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EN

I

(Information)

COMMISSION

Euro exchange rates ⁽¹⁾

15 September 2006

(2006/C 223/01)

1 euro =

Currency	Exchange rate	Currency	Exchange rate		
USD	US dollar	1,2675	SIT	Slovenian tolar	239,59
JPY	Japanese yen	149,09	SKK	Slovak koruna	37,388
DKK	Danish krone	7,4606	TRY	Turkish lira	1,8666
GBP	Pound sterling	0,67390	AUD	Australian dollar	1,6853
SEK	Swedish krona	9,2250	CAD	Canadian dollar	1,4203
CHF	Swiss franc	1,5946	HKD	Hong Kong dollar	9,8642
ISK	Iceland króna	89,28	NZD	New Zealand dollar	1,9248
NOK	Norwegian krone	8,2775	SGD	Singapore dollar	2,0046
BGN	Bulgarian lev	1,9558	KRW	South Korean won	1 211,98
CYP	Cyprus pound	0,5764	ZAR	South African rand	9,3910
CZK	Czech koruna	28,485	CNY	Chinese yuan renminbi	10,0678
EEK	Estonian kroon	15,6466	HRK	Croatian kuna	7,4348
HUF	Hungarian forint	272,53	IDR	Indonesian rupiah	11 559,60
LTL	Lithuanian litas	3,4528	MYR	Malaysian ringgit	4,653
LVL	Latvian lats	0,6961	PHP	Philippine peso	63,654
MTL	Maltese lira	0,4293	RUB	Russian rouble	33,9470
PLN	Polish zloty	3,9504	THB	Thai baht	47,225
RON	Romanian leu	3,5062			

⁽¹⁾ Source: reference exchange rate published by the ECB.

Commission communication in the framework of the implementation of the Directive 94/25/EC of the European Parliament and of the Council of 16 June 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft

(2006/C 223/02)

(Text with EEA relevance)

(Publication of titles and references of harmonised standards under the directive)

ESO ⁽¹⁾	Reference and title of the harmonised standard (and reference document)	Reference of superseded standard	Date of cessa- tion of presumption of conformity of superseded standard Note 1
CEN	EN ISO 8665:2006 Small craft — Marine propulsion reciprocating internal combustion engines — Power measurements and declarations (ISO 8665:2006)	EN ISO 8665:1995	31.12.2006

⁽¹⁾ ESO: European Standardisation Organisation:

- CEN: rue de Stassart 36, B-1050 Brussels, Tel. (32-2) 550 08 11; fax (32-2) 550 08 19 (<http://www.cenorm.be>)
- CENELEC: rue de Stassart 35, B-1050 Brussels, Tel. (32-2) 519 68 71; fax (32-2) 519 69 19 (<http://www.cenelec.org>)
- ETSI: 650, route des Lucioles, F-06921 Sophia Antipolis, Tel. (33) 492 94 42 00; fax (33) 493 65 47 16 (<http://www.etsi.org>)

Note 1 Generally the date of cessation of presumption of conformity will be the date of withdrawal ('dow'), set by the European Standardisation Organisation, but attention of users of these standards is drawn to the fact that in certain exceptional cases this can be otherwise.

NOTE:

- Any information concerning the availability of the standards can be obtained either from the European Standardisation Organisations or from the national standardisation bodies of which the list is annexed to the Directive 98/34/EC ⁽¹⁾ of the European Parliament and Council amended by the Directive 98/48/EC ⁽²⁾.
- Publication of the references in the *Official Journal of the European Union* does not imply that the standards are available in all the Community languages.

More information about harmonised standards on the Internet at:

<http://europa.eu.int/comm/enterprise/newapproach/standardization/harmstds/>

⁽¹⁾ OJ L 204, 21.7.1998, p. 37.

⁽²⁾ OJ L 217, 5.8.1998, p. 18.

Publication of decisions by Member States to grant or revoke operating licenses pursuant to Article 13(4) of Council Regulation (EEC) No 2407/92 on licensing of air carriers ⁽¹⁾ ⁽²⁾

(2006/C 223/03)

(Text with EEA relevance)

GERMANY

Operating licences granted

Category A: *Operating licences without the restriction of Article 5(7)(a) of Regulation (EEC) No 2407/92*

Name of air carrier	Address of air carrier	Permitted to carry	Decision effective since
StarXL German Airlines GmbH	Guiollettstraße 54 D-60325 Frankfurt/Main	passengers, mail, cargo	31.7.2006

Category B: *Operating licences including the restriction of Article 5(7)(a) of Regulation (EEC) No 2407/92*

Name of air carrier	Address of air carrier	Permitted to carry	Decision effective since
ChallengeLine LS GmbH	Flughafenstraße 6 D-86169 Augsburg	passengers, mail, cargo	1.7.2006

⁽¹⁾ OJ L 240, 24.8.1992, p. 1.

⁽²⁾ Communicated to the European Commission before 31.8.2005.

State aid — Portugal**State aid C 26/2006 (ex N 110/2006) — A temporary protective mechanism for the shipbuilding sector in Portugal****Invitation to submit comments pursuant to Article 88(2) of the EC Treaty**

(2006/C 223/04)

(Text with EEA relevance)

By means of the letter dated 22 June 2006 reproduced in the authentic language on the pages following this summary, the Commission notified Portugal 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 Register
Rue de la Loi/Wetstraat, 200
B-1049 Brussels
Fax No: (32-2) 296 12 42

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

TEXT OF SUMMARY

still in force, thereby complying with the provisions of Article 4 thereof.

PROCEDURE

Portugal notified the measure on 7 February 2006 (and it was registered on 10 February 2006). The Commission departments requested further explanations by letter of 13 March 2006, to which Portugal replied by an e-mail dated 28 April 2006.

OPINION**DESCRIPTION OF THE AID**

The aid beneficiary would be Estaleiros Navais de Viana do Castelo S.A. ('ENVC'), a Portuguese shipyard which currently employs approximately 1 000 workers. On 14 November 2003, ENVC signed a contract with Fouquet Sacops S.A. for the supply of a tanker for the transport of petroleum and chemical products. The tanker was delivered on 26 April 2005.

Portugal plans to award ENVC a direct grant of €1 401 702 for this contract under Council Regulation (EC) No 1177/2002 concerning a temporary defensive mechanism to shipbuilding⁽¹⁾, as amended by Council Regulation (EC) No 502/2004⁽²⁾ (referred to below as the 'TDM Regulation'). The TDM Regulation ceased to apply on 31 March 2005, so it was no longer in force when Portugal notified its aid. However, Portugal claims that the contract is still eligible for aid under the TDM Regulation, as it was signed when the Regulation was

Portugal asked the Commission to approve the aid measure under the TDM Regulation. However, for the following reasons, the Commission doubts whether such aid can be deemed compatible with the common market under this Regulation. It has doubts as to whether the aid can be considered to provide an incentive, as the shipyard had already completed the project by the time Portugal notified the measure. It also doubts whether the TDM Regulation still constitutes a valid legal basis for the approval of the aid, given that it had already ceased to apply by the time Portugal notified the measure and, moreover, that it had been deemed incompatible with the Community's obligations under the WTO Memorandum of Understanding on Rules and Procedures Governing the Settlement of Disputes⁽³⁾. Finally, the amount of aid notified by Portugal appears in any case to exceed the maximum aid intensity allowed under the TDM Regulation.

In the light of the above considerations, the Commission has decided to initiate the procedure laid down in Article 88(2) of the EC Treaty with respect to the planned aid measure.

⁽¹⁾ OJ L 172, 2.7.2002, p. 1.

⁽²⁾ OJ L 81, 19.3.2004, p. 6.

⁽³⁾ EC – Measures affecting trade in commercial vessels, panel report (WT/DS301/R), points 7.184 – 7.222 and 8.1(d), adopted by the body for the settlement of disputes on 20 June 2005.

TEXT OF LETTER

III. APRECIACÃO

'A Comissão informa o Governo português de que, após ter examinado as informações prestadas pelas Vossas Autoridades sobre a medida citada em epígrafe, decidiu dar início ao procedimento previsto no n.º 2 do artigo 88.º do Tratado CE.

I. PROCEDIMENTO

1. Portugal notificou a medida em 7 de Fevereiro de 2006 (registada em 10 de Fevereiro de 2006). Por carta de 13 de Março de 2006, os serviços da Comissão solicitaram esclarecimentos adicionais, a que Portugal respondeu por correio electrónico de 28 de Abril de 2006.

II. DESCRIÇÃO DO AUXÍLIO

2. O beneficiário do auxílio seriam os Estaleiros Navais de Viana do Castelo S.A. ("ENVC"), um estaleiro naval português que emprega actualmente cerca de 1 000 trabalhadores.
3. Em 14 de Novembro de 2003, os ENVC concluíram um contrato com o armador francês Fouquet Sacops S.A., relativamente ao fornecimento de um navio-tanque para produtos petrolíferos e químicos (casco n.º 227), com um preço contratual de 22 900 000 euros. O navio foi efectivamente entregue em 26 de Abril de 2005.
4. Portugal propõe-se conceder aos ENVC auxílios directos no montante de 1 401 702 euros relativamente a este contrato, ao abrigo do Regulamento (CE) n.º 1177/2002 do Conselho, relativo a um mecanismo temporário de defesa do sector da construção naval ⁽⁴⁾, com a última redacção que lhe foi dada pelo Regulamento (CE) n.º 502/2004 ⁽⁵⁾ ("Regulamento MTD"). O Regulamento MTD entrou em vigor em 3 de Julho de 2002 e cessou a sua vigência em 31 de Março de 2005, não se encontrando por consequência em vigor na altura em que Portugal notificou o auxílio.
5. Portugal alega todavia que o contrato é elegível para beneficiar de auxílios ao abrigo do Regulamento MTD, pelos motivos seguintes:
6. O artigo 4.º do Regulamento MTD estabelece o seguinte: "O presente regulamento aplica-se aos contratos finais assinados após a entrada em vigor do regulamento e até ao seu termo de vigência (...)". Portugal salienta neste contexto que o contrato em questão foi assinado em 14 de Novembro de 2003, data em que o Regulamento MTD estava ainda em vigor e, por conseguinte, continua a ser elegível para beneficiar de auxílio.
7. Portugal alega ainda que o contrato em questão foi objecto de propostas de preços inferiores por parte de estaleiros coreanos, preenchendo assim as condições estabelecidas no artigo 2.º do Regulamento MTD e que, por conseguinte, o auxílio se justifica para fazer face à concorrência desleal dos estaleiros coreanos.

Existência de auxílio

8. Em conformidade com o n.º 1 do artigo 87.º do Tratado CE, são incompatíveis com o mercado comum, na medida em que afectem as trocas comerciais entre os Estados-Membros, os auxílios concedidos pelos Estados ou provenientes de recursos estatais, independentemente da forma que assumam, que falseiem ou ameacem falsear a concorrência, favorecendo certas empresas ou certas produções.
9. A Comissão considera que a medida projectada constitui um auxílio estatal, na acepção do n.º 1 do artigo 87.º do Tratado CE: assume a forma de uma subvenção financiada por recursos estatais; é selectiva, uma vez que se destina apenas aos ENVC; esta subvenção selectiva é susceptível de falsear a concorrência, visto que proporciona aos ENVC uma vantagem relativamente aos restantes concorrentes que não beneficiam de auxílio. Por último, a construção naval é uma actividade económica que implica um comércio significativo entre Estados-Membros.

Compatibilidade com o mercado comum

10. Tal como acima referido, Portugal solicitou à Comissão que aprovasse o auxílio ao abrigo do Regulamento MTD. Contudo, a Comissão tem dúvidas quanto ao facto de o auxílio projectado poder ser considerado compatível com o mercado comum ao abrigo desse regulamento pelas razões que se seguem: a Comissão tem dúvidas quanto ao efeito de incentivo do auxílio, que foi apenas aprovado e notificado por Portugal após a conclusão do projecto; a Comissão tem igualmente dúvidas quanto ao facto de o Regulamento MTD, cuja vigência já cessou, poder continuar a constituir uma base legal válida para a aprovação do auxílio; por último, o auxílio notificado parece, de qualquer forma, exceder a intensidade de auxílio permitida pelo Regulamento MTD.

Efeito de incentivo

11. Em princípio, um auxílio estatal apenas pode ser considerado compatível com o mercado comum se for necessário para incentivar a empresa beneficiária a agir de uma forma que contribui para a realização dos objectivos previstos na derrogação relevante ⁽⁶⁾.
12. A Comissão salienta neste contexto que o objectivo do Regulamento MTD consistia em "permitir efectivamente que os estaleiros navais comunitários enfrentem a concorrência desleal da Coreia" (ver sexto considerando). Desta forma, podiam ser autorizados auxílios directos correspondentes a um máximo de 6 % do valor contratual, desde que o contrato tivesse sido objecto de concorrência proveniente de um estaleiro na Coreia que oferecesse um preço inferior (artigo 2.º).
13. Portugal argumentou, quando a esta questão, que os ENVC aceitaram o contrato partindo do pressuposto de que poderiam receber auxílios do Governo português, visto que os estaleiros coreanos tinham oferecido preços inferiores relativamente a este contrato.

⁽⁴⁾ JO L 172 de 2.7.2002, p. 1.

⁽⁵⁾ JO L 81 de 19.3. 2004, p.6

⁽⁶⁾ Ver acórdão no processo 730/79 Philip Morris/Comissão, Col. 1980, p. 2671, pontos 16 e 17.

14. Contudo, a Comissão tem dúvidas quanto à validade desta argumentação. Portugal não apresentou elementos de prova que demonstrem que, na altura em que os ENVC assinaram o contrato, tivessem sido dadas quaisquer garantias públicas de que os estaleiros receberiam um auxílio. Pelo contrário, Portugal não dispunha de um regime MTD em vigor. Além disso, segundo as informações disponíveis, a decisão das Autoridades portuguesas de conceder um auxílio aos ENVC (dependente da aprovação da Comissão), foi apenas tomada em 28 de Dezembro de 2005, ou seja, muito após o contrato ter sido celebrado e o navio entregue.
15. De acordo com as informações disponíveis, afigura-se por conseguinte que os ENVC realizaram o projecto apenas com base nas forças de mercado, não tendo de forma alguma sido incentivados por um auxílio estatal que não se encontrava disponível na altura em que o projecto foi concluído.

Base jurídica

16. A vigência do Regulamento MTD cessou em 31 de Março de 2005 e, por conseguinte, o regulamento não se encontrava em vigor na altura em que Portugal notificou o auxílio. Embora o regulamento se aplicasse aos contratos concluídos durante o seu período de vigência, existem dúvidas quanto ao facto de a Comissão poder ainda apreciar a medida notificada com base num instrumento que não faz já parte do ordenamento jurídico da UE.
17. Por outro lado, a Coreia contestou a compatibilidade do Regulamento MTD com as regras da OMC. Em 22 de Abril de 2005, um painel da OMC emitiu o seu relatório, considerando que o MTD e diversos regimes nacionais adoptados no âmbito desse mecanismo, existentes na altura em que a Coreia intentou a acção junto da OMC, eram contrários ao disposto no n.º 1 do artigo 23.º do Memorando de Entendimento sobre as Regras e Processos que regem a Resolução de Litígios (MERL) ⁽⁷⁾. Em 20 de Junho de 2005, o Órgão de Resolução de Litígios da OMC (ORL) adoptou o relatório deste painel, incluindo a recomendação no sentido de a Comunidade adaptar o Regulamento MTD e os regimes nacionais adoptados no âmbito desse mecanismo em conformidade com as obrigações que lhe incumbem por força dos Acordos da OMC ⁽⁸⁾. Em 20 de Julho de 2005, a Comunidade informou o ORL de que tinha já dado cumprimento à decisão e recomendações do ORL, uma vez que a vigência do Regulamento MTD tinha cessado em 31 de Março de 2005 e que os Estados-Membros não podiam continuar a conceder auxílios ao funcionamento ao abrigo deste regulamento.
18. Portugal argumentou neste contexto que a decisão do ORL não invalidava, *per se*, qualquer auxílio autorizado (ou a autorizar) ao abrigo do Regulamento MTD, limitando-se a contestar o método utilizado pela Comunidade para solucionar a questão da concorrência desleal da Coreia (ou seja, o facto de a Comunidade tentar resolver a situação através de uma medida unilateral — o Regulamento MTD — em vez de recorrer aos mecanismos de resolução de litígios da OMC).
19. O relatório do painel e a decisão do ORL que o adoptou condenavam o Regulamento MTD *per se*, por constituir uma infracção às regras da OMC e obrigavam a Comunidade a deixar de aplicar o Regulamento MTD. A obrigação, imposta à Comunidade, no sentido de aplicar a decisão do ORL abrange também claramente as decisões futuras de concessão de novos auxílios ao abrigo do regulamento MTD ⁽⁹⁾. Autorizar agora a concessão do auxílio projectado equivaleria a continuar a aplicar o Regulamento MTD, em violação da obrigação que incumbe à Comunidade de dar cumprimento à decisão do ORL.
20. Por conseguinte, a Comissão não considera, na presente fase, que o auxílio esteja em conformidade com as obrigações internacionais da Comunidade.

Intensidade do auxílio

21. Nos termos do n.º 3 do artigo 2.º do Regulamento MTD, a intensidade máxima de auxílio permitida é de 6 % do valor contratual antes do auxílio. Com base nas informações disponíveis, o montante de auxílio notificado por Portugal (1 401 702 euros) excede 6 % do valor contratual (22 900 000 euros), afigurando-se assim contrário ao artigo acima referido.

DECISÃO

22. À luz do que precede, a Comissão decidiu dar início ao procedimento previsto no n.º 2 do artigo 88.º do Tratado CE e solicita a Portugal que lhe forneça todos os documentos, informações e dados necessários para a apreciação do auxílio, no prazo de um mês a contar da data de recepção da presente carta. A Comissão solicita às Autoridades portuguesas o envio imediato de uma cópia da presente carta ao potencial beneficiário do auxílio.
23. A Comissão recorda às Autoridades portuguesas o efeito suspensivo do n.º 3 do artigo 88.º do Tratado CE e remete para o artigo 14.º do Regulamento (CE) n.º 659/1999 do Conselho, segundo o qual qualquer auxílio concedido ilegalmente pode ser objecto de recuperação junto do beneficiário.
24. A Comissão comunica a Portugal que informará as partes interessadas através da publicação da presente carta e de um resumo da mesma no Jornal Oficial da União Europeia. Além disso, informará as partes interessadas da EFTA signatárias do Acordo EEE, mediante a publicação de uma comunicação no correspondente suplemento do Jornal Oficial da União Europeia, assim como o Órgão de Fiscalização da EFTA, mediante o envio de uma cópia da presente carta. Todas as partes interessadas serão convidadas a apresentar as suas observações no prazo de um mês a contar da data de publicação da referida comunicação.

⁽⁷⁾ Ver EC — *Measures affecting trade in commercial vessels*, WT/DS301/R, pontos 7.184 — 7.222 & 8.1(d).

⁽⁸⁾ Ver documento da OMC WT/DS301/6.

⁽⁹⁾ Ver EC — *Measures affecting trade in commercial vessels*, WT/DS301/R, ponto 7.21.

Notice of initiation of an expiry review of the antidumping measures applicable to imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China and consigned from or originating in Taiwan and on imports of certain refillable pocket flint lighters originating in the People's Republic of China and consigned from or originating in Taiwan.

(2006/C 223/05)

Following the publication of a notice of impending expiry ⁽¹⁾ of the anti-dumping measures in force on imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China, ('country concerned') as extended to the same lighters originating in or consigned from Taiwan, and as extended to certain refillable pocket flint lighters originating in the People's Republic of China or originating in or consigned from Taiwan, the Commission has received a request for review pursuant to Article 11 (2) of Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community ('the basic Regulation') ⁽²⁾, as last amended by Council Regulation (EC) No 2117/2005 ⁽³⁾.

1. Request for review

The request was lodged on 16 June 2006 by the Community producer BIC S.A. representing a major proportion, in this case more than 50 %, of the total Community production of gas-fuelled, non-refillable pocket flint lighters.

2. Product

The product under review is gas-fuelled, non-refillable pocket flint lighters. By Council Regulation (EC) No 192/1999, as maintained by Regulation (EC) No 1824/2001, the product scope has been extended to gas-fuelled, refillable pocket flint lighters incorporating a plastic tank body. The product concerned is currently classifiable within CN code ex 9613 10 00 and ex 9613 20 90. These CN codes are given only for information.

3. Existing measures

The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EEC) No 3433/91, as extended by Council Regulation (EC) No 192/1999 ⁽⁴⁾ and as maintained by Council Regulation (EC) 1824/2001 ⁽⁵⁾.

⁽¹⁾ OJ C 321, 16.12.2005, p. 4.

⁽²⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17.).

⁽³⁾ OJ L 340, 23.12.2005, p. 17.

⁽⁴⁾ OJ L 21, 29.1.1999, p. 1.

⁽⁵⁾ OJ L 248, 18.9.2001, p. 1. Regulation as last amended by Regulation (EC) No 155/2003.

4. Grounds for the review

The request is based on the grounds that the expiry of measures would lead to a likelihood of continuation or recurrence of injurious dumping.

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 point 5.1(c). 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.

On this basis, the dumping margin calculated is significant.

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 potential of the manufacturing facilities of the exporting producers in the country concerned which could easily restart or increase the production of the product concerned.

It is also alleged that the flow of imports of the product concerned is likely to rise due to the attractiveness of the EU market. All this can further lead to a redirection of exports from other third countries to the Community.

In addition, the applicant alleges 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.

Furthermore, the applicant points out that during the period of imposition of measures, the exporters/producers of the product concerned from the People's Republic of China tried to undermine the existing measures by circumvention practices, which were counteracted by Council Regulation (EC) No 192/1999 ⁽⁶⁾.

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.

⁽⁶⁾ OJ L 21, 29.1.1999, p. 1.

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 exporting producers, or representatives acting on their behalf, are hereby requested to make themselves known by contacting the Commission and providing the following information on their company or companies within the time limit set in point 6(b)(i) and in the formats indicated in point 7:

- name, address, e-mail address, telephone, and fax, and/or telex numbers and contact person,
- the turnover in local currency and the volume in pieces of the product concerned sold for export to the Community during the period 1 July 2005 to 30 June 2006.
- the precise activities of the company with regard to the production of the product concerned and the production volume in pieces of the product concerned, the production capacity and the investments in production capacity during the period 1 July 2005 to 30 June 2006.
- 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,
- by providing the above information, the company agrees to its possible inclusion in the sample. If the company is chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed to not have cooperated in the investigation. The

⁽¹⁾ For guidance on the meaning of related companies, please refer to Article 143 of Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

consequences of non-cooperation are set out in point 8 below.

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 point 6(b)(ii).

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 point 6 (b)(iii) and must cooperate within the framework of the investigation.

If sufficient cooperation 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 point 8.

(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 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 cooperated in the investigation leading to the measures subject to the present review, to any known user or user association, and to the authorities of the exporting country concerned.

(c) Selection of the market economy country

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

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 or recurrence 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 point 6(a)(ii), 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 point 6(a)(iii). 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 cooperate 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*.

- (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 point 6(b)(iii).

- (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), and 5.1(a)(ii) 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 Brazil which, as mentioned in point 5(c), 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 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 labeled as 'Limited (*)' and, in accordance with Article 19(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labeled 'FOR INSPECTION BY INTERESTED PARTIES'.

Commission address for correspondence:

European Commission
Directorate General for Trade
Directorate B
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(*) 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 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 19 of the basic Regulation and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement).

8. Non-cooperation

In cases in which any interested party refuses access to or 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 facts available is made, the result may be less favourable to that party than if it had cooperated.

9. Schedule of the investigation

The investigation will be concluded, according to Article 11(5) of the basic Regulation within 15 months of the date of the publication of this notice in the *Official Journal of the European Union*.

State aid — Poland**State aid C 22/2005 (ex PL 49/2004) — Aid to Poczta Polska for investment related to the provision of universal postal services — Poland****Communication from the Commission, pursuant to Article 88(2) of the EC Treaty, to the other Member States and other interested parties**

(2006/C 223/06)

(Text with EEA relevance)

By the following letter, dated 25 April 2006, the Commission informed Poland of its decision to terminate the procedure provided for in Article 88(2) of the EC Treaty.

1. By e-mail dated 30 April 2004, the Polish authorities notified two aid schemes in favour of the Polish postal operator Poczta Polska, under the “interim mechanism procedure”, provided for in Annex IV.3 of the Act of Accession, which forms part of the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union.
2. The two aid schemes have been registered under the following numbers: PL 45/04: Compensation to Poczta Polska for carrying out universal postal services and PL 49/04: Aid to Poczta Polska for investment related to the provision of universal postal services.
3. On 26 July 2004, 26 November 2004 and 7 February 2005, the Commission requested additional information. The Polish authorities submitted additional information by letters dated: 10 September 2004, 27 October 2004, 3 December 2004 and 29 March 2005. Two meetings between the Polish authorities and the Commission’s services were held on 25 October 2004 and on 31 January 2005. On 20 June 2005, the Commission received additional information from the Polish authorities.
4. By letter dated 29 June 2005, the Commission informed Poland that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the two aid schemes.
5. The two aid schemes were registered under the following numbers: C 21/05: Compensation to Poczta Polska for carrying out universal postal services and C 22/05: Aid to Poczta Polska for investment related to the provision of universal postal services.
6. The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽¹⁾. The Commission called on interested parties to submit their comments.
7. The Commission received no comments from interested parties.
8. Poland submitted its comments by letter of 9 August 2005. A meeting between the Polish authorities and the Commission was held on 10 January 2006. The Commission required additional information by letter dated 24 January 2006.
9. By letter of 10 February 2006, the Polish authorities informed the Commission of their intention to withdraw the notification of the aid scheme C 22/05: Aid to Poczta Polska for investment related to the provision of universal postal services.
10. Following the request of the Commission of 27 February 2006, the Polish authorities indicated by letter of 13 March 2006 that they will not proceed with the aid project covered by the above notification.
11. In the light of the above, the Commission decides to terminate the proceedings under article 88§2 of the EC Treaty in respect of the aid C 22/05: Aid to Poczta Polska for investment related to the provision of universal postal services, because it has become without object.’

(1) OJ C 274, 5.11.2005, p. 14.

Final report of the hearing officer in case COMP/ M.3696 — E.ON/MOL

(pursuant to Articles 15 and 16 of Commission Decision (2001/462/EC, ECSC) of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings — OJ L 162, 19.6.2001, p. 21.)

(2006/C 223/07)

(Text with EEA relevance)

On 2 June 2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 of 20 January 2004 ('the Merger Regulation') whereby the German group E.ON intends to acquire sole control over the gas wholesale, marketing and trading activities as well as gas storage activities of MOL Hungarian Oil and Gas Company Rt. ('MOL', Hungary). Furthermore, E.ON intends to acquire MOL's 50 % shareholding in Panrusgáz, a joint venture between MOL and Gazexport (a subsidiary of Gazprom).

At the end of the first phase of the investigation, the Commission concluded that the concentration raised serious doubts as to its compatibility with the common market and with the EEA Agreement. In particular, the transaction was found to have significant impact on the gas and electricity sector in Hungary, given that MOL has an almost exclusive control over the procurement of gas (imports and domestic production) and therefore enjoys a gatekeeper position for access to gas resources and to the gas infrastructures in Hungary.

On 7 July 2005, the Commission therefore initiated proceedings in accordance with Article 6(1)(c) of the Merger Regulation.

On 20 July and 2 August 2005, E.ON was provided with access to the 'key documents' in the Commission file in accordance with chapter 7.2. of the 'Best Practices on the conduct of EC merger control proceedings'.

On 2 August 2005, the procedure was suspended for eight days pursuant to Article 10(4) of the Merger Regulation owing to the fact that E.ON did not respond in a comprehensive and timely manner to a decision requiring information pursuant to 11(3) of the Merger Regulation.

A statement of objections was sent to E.ON on 19 September 2005. As agreed between E.ON and MOL, a version of the SO without E.ON's business secrets was transmitted to MOL by E.ON's legal representatives. In the following days, access to the Commission's file was granted. E.ON and MOL were given the opportunity to comment on the Commission's preliminary findings as set out in the statement of objections by 3 October 2005. This deadline was subsequently extended to 6 October 2005 at the parties' request. E.ON's reply was received on 5 October 2005.

The parties did not request to develop their arguments in a formal oral hearing.

On 21 October 2005, I granted the request of Energie Baden-Württemberg AG to be admitted as an interested third party. The same day, the Commission sent them a non-confidential summary of the statement of objections.

On 20 October 2005, E.ON offered commitments which were amended on 11 November and on 16 November 2005 respectively. Further to the market testing of the proposed undertakings, E.ON substantially improved their draft commitments, in particular as regards the duration of the gas release program and the price mechanism of the gas release auctions.

I have not been asked to verify the objectivity of the enquiry.

In agreement with and following an express request by the parties, the Commission issued a decision on 10 November 2005 pursuant to article 10(3) second paragraph of the Merger Regulation in order to extend the procedure by 11 working days.

In the light of the commitments eventually proposed and having analysed the results of the market test, the draft decision concludes that the proposed concentration is compatible with the common market and with the EEA Agreement.

In the light of the above, I consider that the rights to be heard of all participants to the present proceeding have been respected.

Brussels, 7 December 2005

Serge DURANDE

Opinion of the Advisory Committee on concentrations given at its 135th meeting on 6 December 2005 concerning a draft decision relating to case COMP/M.3696 — E.ON/MOL

(2006/C 223/08)

(Text with EEA relevance)

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of Article 1(3) and 3(1)(b) of the Merger Regulation and that it has a Community dimension as defined by the Merger Regulation.
 - a) Transmission of gas
 - b) Distribution of gas
 - c) Storage of gas
 - d) Supply of gas to traders
 - e) Supply of gas to Regional Distribution Companies ('RDCs')
 - f) Supply of gas to large power plants
 - g) Supply of gas to large industrial customers (with an hourly consumption exceeding 500 m³/hour)
 - h) Supply of gas to small commercial and industrial customers (with an hourly consumption below 500 m³/hour)
 - i) Supply of gas to residential customers

in the electricity sector:

 - j) Transmission of electricity
 - k) Distribution of electricity
 - l) Provision of balancing power
 - m) Wholesale supply of electricity to traders
 - n) Wholesale supply of electricity to the public utility wholesaler
 - o) Wholesale supply of electricity to RDCs
 - p) Retail supply of electricity to medium and large commercial and industrial customers
 - q) Retail supply of electricity to small commercial and industrial customers
 - r) Retail supply of electricity to residential customers
2. The Advisory Committee agrees with the Commission that for the purpose of assessing the present operation, the **relevant product markets** are

in the gas sector:

 - a) Transmission of gas
 - b) Storage of gas
 - c) Supply of gas to traders
 - d) Supply of gas to RDCs
 - e) Supply of gas to large power plants
 - f) Supply of gas to large industrial customers (with an hourly consumption exceeding 500 m³/hour)
 - g) Supply of gas to small commercial and industrial customers (with an hourly consumption below 500 m³/hour)
 - h) Supply of gas to residential customers (after July 2007 when residential customers become eligible)

in the electricity sector:

 - i) Transmission of electricity
 - j) Provision of balancing power
 - k) Wholesale supply of electricity to traders
 - l) Wholesale supply of electricity to the public utility wholesaler
 - m) Wholesale supply of electricity to RDCs
 - n) Retail supply of electricity to medium and large commercial and industrial customers
 - o) Retail supply of electricity to small commercial and industrial customers
 - p) Retail supply of electricity to residential customers (after July 2007 when residential customers become eligible)
3. The Advisory Committee agrees with the Commission that for the purpose of assessing the present operation, the **relevant geographic markets** are **national** for the following markets

in the gas sector:

 - a) Distribution of gas
 - b) Supply of gas to residential customers until July 2007

in the electricity sector:

 - c) Distribution of electricity
 - d) Retail supply of electricity to residential customers until July 2007
4. The Advisory Committee agrees with the Commission that for the purpose of assessing the present operation, the **relevant geographic markets** are at present **sub-national** for the following markets

in the gas sector:

 - a) Distribution of gas
 - b) Supply of gas to residential customers until July 2007

in the electricity sector:

 - c) Distribution of electricity
 - d) Retail supply of electricity to residential customers until July 2007

5. The Advisory Committee agrees with the Commission that the proposed transaction will create a fully vertically integrated entity along the gas and electricity supply chains by combining MOL's almost exclusive control over gas resources and storage and E.ON's strong market positions in the retail supply of gas through its ownership of regional distribution companies in both gas and electricity, and E.ON's activities in electricity generation/wholesale.
 6. The Advisory Committee agrees with the Commission that therefore after the transaction, the new entity will have both the ability and incentive to foreclose access to gas for its competitors in the downstream gas and electricity markets.
 7. The Advisory Committee agrees with the Commission that the merged entity has a **dominant position** in the following markets in the gas sector:
 - a) Supply of gas to traders in Hungary
 - b) Supply of gas to RDCs in Hungary
 - c) Supply of gas to large power plants in Hungary
 - d) Storage of gas in Hungary
 8. The Advisory Committee agrees with the Commission that the proposed concentration is likely to result in a **significant impediment to effective competition** in the common market or in a substantial part of it and the EEA for the following markets
in the gas sector:
 - a) Supply of gas to large industrial customers in Hungary through the creation of the dominant position
 - b) Supply of gas to small commercial and industrial customers in Hungary
 - c) Supply of gas to residential customers in Hungary (in each of the RDCs' areas separately before July 2007)in the electricity sector:
 - d) Wholesale supply of electricity to traders in Hungary
 - e) Retail supply of electricity to medium and large commercial and industrial customers in Hungary
 - f) Retail supply of electricity to small commercial and industrial customers in Hungary
 - g) Retail supply of electricity to residential customers in Hungary (in each of the RDCs' areas separately before July 2007)
 9. The Advisory Committee agrees with the Commission that the maintenance of cross-shareholdings between MOL and the new entity will allow the new entity to reinforce its foreclosure strategy through its position in the gas storage market and MOL's position in the transmission market.
 10. The Advisory Committee agrees with the Commission that the **undertakings** are sufficient to remove the significant impediment to competition in the following markets
in the gas sector:
 - a) Supply of gas to large industrial customers in Hungary
 - b) Supply of gas to small commercial and industrial customers in Hungary
 - c) Supply of gas to residential customers in the Hungarian RDCs' areas (in Hungary after 2007)
 - d) Storage of gas in Hungaryin the electricity sector:
 - e) Wholesale supply of electricity to traders in Hungary
 - f) Retail supply of electricity to medium and large commercial and industrial customers in Hungary
 - g) Retail supply of electricity to small commercial and industrial customers in Hungary
 - h) Retail supply of electricity to residential customers in the Hungarian RDCs' areas (in Hungary after July 2007)
 11. The Advisory Committee agrees with the Commission that, subject to full compliance with the undertakings offered by the parties, and considered all undertakings together, the proposed concentration does not significantly impede effective competition in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, within the meaning of Article 2(2) of the Merger Regulation and that the proposed concentration is therefore to be declared compatible with Article 2(2) and 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.
 12. The Advisory Committee asks the Commission to take into account all the other points raised during the discussion.
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