+I de Asturias. Prolongación y modificación de la ayuda N 716/2001

**Objective:** Research and development (All sectors)

**Legal basis:** Propuesta de Resolución de la Consejería de Educación y Ciencia del Gobierno del Principado de Asturias, de marzo de 2005, por la que se convocan ayudas a las empresas para la ejecución de proyectos de investigación en el marco del Plan de I+D+I de Asturias

**Budget:**

2005: 300 000 EUR

2006: 3 000 000 EUR

2007: 3 000 000 EUR

**Aid intensity or amount:** 35 % — 60 % — +10 % — 75 % — 50 %

**Duration:** 31.12.2007

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/](http://europa.eu.int/comm/secretariat_general/sgb/state_aids/)

**Date of adoption:** 13.10.2005

**Member State:** Denmark

**Aid No:** N 229/2005

**Title in original language:** Regionale Teknologicentre

**Objective:** Research and development (All sectors)

**Legal basis:** Lov nr. 419 af 6.6.2002

**Budget:**

2005: 4 000 000 EUR

2006-2008: 23 000 000 EUR

2009: 25 000 000 EUR

**Maximum aid intensity:** 60 %

**Duration:** 31.12.2009

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/](http://europa.eu.int/comm/secretariat_general/sgb/state_aids/)

**Date of adoption of the decision:** 24.8.2005

**Member State:** Slovak Republic

**Aid No:** N 298/2005

**Title:** Individual aid for audiovisual production in favour of TYZAM s.r.o.

**Objective:** support of film production

**Legal basis:**

- a) Zákon č. 523/2004 Z.z. o rozpočtových pravidlách verejnej správy a o zmene a doplnení niektorých zákonov
- b) Zákon č. 231/1999 Z.z. o štátnej pomoci v znení zákona č. 203/2004 – § 4 ods. 1, písm. d)
- c) Výnos MK SR – 480/2004 – 1 o poskytovaní dotácií v pôsobnosti MK SR

**Budget:** SKK 7 million

**Aid intensity or amount:** 20 %

**Duration:** ne-off measure after approval (31.12.2005)

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/](http://europa.eu.int/comm/secretariat_general/sgb/state_aids/)

**Date of adoption of the decision:** 24.8.2005

**Member State:** Slovak Republic

**Aid No:** N 299/2005

**Title:** Individual aid for audiovisual production in favour of TaO Productions s.r.o.

**Objective:** support of film production

**Legal basis:**

- a) Zákon č. 523/2004 Z.z. o rozpočtových pravidlách verejnej správy a o zmene a doplnení niektorých zákonov
- b) Zákon č. 231/1999 Z.z. o štátnej pomoci v znení zákona č. 203/2004 – § 4 ods. 1, písm. d)
- c) Výnos MK SR – 480/2004 – 1 o poskytovaní dotácií v pôsobnosti MK SR

**Budget:** SKK 8 million

**Aid intensity or amount:** 10 %

**Duration:** one-off measure after approval (31.12.2005)

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/](http://europa.eu.int/comm/secretariat_general/sgb/state_aids/)

**Date of adoption of the decision:** 24.8.2005

**Member State:** Slovak Republic

**Aid No:** N 300/2005

**Title:** Individual aid for audiovisual production in favour of ALEF Film& Media Group, s.r.o.

**Objective:** Support of film production

**Legal basis:**

- a) Zákon č. 523/2004 Z.z. o rozpočtových pravidlách verejnej správy a o zmene a doplnení niektorých zákonov
- b) Zákon č. 231/1999 Z.z. o štátnej pomoci v znení zákona č. 203/2004 – § 4 ods. 1, písm. d)
- c) Výnos MK SR – 480/2004 – 1 o poskytovaní dotácií v pôsobnosti MK SR

**Budget:** SKK 11 million

**Aid intensity or amount:** 26,2 %

**Duration:** one-off measure after approval (31.12.2005)

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/](http://europa.eu.int/comm/secretariat_general/sgb/state_aids/)

**Date of adoption of the decision:** 16.12.2004

**Member State:** France

**Aid No:** N 337/2004 and N 378/2004

**Title:** Financing by taxes and budget appropriations of industrial technical centres (CTI) and vocational economic development centres (CPDE)

**Objective:** Joint R&D measures, standardisation, training, promotion and information for firms in the engineering, consumer goods and building materials sectors

**Legal basis:** Loi 2001-692 du 1<sup>er</sup> août 2001 et loi de finance annuelle

**Duration:** From the date of authorisation by the Commission until 31 December 2010

**Other information:** Beneficiary: CTI & CPDE in the consumer goods, engineering and building materials sectors

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/](http://europa.eu.int/comm/secretariat_general/sgb/state_aids/)

**Date of adoption of the decision:** 10.9.2002

**Member State:** Denmark

**Aid No:** N 374/2002

**Title:** Aid for facilities at fishing ports granted as part of Community structural measures covered by the FIFG for 2000-06

**Objective:** To co-finance structural assistance for facilities at fishing ports in Denmark for the period 2000-06

**Legal basis:**

- Lov nr. 316 om strukturforanstaltninger, offentliggjort den 3. maj 2001
- Rådets forordning (EF) nr. 2792/1999 af 17. december 1999 om de nærmere regler og betingelser for Fællesskabets strukturforanstaltninger for fiskeriet

**Budget:** EUR 27 million

**Duration:** 2000-2006

**Aid intensity and amount:** Within the limits laid down in Regulation (EC) No 2792/1999

**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/](http://europa.eu.int/comm/secretariat_general/sgb/state_aids/)

**Date of adoption:** 23.11.2005

**Aid No:** N 465/2005

**Member State:** Koninkrijk der Nederlanden

**Title:** Ondersteunende maatregelen om de omschakeling te vergemakkelijken van een aanbod- naar een vraagfinanciering voor schoolbegeleidingsdiensten en rechtstreekse betaling van het geoormerkt gedeelte van de begroting voor schoolbegeleidingsdiensten aan deze diensten

**Legal basis:** Hoofdstukken VI en VIA, onderdeel a) van de wet tot wijziging van onder meer de wet op het primair onderwijs, de wet op de expertisecentra, en de wet op het voortgezet onderwijs in verband met de vraagfinanciering voor schoolbegeleiding en de bekostiging van het onderwijs aan zieke leerlingen

**Objective:** Training

**Overall aid amount granted:** EUR 53 million

**Annual expenditure planned:**

2006: 15 000 000 EUR

2007: 35 000 000 EUR

2008: 3 000 000 EUR

**Duration:** 1.1.2006 — 31.12.2008

**Other information:**

Type of measure: scheme

Form of aid: direct grants

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/](http://europa.eu.int/comm/secretariat_general/sgb/state_aids/)

**Date of adoption of the decision:** 2.2.2005

**Member State:** Spain

**Aid No:** N 499/2004

**Title:** Aid scheme to promote mining exploration, environmental protection and mining safety in the field of non-energy-generating ores

**Objective:** Non-energy-generating ores. Amendment of the scheme approved by the Commission on 19 June 2002. The changes relate to the form and intensity of the aid for mineral exploration, with the aim of making this activity more attractive

**Aid intensity or amount:** Aid for exploration: outright grant covering up to 20 % of eligible costs (30 % in the case of SMEs) and/or an interest-free repayable advance covering up to 60 % of eligible costs (70 % in the case of SMEs)

**Duration:** 31 December 2006

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

[http://europa.eu.int/comm/secretariat\\_general/sgb/state\\_aids/](http://europa.eu.int/comm/secretariat_general/sgb/state_aids/)

**Date of adoption of the decision:** 20.4.2005

**Member State:** Germany

**Aid No:** NN 44/2004

**Title:** Rescue Aid to SVZ Schwarze Pumpe

**Objective:** Rescue aid

**Legal basis:** §2(3) Förderbankgesetz

**Amount:** EUR 21,028 million

**Duration:** Until 31.5.2005

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/](http://europa.eu.int/comm/secretariat_general/sgb/state_aids/)

**STATE AID — UNITED KINGDOM****State aid C 45/2005 (ex N 364/2005) — Waste and Resource Action Programmes: aid for Printings and Writings paper reprocessing capacity****Invitation to submit comments pursuant to Article 88(2) of the EC Treaty**

(2006/C 9/04)

(Text with EEA relevance)

By means of the letter dated 7 December 2005 reproduced in the authentic language on the pages following this summary, the Commission notified the United Kingdom 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 within one month of the date of publication of this summary and the following letter, to:

European Commission  
Directorate-General for Competition  
State Aid Greffe  
SPA 3, 6/05  
B-1049 Brussels  
Fax (32-2) 296 12 42

These comments will be communicated to the United Kingdom. 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 July 2005, the United Kingdom notified to the Commission an investment aid scheme for increasing the manufacturing capacity of printing and writings paper from recycled fibre.

that go beyond the state of the art. The expected budget of the scheme is between GBP 6 million and GBP 20 million. Since the tender process will determine the aid levels, the intensities of aid are not known yet. The expected beneficiaries are less than ten paper manufacturers. The UK authorities expect to grant the aid before April 2006.

**1. Description of the measure**

Waste paper from offices is not collected and recycled in the United Kingdom. In order to deal with this deficit, the government body responsible for the Waste & Resources Action Plan (WRAP) intends to tender grants to paper mills. The grants will stimulate the demand for collection of waste paper from offices by co-funding an increase of printing and writing paper (P&W paper) recycling capacity by the paper mills. In exchange for the aid, the paper companies have to agree on using an increased amount new waste paper newly recovered from the waste stream, with a minimum percentage or tonnage of recovered P&W waste paper from offices. To make the best use of the collected P&W waste paper, the increased papermaking capacity will be used to manufacture new P&W paper.

The tender will take into account the inclusion of elements of new technology, demonstration and innovation that will assist the development of sustainable processes in waste recycling, i.e.

**2. Assessment of the measure**

As regards the Environmental aid guidelines<sup>(1)</sup>, the Commission has doubts that the scheme falls under point 29 of the guidelines, as the investments in new paper production capacity that use paper waste will not reduce pollution from own firms. The beneficiaries will rather use paper waste that originates from *any* paper producer.

As regards other rules than the environmental guidelines, the Commission has doubts that other exemptions set out in Article 87(2) and (3) of the EC-Treaty are applicable. However, the beneficiaries have not been chosen yet, and therefore it is impossible to assess if the investments will take place in areas eligible for regional aid and that the Guidelines on national regional aid<sup>(2)</sup> would apply wholly or in part.

<sup>(1)</sup> OJ C 37, 3.2.2001, p. 3.

<sup>(2)</sup> OJ C 74, 10.3.1998, p. 9.

Should the Environmental aid guidelines not be applicable, the Commission has to assess directly on the basis of Article 87(3)(c). The Commission has done so in the past, notably for a recycling scheme<sup>(3)</sup> and two other cases in the paper industry.<sup>(4)</sup> The criteria applied by the Commission were based on the incentive effect of the aid and whether the necessary investments to obtain the environmental benefits were going beyond the 'state of the art' at EU level.

In other cases where the Commission has assessed investment aid to create capacity to reprocess paper, the criteria applied by the Commission were based on the incentive effect of the aid and whether the necessary investments to obtain the environmental benefits were going beyond the 'state of the art' at EU level. The Commission has doubts that the justification used by the UK authorities that the current very low utilisation of recycled content in the production of P&W papers in the EU is enough to state that manufacturing P&W paper using recycle fibre goes beyond the current 'state of the art' in the EU.

The Commission has doubts about the incentive effect in the collection of P&W waste paper of the scheme.

The Commission also has doubts about the increase environmental benefits of manufacturing P&W papers from P&W waste paper in relation to the more common approach of using P&W waste paper to manufacture other types of paper.

The Commission furthermore doubts whether the eligible costs will be confined to the extra investment costs necessary to meet the environmental objectives, because the UK does not intend to subtract from the eligible investment cost the investment cost of a comparable capacity that would not bring the same environmental benefit. Therefore, it is not clear whether when aid is given for an investment in new P&W paper capacity using P&W waste paper, that the cost of a conventional P&W paper plant will be subtracted.

Finally, the Commission doubts whether the measure proposed by the UK is the least distortive instrument to address the problem at stake. Other instruments, e.g. instruments that focus on the collection, may less distort the markets of waste paper and end products.

<sup>(3)</sup> OJ L 102, 7.4.2004, p. 59. The UK recently notified an extension and prolongation of this scheme, which is currently under assessment.

<sup>(4)</sup> OJ L 314, 28.11.2003, p. 26 and OJ L 53, 26.2.2005, p. 66 respectively. The criteria used in these cases are also commented upon in the Annual Competition report of 2004.

### 3. Conclusion

In the light of the foregoing considerations, the Commission decided to initiate the proceedings according to Article 88(2) of the EC Treaty. Interested parties are invited to submit their comments, in particular as regards (1) what should be considered to be the 'state of the art' when using (P&W) waste paper in the production of new P&W-paper, (2) the necessity of the aid in the light of the expected increase of collection rates of waste P&W paper, (3) the degree of distortion of competition that can be expected, both in the markets for new paper as in the markets for waste paper, and (4) the environmental benefits that can be expected from the notified measure compared to benefits that can be obtained by other instruments.

#### TEXT OF LETTER

The Commission wishes to inform the United Kingdom that, having examined the information supplied by your authorities on the aid referred to above, it has decided to initiate the procedure laid down in Article 88(2) of the EC Treaty.

### 1. PROCEDURE

- (1) Following informal discussions, by letter of 22 July 2005, registered in the Commission on 26 July 2005 under number A/6948, the United Kingdom notified to the Commission a scheme for increasing the manufacturing capacity of printing and writings paper from recycled fibre under the Waste and Resources Action Programme (WRAP). The notification was registered under number N 364/05. The Commission asked further information by letter dated 9 September 2005, registered under number D/56952. The United Kingdom replied by letter dated 28 October 2005, and registered on 7 November 2002 under number A/38954.

### 2. DESCRIPTION OF THE MEASURE

- (2) WRAP is an entity established to promote sustainable waste management, and more specifically to promote efficient markets for recycled materials and products. Its central objective is to enable recycled markets to function more effectively by stimulating demand for recycled materials and products, thereby improving the economics of collection. Although WRAP functions as an adjunct to the Government and implements government policies, it has the form of a private company. WRAP's shareholders comprise several representatives of the industries with some interests in waste management, among them the Confederation of Paper Industries and the Chartered Institute of Waste Management, charities like Wastewatch, and representatives of the devolved and British governments.
- (3) In the present case, WRAP has chosen to give support for the creation of printing and writing reprocessing capacity. The definition of printing and writing paper used by the UK authorities includes the following types of papers: paper for printed publications, copier/printer paper and magazine papers.



- (4) By increasing reprocessing capacity of printing and writing paper (hereinafter "P&W paper"), WRAP wants to address the problems of paper collection and recycling in offices and business. According to the United Kingdom most of the paper produced by businesses and offices is not collected and sorted for recycling. The reasons for this lie in a dual system of waste collection, where city councils are responsible for collecting domestic waste but have no responsibility for collecting waste from businesses and offices, and the low costs of landfill. Businesses and offices pay private waste managers for the collection of their waste. The low costs of landfill, the difficulties experienced in sourcing waste paper in the last decade, and attendant price fluctuations has led to a market failure consisting of a shortage of reprocessing capacity and a preference by waste managers to dump waste paper from offices and businesses in the landfill and to a shortage of reprocessing capacity. In order to correct this market failure, WRAP intends to offer grants to paper manufacturers to increase paper reprocessing capacity which utilises waste paper from offices and businesses as its raw material input.
- (5) WRAP is planning to issue a competitive tender process, inspired by EC public procurement procedures, and grant the aid to paper mills before April 2006. The specific aim expressed in the tender procedure will be to provide a subsidy towards the creation of new P&W paper reprocessing capacity and promote the development of recycled paper technology within this paper grade. Successful bidders will be those whose collections are predominantly from offices and business and are of P&W waste paper. According to the UK authorities, it is highly probable that a bid that included a high proportion of (low quality) household waste, rather than P&W waste paper from offices and/or businesses, will not succeed. According to the order of priority given by WRAP in the tender invitation document to raw material sources, the most important source is offices or business. In return to the grant, the successful paper manufacturers will commit to an increased agreed tonnage of P&W waste paper newly recovered from the waste stream as the raw material for the new facilities, with a minimum percentage or tonnage being recovered printing and writing paper from offices. Tenderers will need to specify the level of support required to bring forward their proposals, and to demonstrate technological developments and environmental benefits.
- (6) Among the criteria for the selection of the successful tenderers is the inclusion in the facility of elements of new technology or processes, whose trialling or demonstration will assist the development of sustainable processes in waste recycling. In addition, the demonstration by the tenderer that the process used goes beyond current "state of the art".
- (7) According to the United Kingdom, the competitive tender will ensure that the minimum necessary is paid to secure the environmental benefits.
- (8) The United Kingdom argues that the investment project would bring about a major environmental benefit consisting in the creation of an increasing demand for a major proportion of office and businesses waste stream. This will bring benefits for the environment, while this will also allow less waste to be disposed in the landfills.
- (9) The budget for this measure is between GBP 6 million and GBP 20 millions. The budget will cover a period from the date of clearance to 31 December 2008. The number of beneficiaries is expected to be between two and ten paper mill companies, depending on the quality of the proposals. The aid is financed through the general budget of the Department for Environment, Food and Rural Affairs (DEFRA).

### 3. PRELIMINARY ASSESSMENT OF THE MEASURE

- (10) According to Article 6 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty<sup>(5)</sup>, the decision to initiate the formal investigation procedure shall summarise the relevant issues of fact and law, shall include a preliminary assessment of the Commission as to the aid character of the proposed measure, and shall set out the doubts as to its compatibility with the common market.

#### 3.1. Existence of aid under Article 87(1) EC Treaty

- (11) Under Article 87(1) EC Treaty, "any aid granted by a Member State 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, insofar as it affects trade between Member States, be incompatible with the common market."
- (12) In this case, the measure will be funded by resources granted by the State under the WRAP programme. The aid will be granted to individual beneficiaries. The competitive selection procedures may ensure that the amount of the subsidy is limited to the minimum, but does not take away the aid character of the measure. The measure distorts or threatens to distort competition, as it may cover a significant part of investment costs, which would allow the beneficiary to charge a lower price for the P&W paper it produces. The measure will affect the market for new paper, but also the market for waste paper, which is valuable commodity in demand by the paper industry. The measure is likely to affect trade between Member States, since both new paper and waste paper are traded internationally. In fact, a big amount of the UK paper consumption is imported mainly from other Member States and the United Kingdom was the biggest European exporter of waste paper in 2004<sup>(6)</sup>.
- (13) Therefore, the scheme qualifies as State aid under Article 87(1) of the EC Treaty.
- (14) By notifying to the Commission the current scheme, the United Kingdom has fulfilled with the obligation of Article 88(3) of the EC Treaty.

<sup>(5)</sup> OJ L 83, 27.3.1999, p. 1.

<sup>(6)</sup> CEPI, Special Recycling 2004 Statistics. Page 5, available at <http://www.cepi.org/files/Sp%20Rec%202005-135002A.pdf>

### 3.2. Compatibility of the aid under the environmental aid guidelines

- (15) The UK authorities claim that the scheme brings environmental benefits. Therefore, the Commission assessed whether the scheme would be justified under the Community guidelines on State aid for environmental protection (hereinafter the environmental aid guidelines) <sup>(7)</sup>.
- (16) The Commission does not deny that the reuse of waste paper is more environmentally friendly than putting it into landfill. However, it has doubts that point 29 of the environmental aid guidelines justify the scheme in as far as it increases the recycling rate of P&W paper. Pursuant to this point, the Commission may authorise (1) investment aid enabling firms to improve on the community standards applicable and (2) investment aid where firms undertake investment in the absence of mandatory Community standards or where they have to undertake investments in order to comply with national standards that are more stringent than the applicable Community standards.
- (17) First of all, the Commission recalls that according to the general principles of law, an exception should be interpreted in a restrictive manner. The guidelines define the conditions under which the Commission may consider that aid is compatible with the common market in accordance with Article 87(3)(c) of the Treaty, and therefore form an exception to the general prohibition laid down in Article 87(1) of the Treaty. It should also be recalled that the environmental aid guidelines are based on the general principle of "the polluter pays", and that every interpretation of the guidelines should strictly comply with this underlying principle.
- (18) The scheme may increase the capacity to produce P&W paper, which would lead to increase quantities of waste paper, which would only be partially recycled. In any case, only part of the waste paper used to manufacture P&W paper will be paper sold by each beneficiary itself. Consequently, the Commission has doubts that the investment will reduce the beneficiaries' own pollution. It is more likely that the environmental benefits may derive from indirect effects on supply and demand for waste paper that affect all users and provide of waste paper concerned, not only the beneficiary.
- (19) The United Kingdom agrees that there are no Community standards applicable to the beneficiaries. Therefore, first situation referred to in point 29 of the environmental aid guidelines, which allows aid to be granted in order to enable firms to improve on Community standards does not apply in this case.
- (20) In relation to the second situation described in the environmental guidelines, concerning aid to firms to undertake investments in absence of Community standards, the Commission also has doubts that it would apply in this

case. The Commission considers that point 29 of the environmental aid guidelines concerns cases where an undertaking invests to improve its own environmental record, and to reduce its own pollution. In such cases, aid can be allowed as an incentive to improve the environmental performance of the company.

- (21) This interpretation is confirmed by point 18(b) of the environmental aid guidelines, which states that aid "may act as an incentive to firms to improve on standards or to undertake further investment designed to reduce pollution from their plants".
- (22) Other interpretation of the guidelines might result in Member States subsidising large investments, with high intensities, in all those sectors where used products can be used as materials for production or where such use is the general practice in that sector. Such aid could be granted in non-assisted areas or, in any event, without having to comply with regional aid rules and might have serious consequences on the relevant markets. Moreover, following such interpretation, the rules could be circumvented by granting aid not to the polluters, that under Community law would not be obliged to take care of the other company's pollution, but to the companies taking care of the pollution.
- (23) It is not excluded that part(s) of the selected investment projects will be eligible for environmental aid for other reasons, but as the projects have not been selected yet and as the United Kingdom has not guaranteed that aid would be given only in situations foreseen by the environmental guidelines, the Commission doubts whether the aid can be justified under the environmental aid guidelines.

### 3.3. Compatibility of aid under the regional guidelines and other provisions of the Treaty

- (24) The beneficiaries have not been chosen yet, and therefore it is impossible to assess if the investments will take place in areas eligible for regional aid and that the Guidelines on national regional aid <sup>(8)</sup> would apply wholly or in part. In fact, it should be noted that similar projects have already been approved by the Commission based on the rules for regional aid, but not as environmental aid <sup>(9)</sup>.

<sup>(8)</sup> OJ C 74, 10.3.1998, p. 9.

<sup>(9)</sup> E.g. *Hamburger AG* (C 72/01), Commission decision 9 April 2002, OJ L 296, 20.10.2002, p. 50.  
*Kartogroup* (N184/2000), Commission decision 18 July 2001 available at [http://europa.eu.int/comm/secretariat\\_general/sgb/state\\_aid/industrie/n184-00.pdf](http://europa.eu.int/comm/secretariat_general/sgb/state_aid/industrie/n184-00.pdf)

<sup>(7)</sup> OJ C 37, 3.2.2001, p. 3.

(25) The Commission furthermore doubts that other rules based on Article 87(3)(c) are applicable or that other exemptions set out in Article 87(2) and (3) of the EC-Treaty are applicable.

### 3.4. Compatibility of aid directly on the basis of Article 87(3)(c)

(26) Should the Environmental aid guidelines not be applicable, the case has to be assessed directly on the basis of Article 87(3)(c). In fact, the Commission has done so in the past, notably for a recycling scheme administered by WRAP<sup>(10)</sup> and two other cases in the paper industry<sup>(11)</sup>.

(27) In past cases dealing with investment to increase recycling capacity in the paper industry<sup>(12)</sup>, the criteria applied by the Commission was based on the incentive effect of the aid and whether the necessary investments to obtain the environmental benefits were going beyond the "state of the art" at EU level. Since the use of recycled fibre to manufacture paper is common practice in the EU, the Commission has not accepted that the mere fact that the aid aims to increase the amount of recycled paper fibre in the manufacturing of paper is enough to qualify it as environmental aid.

#### Investments going beyond the state of the art?

(28) The UK authorities argue that the fact that very small amounts of P&W paper are made from recycled fibre in the EU, qualifies the investments as going beyond the current "state of the art". The Commission is aware of technological barriers to increased rates of recycled fibres used in particular in P&W paper, like the de-inking of digital print, the removal of ashes with washers and the increased amount of bleaching, flotation, dispersion and sludge disposal. It would, however, normally expect a certain level of innovation from a market operator that wants to compete and be in the vanguard of the product market, in particular in the paper market, where many operators are large multinational producers. In past cases, the Commission concluded that "any paper producer that wishes to remain technologically and environmentally competitive in the long run has to make such investments in innovation from time to time"<sup>(13)</sup>. The relatively small amounts of P&W paper manufactured from waste paper would seem to indicate that it is possible to implement such processes and that the technology exists. According to information available to the Commission the production of P&W papers using recycled fibre has increased by 6,8 % in 2004<sup>(14)</sup>. The production of P&W paper using

recycled fibre is currently the fastest growing type of recycled paper in Europe.

(29) Therefore, the Commission has doubts that the justification used by the UK authorities that the current very low utilisation of recycled content in the production of P&W papers in the EU is enough to state that manufacturing P&W paper using recycle fibre goes beyond the current "state of the art" in the EU.

#### Increasing collection rates?

(30) According to information available to the Commission, it seems that the current situation of the market of P&W waste paper is changing fast and that paper companies are becoming very interested on P&W waste paper due to its high quality<sup>(15)</sup>. In fact, in Sweden it is expected that the recycling rate of office papers office will pass from 57 % in 2003 to 75 % in 2006. Given the situation on the waste paper market, it is reasonable to expect increased interest in waste P&W paper from paper producers.

(31) Therefore, the Commission has doubts that an increase in paper manufacturing capacity in the United Kingdom is needed to increase the collection demand. In the last years, there has been a big demand for waste paper in countries of East Asia. It would seem that such an increase has converted the United Kingdom to a net exporter of P&W waste paper.

(32) Therefore, the Commission has doubts about the necessity of aid for increasing the collection of P&W waste paper.

#### Proper targeting to maximise environmental benefits?

(33) The Commission doubts whether the measure is properly targeted, ensuring the highest environmental benefits. The United Kingdom argues that the biggest environmental gains are obtained if high quality waste paper is used for high quality new paper, i.e. P&W paper. The Commission, however, wonders whether a more common approach like using P&W waste paper to manufacture other types of paper might have the same impact in the collection of paper from offices and, taking the broadest possible perspective, bring the same environmental benefits.

#### Proper calculation of eligible investment cost?

(34) If it were appropriate to base the assessment directly on Article 87(3)(c), the Commission would draw a parallel to points 36 and 37 of the environmental aid guidelines to calculate the eligible cost. In accordance with these points, eligible cost must be confined to the extra investment costs necessary to meet the environmental objectives.

<sup>(10)</sup> OJ L 102, 7.4.2004, p. 59. The waste products that are concerned under this scheme are wood, glass, plastics, aggregates and compost. The Commission noted that the objective of this measure is to encourage the development of waste recycling, which is a clear objective of the Community environmental policy. The Commission also noted that the aid does not subsidise "state of the art" techniques in the industries concerned, which are economically profitable and do not need State aid. Therefore, the Commission considered that this scheme was compatible with Article 87(3)(c) of the EC Treaty.

<sup>(11)</sup> OJ L 314, 28.11.2003, p. 26 and OJ L 53, 26.2.2005, p. 66 respectively. The criteria used in these cases are also commented upon in the Annual Competition report of 2004.

<sup>(12)</sup> OJ L 314, 28.11.2003, p. 26 and OJ L 53, 26.2.2005, p.66 respectively. The criteria used in these cases are also commented upon in the Annual Competition report of 2004.

<sup>(13)</sup> OJ L 53, 26.2.2005, p. 76.

<sup>(14)</sup> CEPI, Special Recycling 2004 Statistics, p. 1.

<sup>(15)</sup> This is, e.g., signalled in a study on recycling waste "Support in the drafting of an ExIA on the Thematic Strategy on the Prevention and Recycling of Waste" by EPEC, Page 82, available at [http://europa.eu.int/comm/environment/waste/pdf/epec\\_report\\_05.pdf](http://europa.eu.int/comm/environment/waste/pdf/epec_report_05.pdf), published by DG ENV.

- (35) The method used by the UK authorities to calculate the eligible costs will be based on the premise that where the market would not give rise to the investment in question, then the relevant eligible costs are all the costs of the investment. Only those costs necessary to make the required investment, and to achieve the environmental objective, will be considered to be eligible and any net benefits during the first five years of production will be deducted. The cost of a reference investment which creates the same capacity but which does not provide the same environmental benefits, would not be subtracted.
- (36) The Commission has doubts whether this interpretation is acceptable. Substantial parts of the selected investment projects might be essential as well for investment projects in similar production capacity that is not based on using waste P&W paper. In case of investment in new capacity, the whole investment cost would be necessary to obtain the environmental benefit, but it is not clear why the investment of a conventional plant should not be subtracted. Without taking account of such a reference investment, the cost calculation would be disproportioned.

Choice for the least distortive instrument?

- (37) The United Kingdom has chosen to grant aid directly to the paper producers instead of to collection schemes, because it reduces its administrative costs and the amount of support. The Commission, however, doubts whether the measure proposed by the United Kingdom is the least distortive instrument to address the problem at stake.

Other instruments, e.g. instruments that focus on the collection, are likely to less distort the markets of waste paper and of end products.

**4. CONCLUSION**

- (38) In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 88(2) of the EC Treaty, requests the United Kingdom to submit its comments and to provide all such information as may help to assess the aid, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.
- (39) The Commission wishes to remind the United Kingdom that Article 88(3) of the EC Treaty has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.
- (40) The Commission warns the United Kingdom that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.'

**Non-opposition to a notified concentration**  
**(Case COMP/M.4008 — Logista/Editorial Planeta/JV)**

(2006/C 9/05)

(Text with EEA relevance)

On 16 December 2005, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in Spanish and will be made public after it is cleared of any business secrets it may contain. It will be available:

- from the Europa competition web site (<http://europa.eu.int/comm/competition/mergers/cases/>). This web site provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
- in electronic form on the EUR-Lex website under document number 32005M4008. EUR-Lex is the on-line access to European law. (<http://europa.eu.int/eur-lex/lex>)

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**Non-opposition to a notified concentration**  
**(Case COMP/M.4058 — Logista/Planeta de Agostini/JV)**

(2006/C 9/06)

(Text with EEA relevance)

On 16 December 2005, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in Spanish and will be made public after it is cleared of any business secrets it may contain. It will be available:

- from the Europa competition web site (<http://europa.eu.int/comm/competition/mergers/cases/>). This web site provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
  - in electronic form on the EUR-Lex website under document number 32005M4058. EUR-Lex is the on-line access to European law. (<http://europa.eu.int/eur-lex/lex>)
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**CORRIGENDA****Corrigendum to the notice 'Holidays in 2006'**

*(Official Journal of the European Union C 336 of 31 December 2005)*

(2006/C 9/07)

On page 2, against the entry 'FRANCE' delete '15.4.'

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