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Information and Notices

12 September 2007

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[1] Text with EEA relevance

(Continued overleaf)

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION POLICY

Commission

EN

[1] Text with EEA relevance

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COMMISSION

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

(Text with EEA relevance)

(2007/C 213/01)

Date of adoption of the decision	19.7.2007
Reference number of the aid	N 360/06
Member State	Slovakia
Region	—
Title (and/or name of the beneficiary)	Zvýhodnený daňový režim na používanie palív z obnoviteľných zdrojov na základe smernice č. 2003/96/ES (biopalivá)
Legal basis	Zákon č. 98/2004 Z. z. o spotrebnej dani z minerálneho oleja v znení zákona č. 667/2004 Z. z. a zákona č. 223/2006 Z. z. Nariadenie vlády Slovenskej republiky č. 246/2006 Z. z. o minimálnom množstve pohonných látok vyrobených z obnoviteľných zdrojov v motorových benzínoch a motorovej nafte uvedených na trh Slovenskej republiky
Type of measure	Aid scheme
Objective	Environmental protection
Form of aid	Tax rate reduction
Budget	Overall budget: SKK 2 933 million
Intensity	—
Duration	1.5.2006-30.4.2012
Economic sectors	Chemical and pharmaceutical industry

Name and address of the granting authority	Ministerstvo financií SR
Other information	—

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

http://ec.europa.eu/community_law/state_aids/

Date of adoption of the decision	13.6.2007
Reference number of the aid	N 549/06
Member State	Italy
Region	Sicilia
Title (and/or name of the beneficiary)	Atlantica Invest AG
Legal basis	— Legge 19 dicembre 1992, n. 488: «disciplina intervento straordinario nel Mezzogiorno» — Articolo 60 legge finanziaria 2003: «creazione Fondo aree sottosviluppate» — Decreto Min. Att. Prod. 12.11.2003: «modalità di accesso ai contratti di programma» — Delibera CIPE (progetto pilota di localizzazione) n. 12 del 4.4.2006
Type of measure	Individual aid
Objective	Regional development
Form of aid	Direct grant
Budget	Overall budget: EUR 97,48 million
Intensity	12,2 %
Duration	31.12.2009
Economic sectors	Recreational, cultural sporting activities
Name and address of the granting authority	Ministero dello Sviluppo economico
Other information	—

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

http://ec.europa.eu/community_law/state_aids/

Date of adoption of the decision	4.5.2007
Reference number of the aid	N 755/06
Member State	Czech Republic
Region	—
Title	Repairs to damage caused by floods from May to July 2006 to dykes and fish-pond structures
Legal basis	1) Zákon č. 254/2001 Sb., o vodách a o změně některých zákonů (vodní zákon) (§ 102). 2) Pravidla České republiky – Ministerstva zemědělství pro poskytování a čerpání přímých dotací vodnímu hospodářství na úhradu odstranění škod po povodních z května až července 2006 na hrázích a objektech rybníků a způsobu kontroly jejich použití
Type of measure	Aid scheme
Objective	Compensation of damages caused by flood in the summer 2006
Form of aid	Direct aid
Budget	CZK 3 000 000 overall
Intensity	Max. 70 % of the building costs
Duration	1.1.2007-31.12.2008
Economic sectors	Fisheries
Name and address of the granting authority	Ministerstvo zemědělství Těšnov 17 CZ-117 05 Praha 1
Other information	—

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

http://ec.europa.eu/community_law/state_aids/

Date of adoption of the decision	4.5.2007
Reference number of the aid	N 914/06
Member State	Czech Republic
Region	—
Title	Mitigation of damage to fish stocks in fishponds caused by flooding in the period from 28 May to 2 July 2006

Legal basis	1) Usnesení vlády ČR ze dne 1. 11. 2006 č. 1246 o finančním řešení zmírnění škod způsobených na zem. majetku, vodohospodářské infrastruktuře, korytech vodních toků a rybnících v důsledku povodní v období od 28. 5. do 2. 7. 2006, 2) Usnesení vlády ČR ze dne 3. 7. 2006 č. 845 k povodňové situaci v ČR a následkům povodňových škod v období od 28. 5. do 2. 7. 2006, 3) Zákon č. 218/2000 Sb., o rozpočtových pravidlech, 4) Zákon č. 254/2001 Sb., o vodách, 5) Zákon č. 99/2004 Sb., o rybářství, 6) Vyhláška č. 197/2004
Type of measure	Aid scheme
Objective	Mitigation of damages to fish stocks in fishponds caused by floods in the period from 28 May to 2 July 2006
Form of aid	Direct aid
Budget	CZK 10 000 000 overall
Intensity	50 % of the damage to fish
Duration	1.12.2006-31.12.2007
Economic sectors	Fisheries
Name and address of the granting authority	Ministerstvo zemědělství Těšnov 17 CZ-117 05 Praha 1
Other information	—

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

http://ec.europa.eu/community_law/state_aids/

Date of adoption of the decision	14.5.2007
Reference number of the aid	N 135/07
Member State	The Netherlands
Region	—
Title (and/or name of the beneficiary)	Fonds voor vispromotie (wijziging bestaande regeling)
Legal basis	Verordening financiering vispromotie 2007
Type of measure	Aid scheme
Objective	Aid to the fisheries sector
Form of aid	Individual grants
Budget	Ca. EUR 1 381 000 per year
Intensity	Max. 100 %

Duration	Unlimited
Economic sectors	Fisheries sector
Name and address of the granting authority	Productschap Vis Postbus 72 2280 AB Rijswijk Nederland
Other information	Annual report

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

http://ec.europa.eu/community_law/state_aids/

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COMMISSION

Euro exchange rates ([1])

11 September 2007

(2007/C 213/02)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,3824	RON	Romanian leu	3,3163
JPY	Japanese yen	157,31	SKK	Slovak koruna	33,637
DKK	Danish krone	7,4473	TRY	Turkish lira	1,7790
GBP	Pound sterling	0,68020	AUD	Australian dollar	1,6715
SEK	Swedish krona	9,3200	CAD	Canadian dollar	1,4467
CHF	Swiss franc	1,6401	HKD	Hong Kong dollar	10,7610
ISK	Iceland króna	89,86	NZD	New Zealand dollar	1,9819
NOK	Norwegian krone	7,8515	SGD	Singapore dollar	2,1049
BGN	Bulgarian lev	1,9558	KRW	South Korean won	1 294,48
CYP	Cyprus pound	0,5842	ZAR	South African rand	9,9094
CZK	Czech koruna	27,630	CNY	Chinese yuan renminbi	10,4001
EEK	Estonian kroon	15,6466	HRK	Croatian kuna	7,3237
HUF	Hungarian forint	254,58	IDR	Indonesian rupiah	13 049,86
LTL	Lithuanian litas	3,4528	MYR	Malaysian ringgit	4,8584
LVL	Latvian lats	0,7004	PHP	Philippine peso	65,056
MTL	Maltese lira	0,4293	RUB	Russian rouble	35,2250
PLN	Polish zloty	3,7895	THB	Thai baht	44,709

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

NOTICES FROM MEMBER STATES

Romanian national procedure for the allocation of limited air traffic rights

(2007/C 213/03)

In accordance with Article 6 of Regulation (EC) No 847/2004 of the European Parliament and of the Council on the negotiation and implementation of air service agreements between Member States and third countries, the European Commission publishes the following national procedure for the distribution of air traffic rights among eligible Community carriers where these rights are limited under international air service agreements.

'Ministry of Transport

Order approving the Regulation on the designation of Community air carriers to operate air services in accordance with the provisions of air service agreements concluded by Romania with non-EU countries

No 269 of 28 May 2007

For the discharge of the powers of the Ministry of Transport as state authority in the field of transport,

On the basis of Article 4(b) and (v) and Article 50(3) of Government Ordonnance No 29/1997 on the Civil Aviation Code, republished as subsequently amended and supplemented, Article 5 of Regulation (EC) No 847/2004 of the European Parliament and of the Council on the negotiation and implementation of air service agreements between Member States and third countries, and Article 5(4) of Government Decision No 367/2007 on the organisation and functioning of the Ministry of Transport,

The Ministry of Transport hereby issues the following

ORDER:

Article 1

The Regulation on the designation of Community air carriers to operate air services in accordance with the provisions of the air service agreements concluded by Romania with non-EU countries, as set out in the Annex forming an integral part of this Order, is hereby approved.

Article 2

1. This Order shall be published in the Official Gazette of Romania, Part I.

2. On the date of the entry into force of this Order, Order No 546/1999 on the conditions governing the designation of Romanian air carriers to operate public air transport services on scheduled routes, published in Official Gazette of Romania, Part I, No 539 of 4 November 1999, shall be repealed.

Article 3

The Directorate-General for Civil Aviation of the Ministry of Transport shall take measures to apply the provisions of this Order.

The Minister of Transport

Ludovic ORBAN

Annex to Ministry of Transport Order No 269/2007

Regulation on the designation of Community air carriers to operate air services in accordance with the provisions of the air service agreements concluded by Romania with non-EU countries

Article 1

1. The present Regulation establishes the conditions under which the Community air carriers may be designated to operate air services on routes covered by the air service agreements concluded by Romania with non-EU countries and to which Council Regulation (EEC) No 2408/92 on access for Community air carriers to intra-Community air routes, hereinafter "Council Regulation (EEC) No 2408/92", does not apply.

2. For the purpose of this Regulation:

— "community air carrier" means any air carrier established in Romania under the terms of Community law and holding an operating licence issued in accordance with Council Regulation (EEC) No 2407/92 on licensing of air carriers,

— "route with limited traffic rights" means a route to which Council Regulation (EEC) No 2408/92 does not apply and which is subject to limited traffic rights in accordance with an air service agreement concluded by Romania with a non-EU country.

Article 2

1. The information on traffic rights and their allocation on routes between Romania and countries which are not members of the European Union and with which Romania has concluded air service agreements is available on the website of the Ministry of Transport (www.mt.ro).

2. The schedule of planned negotiations for bilateral air service agreements shall be published on the website of the Ministry of Transport.

3. Any Community air carrier interested in operating air services on a route between Romania and a country which is not a member of the European Union and with which Romanian has not concluded an air service agreement may inform the Ministry of Transport of its intention and of any possible requirements. The information received by the Ministry of Transport shall be taken into consideration if an air service agreement is negotiated with that country.

Article 3

1. Any Community air carrier interested in operating air services on routes covered by air service agreements concluded by Romania with non-EU countries and to which Council Regulation (EEC) No 2408/92 does not apply shall submit an application in writing to the Directorate-General for Civil Aviation, "the DGCA", of the Ministry of Transport to obtain the appropriate designation.

2. If the application is made for a route with limited traffic rights (including limits on the capacity and frequency or on the number of air carriers permitted to operate on that route), information on the application shall be published on the website of the Ministry of Transport, together with a notice inviting any other Community air carrier to apply for a designation to operate that route within fifteen days of publication of the notice.

3. All applications received as a result of the invitation as provided for in paragraph (2) shall be published on the website of the Ministry of Transport.

4. Any application received after the period specified in paragraph (2) shall not be considered and the applicants shall be informed accordingly by the DGCA.

5. Applications as provided for in paragraphs (1) and (3) shall be written in the Romanian language and shall contain the following information:

(a) a copy of the air carrier's operating licence;

(b) a description of the planned services (routes, flight schedule, type of aircraft and their registration mark, etc.);

(c) the planned start date for the air services;

(d) possible market arrangements with other air carriers;

(e) connecting services, if any;

(f) the accessibility of the services and customer support (tickets sales network, internet-based services, etc.);

(g) the pricing policy for the route;

(h) elements and guarantees enabling assessment of the applicant air carrier's operational and financial capacity to operate the intended air services, covering at least the first two years of operation (a business plan for that route containing, as a minimum, information about the following: the status of the aircraft to be used, the operational possibility to provide another aircraft in the event that the scheduled aircraft cannot be used owing to unforeseen circumstances, the financial capacity to commence and maintain operations even if the volume of traffic is very low, the integration of the new service into air services that are already being operated, a forecast of the impact of the air service on the different categories of passengers).

6. The DGCA may ask applicants to provide additional information needed for the assessment of the application.

Article 4

1. For routes without any limitation of traffic rights, the designation shall be issued by the Ministry of Transport in accordance with the provisions of the appropriate air service agreement, after receipt of the application and information laid down in Article 3.

2. Competing applications for unused capacity on a route with limited traffic rights shall be assessed by the DGCA on the basis of the following criteria:

(a) meeting of the air transport demand (frequency of service and capacity offered, direct or indirect services, days of operation, etc);

(b) the presence of guarantees with regard to the sustainability of the service for a period of at least two years;

(c) the proposed start date and period of operation;

(d) the accessibility of the services offered to users (tickets sales network, internet-based services, etc.);

(e) the tariff policy, including ticket prices;

(f) connection of the offered services with the existing route network, if any;

(g) the aircraft's performance from an environmental point of view, including as regards noise pollution.

3. The air carrier's situation as regards the payment of Romanian airport tariffs and tariffs for air navigation services may be also used as a selection criterion.

Article 5

1. The Ministry of Transport shall decide on applications for designation to operate air services on a route with limited traffic rights within 60 days following the publication of the notice provided for in Article 3(2).

2. Traffic rights shall be granted for an indefinite period.

3. The decision as laid down in paragraph (1) shall be published on the website of the Ministry of Transport and communicated by the DGCA to all applicants in writing. After publication of the decision, the Ministry of Transport shall designate the air carrier selected to operate air services on that route.

4. Traffic rights granted to operate air services on routes not covered by Council Regulation (EEC) No 2408/92 may not be transferred by one air carrier to another.

5. If, following the designation issued by the Ministry of Transport in accordance with Article 4(1) or 5(3), the appropriate operating authorisation for that route is not granted to the designed air carrier by the competent authority of a non-EU third country or is revoked, the air carrier shall notify the Ministry of Transport immediately in writing.

Article 6

1. The DGCA shall monitor how a Community air carrier designated to operate air services on a route with limited traffic rights is operating the services in accordance with its application and with the terms of the final designation decision provided for in Article 5.

2. Any Community air carrier shall have the right to contest the efficient use of the traffic rights on a route with limited traffic rights and to apply for the designation to operate air services on that route by offering better operating conditions than the designated air carrier.

3. In the situation specified in paragraph (2), the DGCA shall reassess the initial designation. However, the reassessment may not be carried out within five years of a designation being issued or of a previous reassessment.

4. The designated air carrier shall be informed of any reassessment decision. The decision shall be published on the website of the Ministry of Transport. The reassessment process shall follow the procedure laid down in Articles 3 to 5.

Article 7

1. The Ministry of Transport shall withdraw a designation issued under Article 5(3) if:

(a) the air carrier has not commenced operation of the air services on the specified route within six months of the date of designation;

(b) the air service is interrupted and not resumed within six months, unless the interruption is due to circumstances beyond the control of the designated air carrier;

(c) the competent authority of another country has not granted the appropriate operating authorisation to the designated air carrier, or revokes the authorisation;

(d) the air carrier has notified the DGCA of its intention to cease operating the route in question.

2. The Ministry of Transport may also withdraw a designation if:

(a) the air carrier fails to comply with the commitments which it gave on the frequency of flights, capacity, tariffs and ticket distribution and on the basis of which the Ministry of Transport issued the designation decision;

(b) the air carrier has repeatedly been in debt to Romanian airports or air navigation service providers.

3. The DGCA shall notify the air carrier concerned in writing of its intention to withdraw the designation for a certain route and the reasons for the decision. Such notification shall also be sent to all Community air carriers that applied for the designation to operate air services on the route in question, in accordance with Article 3, and the carriers shall be permitted to make observations and comments.

4. The designated Community air carrier has the right, within 15 days of receipt of the notification as provided for in paragraph (3), to send the DGCA its comments on the reasons for the withdrawal of the designation and the new commitments it wishes to undertake regarding the operation of air services on the route in question.

5. Within 30 days of the expiry of the deadline laid down in paragraph (4), the Ministry of Transport shall take a decision on withdrawing the designation. If the designation is withdrawn, the appropriate decision shall enter into force three months after its notification to the air carrier concerned. For a new designation, the procedure laid down in Articles 3 to 5 shall be applied.

Article 8

Any action brought against a decision of the Ministry of Transport not to designate a Community air carrier to operate air services on a route covered by an air services agreement concluded by Romania with a country which is not a member of the European Union and to which Council Regulation (EEC) No 2408/92 does not apply, or to withdraw a designation shall be caught by Law No 554/2004 on administrative litigation, as subsequently amended.'

National procedure of the Netherlands for the allocation of limited air traffic rights

(2007/C 213/04)

In accordance with Article 6 of Regulation (EC) No 847/2004 of the European Parliament and of the Council on the negotiation and implementation of air service agreements between Member States and third countries, the European Commission is publishing the following national procedure in respect of the distribution of aviation rights amongst the eligible Community air carriers in cases in which these are limited pursuant to aviation agreements with third countries.

'Ministerie van Verkeer en Waterstaat
Luchtvaart

Policy rule memorandum on route licensing policy

(as amended by Decree of 7 May 2007 (VENW/DGTL-2007/7827))

Datum
20 augustus 2004

Ons kenmerk
DGL/04.U01454

Introduction

The judgment handed down by the European Court of Justice in respect of the "Open Skies" cases on 5 November 2002 ([1]) has shown that, if a European air carrier wishes to establish its registered offices in the Netherlands, it must be given the opportunity without discrimination and in a transparent manner, to exercise its rights in accordance with the Dutch bilateral aviation treaties. This aspect has been laid down in the "Regulation on the negotiation and implementation of air service agreements between Member States and third countries" (EC No 847/2004). In this context, the Directorate-General for Transport and Aviation [*Directoraat-Generaal Transport en Luchtvaart*, DGTL] has decided to bring route licensing policy and the implementation of this in line with these developments in the field of European legislation and, for the sake of transparency, to lay down the amendments required in order to achieve this in this policy memorandum.

In addition to the methodology used in issuing route licences, the format of the route licence shall also be amended. For instance, the route licence shall be configured in such a way that all Community air carriers established in the Netherlands shall in principal be permitted to operate transport to anywhere in the world. However in order to be able to use a specific route, this route must be included in a list, to be determined by the Minister, of routes to be operated in practice, which shall be drawn up pursuant to the licence.

The DGTL is also in favour of enforcing the current methodology as far as possible, where this does not conflict with EU regulations. In view of the latter, the clauses in relation to ownership and control based on nationality shall be brought in line with the requirements under Article 43 EC (business location) in accordance with the judgment given by the European Court of Justice in respect of the "Open Skies" treaties with the US.

Prior to granting its consent, the DGTL must, in the case of a limited number of landing rights, determine in a transparent and non-discriminatory manner which air carriers shall be permitted to fly which routes. In doing so, the DGTL shall rely on existing policy that has been laid down in the Licensing Policy Memorandum of 1994 and on the new additions laid down in this Memorandum on Route Licensing Policy. The method of assessment shall be dealt with and substantiated in accordance with the procedures under the General Administrative Law Act [*Algemene Wet Bestuursrecht*, Awb].

Scope of application

Any Community air carrier that wishes to provide routes from, to and via third countries from the Netherlands must, in order to be able to assert its rights to exercise the bilateral rights that the Dutch government has acquired, first establish its registered offices in the Netherlands and apply for a route licence or, where non-scheduled flights are concerned, charter permission.

The validity of the route licence depends on whether the air carrier is also in possession of, and shall continue to be in possession of, a valid operating permit pursuant to Article 16a of the Aviation Act [*Luchtvaartwet*].

([1]) Cases C-466/98, C-467/98, C-468/98, C-469/98, C-471/98, C-472/98, C-475/98, C-476/98.

Whether or not an operating permit will be granted or is valid shall at all times depend on whether the company is in possession of an AOC (Air Operator's Certificate) specifying the activities that fall under the operating permit (Article 9, Regulation (EEC) No 2407/92). Flights must be operated in accordance with the Air Operator's Certificate granted.

If an air carrier that holds a Dutch route licence is no longer a Community carrier established in the Netherlands, the Minister may decide to withdrawn its route licence.

Incidentally, the granting of a route licence does not mean that the licence-holder is not required to observe the conditions imposed in other contexts, for instance rules laid down by the authorities of third countries that are flight destinations, or the availability of slots.

Legal framework

National

A route licence or charter permission shall be issued on the basis of Article 16b of the Aviation Act, which creates the option to issue a licence as referred to in Article 16, which does not fall under Article 16a with regard to the operating permit. This also forms the basis for the authority to lay down this policy rule.

A licence may be issued for a maximum period of five years. The assessment that precedes the issuing of a licence shall take place in accordance with this memorandum with regard to the amendment of the route licensing policy and the Licensing Policy Memorandum. Where this memorandum deviates from the Licensing Policy Memorandum, the Licensing Policy Memorandum shall prevail. In addition, with regard to chartered flights, the Decree on non-scheduled transport (BOL [*Besluit ongeregeld luchtvervoer*], Decree of 2 May 1975/Bulletin of Acts and Decrees 1975/227) and, where package travel is concerned, the Inclusive Tours Holiday Decree [*Besluit IT-reizen*] (Regulation of 5 February 1981/No LV/L 20478/Netherlands Civil Aviation Authority [*Rijksluchtvaartdienst*]/Government Gazette 1981, 33) shall apply.

In addition to the Inclusive Tours Holiday Decree, in accordance with Article 7 of the BOL further rules with regard to non-scheduled transport have been laid down in the Decree on carriage and other flights [*Besluit Vracht — en overige vluchten*] (Regulation of 5 February 1981/No LV/L 20477/Netherlands Civil Aviation Authority [*Rijksluchtvaartdienst*]/Government Gazette 1981, 33), the Decree containing regulations concerning the transport by air of groups with an advance booking [*Beschikking ABC-vluchten*] (Decree of 11 June 1979/No LV/L 22952/Government Gazette 1979, 131), and the Decree on the transport of private groups [*Beschikking vervoer besloten groepen*] (Regulation of 29 July 1975/No POL/L 23676/Government Gazette 1975, 150).

European

On 5 November 2002, the European Court handed down a judgment in the cases brought by the Commission regarding the "Open Skies" treaties with the US ([2]). The European Court is of the opinion that the Community has exclusive jurisdiction in specific areas. In addition, the European Court has ruled that clauses relating to national ownership and control in aviation agreements constitute an infringement of the right of establishment under Article 43 of the EC Treaty. Both the Court and the Commission ([3]) have called upon the Member States to put an end to this violation of the EC Treaty.

In light of the judgments given by the European Court of Justice and pursuant to Article 10 of the EC Treaty, the Netherlands shall be obliged to take appropriate measures in order to guarantee compliance with the obligations arising from the Treaty or from the activities of the Community institutions. Following the judgment given by the Court, the Committee laid down the obligations in the field of traffic rights in the "Communication from the Commission on relations between the Community and third countries in the field of air transport" (COM(2003) 94) and the subsequently adopted "Regulation on the negotiation and implementation of air service agreements between Member States and third countries" (EC No 847/2004). Article 5 of this Regulation in particular is relevant to route licensing policy.

Types of licences for the distribution of routes

Exemption from licences for the distribution of routes

On the basis of Regulation (EEC) No 2408/92 ([4]) on access for Community air carriers to intra-Community air routes, air carriers that hold an operating permit issued by one of the Member States shall be permitted to operate flights within the EC. The operation of routes in some Member States is subject to authorisation from the relevant Member State.

([2]) See footnote 1.
([3]) "Communication from the Commission: On the consequences of the judgments given by the Court of Appeal on 5 November 2002 in respect of European aviation policy" (COM(2002) 649).
([4]) Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ L 240, 24.8.1992, p. 33).

In the Netherlands however, permission will automatically be granted without an administrative procedure, except in the case of reporting to the airport and air traffic control when a flight will actually be operated. Since 1 April 1997, the Regulation has also permitted Community air carriers to carry out transport from and to airports within a Member State (cabotage). The operation of flights outside the EC is subject to the granting of a route licence or charter permission.

Route licence

Routes outside the European Community are largely governed by bilateral agreements. Each bilateral relationship has its own individual character. Depending on various political and economic factors such as the market power of the air carrier in the country with which the aviation agreement is being concluded, the rights conferred will be of a liberal or restrictive nature. The issue and assessment of route licences will therefore only relate to routes within the European Union.

The most liberal current aviation agreement is the "Open Skies" agreement with the United States. Under this type of open regime, several Dutch air carriers are permitted to fly from any location in the Netherlands to any location in the country of the party entering into the agreement via an arbitrary intervening point and with onward flights to all locations. Under this very liberal regime, there are no restrictions on the frequency with which flights may be operated. In these situations, both a route licence for scheduled flights with passage and freight and charter permission will therefore be issued almost automatically.

If the bilateral regime is restrictive, the aviation agreement will specify, amongst other things, how many air carriers are permitted to fly specific routes as a scheduled service and with what frequency. In some cases the third country, in line with the agreements under the aviation agreement, will also require tariffs to be registered. These tariffs may be subject to the consent of the country in question.

Under both liberal and the restrictive aviation agreements, predominantly Dutch ownership and actual control of the air carrier(s) to be designated is currently generally required. Aviation agreements primarily govern scheduled flights. The Dutch government has therefore included the requirement in relation to Dutch ownership and control in the route licence issued in respect of scheduled flights. This requirement in relation to Dutch property and control will be converted into the requirement that the air carrier to which a route licence is issued must be a Community carrier established in the Netherlands. Chartered flights and *ad hoc* flights are usually considered outside of the aviation agreement on a case by case basis within the context of the bilateral aviation relationship. Charter permission is granted for this purpose.

Charter permission

As previously stated, the vast majority of chartered flights and *ad hoc* flights fall outside the bilateral regime. Flights outside Europe are governed by a separate regime for chartered flights and Regulation (EEC) No 2408/92 applies. In principle, in the case of chartered flights no distinction is made between Dutch and non-Dutch air carriers, provided that Dutch carriers enjoy equal access for the purpose of performing chartered flights in the state in which the non-Dutch air carrier is established.

The issue of nationality therefore plays a smaller role in terms of the operation of chartered flights. However, the procedure in this respect must also be transparent and non-discriminatory. Charter permission may be granted in respect of the operation of chartered flights or *ad hoc* flights upon request, whereby permission is granted for the operation of a number of chartered flights during a specific period. In assessing the application, the same policy principles will be observed as when assessing an application for a route licence. The procedure with regard to consultation and decision-making is also the same. In addition, the guidelines and procedures with regard to permission under the Decree on non-scheduled transport (BOL [*Besluit ongeregeld luchtvervoer*], Decree of 2 May 1975/Bulletin of Acts and Decrees 1975/227) and the additional rules based thereon (such as, where package travel is concerned, the Inclusive Tours Holiday Decree [*Besluit IT-reizen*] (Regulation of 5 February 1981/No LV/L 20478/Netherlands Civil Aviation Authority [*Rijksluchtvaartdienst*]/Government Gazette 1981, 33)) shall apply.

In view of the fact that, with respect to licensing policy, a great deal of importance is attached to strengthening the network of scheduled aviation connections, the question of whether the aviation policy/economic basis of an important scheduled service is affected by the operation of the chartered flights in question will play a significant role in the decision regarding whether to grant charter permission. If a charter air carrier intends to carry out scheduled service operations, this carrier will first of all be required to arrange for the operating permit and the Air Operator's Certificate to be amended accordingly by following the procedures that exist for this purpose pursuant to Regulation (EEC) No 2407/92 and JAR-OPS.

Route licence procedure

Aviation policy negotiations

During aviation policy negotiations, the interests of the national air carrier play a significant role. In current practice it is often the case that negotiations regarding traffic rights take place on the basis of the interest in new opportunities expressed by (one of) the air carriers. Consideration is already given in advance to the question of whether the application submitted by the interested air carrier fits in with the policy principles of the Licensing Policy Memorandum and whether the air carrier meets all requirements. Furthermore, other interested parties are consulted and are given the opportunity to attend negotiations. If the result of the negotiation is that only a limited number of air carriers may be designated to take advantage of the traffic rights, in accordance with the policy principles of the Licensing Policy Memorandum, a designation order is sent to the bilateral contact via the appropriate diplomatic channels. The current designation orders and with them the assigned routes have to be maintained with due observance of the regulations and restrictions imposed by the route licence.

As a result of the judgment given by the European Court of Justice, the interests of Community air carriers established in the Netherlands shall also be taken into account. The procedure during the intervening period between the date of aviation negotiations and such time as the aviation agreement is concluded must also be transparent and non-discriminatory for non-national Community air carriers.

Procedure

The Community air carriers established in the Netherlands must submit an application in their own right in order to be able to exercise rights they have acquired or routes that are no longer being used by another air carrier and that have therefore become available. If an air carrier has submitted an application for a route licence in writing, the DGTL shall first of all investigate whether the aviation relationship with regard to the route in question provides the scope to grant such application.

The processing of an application for a route licence shall be subject to the normal procedural regulations under Chapters 3, 4 and 6 of the General Administrative Law Act [*Algemene wet bestuursrecht*, Awb]. In accordance with these regulations, a decision shall in principle be taken within a reasonable period of 8 weeks following receipt of the application. In accordance with these regulations, the applicant shall, for instance, be given the opportunity to supplement his or her application where necessary. The applicant shall also be heard if the application is refused in full or in part. Pursuant to the Awb, interested third parties shall also be given the opportunity to be heard if it is anticipated that they may object to the granting of the application. Once a decision has been laid down, the various interested parties may also lodge an appeal against this decision.

Under the new system, the route licence is valid for a period of 5 years. Unlike systems that have been used in the past, there are no separate deadlines associated with the routes under the new system. The routes to be operated and the associated number of flights are actually included in a list of routes to be operated in practice that are to be determined by the Minister. The list, which is therefore drawn up in accordance with the licence, shall apply for as long as the licence is in force. This list may be amended in accordance with the regulations and restrictions imposed under the route licence. For instance, the list may be amended pursuant to Article 3 of the route licence in the event that the permitted method of exercising the available traffic rights is extended for the licence holder. The Minister shall also be permitted to amend the list if a licence holder fails to operate a route for which it has been granted permission pursuant to the route licence for a period of one year or more (use-it-or-lose-it principle).

Use-it-or-lose-it

The Article in the route licence that governs the option to withdraw those routes that have not been operated for a period of more than one year shall remain in full force and shall be applied in a more active manner in view of the potential increase in the number of applications in those locations where the number of rights to be distributed is limited. For the purpose of switching to this more active approach, it has been decided that the option to withdraw routes shall apply no earlier than one year from the date of issue of the amended decision, principally in view of the fact that this regulation has been a dead letter in recent years.

If, after a period of one year has passed since permission to operate certain routes was granted, it emerges that an air carrier has operated less than 80 % of the number of flights permitted during that year, the Minister may withdrawn permission in respect of the route in question by means of removing said route from the list of routes to be operated in practice. This shall be carried out with due observance of the policy principles described below.

For routes that are determined by order this year in accordance with the route licence, the licence holder may only operate the routes within the context of rights, as laid down in aviation agreements on 22 August 2004.

In the case of the routes determined, the number of flights permitted shall be laid down in an administrative system for the purpose of assessment. To this end, a list stating, amongst other things, the frequencies associated with the allocated routes shall be drawn up in consultation with the Community carriers established in the Netherlands.

If the air carrier is the only carrier designated under the aviation agreement and no more air carriers may be designated (single designation), the total number of flights permitted on this route may be withdrawn. If several air carriers have been or may be designated (multiple designation), withdrawal of permission in respect of the unused part of the allocated flights shall be considered. However, in the event that the more limited form of operation is not consistent with the aims in relation to the policy principles described below that are used in assigning limited traffic rights, the withdrawal and making available for redistribution of all allocated flights may also be considered in the event of multiple designation.

The Minister shall however not withdraw permission granted if the air carrier is able to demonstrate that its failure to operate the total number of flights permitted is the result of special circumstances that could not have been avoided even if all reasonable measures had been taken. This may also be understood to refer to a situation such as a terrorist attack or SARS outbreak, however also necessary restrictions resulting from considerations in relation to tactical negotiations or other matters related to aviation policy. It may also be understood to refer to situations in which codeshare operations are severely limited by restrictive arrangements.

With regard to the redistribution of routes that have been withdrawn, all Community air carriers established in the Netherlands and therefore also the air carrier that was permitted to operate these routes until such time as they were withdrawn, shall be eligible for the distribution procedure. To this end, the air carriers must declare their interest in operating a specific route well in advance by submitting an application in writing (no later than 3 months prior to the season in which the air carrier wishes to commence its flights in the event that routes/frequencies become available). On the basis of the application and the availability of rights, the DGTL shall then take a decision with due observance of the applicable administrative provisions.

The Minister may however decide not to withdraw a route despite failure to operate the total number of flights permitted, for example if the air carrier that has been granted permission gives notices in good time that it will increase the number of flights that it operates in the coming year so that the total number of flights are used and if no other air carrier has expressed an interest in operating these flights.

Policy principles

The policy principles used by the DGTL in assessing whether an application to exercise traffic rights may be granted are partly incorporated in the Licensing Policy Memorandum, partly in the general policy of the Ministry of Transport, Public Works and Water Management [*Verkeer en Waterstaat*] and in the text of the budget in accordance with the budget methodology "*Van Beleidsbegroting Tot Beleidsverantwoording*" (VBTB, "From Budget to Balance Sheet") ([5]). For the sake of clarity, the policy principles shall be briefly set out again below. The DGTL shall consider the merits of each application in accordance with the policy principles and with due observance of the policy implications of the judgment given by the European Court of Justice, which is also cited below. As aviation agreements vary greatly, the weighting of the different principles will also vary.

Aviation policy

One of the general policy aims of the Ministry of Transport, Public Works and Water Management is "to provide for an effectively operating aviation system by contributing towards the development and stability of a well-functioning aviation market" ([6]). In this context, the Netherlands contributes towards developing an open and free transport market. The aim in negotiating aviation agreements shall therefore be to ensure that these are as liberal as possible. Furthermore, for the purpose of achieving this aim, tactical aviation policy considerations must be taken into account when carrying out negotiations in respect of, and the distribution, of traffic rights.

([5]) Chapter XII of the 2003 National Budget, Lower House, session year 2002-2003, 28 600 XII, No 2.
([6]) See footnote 5, Article 11.

In view of the statements made previously in this memorandum within the context of provisions in respect of nationality, the DGTL shall, in consultation with its bilateral contact, also make every effort to amend the clause in the various aviation agreements in such a way that other Community air carriers are also able to rely on the traffic rights granted via the applicable national procedures, provided that they are established in the Netherlands. If the aviation policy contact adheres to the nationality clause, it will be necessary to examine how this should be handled and what the implications are in respect of traffic rights and the associated decisions on these routes on a case by case basis.

The working method must be amended for the purpose of future negotiations in respect of aviation policy, in order to ensure that the procedure is transparent and to guarantee equal access to the rights acquired. This must be carried out with due observance of the regulations laid down in the "Regulation on the negotiation and implementation of air service agreements between Member States and third countries" (EC No 847/2004) ([7]). The negotiations shall be conducted on behalf of all Community air carriers, after which, following conclusion of the negotiations, a notification shall be issued to all Community air carriers established in the Netherlands, which may then submit an application in order to exercise the rights acquired.

With regard to freight, the DGTL shall make every effort to establish a separate freight regime with its bilateral partner, in order to ensure that the interests of carriers are represented as effectively as possible. If it is not possible to arrange a separate freight regime, the DGTL shall, on the basis of the policy principles in this memorandum and in the Licensing Policy Memorandum, assess how the rights acquired may be distributed between passenger carriers and freight carriers on a case by case basis.

The process that takes place between the date of negotiations in respect of aviation policy and such time as the rights acquired are exercised shall be subject to the applicable national and European rules on competition and relevant case law. With regard to codeshare, it shall in principle only be necessary for the government to designate the operating carrier in respect of flights from, to, and via the Netherlands. Conversely, some countries impose a requirement to the effect that the marketing carrier must also be designated under the aviation agreement, and a licence is sometimes required in order to operate flights. In the case of single designation, this may mean that there is no remaining scope to designate another Community air carrier established in the Netherlands. In the case of multiple designation, this may mean that the number of flights operated on behalf of the marketing carrier may lead to a limitation with regard to the remaining number of flights under the aviation agreement. At the request of the marketing carrier, it shall be examined in such cases whether this constitutes grounds for the Minister to issue a designation and/or permission in accordance with the route licence.

For the existing codeshare operations that are already permitted pursuant to aviation agreements, the air carriers shall retain their rights with due observance of the conditions and additional stipulations imposed under the route licence.

If an air carrier has been granted permission to operate flights on certain routes and intends to convert a direct service on this route into an indirect service via codeshare, it shall be required to inform the DGTL of such intention. If it is necessary to conduct negotiations in respect of aviation policy in order to carry out the above amendment to the type of service or for the purpose of new codeshare operations, and these negotiations result in changes to the rights package, the DGTL shall reassess the manner in which the rights are distributed in accordance with the policy principles.

Quality of networks

As stated in the Licensing Policy Memorandum, the effect on the network of airlinks from, to and via the Netherlands plays an important role in assessing whether permission may be granted to an air carrier to operate flights on a route outside of the European Community. For instance, the Memorandum proposes that prospective scheduled service carriers should not be granted permission to operate routes in those cases in which this is likely to infringe upon the primary routes of the existing worldwide network of flights leaving from the Netherlands. This would serve to implement the policy to strengthen the network of airlinks via the Netherlands. Within the context of the VBTB 2002-2006, the policy aim may be summarised as follows: "in an open and competitive international transport market, to maintain and strengthen the link between the Netherlands and the global aviation network" ([8]). The aim in this regard is for Schiphol to continue to be one of the top four North-west European airports in terms of the quality of its network.

([7]) See also the "Communication from the Commission on relations between the Community and third countries in the field of air transport" (COM(2003) 94).

([8]) See footnote 5, Article 11 of the National Budget for the Ministry of Transport, Public Works and Water Management.

Whether a sufficient contribution is being made towards the quality of the network shall, amongst other things, be assessed from the perspective of passengers who are embarking and disembarking on the one hand, and passengers who are transferring to another flight ([9]) on the other hand. In the case of passengers who are embarking and disembarking, this concerns the "quality of accessibility" of the Netherlands by air (in this case Schiphol). In the case of passengers who are transferring to another flight, this also concerns the "quality of transfer" in order to take a connecting flight via the Netherlands (in this case Schiphol).

The assessment criteria considered in assessing the quality of the network are focused on the type and quality of the air services on offer. The DGTL bases this on the following information:

— a description of the air service (e.g. the intended route),

— the frequency of the air service and the capacity offered,

— the type and configuration of aircraft,

— direct or indirect connections,

— commencement of the air service,

— continuity of the air service,

— nature of the service (passengers, freight or other),

— accessibility of the air service for users,

— realisation of connections,

— degree of competition for the route.

Safety

The general policy aim of the DGTL is "to promote the safety of traffic and transport in the field of aviation" ([10]). In this context, the air carrier is required to hold a valid Air Operator's Certificate (AOC). Flights may only be operated within the limits imposed by this AOC and with due observance of the applicable national and international safety requirements.

Whether or not an operating permit required in respect of a route licence and charter permission will be granted or is valid shall at all times depend on whether the carrier holds an AOC specifying the activities that fall under the operating permit (Article 9, Regulation (EEC) No 2407/92).

Environment

The general policy principle in the context of the environment is "to realise and maintain the sustainable development of aviation" ([11]). The noise and emission characteristics of the aircraft to be used in order to operate a specific route may play a role in this respect.

Business location

Under Article 43 of the EC Treaty, it is not permitted to impose restrictions on the freedom of establishment of citizens (or companies, see Article 48 EC) as well as restrictions with regard to the establishment of agencies, branches or subsidiaries by the citizens of a Member State.

Article 43 enables citizens/companies in a Member State to engage in activities in another Member State in accordance with the national legislation that applies to citizens in the country in which the citizen/company is established. The European Court is of the opinion that a carrier established in a Member State should be treated in the same manner as the national carriers in this Member State. The national ownership and control required under aviation agreements constitutes an infringement of the freedom of establishment.

The general rule and relevant case law of the Court of Appeals show that the European requirements with regard to establishment come down to the actual and effective realisation of activities in the field of aviation with a view to doing so on a long-term basis, whereby the legal form of the company shall not be regarded as the decisive factor. This is also stated under ground 10 of the "Regulation on the negotiation and implementation of air service agreements between Member States and third countries" (EC No 847/2004).

([9]) Where the text reads "passengers who are embarking and disembarking" this also refers to "shippers who are importing or exporting cargo". Where the text reads "passengers who are transferring to another flight" this also refers to "shippers who are conveying goods in transit".

([10]) See footnote 5, Article 9 of the National Budget for the Ministry of Transport, Public Works and Water Management.

([11]) See footnote 5, Article 12 of the National Budget for the Ministry of Transport, Public Works and Water Management.

If a Community air carrier wishes to assert its air traffic rights acquired via the Netherlands in bilateral negotiations, the DGTL will check whether it is actually established in the Netherlands. The criteria originating from case law of the European Court relating to actual integration in the national economy and permanent presence in the Netherlands shall be used as a touchstone in this regard. Moreover, a Community air carrier that establishes its registered offices in the Netherlands must comply with the Dutch regulations that apply to Dutch air carriers, including the requirement to hold a permit under Article 16, 16a, and 16b of the Aviation Act, which is predominantly based on the requirements of Regulation (EEC) No 2407/92.

It is basically the case that EU carriers originating from other Member States must not be subject to restrictions imposed under the conditions of an AOC, as the original license issued by the country of origin must be recognised on the basis of the harmonised principles of Regulation (EEC) No 2407/92. In this respect, it must be taken into account that the current safety requirements have not been fully harmonised. This may constitute grounds for the safety requirements to be governed by national law in the meantime ([12]). Article 16a, paragraph 4, provides points of departure for this purpose, which specify that the Minister may revoke a licence that falls under Regulation (EEC) No 2407/92 as a result of the operation of flights contrary to provisions imposed by or pursuant to this Act or due to failure to comply with provisions associated with the licence.

Ground 10 cited above also states that a carrier that has registered offices in several Member States must observe requirements arising from national law, providing that this is in accordance with European law. Therefore outside of the regulations under the Aviation Act, national regulations for instance in the field of employment law and consumer law shall also apply, provided that this takes place in a non-discriminatory manner.

Ownership and control

The European Court has concluded that any stipulations in respect of nationality under aviation agreements that state that not all Community air carriers established in the country in question are eligible for the traffic rights acquired, constitutes an infringement of the right of establishment.

The requirement imposed by the route licence to the effect that the majority ownership and the actual control of the carrier must be and remain in Dutch hands shall be replaced. On the basis of Article 4, paragraph 2 of Council Regulation (EEC) No 2407/92 ([13]), the requirement shall be formulated in such a way that the air carrier must be a Community air carrier established in the Netherlands. On the basis of Regulation (EEC) No 2407/92, a Community air carrier must currently qualify as an air carrier of which the majority interest and actual control is in the hands of one or more Member States of the European Union and/or the citizens of Member States. In accordance with the above-mentioned regulation, it may be demonstrated whether a carrier is a Community air carrier by means of an operating permit. Carriers shall therefore be required to hold an operating permit pursuant to Regulation (EEC) No 2407/92.

De staatssecretaris van Verkeer en Waterstaat,
namens deze,
de waarnemend directeur-generaal Luchtvaart,

J. Tammenoms Bakker'

([12]) See the statements issued by the Transport Council on 5 June 2003 on external relations.
([13]) Council Regulation (EEC) No 2407/92 of 23 July 1992 on the licensing of air carriers (OJ L 240, 24.8.1992, p. 1).

V

(Announcements)

ADMINISTRATIVE PROCEDURES

COMMISSION

F-Paris: Operation of scheduled air services

Operation of scheduled air services between Strasbourg and Prague and Strasbourg and Vienna

Notice of competitive public tenders issued by France pursuant to Article 4(1)(d) of Council Regulation (EEC) No 2408/92 for the delegation of a public service

(2007/C 213/05)

1. **Introduction:** Pursuant to Article 4(1)(a) of Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes, France has imposed public service obligations in respect of scheduled air services between Strasbourg and Prague and Strasbourg and Vienna, the terms of which were published in the Official Journal of the European Union of 11.9.2007 under references C 212.

   Separate invitations to tender are being issued for the routes between Strasbourg and Prague and Strasbourg and Vienna.

   With regard to each of the above routes, if on 29 February 2008 no air carrier has commenced or is about to commence operating the route in accordance with the public service obligation imposed it and without requesting financial compensation, France has decided, in accordance with the procedure laid down in Article 4(1)(d) of the aforementioned Regulation, to limit access to the route to a single carrier and, via an invitation to tender, to grant the right to operate these services from 30 March 2008, the first day of the IATA 2008 summer scheduling season, until 27 March 2010, the day before the start of the IATA 2010 summer scheduling season.

   Tenderers may present tenders to operate both the above-mentioned routes, particularly where this results in a reduction in the overall compensation required. However, they must set out clearly the amount of compensation required in respect of each route, where appropriate specifying different rates depending on which parts of their tender are accepted in the event that they are awarded a contract covering some but not all of the routes for which they have tendered.

2. **Subject of each invitation to tender:** For each of the routes listed in section 1, to provide scheduled air services from 30 March 2008 in accordance with the relevant public service obligation as published in the Official Journal of the European Union of 11.9.2007 under references C 212.

3. **Participation in the tender procedure:** Participation is open to all Community air carriers who hold a valid operating licence issued in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers.

4. **Tender procedure:** Each invitation to tender is subject to the provisions of Article 4(1)(d), (e), (f), (g), (h) and (i) of Regulation (EEC) No 2408/92.

5. **Tender file:** The full tender dossier, including the specific rules for the invitation to tender and the public service delegation agreement and its technical annex (note on demographic and socio-economic features of Strasbourg airport catchment area, note on Strasbourg airport, market study, note on the European Parliament, text of the public service obligation published in the Official Journal of the European Union), is obtainable free of charge from:

   Ministère des Affaires étrangères, direction des Affaires financières, sous-direction du Budget, bureau des Interventions, 23, rue La Pérouse, F-75775 Paris Cedex 16. Telephone: (33)1 43 17 66 42 and (33)1 43 17 77 99. Fax: (33)1 43 17 77 69. E-mail: jean-louis.girodet@diplomatie.gouv.fr and jean-claude.formose@diplomatie.gouv.fr

6. **Financial compensation:** Tenders must explicitly state the amount of compensation required for the operation of each route for the planned duration of the contract (with a breakdown for a first period from 30 March 2008 to 28 March 2009 and a second period from 29 March 2009 to 27 March 2010). The exact amount of compensation finally granted will be determined for each period ex-post on the basis of the proven costs and revenue actually generated by the service, within the limits of the amount given in the tender.

7. **Fares:** Tenders must indicate the proposed fares and the conditions under which changes may be introduced.

8. **Duration, amendment and termination of the contract:** The contract will begin on 30 March 2008. It will end the day before the start of the IATA 2010 summer scheduling season, i.e. on 27 March 2010. The performance of the contract will be examined in cooperation with the carrier at the end of each of the two periods specified in section 6. The amount of the compensation may be revised in the event of unforeseen changes in operating conditions.

   In accordance with the public service obligations specified in section 2, the carrier selected must give at least six months' notice before discontinuing these services.

   In the event of serious breaches of its contractual obligations, the carrier will be deemed to have terminated the contract without notice if it does not operate the flights in accordance with those obligations within one month of the serving of formal notice.

9. **Penalties:** Failure by the carrier to observe the period of notice referred to in section 8 will give rise either to the payment of an administrative fine in accordance with Article R. 330-20 of the Civil Aviation Code or to a penalty calculated on the basis of the number of months of default and the actual deficit of the route during the year in question, not exceeding the level of the maximum financial compensation provided for in section 6.

   In the event of minor breaches of the public service obligation, the maximum compensation provided for in section 6 will be reduced, without prejudice to the application of the provisions of Article R.330-20 of the Civil Aviation Code.

   These reductions will reflect the number of weeks during which the capacity provided was lower than the minimum capacity, as well as failure to comply with the frequency of service and the timetables imposed as public service obligations.

10. **Submission of tenders:** Tenders must reach the following address before 17:00 (local time):

    Ministère des affaires étrangères, direction des affaires financières, sous-direction du budget, bureau des interventions, 23, rue La Pérouse, -75775 Paris Cedex 16, at the latest five weeks after the date of publication of this notice of invitation to tender in the Official Journal of the European Union, and must be sent by registered letter with acknowledgement of receipt, date as on the receipt, or delivered by hand with acknowledgement of receipt.

11. **Validity of the invitation to tender:** In accordance with the first sentence of Article 4(1)(d) of Council Regulation (EEC) No 2408/92, the validity of each invitation to tender is subject to the condition that no Community carrier presents by 29 February 2008 a programme for operating the route in question from 30 March 2008 in accordance with the public service obligation imposed and without requesting any financial compensation.

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION POLICY

COMMISSION

STATE AID — DENMARK

State aid C 22/07 (ex N 43/07) — Extension to certain activities of the regime exempting Danish maritime transport companies from the payment of the income tax and social contributions of seafarers

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

(Text with EEA relevance)

(2007/C 213/06)

By means of the letter dated 10 July 2007 reproduced in the authentic language on the pages following this summary, the Commission notified the Kingdom of Denmark its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the above-mentioned 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 Energy and Transport
Directorate A — Unit 4
B-1049 Brussels
Fax (32-2) 296 41 04

These comments will be communicated to the Kingdom of Denmark. 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

1. DESCRIPTION OF THE MEASURE

1.1. Title

1. Extension of the DIS regime to cable laying and dredging activities.

1.2. Description of the notified amendment to the regime

2. The main purpose of the notified amendment is to extend the so called DIS regime to crews on board cable layers and dredgers. This regime consists of an exemption — for ship-owners — from the payment of social contributions and income tax of their seafarers working on board ships registered in the *Dansk Internationalt Skibsregister*, the Danish International Register of Shipping, hereinafter referred to as the DIS register, when the ships are used for the commercial transport of passengers or goods.

3. The measures under examination do not concern the tonnage tax regime. They are limited to the DIS regime so far.

4. With respect to cable layers, their activities have not been eligible so far for the existing regimes in favour of maritime transport, that is to say the tonnage tax regime and the DIS regime, although cable layers were allowed to register in the DIS register. These activities were subjected to normal corporation tax and to normal social contributions. Denmark wants from now on to give to cable layers the full advantage of the DIS regime.

5. Accessorily, Denmark notified an Executive Order that has been never notified so far to the Commission and that lay down important rules for the implementation of the DIS regime. The order in question is Executive Order on the taxation of mariners in application of Section 12 of Act No 386 of 27 May 2005 on the taxation of mariners.

6. With respect to dredgers, the order in question specifies what can be considered as maritime transport for the dredging industry with a view to establishing rules for the eligibility of dredging activities.

7. Pursuant to Section 13 of this Order, the following activities of dredgers are regarded as maritime transport:

   (1) sailing between the port and the extraction site;

   (2) sailing between the place of extraction and the place where the extracted materials are to be unloaded, including the unloading itself;

   (3) sailing between the place of unloading and the port;

   (4) sailing at and between places of extraction;

   (5) sailing to provide assistance at the request of public authorities in connection with clearing up after oil spills, etc.

8. Under current law sand dredgers cannot be registered in the Danish International Register of Shipping. Neither can they be covered by the tonnage tax scheme. Sand dredgers therefore cannot meet the basic conditions for applying for the DIS regime. Since, in addition, sand dredgers are to a certain extent used for work falling outside the scope of the Community Guidelines on State aid to maritime transport [1], referred to thereafter as the Guidelines — e.g. construction work in territorial waters — Denmark has found it difficult to include sand dredgers in the general net wages scheme.

9. Instead, Denmark decided to tax persons on board sand dredgers according to the general rules and subsequently to refund the tax to the vessel owners once the conditions for this are met. So dredging is indirectly covered by the DIS regime.

2. PRELIMINARY ASSESSMENT OF THE EXISTENCE OF AN AID

10. The Commission will examine here whether the application of the DIS regime to dredging and cable laying activities could be compatible with the common market.

3. DOUBTS ABOUT THE COMPATIBILITY OF THE MEASURE WITH THE COMMON MARKET

11. The Commission has serious doubts as to whether cable laying activities and certain dredging activities covered by the scheme constitute maritime transport within the sense of the Guidelines.

3.1. Cable laying

12. The Commission considers it impossible to divide a given activity into a part falling under the notion of maritime transport and a part excluded thereof. It is rather of the view that it is necessary for all kinds of maritime activities, to undertake a global assessment in order to conclude whether or not the activity examined falls entirely within the notion of maritime transport.

13. As a consequence, the Commission is of the opinion that the laying of cables at sea cannot be construed as the superposition of a maritime transport services and of the effective laying of cable at sea.

14. Cable laying vessels do not usually transport cable drums from one port to another port or from one port to an off-shore installation. Instead they lay cables, at the request of a client, from a determined point located on a coast to a determined point located on another coast.

15. In addition, it is not yet proven that cable laying companies established within the Community do suffer from the same competitive constraints as those of maritime transport operator on the world market. It is not clear whether Community cable layers face a competition, exerted by flags of convenience, of the same intensity as that characterizing maritime transport.

3.2. Dredging

16. The Commission considers that the excavation of materials for the maintenance of a water depth in navigation channels or in port basins and the disposal thereof at sea do not constitute transport. As a matter of fact, the client (port or waterways authorities) expects the dredging companies to get rid of materials that hamper or obstruct the navigation and not to transport these materials to a particular place.

17. In addition, the Commission wonders whether the extraction of aggregates at sea and its transportation up to the port where the dredging company is established constitutes maritime transport. It should be here recalled that maritime transport is the transportation of goods between '*a port and any other port or off-shore installation at sea*'. Since the extraction place cannot be considered to be an off-shore installation at sea, it may be disputed that the activity consisting of extracting aggregates and transporting them up to a port of unloading constitutes maritime transport.

18. However, the Commission may accept the view that a construction site (reclaim of land, construction of a pier or a dyke, etc) can constitute an offshore installation at sea because of the fixed nature of the place of construction. In that respect the transportation of aggregates from a port to a construction site at sea can constitute maritime transport.

19. As a consequence, the Commission has doubts as to whether the activities of dredgers, as provided in the notified measures, can all constitute maritime transport, for the purpose of implementing the Guidelines.

20. The Commission thus considers, at this stage of its analysis, that cable laying may not constitute maritime transport and may not be eligible for State aid to maritime transport within the meaning of the Guidelines. Regarding dredging, at this stage the Commission has doubts about whether the activities covered by the scheme constitute maritime transport and whether they fulfil the conditions of eligibility for State aid to maritime transport.

[1] OJ C 13, 17.1.2004, p. 3.

TEXT OF LETTER

'1. **SAGSFORLØB**

1. Danmark anmeldte med brev til Kommissionen den 15. januar 2007 ([2]) en ændring af den nuværende ordning, hvorved rederier fritages for at betale indkomstskat for deres søfolk i Danmark.

2. Denne statsstøtteordning blev oprindelig registreret under nr. NN 118/96 og senere godkendt af Kommissionen ved beslutning af 13. november 2002 ([3]). Ændringen er blevet registreret under nr. N 43/07.

3. Danmark fremsendte med brev til Kommissionen af 27. marts 2007 ([4]) yderligere oplysninger om sagen, som Kommissionen havde anmodet om i brev af 20. marts 2007 ([5]).

2. **BESKRIVELSE AF FORANSTALTNINGEN**

2.1. **Titel**

4. Udvidelse af DIS-ordningen til kabellægnings- og sandsugningsaktiviteter

2.2. **Beskrivelse af den anmeldte ændring af ordningen**

5. Det vigtigste formål med den anmeldte ændring er at udvide den såkaldte DIS-ordning til også at omfatte mandskabet ombord på kabelskibe og sandsugere. Ordningen består i, at rederne fritages fra at betale socialsikringsbidrag og indkomstskat for deres søfolk, som arbejder ombord på skibe, der er registreret i *Dansk Internationalt Skibsregister* (i det følgende benævnt »DIS-registeret«), når skibene anvendes til kommerciel transport af passagerer eller gods.

6. De foranstaltninger, der undersøges, vedrører ikke tonnageskatteordningen. De er indtil videre begrænset til DIS-ordningen.

7. Hvad angår kabelskibe, så har deres aktiviteter indtil nu ikke været støtteberettigede under bestående ordninger til fordel for søtransportaktiviteter, dvs. tonnageskatordningen og DIS-ordningen, selv om kabelskibe kunne registreres i DIS-registeret. Aktiviteterne var underlagt normal virksomhedsbeskatning, og der skulle betales normale socialsikringsbidrag. Danmark ønsker at inddrage kabelskibe fuldt ud i DIS-ordningen fra nu af.

8. Samtidig med denne anmeldelse anmeldte Danmark en bekendtgørelse, som ikke tidligere er anmeldt til Kommissionen; bekendtgørelsen fastsætter vigtige regler for gennemførelsen af DIS-ordningen. Den pågældende bekendtgørelse handler om beskatning af søfolk i medfør af § 12 i Lov om beskatning af søfolk (Lov nr. 386 af 27. maj 2005).

9. Hvad angår sandsugere, fastsætter den pågældende bekendtgørelse, hvad der udgør søtransport for sandsugere med henblik på at fastlægge regler for sandsugningsaktiviteters støtteberettigelse.

10. I henhold til bekendtgørelsens § 13 regnes følgende aktiviteter for at være søtransport i forbindelse med sandsugere:

    (1) Sejlads mellem havn og indvindingsplads

    (2) Sejlads mellem indvindingsplads og det sted, hvor de indvundne materialer skal losses, herunder selve losningen

    (3) Sejlads mellem lossested og havn

    (4) Sejlads på og mellem indvindingspladser

    (5) Sejlads ved assistance på foranledning af offentlig myndighed i forbindelse med oprydning efter olieudslip m.v.

11. Ifølge den nuværende lovgivning kan sandsugere ikke registreres i DIS-registeret. De kan heller ikke omfattes af tonnageskatteordningen. Sandsugere kan derfor ikke opfylde de grundlæggende betingelser for at anvende DIS-ordningen. Eftersom sandsugere desuden i et vist omfang anvendes til aktiviteter, som ligger uden for rammerne af Fællesskabets retningslinjer for statsstøtte til søtransport ([6]) (i det følgende benævnt retningslinjerne), f. eks. konstruktionsarbejder i søterritoriet, har det været vanskeligt for Danmark at inkludere sandsugere i den generelle nettolønsordning.

12. I stedet har Danmark besluttet at beskatte personer, som arbejder ombord på disse fartøjer, i henhold til de generelle beskatningsregler og derefter refundere skatten til rederierne, når disse opfylder betingelserne. Det vil sige, at sandsugning indirekte er omfattet af DIS-ordningen.

2.3. **Beskrivelse af den nuværende ordning**

13. Ordningen består af en fritagelse for indkomstskat og socialsikringsbidrag for personer, som arbejder ombord på fartøjer, der er registreret i DIS-registeret, når disse fartøjer anvendes til kommerciel transport af passagerer og gods.

14. DIS-registeret blev indført ved Lov nr. 408 af 1. juli 1988 og trådte i kraft den 23. august 1988. Det blev indført for at standse udflagningen fra det danske register til tredjelande.

15. DIS adskiller sig hovedsageligt fra *Dansk Skibsregister* (DAS) ved at tilbyde rederne muligheden for at ansætte søfolk fra tredjelande på grundlag af disses nationale lønvilkår, medens statsborgere fra tredjelande, som arbejder på DAS-registrerede fartøjer, betales efter de danske regler.

([2]) Registreret under reference TREN (2007) A/21157.
([3]) Beslutningens tekst findes på det officielle sprog på følgende internetadresse: http://ec.europa.eu/community_law/state_aids/transports-1998/nn116-98.pdf
([4]) Registreret under reference TREN (2007) A/28077.
([5]) Reference: TREN(2007) D/ 306985.
([6]) EUT C 13 af 17.1.2004, s. 3.

16. Inden indførelsen af DIS-registeret skulle alle søfolk på danske skibe betale indkomstskat i Danmark uanset deres nationalitet og bopæl.

17. Loven om oprettelse af DIS-registeret blev ledsaget af en række støtteforanstaltninger ([7]), som skulle gøre det nye åbne register meget tiltrækkende. Rederierne skulle ikke længere betale indkomstskat og socialsikringsbidrag for deres søfolk ombord på DIS-registrerede fartøjer, uanset om disse var bosiddende i Danmark eller ej. Det er en betingelse, at der tages hensyn til skattefritagelsen ved fastsættelsen af lønnen. Skattefordelen tilfalder hermed rederiet og ikke den enkelte søfarende.

18. Personer, som uden for begrænset fart erhverver lønindkomst ved arbejde om bord på danske eller udenlandske skibe, kan ved opgørelsen af den skattepligtige indkomst fradrage et beløb på 56 900 kr. Tilsvarende gælder ved arbejde om bord på stenfiskerfartøjer, herunder sandsugere, som har egne fremdrivningsmidler og eget lastrum til transport af materialer indvundet fra havbunden, og som har en bruttotonnage på 20 t eller derover. Har den pågældende kun lønindtægt som nævnt i det foregående i en del af året, eller er der tale om ansættelse på deltid, nedsættes fradraget forholdsmæssigt. Det er en betingelse for fradrag, at forhyringsvilkårene for den pågældende svarer til, hvad der sædvanligvis gælder for søfolk.

19. Fritagelsen for indkomstskat og socialsikringsbidrag for søfolk, som er ansat ombord på DIS-registrerede fartøjer, blev ikke anmeldt til Kommissionen, men blev ikke desto mindre godkendt af Kommissionen den 13. november 2002 ([8]).

2.4. **Budget**

20. Det årlige indtægtstab på ca. 600 mio. kr. (ca. 300 mio. EUR) dækker hele fritagelsesordningen (DIS-ordningen), og ikke kun udvidelsen til at omfatte kabelskibe og sandsugere.

21. Danmark har ikke givet noget skøn over omkostningerne for at udvide ordningen til at omfatte kabelskibe og sandsugere.

2.5. **Andre statsstøtteordninger, som finder anvendelse på søtransport i Danmark**

22. Så vidt Kommissionen ved, anvender Danmark i øjeblikket kun én anden støtteordning inden for søtransport, nemlig tonnageskatteordningen ([9]).

2.6. **Kabellægning**

23. Et kabelskib er et højsøfartøj, som er udformet og anvendes til at udlægge undervandskabler til telekommunikation eller el-transmission. Sådanne fartøjer kan også anvendes til at reparere bestående kabler. Et kabelskib er til forskel fra andre fartøjer udstyret med en stor overbygning og en eller flere kabeltromler.

24. Udlægning af søkabler er et erhverv, som tog sin begyndelse i midten af det 19. århundrede, og som kun har kendt fremgang siden og navnlig efter, at lyslederkabler vandt indpas i teleindustrien i midten af 1980'erne. Kabellægningsvirksomhedernes kunder er normalt teleselskaber.

25. De vigtigste ejere og operatører af kabelskibe i verden for tiden er:

— TYCO

— ASN Marine

— Elettra

— FT Marine

— Global Marine Systems Limited

— NTT World Engineering Marine Corporation (NTT-WEM)

— S. B. Submarine Systems

— YIT Primatel Ltd

— E-MARINE

— IT International Telecom Inc.

26. Ifølge oplysninger fra de danske myndigheder fører mere end halvdelen af verdens kabellægningstonnage et EØS- eller EU-flag.

27. Danmark mener, at kabellægning kan ligestilles med søtransport, og at det kunne være berettiget til at modtage statsstøtte til søtransport.

2.7. **Sandsugning**

28. Sandsugere kan tjene to formål; enten at sørge for bibeholdelse af vanddybden i en sejlrende eller havn (opmudring) eller at indvinde sten og/eller sand fra havbunden.

29. Den førstnævnte aktivitet er hovedsagelig lokal eller national, og der er nære kontakter mellem havnemyndighederne og sandsugningsvirksomhederne. Sidstnævnte aktivitet er mere international og mere åben for verdensomspændende konkurrence, navnlig i forbindelse med store bygge- og anlægsprojekter til havs.

30. Verdens førende på området er nederlandske *Boskalis-HBG* [30 %-40 % af EU-markedet], fulgt af belgiske *DEME* [10 %-20 %] og *De Nul* [10 %-20 %]. Andre vigtige aktører er nederlandske *Van Oord* [5 %-10 %], *Ballast Nedam* [5 %-10 %] og *Blankevoort* [0 %-5 %], spanske *Grupo Dragados* [0 %-5 %], og danske *Rohde Nielsen* [0 %-5 %]. Store sandsugningsvirksomheder fra den lukkede del af verdensmarkedet, f.eks. *Hyundai, Samsung, Daewoo* og *Hanjin Construction* fra Sydkorea, anses for at være stærke potentielle konkurrenter til EU/EØS-selskaber.

([7]) Lov nr. 361, 362, 363 og 364 af 1. juli 1988, som trådte i kraft den 1. januar 1989.

([8]) Beslutningens tekst findes på det officielle sprog på følgende internetadresse: http://ec.europa.eu/community_law/state_aids/transports-1998/nn116-98.pdf

([9]) Støtte NN 116/98, godkendt ved Kommissionens beslutning af 13. november 2002. Beslutningens tekst findes på det officielle sprog på følgende internetadresse: http://europa.eu.int/comm/secretariat_general/sgb/state_aids/transports-1998/nn116-98.pdf

3. FORELØBIG VURDERING AF, OM DER ER TALE OM STATSSTØTTE

31. Kommissionen bemærker, at den anmeldte foranstaltning udvider en statsstøtteordning til at dække nye aktiviteter. Foranstaltningen udgør støtte efter EF-traktatens artikel 87, stk. 1, da den finansieres med offentlige midler, er til fordel for bestemte virksomheder, fordrejer eller truer med at fordreje konkurrencen og kan påvirke samhandlen mellem medlemsstaterne.

32. Kommissionen undersøger i det følgende, om anvendelsen af DIS-ordningen på sandsugnings- og kabellægningsaktiviteter ville være forenelig med fællesmarkedet.

4. TVIVL OM STØTTENS FORENELIGHED MED FÆLLESMARKEDET

4.1. Retsgrundlag

33. De anmeldte foranstaltningers forenelighed med fællesmarkedet skal undersøges på grundlag af Fællesskabets retningslinjer for statsstøtte til søtransportsektoren ([10]). Ifølge retningslinjerne kan virksomheder modtage støtte fra medlemsstater, forudsat at de hovedsageligt leverer søtransporttjenester.

34. Som det fremgår af nedenstående, har Kommissionen alvorlige tvivl om, hvorvidt en udvidelse af DIS-ordningen til også at omfatte kabellægnings- og visse sandsugningsaktiviteter er forenelig med fællesmarkedet, idet disse aktiviteter måske ikke er søtransport i henhold til retningslinjerne.

35. Ved søtransport forstås i forbindelse med gennemførelsen af retningslinjerne søtransport i henhold til EU-lovgivningen og navnlig forordning (EF) nr. 4055/56 ([11]), som definerer »søtransport inden for Fællesskabet« som »*befordring af passagerer og gods med skib mellem en havn i en medlemsstat og en havn eller et offshoreanlæg i en anden medlemsstat*«. På dette grundlag kan søtransport defineres som »*befordring af passagerer og gods med skib, på en kundes vegne, mellem en havn og enhver anden havn eller et offshoreanlæg.*«

36. I denne forbindelse har Domstolen afklaret begrebet søtransport i en dom af 11. januar 2007 i sag C-251/04, Grækenland mod Kommissionen, for så vidt angår spørgsmålet om, hvorvidt bugsering ville være søtransport: »[…] *adskiller bugsering sig fra cabotage i art og egenskab, således som defineret i artikel 2, stk. 1, i forordning (EØF) nr. 3577/92. Selv om bugsering er en ydelse, der normal leveres mod betaling, består den i princippet ikke i almindelig søtransport af gods eller passagerer. Der er snarere tale om assistance til flytning af et skib, en borerig, en platform eller en bøje. En bugserbåd, som hjælper et andet skib med at manøvrere, leverer ekstra drivkraft til dette skib eller erstatter dets drivkraft i tilfælde af fejl eller svigt, assisterer det skib, som transporterer passagererne eller godset, men det er ikke selv noget transportskib.*« Domstolen bemærkede også, at forordning (EØF) nr. 3577/92 ikke finder anvendelse på »*tjenesteydelser, der er relaterede til, forbundet med eller underordnet leveringen af tjenesteydelser inden for søtransport*« ([12]). I lyset af denne dom bør begrebet søtransport derfor fortolkes således, at kun den direkte befordring af gods eller passagerer med skib mellem to havne eller mellem en havn og et offshoreanlæg er omfattet, og ikke tjenesteydelser, der er relateret til eller forbundet med sådan befordring.

4.2. Kabellægning

37. Kommissionen mener, at det må undersøges, hvilke virkninger den påtænkte udvidelse ville have på den berørte sektor. Den sektor, det drejer sig om, er udlægning af tele- eller el-kabler på havbunden.

38. Kommissionen anser det for umuligt at inddele en given aktivitet i dele, hvoraf nogle er omfattet af begrebet søtransport, medens andre ikke er det. Det vil være nødvendigt — ligesom for alle andre maritime aktiviteter — at foretage en global vurdering og derefter konkludere, hvorvidt den undersøgte aktivitet vil være helt omfattet af definitionen af søtransport.

39. Som følge heraf mener Kommissionen ikke, at udlægning af kabler i havet kan siges at være en kombination af søtransport og udlægning af kabler i havet.

40. Kabelskibe foretager normalt ikke transport af kabeltromler fra havn til havn eller fra en havn til et offshoreanlæg. De udlægger i stedet på en klients anmodning kabler fra et punkt på en kyst til et andet punkt på en anden kyst. Kabelskibe lader derfor ikke til at levere nogen direkte søtransporttjenester, dvs. befordring af passagerer og gods med skib mellem en havn i en medlemsstat og en havn eller et offshoreanlæg i en anden medlemsstat. Selv om et sådant fartøj eventuelt også befordrer gods med skib, så lader denne aktivitet udelukkende til at foregå i forbindelse med fartøjets hovedaktivitet, som er kabeludlægning.

41. Herudover er der endnu intet belæg for, at kabellægningsvirksomheder, der er etableret i Fællesskabet, er underlagt de samme konkurrencemæssige begrænsninger, som gælder for søtransportvirksomheder på verdensmarkedet. Det står ikke klart, om Fællesskabets kabellægningsvirksomheder på grund af konkurrenter, der sejler under bekvemmelighedsflag, befinder sig i samme konkurrencesituation som søtransportsektoren.

42. Kommissionen mener derfor på dette stade af undersøgelsen, at kabellægning måske ikke kan anses for at udgøre søtransport og derfor måske ikke kan modtage statsstøtte i overensstemmelse med Fællesskabets retningslinjer.

4.3. Sandsugning

43. Kommissionen er i tvivl om, hvorvidt udgravning af materialer for at bibeholde en vanddybde i en sejlrende eller et havnebassin og deres bortskaffelse på havet er søtransport. Kunden (havne- eller søfartsmyndigheder) forventer, at den virksomhed, der foretager opmudringen, bortskaffer materialerne, som sinker eller forhindrer sejlads, men ikke at de transporteres til et bestemt sted.

([10]) EUT C 13 af 17.1.2004, s. 3.
([11]) Rådets forordning (EØF) nr. 4055/86 af 22. december 1986 om anvendelse af princippet om fri udveksling af tjenesteydelser på søtransportområdet (EFT L 117 af 5.5.1988, s. 33).
([12]) Se dommens præmis 31 og 32.

44. Kommissionen er også i tvivl om, hvorvidt sandsugning på havet og transport af materialerne til virksomhedens hjemhavn kan siges at være søtransport. Der mindes om, at søtransport i henhold til EU-retten er transport af gods mellem *»en havn og enhver anden havn eller et offshoreanlæg«*.

45. Kommissionen kan dog acceptere det synspunkt, at et bygge- og anlægsområde (landindvinding, konstruktion af mole eller dige osv.) kan være et offshoreanlæg på grund af dets faste placering. I denne forbindelse kan transport af fyldmaterialer fra en havn til et bygge- og anlægsområde på havet anses for at være søtransport.

46. Som følge heraf er Kommissionen i tvivl om, hvorvidt de i punkt 10 omhandlede aktiviteter kan anses for at være søtransport i forbindelse med implementering af retningslinjerne.

5. **KONKLUSION**

47. Med udgangspunkt i det foregående må der foretages en undersøgelse, der bygger på artikel 4, stk. 4, i procedureforordningen om statsstøtte ([13]), for at hjælpe Kommissionen med at afklare, hvorvidt kabellægnings- og sandsugningsaktiviteter er berettigede til at modtage statsstøtte til søtransport.

48. Kommissionen beslutter i lyset af ovenstående vurdering at indlede en formel undersøgelsesprocedure, jf. forordningens artikel 4, stk. 4 ([14]), for så vidt angår de foreslåede ændringer.

49. I lyset af de foregående overvejelser anmoder Kommissionen i overensstemmelse med forordningens artikel 6, stk. 1 ([15]), Danmark om at fremsætte sine bemærkninger til de ovennævnte spørgsmål og at fremsende alle oplysninger, som kan bidrage til vurderingen af de påtænkte støtteforanstaltninger, inden for én måned fra datoen for modtagelsen af dette brev. Kommissionen opfordrer de danske myndigheder til straks at fremsende en kopi af dette brev til de potentielle støttemodtagere.

50. Kommissionen minder Danmark om, at EF-traktatens artikel 88, stk. 3, har opsættende virkning. Kommissionen henviser også til forordningens artikel 14 ([16]), som bestemmer, at uretmæssigt udbetalt støtte kan kræves tilbagetalt af støttemodtagerne.

51. Kommissionen gør Danmark opmærksom på, at den informerer interesserede parter ved at offentliggøre dette brev samt et resumé af det i *Den Europæiske Unions Tidende*. Kommissionen informerer også interesserede parter i EFTA-lande, som har underskrevet EØS-aftalen, ved at offentliggøre en meddelelse i *Den Europæiske Unions Tidendes* EØS-tillæg, og den informerer EFTA-Tilsynsmyndigheden ved at fremsende en kopi af dette brev. Alle interesserede parter vil blive opfordret til at fremsætte deres bemærkninger senest en måned efter offentliggørelsen.'

([13]) Rådets forordning (EF) nr. 659/1999 af 22.3.1999 om fastlæggelse af regler for anvendelsen af EF-traktatens artikel 93 (EFT L 83 af 22.3.1999, s. 1).

([14]) Artikel 4, stk. 4, i forordning (EF) nr. 659/1999:
4. Konstaterer Kommissionen efter en foreløbig undersøgelse, at en anmeldt foranstaltning giver anledning til tvivl om, hvorvidt den er forenelig med fællesmarkedet, beslutter den at indlede proceduren efter traktatens artikel 93, stk. 2, i det følgende benævnt »beslutning om at indlede den formelle undersøgelsesprocedure«.

([15]) Artikel 6, stk. 1, i forordning (EF) nr. 659/1999:
1. Beslutningen om at indlede den formelle undersøgelsesprocedure skal sammenfatte de relevante faktiske og retlige spørgsmål, indeholde en foreløbig vurdering fra Kommissionens side med hensyn til støttekarakteren af den påtænkte foranstaltning og anføre, om der er tvivl om, hvorvidt den er forenelig med fællesmarkedet. I beslutningen skal den pågældende medlemsstat og andre interesserede parter opfordres til at fremsætte bemærkninger inden for en nærmere fastsat frist, der normalt ikke må overstige en måned. I behørigt begrundede tilfælde kan Kommissionen forlænge denne frist.

([16]) Artikel 14 i forordning (EF) nr. 659/1999:
Tilbagebetaling af støtte
1. I negative beslutninger om ulovlig støtte bestemmer Kommissionen, at den pågældende medlemsstat skal træffe alle nødvendige foranstaltninger til at kræve støtten tilbagebetalt fra støttemodtageren, i det følgende benævnt »beslutning om tilbagebetaling«. Kommissionen kræver ikke tilbagebetaling af støtten, hvis det vil være i modstrid med et generelt princip i fællesskabslovgivningen.
2. Den støtte, der skal tilbagebetales i medfør af en beslutning om tilbagebetaling, skal indeholde renter beregnet på grundlag af en passende sats, der fastsættes af Kommissionen. Renterne betales fra det tidspunkt, hvor den ulovlige støtte var til støttemodtagerens rådighed, og indtil den tilbagebetales.
3. Med forbehold af eventuel kendelse fra Domstolen efter traktatens artikel 185 skal tilbagebetalingen ske omgående og i overensstemmelse med gældende procedurer i den pågældende medlemsstats nationale ret, forudsat at disse giver mulighed for omgående og effektiv gennemførelse af Kommissionens beslutning. Til det formål og i tilfælde af søgsmål ved de nationale domstole træffer de pågældende medlemsstater alle nødvendige foranstaltninger, som er til rådighed i deres respektive retssystemer, herunder også foreløbige foranstaltninger, dog med forbehold af fællesskabsretten.

STATE AID — GERMANY

State aid C 18/07 (ex N 874/06) — Training aid for DHL Leipzig

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

(Text with EEA relevance)

(2007/C 213/07)

By means of the letter dated 27 June 2007 reproduced in the authentic language on the pages following this summary, the Commission notified Germany of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the training aid linked with the above-mentioned aid.

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

European Commission
Directorate-General for Competition
State Aid Greffe
Rue de la Loi/Wetstraat, 200
B-1049 Bruxelles
Fax (32-2) 296 12 42

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

TEXT OF SUMMARY

PROCEDURE

The planned aid to DHL in Leipzig, Germany was notified to the Commission on 21 December 2006.

DESCRIPTION

Beneficiary of the aid would be the express parcel operator DHL, wholly owned by Deutsche Post AG. DHL is currently building a new delivery and airfreight centre in Leipzig-Halle, Germany, which is expected to become operational by the end of October 2007. The delivery and airfreight centre is operated by DHL Hub Leipzig GmbH and European Air Transport Leipzig GmbH.

The German authorities propose to grant training aid amounting to EUR 7,753 million for a total of eligible costs amounting to EUR [(10-15)] (*) million. The training concerns certain jobs such as ground handling of airfreight (so called Ramp Agents II), security agents as well as pre-flight and ramp mechanics. The training programme includes mostly *general* training measures and some *specific* training measures.

ASSESSMENT

At this stage, the Commission has serious doubts that the envisaged aid fulfils the conditions of Commission Regulation (EC) No 68/2001 and Article 87(3)(c) EC Treaty. On the one hand the Commission is not sure whether the eligible costs comprise also productive hours. On the other hand, the Commission has reasons to assume that the beneficiaries would need to provide the training to their employees also in the absence of aid for the following reasons: first, following the investments made in the logistic centre in Leipzig, Germany, DHL must employ new workers in order to start operating; second, the training measures, although to a high extent general, appear rather technical and to a large extent immediately required to operate the hub; third, certain qualifications and certificates seem to be required by law; fourth, it seems rather difficult to find already fully trained and skilled employees for air transport services in the European market; and finally, subcontracting services to other service providers does not seem a cost efficient option.

CONCLUSION

In view of the doubts mentioned above, the Commission has decided to initiate the procedure laid down in Article 88(2) of the EC Treaty.

TEXT OF LETTER

'Hiermit teilt die Kommission der Bundesrepublik Deutschland mit, dass sie nach Prüfung der von den deutschen Behörden über die vorerwähnte Maßnahme übermittelten Angaben beschlossen hat, das Verfahren nach Artikel 88 Absatz 2 EG-Vertrag einzuleiten.

1. VERFAHREN

1. Nachdem am 23.11.2006 eine Vorbesprechung mit den deutschen Behörden stattgefunden hatte, meldete Deutschland mit Schreiben vom 21.12.2006 eine Beihilfe für DHL an. Mit Schreiben vom 29.1.2007 forderte die Kommission weitere Angaben an, die ihr von Deutschland mit Schreiben vom 13.4.2007 übermittelt wurden.

(*) Confidential information.

2. **BESCHREIBUNG DES PROJEKTS**

2.1. **Der Empfänger**

2. Mit einem weltweiten Umsatz von 18,2 Mrd. EUR im Jahr 2005 gehört DHL zu den führenden Expressdienstleistern. Das Unternehmen ist eine 100 %ige Tochter der Deutschen Post AG.

3. Zur Zeit errichtet DHL in Leipzig-Halle ein neues Logistikzentrum für Expresssendungen und Luftfracht, das Ende Oktober 2007 den Betrieb aufnehmen soll. Die Investitionskosten für dieses Projekt belaufen sich auf insgesamt 250 Mio. EUR. Im April 2004 wurde DHL eine regionale Investitionsbeihilfe von rund 70 Mio. EUR gewährt, die von der Kommission als Beihilfesache N 608/03 mit einer Beihilfehöchstintensität von 28 % genehmigt wurde.

4. Das Zentrum für Expresssendungen und Luftfracht wird von den beiden begünstigten Unternehmen DHL Hub Leipzig GmbH (im Folgenden ‚DHL Hub') und European Air Transport Leipzig GmbH (im Folgenden ‚DHL EAT') betrieben, die beide über verschiedene Tochterunternehmen zu 100 % der Deutschen Post AG gehören.

2.2. **Das Ausbildungsprojekt**

5. Das Logistikzentrum wird alle Bodenabfertigungsdienste sowie Preflight-Checks und Ramp-Checks für alle ankommenden und abgehenden Flugzeuge von DHL durchführen. Das Unternehmen beabsichtigt, zu diesem Zweck schrittweise rund 1 500 Personen einzustellen und entsprechend auszubilden. Die notifizierte Beihilfe bezieht sich allerdings auf Ausbildungsmaßnahmen für 485 Beschäftigte.

6. Die deutschen Behörden notifizierten für die Ausbildungsmaßnahme einen direkten Zuschuss in Höhe von 7,753 Mio. EUR, der je zur Hälfte durch den Freistaat Sachsen und das Land Sachsen-Anhalt bereitgestellt wird. Grundlage hierfür sind die jeweiligen Bestimmungen der beiden Bundesländer über die Förderung von Projekten und Ausbildungsmaßnahmen aus Mitteln des Europäischen Sozialfonds.

7. Die von DHL geplanten Ausbildungsmaßnahmen werden von DHL Hub (320 Personen) und DHL EAT (165 Personen) durchgeführt.

8. Zunächst begründeten die deutschen Behörden die Erforderlichkeit der Ausbildungsmaßnahme damit, dass nicht genügend qualifizierte Fachkräfte verfügbar seien. Außerdem ziehe man die Ausbildung von Arbeitern am Standort vor, um dem Druck zum berufsbedingten Wohnortwechsel bzw. ‚Berufspendlertum' entgegenzuwirken. Später gab DHL jedoch an, dass es auch auf die geplante Qualifizierungsmaßnahme verzichten und stattdessen Mitarbeiter von Wettbewerbern abwerben bzw. die Dienstleistungen an verschiedene externe Unternehmen vergeben könne.

9. Bei der von DHL Hub angebotenen beruflichen Qualifizierung handelt es sich vornehmlich um allgemeine Ausbildungsmaßnahmen, mit denen den Arbeitern das Wissen und die Fähigkeit zur Ausübung der jeweiligen Tätigkeiten vermittelt werden soll. Die Ausbildung umfasst einen theoretischen Teil und die Vermittlung von praktischen Kenntnissen am Arbeitsplatz. Die Ausbildung von DHL Hub bezieht sich auf insgesamt 320 Beschäftigte für die folgenden Einsatzbereiche, die nachstehend näher erläutert werden:

Tabelle 1

Berufsgruppe	Anzahl	Aufgaben
Flugzeugabfertiger (Ramp Agent II)	210	Be- und Entladen der Luftfahrzeuge
Sicherheitsfachkraft	110	Personen- und Frachtkontrolle
(operative) Führungskräfte	(110) [1]	Aufgaben im mittleren Management; Personalmanagement und Planung, Führungsaufgaben

[1] DHL wird für 110 Beschäftigte, die bereits an einer anderen Ausbildungsmaßnahme z.B. für Ramp Agent II, Sicherheitsfachkräfte oder Techniker/Mechaniker teilgenommen haben, ein zusätzliches Management-Training durchführen.

Flugzeugabfertiger (Ramp Agent II)

10. Hauptaufgabe der Ramp Agents ist das zeitgerechte Be- und Entladen der Luftfahrzeuge. Dazu gehört auch das Bedienen und Fahren des sogenannten ‚Ground Service Equipment', die Übergabe von Flugunterlagen, das Erstellen von Berichten sowie die Kommunikation mit den Piloten und den Flughafenbehörden.

11. Die Ausbildung zum Ramp Agent umfasst 19 Kurse zuzüglich eines praktischen Ausbildungsteils und erfolgt in 77 Ausbildungstagen, 47 davon am Arbeitsplatz. Laut Notifizierung (Seite 31) richtet sich die Ausbildungsmaßnahme an Arbeiter mit einer abgeschlossenen Berufsausbildung in einem ähnlichen Bereich oder — nach dem Verständnis der Kommission — idealerweise bereits als Ramp Agent II. Die Kurse sollen von Ende 2006 bis Oktober 2007, d.h. vor Aufnahme des Hub-Betriebs, stattfinden. Die Ausbildung umfasst auch einen Kurs mit der Bezeichnung ‚*Unit Load Device Build Up*', der als spezifische Ausbildungsmaßnahme angesehen wird, weil darin der Aufbau bestimmter, nur von DHL verwendeter Container behandelt wird. Darüber hinaus beinhaltet die allgemeine Ausbildung Folgendes:

— ein allgemeines Sicherheitstraining wie Brandschutz, Umgang mit Frachttüren, erste Hilfe, Gefahrgutschulung und Sicherheitsbestimmungen auf dem Vorfeld,

— ein allgemeines fachbezogenes Training, das zum Erwerb entsprechender Befähigungsnachweise führt wie Vorfeldführerschein, GSE (Einweisung in Abfertigungsgeräte) und Flurförderzeugschein,

— sonstige technische Ausbildungsmaßnahmen wie Flugzeugbeförderung, Enteisungsmethoden und Einführung in die Vorfeldarbeit sowie,

— einige allgemeine Schulungen wie z.B. Umweltmanagement (ISO/DIN Norm 14001) oder Qualitätsmanagement und Prozesse (ISO/DIN Normen 9001, 2000).

12. Den deutschen Behörden zufolge sind in den nationalen und europäischen Vorschriften im Prinzip weder eine Mindestmitarbeiterzahl noch spezifische Ausbildungsanforderungen oder Qualifikationen für die Ausübung der Tätigkeit als Ramp Agent II vorgesehen. Deutschland selbst nennt jedoch 5 Kurse, für die diese Feststellung nicht gilt (u.a. Brandschutz, erste Hilfe, Gefahrgutschulung und Sicherheitsbestimmungen auf dem Vorfeld), weil sie für alle Mitarbeiter Pflicht sind ([1]), sowie zusätzliche Kurse einschließlich der jeweiligen Ausbildung am Arbeitsplatz, die von einer bestimmten Mindestzahl an Mitarbeitern (ca. 70) absolviert werden müssen, nämlich der Umgang mit den Frachttüren und die mit dem Erwerb eines Befähigungsnachweises verbundenen allgemeinen Ausbildungsmaßnahmen. Diese Personen könnten anschließend ihr Wissen in kurzen Schulungseinheiten an ihre Kollegen weitergeben.

13. Eine andere Lösung, die DHL ins Auge fasst, ist die Vergabe an externe Unternehmen. Hierzu legten die deutschen Behörden eine Kostenanalyse vor, aus der hervorgeht, dass die gesamten Personalausgaben inklusive der Ausbildungsmaßnahmen die Kosten einer externen Vergabe weit übersteigen würden. Die Kostenanalyse ist jedoch insofern recht unspezifisch, als sie nicht zwischen dem von DHL in jedem Fall erforderlichen Ausbildungsbedarf und den über diesen Mindestbedarf hinausgehenden Ausbildungskosten differenziert. Zudem bräuchten die von DHL beauftragten Bildungseinrichtungen zunächst eine entsprechende Schulung, deren Kosten unberücksichtigt blieben. Darüber hinaus lässt die Analyse die Vorteile außer Acht, die mit der Erbringung der Groundhandlingdienste durch das Unternehmen selbst verbunden sind und — wie in der Notifizierung dargelegt — ein wesentlicher Faktor für das gesamte Investitionsprojekt waren.

Sicherheitsfachkräfte

14. Die Tätigkeit einer Sicherheitsfachkraft umfasst die Personen- und Frachtkontrolle zur Gewährleistung eines störungsfreien Betriebs. Die Ausbildung zur Sicherheitsfachkraft hat nur allgemeine Ausbildungsinhalte zum Gegenstand:

— ein allgemeines Sicherheitstraining wie Brandschutz, erste Hilfe und Gefahrgutschulung,

— das für Sicherheitsfachkräfte gesetzlich vorgeschriebene fachbezogene allgemeine Sicherheitstraining, wie Abwehr terroristischer Gefahren, Zugangskontrolle, Kontrolle und Durchsuchung, Sicherheit von Gepäck und Fracht, Waffen und sicherheitsbezogene Bereiche,

— sonstige allgemeine fachbezogene Ausbildungsmaßnahmen, die zu entsprechenden Befähigungsnachweisen wie Vorfeldführerschein führen,

— sonstige allgemein gehaltene fachbezogene Sicherheitsschulungen in Recht, Waffen- und Sprengstoffkunde, Grundlagen für Kontrollabläufe, Auswertung von Röntgenbildern;

— einige allgemeine Ausbildungsmaßnahmen wie Qualitätsmanagement und Prozesse (ISO/DIN Norm 9001).

15. Den Angaben der deutschen Behörden zufolge entspricht die Ausbildung den einschlägigen nationalen und europäischen Vorschriften. DHL plant eine umfassende Ausbildung in den Sicherheitsbelangen für alle Sicherheitsfachkräfte, die jedoch bei Ausbleiben der staatlichen Unterstützung auf ein Mindestmaß, d.h. das allgemeine fachbezogene Sicherheitstraining, beschränkt würde (warum nicht auf das für alle Ramp Agents II vorgeschriebene allgemeine Sicherheitstraining ist zur Zeit noch unklar). Vorgesehen ist auch hier, die sonstigen allgemein gehaltenen Sicherheitsschulungen nur einer begrenzten Zahl an Mitarbeitern anzubieten, die dann ihr Wissen an die übrigen Mitarbeiter weitergeben.

16. Auch in diesem Fall schlagen die deutschen Behörden eine alternative Lösung, nämlich die Vergabe an externe Dienstleister vor. Den vorliegenden Informationen zufolge liegen die Kosten für eine externe Vergabe etwa [(15-30 %)] (*) unter den Personalkosten von DHL, obwohl die Ausbildungskosten noch gar nicht einbezogen wurden. Warum DHL nicht die kostengünstigere Option, d.h. die Vergabe von Unteraufträgen, wählt, wird von Deutschland nicht erläutert. Die Kostenanalyse ist insofern recht unspezifisch, als sie nicht zwischen dem von DHL in jedem Fall erforderlichen Ausbildungsbedarf und den über diesen Mindestbedarf hinausgehenden Ausbildungskosten differenziert. Angaben, aus denen sich schließen ließe, dass entsprechende Unterauftragnehmer auf dem lokalen Arbeitsmarkt zur Verfügung stehen, legen die deutschen Behörden nicht vor.

Ausbildung für das mittlere Management

17. Die Ausbildung für operative Führungskräfte richtet sich an Mitarbeiter, die im gesamten Logistikzentrum zum Einsatz kommen. Nach dem Verständnis der Kommission durchlaufen sie zuerst die vorgenannten Trainingsmaßnahmen und anschließend werden ihnen tiefer gehende Kenntnisse zu den von ihnen zu leitenden Bereichen vermittelt. Das Training umfasst außerdem Ausbildungsinhalte wie Arbeitsrecht, Grundlagen der Kommunikation, Personal- und Konfliktmanagement, Teamentwicklung. usw..

18. Bei den Tätigkeiten für DHL EAT geht es hauptsächlich um die Flugzeugwartung vor der Freigabe zum Flug. Die Ausbildungsmaßnahmen für DHL EAT beziehen sich auf die folgenden Tätigkeiten und insgesamt 165 Beschäftigte:

Tabelle 2

Berufsgruppe	Anzahl	Aufgaben
Flugzeugmechaniker mit Freigabeberechtigung CAT A	97	Ausstellung von Freigabebescheinigungen nach einfacher planmäßiger Wartung (‚Line Maintenance') und die Behebung einfacher Mängel
Flugzeugmechaniker mit Freigabeberechtigung CAT B 1	68	Ausstellung von Freigabe-bescheinigungen nach Instandhaltungsarbeiten, einschl. Arbeiten an der Luftfahrzeug-struktur, Triebwerken und mechanischen und elektrischen Systemen

([1]) Mitarbeiter, die unmittelbar mit der Fracht zu tun haben, müssen eine anerkannte Lizenz für die Behandlung der Materialien besitzen; alle im nicht öffentlichen Bereich des Flughafens Beschäftigten müssen ein Sicherheitstraining absolvieren; am Flugzeug eingesetzte Mitarbeiter müssen einen Kurs für den Umgang mit Frachttüren absolvieren; darüber hinaus müssen die Mitarbeiter — je nach Tätigkeit — Qualifikationen zur Bedienung von Geräten und Steuerung von Fahrzeugen vorweisen.

(*) Angaben, die durch eckige Klammern ersetzt worden sind, unterliegen dem Berufsgeheimnis.

19. Gemäß der Verordnung (EG) Nr. 2042/2003 der Kommission vom 20. November 2003 über die Aufrechterhaltung der Lufttüchtigkeit von Luftfahrzeugen und luftfahrttechnischen Erzeugnissen, Teilen und Ausrüstungen und die Erteilung von Genehmigungen für Organisationen und Personen, die diese Tätigkeiten ausführen ([2]), müssen die an der Wartung der Fluggeräte beteiligten Mitarbeiter zur Ausstellung von Freigabebescheinigung berechtigt sein. Die Voraussetzungen für den Erwerb einer solchen Berechtigung sind in der vorgenannten Verordnung festgelegt und beziehen sich auf Umfang und Inhalt der hierfür erforderlichen Ausbildungsmaßnahmen.

20. Die geplanten Ausbildungsmaßnahmen entsprechen den vorgenannten gesetzlich vorgeschriebenen Anforderungen und beziehen sich auf zwei Qualifikationen: Flugzeugmechaniker mit Freigabeberechtigung (Cat A) und Flugzeugmechaniker mit Freigabeberechtigung (CAT B1). Im Einzelnen beinhaltet die Ausbildung für beide Berufsgruppen Folgendes:

— Englischkurse, einschließlich technisches Englisch,

— technisches Grundwissen u.a. in Elektrik, Elektronik, Aerodynamik,

— praktische Anwendung des erworbenen technischen Grundwissens,

— weiteres vertieftes Training für CAT B 1.

21. An alle EAT-Ausbildungsmaßnahmen schließt sich eine Ausbildung am Arbeitsplatz an, deren Dauer die Zahl der Ausbildungstage, an denen theoretischer Unterricht im Klassenraum stattfindet, bei weitem übersteigt.

22. Die deutschen Behörden wissen, dass DHL sein Luftdrehkreuz nicht ohne entsprechend qualifizierte und lizenzierte Mitarbeiter betreiben kann. Da das gesamte Ausbildungsprogramm durch die vorgenannte Verordnung vorgegeben ist, akzeptieren die deutschen Behörden, dass DHL den Umfang der Ausbildung nicht reduzieren kann. Sie behaupten jedoch, dass DHL bei Ausbleiben der staatlichen Unterstützung überhaupt keine Ausbildung anbieten, sondern stattdessen auf bereits qualifizierte Mitarbeiter von Wettbewerbern oder Unterauftragnehmer zurückgreifen würde.

23. Der von Deutschland vorgelegten Kostenanalyse zufolge sind die Kosten für die Vergabe von Unteraufträgen geringer als die entsprechenden Personalkosten einschließlich der Ausbildungsmaßnahmen (d.h. etwa [(5-20 %)] für CAT A und rund [(10-30 %)] für CAT B 1).

2.3. **Förderfähige Ausbildungskosten und geplante Beihilfe**

24. Zu den förderfähigen Kosten legte Deutschland folgende Übersicht vor:

Tabelle 3

Kostenposition	Kosten allgemeine Ausbildung für DHL Hub in EUR	Kosten spezifische Ausbildung für DHL Hub in EUR	Kosten allgemeine Ausbildung für DHL EAT in EUR	Kosten spezifische Ausbildung für DHL EAT in EUR
a) Kosten der Ausbilder	[…] EUR	[…] EUR	[…] EUR	[…] EUR
b) Reisespesen für Ausbilder und Auszubildende	[…] EUR (Ausbilder) […] EUR (Auszubildende)	[…] EUR	[…] EUR […] EUR	[…] EUR
c) Sonstige laufende Aufwendungen	[…] EUR	[…] EUR	[…] EUR	[…] EUR
d) Abschreibung	[…] EUR	[…] EUR	[…] EUR	[…] EUR
e) Beratungskosten	[…] EUR	[…] EUR	[…] EUR	[…] EUR
Summe a) — e)	[…] EUR	[…] EUR	[…] EUR	[…] EUR
f) Personalkosten Auszubildende	[…] EUR (nur teilweise förderfähig)	[…] EUR (nur teilweise förderfähig)	[…] EUR (nur teilweise förderfähig)	[…] EUR (nur teilweise förderfähig)
Förderfähige Kosten insgesamt	[(30-40 %)] EUR	[(< 1 %)] EUR	[(40-50 %)] EUR	[(10-20 %)] EUR
Förderhöchstintensität	60 %	35 %	60 %	35 %
Voraussichtlicher Förderbetrag	[…] EUR	[…] EUR	[…] EUR	[…] EUR

([2]) ABl. L 315 vom 28.11.2003, S. 1.

25. Die förderfähigen Kosten des Ausbildungsvorhabens belaufen sich insgesamt auf [(10-15)] Mio. EUR und der voraussichtliche Betrag der Ausbildungsbeihilfe auf 7 753 000 EUR.

3. BEURTEILUNG DER BEIHILFE

Vorliegen staatlicher Beihilfe

26. Die Kommission ist der Auffassung, dass die Maßnahme eine staatliche Beihilfe im Sinne des Artikels 87 Absatz 1 EG-Vertrag darstellt, die in Form eines Zuschusses aus öffentlichen Mitteln gewährt wird. Die Maßnahme ist selektiv, weil sie auf DHL beschränkt ist. Dieser selektive Zuschuss ist geeignet, den Wettbewerb zu verzerren, weil er DHL gegenüber anderen Wettbewerbern, die keine Fördermittel erhalten, begünstigt. Schließlich ist festzuhalten, dass der Markt für Expressdienstleistungen, auf dem DHL zu den führenden Unternehmen zählt, durch intensive Handelsbeziehungen zwischen den Mitgliedstaaten bestimmt wird.

Rechtsgrundlage für die Beurteilung

27. Deutschland beantragt die Genehmigung der Beihilfe auf der Grundlage der Verordnung (EG) Nr. 68/2001 der Kommission vom 12. Januar 2001 über die Anwendung der Artikel 87 und 88 EG-Vertrag auf Ausbildungsbeihilfen ([3]), geändert durch die Verordnung (EG) Nr. 363/2004 der Kommission vom 25. Februar 2004 ([4]) und die Verordnung (EG) Nr. 1976/2006 der Kommission vom 20. Dezember 2006 ([5]) (im Folgenden die ‚Verordnung').

28. Gemäß Artikel 5 der Verordnung sind Beihilfen, deren Höhe für ein einzelnes Ausbildungsvorhaben eines Unternehmens 1 Mio. EUR übersteigt, nicht von der Notifizierungspflicht gemäß Artikel 88 Absatz 3 EG-Vertrag freigestellt. Die Kommission stellt fest, dass die vorgeschlagene Beihilfe in diesem Fall 7 753 307 EUR beträgt, die an ein Unternehmen gezahlt werden sollen und dass die Ausbildungsmaßnahme ein einziges Vorhaben darstellt. Nach Auffassung der Kommission fällt daher die geplante Beihilfe unter die Notifizierungspflicht, der die Bundesrepublik Deutschland nachgekommen ist.

29. Bei der Beurteilung einer einzelnen Ausbildungsbeihilfe, die nicht unter die Freistellungsregelung der Verordnung fällt, muss die Kommission aufgrund dieser Tatsache in Einklang mit ihren früheren Entscheidungen ([6]) eine individuelle Beurteilung ([7]) auf der Grundlage von Artikel 87 Absatz 3 Buchstabe c EG-Vertrag durchführen, bevor sie die Durchführung der Beihilfe genehmigt. Bei dieser Einzelbeurteilung stützt sich die Kommission allerdings sinngemäß auf die Grundprinzipien der Verordnung über Ausbildungsbeihilfen. Das bedeutet insbesondere, dass sie zunächst überprüft, ob die Maßnahme die formalen Kriterien des Artikels 4 erfüllt.

30. Außerdem muss die Kommission entsprechend ihrer gängigen Praxis prüfen, ob die Ausbildungsmaßnahme notwendig ist, um die betreffende Tätigkeit durchführen zu können, weil diese Erforderlichkeit der Beihilfe ein allgemeines Vereinbarkeitskriterium ist ([8]). Wenn die Beihilfe nicht zu zusätzlichen Tätigkeiten des Begünstigten führt, kann sie weder als ‚Förderung' der wirtschaftlichen Entwicklung im Sinne von Artikel 87 Absatz 3 Buchstabe c EG-Vertrag betrachtet, noch als Ausgleich der in Erwägungsgrund 10 der Verordnung genannten Marktschwäche, dass die Unternehmen zu wenig in die Ausbildung ihrer Beschäftigten investieren, angesehen werden.

Vereinbarkeit mit dem Gemeinsamen Markt

31. Die Kommission prüfte zunächst, ob das notifizierte Vorhaben die formalen Kriterien des Artikels 4 der Verordnung erfüllt.

32. Hierzu wird erstens festgestellt, dass die in der Tabelle 3 angegebene Beihilfeintensität unterhalb der Beihilfeobergrenzen nach Artikel 7 Absatz 2 und Absatz 3 von 35 % für spezifische Ausbildungsmaßnahmen (35 % von […] = [(ca. 5-25 %)]) und 60 % für allgemeine Ausbildungsmaßnahmen (60 % von […] = [(ca. 75-95 %)]) liegt. Da das Vorhaben in einem Fördergebiet im Sinne von Artikel 87 Absatz 3 Buchstabe a EG-Vertrag durchgeführt werden soll, wäre Deutschland in der Tat berechtigt, die Obergrenzen um 10 Prozentpunkte anzuheben.

33. Zweitens scheinen die in der Tabelle 3 aufgeführten förderfähigen Kosten der Maßnahme Artikel 4 Absatz 7 der Verordnung zu entsprechen. Insbesondere scheinen die förderfähigen Personalkosten für Ausbildungsteilnehmer auf die Höhe der Gesamtkosten der übrigen förderfähigen Kosten begrenzt worden zu sein. Die Kommission stellt allerdings fest, dass ein Großteil der Ausbildung am Arbeitsplatz erfolgen soll und somit vermutlich als produktive Stunden bei den Kosten für die Ausbildungsteilnehmer hätte in Abzug gebracht werden müssen. Die Kommission bezweifelt daher in diesem Stadium des Verfahrens, dass die Kosten für die Ausbildungsteilnehmer richtig berechnet wurden.

Erforderlichkeit der Beihilfe

34. Die Kommission weist darauf hin, dass eine Ausbildungsbeihilfe nur dann im Sinne von Artikel 87 Absatz 3 Buchstabe c EG-Vertrag mit dem Gemeinsamen Markt vereinbar ist, wenn sie nicht unmittelbar für die Leistungen des Begünstigten erforderlich ist ([9]). Die Kommission hat Grund zu der Annahme, dass die Begünstigten ihren Beschäftigten auch ohne Beihilfe zumindest bis zu einem gewissen Umfang eine ähnliche Ausbildung bieten müssten. Das schließt jedoch nicht aus, dass einige Ausbildungsmaßnahmen über das Maß hinausgehen, das für die Aufnahme des Betriebs erforderlich ist, und insofern für eine Ausbildungsbeihilfe in Betracht kommen könnten.

([3]) ABl. L 10 vom 13.1.2001, S. 20.
([4]) ABl. L 63 vom 28.2.2004, S.20.
([5]) ABl. L 368 vom 23.12.2006, S. 85.
([6]) Siehe Entscheidung der Kommission vom 4. Juli 2006 in der Beihilfesache C 40/2005 *Ford Genk,* ABl. C 366 vom 21.12.2006, S. 32 und Entscheidung der Kommission vom 4. April 2007 in der Beihilfesache C 14/2006 *General Motors Belgium* (noch nicht veröffentlicht).
([7]) Dies entspricht auch Erwägungsgrund 16 der Verordnung über Ausbildungsbeihilfen.
([8]) Dies wird in Erwägungsgrund 11 der Verordnung bekräftigt, demzufolge sichergestellt werden muss, ‚dass die Beihilfen auf das Maß beschränkt bleiben, das zur Erreichung des mit Marktkräften allein nicht zu verwirklichenden Gemeinschaftsziels notwendig ist, […]'.
([9]) Vgl. Entscheidung der Kommission C 14/2006 Ausbildungsbeihilfe für General Motors in Antwerpen, Belgien (noch nicht veröffentlicht) und Entscheidung der Kommission C 40/2005, Ausbildungsbeihilfe für Ford Genk (ABl. L 366 vom 21.12.2006, S. 32).

35. Nach Auffassung der deutschen Behörden ergibt sich die Erforderlichkeit der Beihilfe aus der Tatsache, dass das Unternehmen die Absicht hat, vornehmlich (gering qualifizierte und/oder arbeitslose) Personen aus dem Einzugsgebiet des Standorts einzustellen, für deren Qualifizierung es zusätzlicher Anstrengungen bedarf. Die Beihilfe soll also vor allen Dingen den Beschäftigten zugute kommen und sich positiv auf die gesamte Region auswirken, die unter einer hohen Arbeitslosigkeit leidet.

36. Darüber hinaus geben die deutschen Behörden an, dass die geplanten Ausbildungsmaßnahmen über den unternehmerisch notwendigen Bedarf hinausgehen. Sie behaupten, dass DHL die Ausbildungsmaßnahmen ohne die Beihilfe nicht in dem im vorliegenden Trainingskonzept dargestellten Umfang durchführen würde. Stattdessen würde das Unternehmen einer begrenzten Anzahl von Beschäftigten nur das erforderliche Minimum an Ausbildung erteilen. Daneben würde es, um den unternehmerischen Erfordernissen gerecht zu werden, bereits qualifizierte Fachkräfte von Wettbewerbern abwerben und Teile seiner Tätigkeiten im Rahmen von Unterverträgen an andere Dienstleister vergeben.

37. Die Kommission ist zum gegenwärtigen Zeitpunkt aus verschiedenen Gründen nicht von den Argumenten Deutschlands überzeugt.

38. Erstens hat DHL offensichtlich massiv in das Logistikzentrum investiert und will es auch in Betrieb nehmen. Die deutschen Behörden bestätigten, dass die Arbeiter aus Belgien, dem bisherigen Standort des Hubs, grundsätzlich nicht zu einem Wechsel nach Deutschland bereit sind. Um den Betrieb aufnehmen zu können, muss DHL daher neue Mitarbeiter einstellen.

39. Zweitens scheint für den Betrieb des Logistikzentrums eine gewisse größtenteils fachspezifische Ausbildung der Mitarbeiter erforderlich zu sein. Hierfür scheint Folgendes maßgeblich zu sein:

a) Vermittlung von für den Geschäftsbetrieb erforderlichen unternehmensspezifischen Kenntnissen, d.h. Kenntnisse über bestimmte auf DHL zugeschnittene Frachtsysteme, die außerhalb von DHL nicht zu Ausbildungsinhalten gehören. Das gilt insbesondere für die spezifischen Ausbildungsmaßnahmen wie den Kurs über Unit Load Device für Flugzeugabfertiger.

b) Erwerb von bestimmten, für den Geschäftsbetrieb gesetzlich vorgeschriebenen Qualifikationen. Anders ausgedrückt bedeutet dies, dass eine bestimmte Anzahl von Mitarbeitern mit Sicherheitsanforderungen vertraut sein müssen. Dies ist gesetzlich vorgeschrieben und bedarf einer formellen Zertifizierung. Dieses Erfordernis ist auf die spezielle Art der Dienstleistungen von DHL zurückzuführen, die grundsätzlich ein erhebliches Sicherheitsrisiko in sich bergen. Die Kommission stellt fest, dass sowohl nach nationalen als auch nach europäischen Rechtsvorschriften beim Umgang mit Frachtstücken als Ramp Agent oder Sicherheitsfachkraft bestimmte Voraussetzungen oder Sicherheitsanforderungen erfüllt sein müssen. Beispielsweise hat der Gesetzgeber je nach Größe der Flugzeugflotte bzw. Frachttonnage eine Mindestmitarbeiterzahl zur Durchführung der entsprechenden Tätigkeiten festgelegt. Außerdem sind die Flugplatzbetreiber und Luftfahrtunternehmen nach Artikel 8 und 9 des deutschen Luftsicherheitsgesetzes verpflichtet, das Sicherheitspersonal und alle übrigen Mitarbeiter entsprechend zu schulen. Ähnliche Vorschriften sind in der deutschen Verordnung über Bodenabfertigungsdienste (Anhang 3) vorgesehen. Demnach scheinen die gesamte Ausbildung bei DHL EAT, die meisten Schulungen für die Sicherheitsfachkräfte sowie mindestens 5 Kurse für Flugzeugabfertiger (d.h. Brandschutz, Umgang mit Frachttüren, erste Hilfe, Gefahrgutschulung und Sicherheitsbestimmungen auf dem Vorfeld) ohnehin gesetzlich vorgeschrieben zu sein. Darüber hinaus muss geklärt werden, ob die Kurse für Flugzeugabfertiger wie erste Hilfe, Sicherheit, Sicherheitsbezogene Bereiche, Umweltmanagement usw. sowie einige vergleichbare Kurse für die Sicherheitsfachkräfte nicht ebenfalls Pflicht sind. Dies gilt auch für die Führungskräfte, die dieselben Qualifikationen vorweisen müssen.

c) Vermittlung einer für den Betrieb des Hubs unmittelbar erforderlichen allgemeinen fachbezogenen Ausbildung. Dies bezieht sich auf Kurse für Flugzeugabfertiger wie Flugzeugbeförderung, Flugzeugenteisung, Vorfeldführerschein, Flurförderzeugschein, Sicherheit auf dem Vorfeld usw.

d) Ausbildung am Arbeitsplatz zur Gewährleistung eines reibungslosen Betriebs. Im Rahmen dieser Ausbildung sollen sich die Ausbildungsteilnehmer mit den Arbeitsabläufen vertraut machen, was im Luftfrachtbetrieb von besonderer Bedeutung ist, da das Beladen der Flugzeuge nach einem straffen Zeitplan erfolgen muss und ein einziger Fehler enorme Verspätungen nach sich ziehen kann.

e) Vermittlung von sonstigen Allgemeinkenntnissen, die nicht unter die Buchstaben b) bis d) fallen.

40. Drittens bezweifelt die Kommission, dass DHL in der Lage wäre, für seinen unternehmerischen Bedarf Arbeitskräfte mit den vorgenannten Fähigkeiten auf dem lokalen oder dem europäischen Arbeitsmarkt anzuwerben. Jedenfalls ist nicht von der Hand zu weisen, dass auf dem lokalen Arbeitsmarkt keine qualifizierten Fachkräfte zu finden sind. Zudem scheint, wie die deutschen Behörden selbst hervorheben, unter den Arbeitnehmern keine Bereitschaft zu bestehen, den Wohnsitz dauerhaft in die neuen Bundesländer zu verlegen. Schließlich gelangte die Kommission in der Besprechung mit den deutschen Behörden zu der Feststellung, dass qualifizierte Fachkräfte für den Luftfrachtbereich auch auf dem europäischen Markt nur schwer zu finden sind. Die Kommission bräuchte hierzu nähere Angaben von DHL und anderen Beteiligten.

41. Viertens bezweifelt die Kommission, dass die Anwerbung bereits qualifizierter Fachkräfte eine angemessene Alternative zur hausinternen Ausbildung ist. Die Kommission geht davon aus, dass zumindest die spezifischen Ausbildungsmaßnahmen und die Sicherheitsschulungen in jedem Fall von DHL durchzuführen sind, da die spezifische Fachausbildung nicht von externen Ausbildern vermittelt werden kann und für DHL eine adäquate Sicherheitsschulung gewährleistet sein muss. Vor allem ist ein fachbezogenes Sicherheitstraining für Sicherheitsfachkräfte erforderlich. Auch die Logistikausbildung und die Ausbildung der Führungskräfte scheinen unerlässlich.

42. Fünftens hegt die Kommission Zweifel, ob DHL tatsächlich auf einige Kurse des Schulungspakets verzichten kann, zumal insbesondere für Flugzeugabfertiger gemäß der Notifizierung vorgesehen ist, dass auch Personen, die bereits einen entsprechenden Befähigungsnachweis besitzen, das gesamte Training noch einmal durchlaufen sollen. Außerdem ist fraglich, ob es wirklich machbar ist, nur eine begrenzte Anzahl von Mitarbeitern auszubilden, weil sich dies negativ auf den reibungslosen Betrieb auswirken könnte. Tatsächlich hat DHL das gesamte auszubildende Personal bereits bewusst eingestellt, so dass es wenig Sinn machen würde, die geplante Ausbildung wegfallen zu lassen und nicht einsatzfähige Mitarbeiter zu bezahlen. Hierzu bräuchte die Kommission auf jeden Fall genauere Angaben.

43. Schließlich hat die Kommission Zweifel an DHLs Behauptung, es würde bei Ausbleiben der Beihilfe auf die geplante Ausbildung verzichten und verschiedene Dienstleistungen an externe Unternehmen vergeben, da zum einen in diesem Fall einige der unter die Buchstaben a), b) und d) fallenden Ausbildungsmaßnahmen dennoch erforderlich wären und zum anderen die gesamte Investition von DHL in Leipzig-Halle gerade darauf ausgerichtet ist, sämtliche Dienstleistungen der Expresspaketlieferung mit eigenen Mitarbeitern zu bewältigen und — wie die Kommission der Besprechung mit den deutschen Behörden entnommen hat — diese Dienstleistungen auch anderen, auf demselben Flughafen tätigen Wettbewerbern anzubieten. Folglich wäre die Vergabe an externe Unternehmen mit zusätzlichen Kosten verbunden und somit nicht die effizienteste Option.

4. **ENTSCHEIDUNG**

44. Angesichts der oben dargelegten Bedenken hat die Kommission beschlossen, das Verfahren nach Artikel 88 Absatz 2 EG-Vertrag einzuleiten; sie fordert die Bundesrepublik Deutschland daher auf, ihr innerhalb eines Monats nach Eingang dieses Schreibens alle zur Beurteilung der Vereinbarkeit der Beihilfe sachdienlichen Unterlagen, Angaben und Daten zu übermitteln, insbesondere in Bezug auf

    — sämtliche Qualifikationen, Sicherheitsanforderungen und Mindeststandards für den Umgang mit Fracht und Luftfahrzeugen, die aufgrund nationaler, europäischer und internationaler Vorschriften gesetzlich vorgeschrieben sind,

    — eine detaillierte Kostenanalyse einschließlich der Kosten für die gesetzlich vorgeschriebenen Ausbildungsmaßnahmen und/oder des in jedem Fall erforderlichen Mindestausbildungsbedarfs mit Angabe der zusätzlichen Kosten im Vergleich zur externen Vergabe und/oder Anstellung bereits qualifizierter Fachkräfte,

    — Angaben, ob sich die in diesem Sektor übliche Ausbildung auf die gesetzlich vorgeschriebenen Qualifikationen beschränkt oder darüber hinaus geht (was bei dem vorliegenden Projekt der Fall sein soll),

    — Angaben zum nationalen und europäischen Arbeitsmarkt für Luftfrachtdienste, insbesondere zur Verfügbarkeit von qualifizierten und lizenzierten Fachkräften, dem Lohnniveau für diese Facharbeiter sowie sonstige Angaben, die für den Vergleich zwischen Beschäftigten mit und ohne einschlägige Berufserfahrung maßgeblich sind.

45. Deutschland wird ersucht, dem potenziellen Beihilfeempfänger unverzüglich eine Kopie dieses Schreibens zuzuleiten.

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

47. Die Kommission weist die Bundesrepublik Deutschland darauf hin, dass sie alle Beteiligten durch die Veröffentlichung des vorliegenden Schreibens und einer aussagekräftigen Zusammenfassung desselben im Amtsblatt der Europäischen Union unterrichten wird. Außerdem wird sie die Beteiligten in den EFTA-Staaten, die das EWR-Abkommen unterzeichnet haben, durch die Veröffentlichung einer Bekanntmachung in der EWR-Beilage zum Amtsblatt der Europäischen Union und die EFTA-Überwachungsbehörde durch Übermittlung einer Kopie dieses Schreibens von dem Vorgang in Kenntnis setzen. Alle Beteiligten werden aufgefordert, innerhalb eines Monats nach dem Datum dieser Veröffentlichung ihre Stellungnahme abzugeben.'

Prior notification of a concentration

(Case COMP/M.4753 — Antalis/MAP)

(Text with EEA relevance)

(2007/C 213/08)

1. On 5 September 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 [1] by which the undertaking Antalis International SAS ('Antalis', France) controlled by Sequana Capital acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of MAP Merchant Group BV ('MAP', the Netherlands) by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— for Antalis: distribution of paper,

— for MAP: distribution of paper.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of Regulation (EC) No 139/2004. However, the final decision on this point is reserved.

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

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax ((32-2) 296 43 01 or 296 72 44) or by post, under reference number COMP/M.4753 — Antalis/MAP, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
J-70
B-1049 Bruxelles/Brussel

[1] OJ L 24, 29.1.2004, p. 1.