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Information and Notices

[1] Text with EEA relevance

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I

(Information)

COUNCIL

JOINT DECLARATION OF THE EUROPEAN COMMUNITY AND ITS MEMBER STATES AND THE REPUBLIC OF CROATIA ON POLITICAL DIALOGUE

(2001/C 320/01)

On the occasion of the signature of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part [1], the European Community and its Member States and the Republic of Croatia (hereinafter referred to as 'the Parties') express their resolution to reinforce and intensify their mutual relations in the political fields.

Accordingly, the Parties agree to establish a regular political dialogue which will accompany and consolidate their rapprochement, support the political and economic changes underway in the Republic of Croatia, and contribute to strengthening their existing links and establish new forms of cooperation, in particular taking into account Croatia's status as a potential candidate for European Union membership.

The political dialogue, based on shared values and aspirations, will aim at:

1. reinforcing democratic principles and institutions as well as respect for human rights, including the rights of persons belonging to national minorities;

2. promoting regional cooperation, development of good neighbourly relations and fulfilment of obligations under international law;

3. facilitating the integration of the Republic of Croatia to the fullest possible extent into the political and economic mainstream of Europe based on its individual merits and achievements;

4. increasing convergence of positions between the Parties on international issues, and on those matters likely to have substantial effects on the Parties, including cooperation in the fight against terrorism and other areas in the field of justice and home affairs;

5. enabling each Party to consider the position and interests of the other party in their respective decision making process;

6. enhancing security and stability in the whole of Europe and, in particular, in South-Eastern Europe, through cooperation in the areas covered by the Common Foreign and Security Policy of the European Union.

The political dialogue between the Parties will take place through regular consultations, informal contacts and exchange of information as appropriate, in particular in the following formats:

1. high-level meetings between representatives of the Republic of Croatia on the one hand, and representatives of the European Union, in the Troika format, on the other;

2. providing mutual information on foreign policy decisions taking full advantage of diplomatic channels, including contacts at the bilateral level in third countries as well as within multilateral forums such as the United Nations, OSCE, Council of Europe and other international organisations;

3. contacts at Parliamentary level;

4. any other means which would contribute to consolidating, and developing dialogue between the Parties,

5. where appropriate, political dialogue may be organised as a multilateral and/or regional dialogue.

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[1] Signed at Luxembourg on 29 October 2001.

COUNCIL DECISION

of 23 October 2001

appointing members and alternate members of the Advisory Committee on Education and Training in the Field of Architecture

(2001/C 320/02)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Decision 85/385/EEC of 10 June 1985 setting up an Advisory Committee on Education and Training in the Field of Architecture [1], and in particular Articles 3 and 4 thereof,

Having regard to the Act of Accession of 1994, and in particular Article 165(1) thereof,

Whereas, according to Article 3 of the above Decision, the Committee consists of three experts from each Member State and one alternate for each of those experts; whereas, according to Article 4 of the same Decision, the term of office of these experts and alternates is three years.

Whereas by its Decision of 26 February 1996 [2] the Council appointed the members and alternate members of the Committee for the period 26 February 1996 to 25 February 1999.

Whereas the Governments of thirteen Member States have each submitted a list of candidates with a view to the appointment, replacement or renewal of the term of office of members and alternate members,

HAS DECIDED AS FOLLOWS:

Sole Article

The following are hereby appointed members and alternate members of the Advisory Committee on Education and Training in the Field of Architecture for the period 23 October 2001 to 22 October 2004:

A. **Experts from the practising profession**

	Members	**Alternates**
Belgium	Mr Christian BREVERS	Mr Jef HEYMANS
Denmark	Ms Bente BEDHOLM	Mr Jan CHRISTENSEN
Germany	Mr Wilfried TURK	Mr Hans ROLLMANN
Greece	Mr Dionyssios DIGENIS	Mr Christoforos SAKELLAROPOULOS
Spain	Mr Jaime DURÓ PIFARRÉ	Mr Jordi QUEROL PIERA
France	Mr Bertrand MATTHIEU	Mr Pierre BOLZE
Ireland	Mr John O'REILLY	Mr Eoin O'COFAIGH
Italy	Mr Leopoldo FREYRIE	Mr Pierluigi MISSIO
Luxembourg	. . . . .	. . . . .
Netherlands	Mr C. D. VAN BRUGGEN	Mr B. G. J. J. SNELDER
Austria	Mr Alexander RUNSER	Ms Elisabeth SCHUBRIG
Portugal	Ms Olga VASCONCELOS DE ALBUQUERQUE QUINTANILHA	Mr José Manuel AGUIAR PORTELA DA COSTA
Finland	Mr Veikko VASKO	Mr Matti RAUTIOLA
Sweden	Mr Bo HOFSTEN	Mr Anders BOLIN
United Kingdom	Mr Ian R. DAVIDSON	Mr Ken TAYLOR

[1] OJ L 223, 21.8.1985, p. 26.

[2] OJ C 74, 14.3.1996, p. 1.

B. **Experts from universities or equivalent teaching institutions in the field of architecture**

	Members	Alternates
Belgium	. . . . .	. . . . .
Denmark	Mr Peter KJÆR	Mr Hans-Peter SVENDLER NIELSEN
Germany	Mr Günther UHLIG	Mr Martin KORDA
Greece	Mr Nikolaos KALOGERAS	Mr Constantinos-Victor SPYRIDONIDIS
Spain	Mr Fernando RAMOS GALINO	Mr R. ARCOCA HERNÁNDEZ-ROS
France	Mr Philippe DUBOIS	Mr Francis NORDEMANN
Ireland	Mr Loughlin KEALY	Mr James HORAN
Italy	Mr Mario DOCCI	Mr Tommaso SCALESSE
Luxembourg	. . . . .	. . . . .
Netherlands	Mr A. OXENAAR	Mr L. VAN DUIN
Austria	Mr Christian KÜHN	Mr Wolf D. PRIX
Portugal	Mr Rui José CARDIM	Mr Alexandre VIEIRA ALVES COSTA
Finland	Mr Juhani KATAINEN	Mr Tom SIMONS
Sweden	Mr Finn WERNE	Mr Hasse ERNERFELDT
United Kingdom	Mr James A. LOW	Mr Laurence JOHNSTON

C. **Experts from the competent authorities of the Member States**

	Members	Alternates
Belgium	. . . . .	. . . . .
Denmark	Mr Mikkel BUCHTER	Mr Rasmus SCHERMER
Germany	Ms Vera STAHL	Mr Michael ELZER
Greece	Mr Nikolaos KATSIBINIS	Ms Margarita KARAVASSILI
Spain	Mr F. RODRÍGUEZ GARCÍA	Mr Emilio LARRODERA RÍOS
France	Ms Marielle RICHE	Mr Raphaël HACQUIN
Ireland	Mr Michael McCARTHY	Ms Nancy CALLAGHAN
Italy	Ms Teresa CUOMO	. . . . .
Luxembourg	. . . . .	. . . . .
Netherlands	Mr R. J. H. DOCTER	Mr G. ENNING
Austria	Mr Wolfgang LENTSCH	Mr Evelyn NOWOTNY
Portugal	Mr A. José OLIVEIRA FARIA	Mr António Vasco MASSAPINA
Finland	Ms Anita LEHIKOINEN	Ms Mirja ARAJÄRVI
Sweden	Ms Nina KOWALEWSKA	Ms Karin DAHL BERGENDORFF
United Kingdom	Mr Robin VAUGHAN	Mr David PETHERICK

Done at Luxembourg, 23 October 2001.

For the Council

The President

A. NEYTS-UTTEBROECK

COMMISSION

Euro exchange rates [1]

14 November 2001

(2001/C 320/03)

1 euro	=	7,4446	Danish krone
	=	9,334	Swedish krona
	=	0,6126	Pound sterling
	=	0,8803	United States dollar
	=	1,4	Canadian dollar
	=	107,2	Japanese yen
	=	1,4701	Swiss franc
	=	7,844	Norwegian krone
	=	94,56	Icelandic króna [2]
	=	1,6855	Australian dollar
	=	2,0815	New Zealand dollar
	=	8,547	South African rand [2]

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

[2] *Source:* Commission.

Communication from the Commission on the application of State aid rules to public service broadcasting

(2001/C 320/04)

(Text with EEA relevance)

1. INTRODUCTION AND SCOPE OF THE COMMUNICATION

1. Over the last two decades, broadcasting has undergone important changes. The abolition of monopolies, the emergence of new players and rapid technological developments have fundamentally altered the competitive environment. Television broadcasting was traditionally a reserved activity. Since its inception, it has mostly been provided by public undertakings under a monopoly regime, mainly as a consequence of the limited availability of broadcasting frequencies and the high barriers to entry.

2. In the 1970s, however, economic and technological developments made it increasingly possible for Member States to allow other operators to broadcast. Member States have therefore decided to introduce competition in the market. This has led to a wider choice for consumers, as many additional channels and new services became available; it has also favoured the emergence and growth of strong European operators, the development of new technologies, and a larger degree of pluralism in the sector. Whilst opening the market to competition, Member States considered that public service broadcasting ought to be maintained, as a way to ensure the coverage of a number of areas and the satisfaction of needs that private operators would not necessarily fulfil to the optimal extent.

3. The increased competition, together with the presence of State-funded operators, has also led to growing concerns for a level playing field, which have been brought to the Commission's attention by private operators. The vast majority of the complaints allege infringements of Article 87 of the EC Treaty in relation to the public funding schemes established in favour of public service broadcasters.

4. This Communication sets out the principles to be followed by the Commission in the application of Articles 87 and 86(2), of the EC Treaty to State funding of public service broadcasting. This will make the Commission's policy in this area as transparent as possible.

2. THE ROLE OF PUBLIC SERVICE BROADCASTING

5. As stated by the recent Commission communication on services of general interest in Europe: '*The broadcast media play a central role in the functioning of modern democratic societies, in particular in the development and transmission of social values. Therefore, the broadcasting sector has, since its inception, been subject to specific regulation in the general interest. This regulation has been based on common values, such as freedom of expression and the right of reply, pluralism, protection of copyright, promotion of cultural and linguistic diversity, protection of minors and of human dignity, consumer protection*' ([1]).

6. Public service broadcasting, although having a clear economic relevance, is not comparable to a public service in any other economic sector. There is no other service that *at the same time* has access to such a wide sector of the population, provides it with so much information and content, and by doing so conveys and influences both individual and public opinion.

7. As stated by the high-level group on audiovisual policy chaired then by Commissioner Oreja, public service broadcasting '*has an important role to play in promoting cultural diversity in each country, in providing educational programming, in objectively informing public opinion, in guaranteeing pluralism and in supplying, democratically and free-of-charge, quality entertainment*' ([2]).

8. Furthermore, broadcasting is generally perceived as a very reliable source of information and represents, for a not inconsiderable proportion of the population, the main source of information. It thus enriches public debate and ultimately ensures that all citizens participate to a fair degree in public life.

9. The role of the public service ([3]) in general is recognised by the Treaty. The key provision in this respect is Article 86(2), which reads as follows:

'*Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community*'.

([1]) COM(2000) 580 final, p. 35.

([2]) 'The digital age European audiovisual policy. Report from the high-level group on audiovisual policy', 1998.

([3]) For the purpose of the present communication, and in accordance with Article 16 of the EC Treaty and the declaration (No 13) annexed to the final act of Amsterdam, the term 'public service' as of the Protocol on the system of public broadcasting in the Member States has to be intended as referring to the term 'service of general economic interest' used in Article 86(2).

10. This provision is confirmed by Article 16 of the EC Treaty, concerning services of general economic interest, which was introduced by the Amsterdam Treaty and entered into force on 1 May 1999 — Article 16 states:

'*Without prejudice to Articles 73, 86 and 87, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions*'.

11. The interpretation of these principles in the light of the particular nature of the broadcasting sector is outlined in the interpretative protocol on the system of public broadcasting in the Member States, annexed to the EC Treaty, (hereinafter referred to as 'the Protocol'), which, after considering '*that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism*', states that:

'*The provisions of the Treaty establishing the European Community shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting insofar as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and insofar as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account*'.

12. The importance of public service broadcasting for social, democratic and cultural life in the Union was also reaffirmed in the Resolution of the Council and of the Representatives of the Governments of the Member States, Meeting within the Council of 25 January 1999 concerning public service broadcasting, (hereinafter referred to as 'the Resolution'). As underlined by the Resolution: '*Broad public access, without discrimination and on the basis of equal opportunities, to various channels and services is a necessary precondition for fulfilling the special obligation of public service broadcasting*'. Moreover, public service broadcasting needs to '*benefit from technological progress*', bring '*the public the benefits of the new audiovisual and information services and the new technologies*' and to undertake '*the development and diversification of activities in the digital age*'. Finally, '*public service broadcasting must be able to continue to provide a wide range of programming in accordance with its remit as defined by the Member States in order to address society as a whole; in this context it is legitimate for public service broadcasting to seek to reach wide audiences*' ([4]).

13. Given these characteristics, which are peculiar to the broadcasting sector, a public service mandate encompassing '*a wide range of programming in accordance with its remit*', *as stated by the Resolution*, can in principle be considered as legitimate, as aiming at a balanced and varied programming, capable of preserving a certain level of audience for public broadcasters and, thus, of ensuring the accomplishment of the mandate, i.e. the fulfilment of the democratic, social and cultural needs of the society and the guaranteeing of pluralism.

14. It should be noted that commercial broadcasters, of whom a number are subject to public service requirements, also play a role in achieving the objectives of the Protocol to the extent that they contribute to pluralism, enrich cultural and political debate and widen the choice of programmes.

3. THE LEGAL CONTEXT

15. The application of State aid rules to public service broadcasting has to take into account a wide number of different elements. The EC Treaty includes Articles 87 and 88 on State aid and Article 86(2) on the application of the rules of the Treaty and the competition rules, in particular, to services of general economic interest. Whereas the Treaty of Amsterdam introduced a specific provision (Article 16) on services of general economic interest and an interpretative protocol on the system of public service broadcasting, the Treaty of Maastricht had already introduced an article which defines the role of the Community in the field of culture (Article 151) and a possible compatibility clause for State aid aimed at promoting culture (Article 87(3)(d)). The European Parliament and the Council have adopted Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities ([5]). The Commission has adopted Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings ([6]). These rules are interpreted by the Court of Justice and the Court of First Instance. The Commission has also adopted the communication mentioned in point 5 and adopted several communications on the application of the State aid rules.

4. APPLICABILITY OF ARTICLE 87(1)

4.1. The State aid character of State financing of public service broadcasters

16. Article 87(1) states: '*Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market*'.

([4]) OJ C 30, 5.2.1999, p. 1.

([5]) OJ L 298, 17.10.1989, p. 23, as amended by Directive 97/36/EC (OJ L 202, 30.7.1997, p. 60).

([6]) OJ L 195, 29.7.1980, p. 35, as last amended by Directive 2000/52/EC (OJ L 193, 29.7.2000, p. 75).

17. The effect of State intervention, not its purpose, is the decisive element in any assessment of its State aid content under Article 87(1). State financing of public service broadcasters is normally to be regarded as State aid, inasmuch as it meets the above criteria. Public service broadcasters are normally financed out of the State budget or through a levy on TV-set holders. In certain specific circumstances, the State makes capital injections or debt cancellations in favour of public service broadcasters. These financial measures are normally attributable to the public authorities and involve the transfer of State resources. Moreover, and to the extent that such measures fail to satisfy the market economy investor test, in accordance with the 'Application of Articles 92 and 93 of the EEC Treaty to public authorities' holdings' ([7]) and the Commission communication to the Member States on the 'Application of Articles 92 and 93 of the EEC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector' ([8]), they favour in most cases only certain broadcasters and may thereby distort competition. Naturally, the existence of State aid will have to be assessed on a case by case basis, and depends also on the specific nature of the funding ([9]).

18. As the Court of Justice has observed: '*When aid granted by the State or through State resources strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade the latter must be regarded as affected by that aid*' ([10]). Thus, State financing of public service broadcasters can generally be considered to affect trade between Member States. This is clearly the position as regards the acquisition and sale of programme rights, which often takes place at an international level. Advertising, too, in the case of public broadcasters who are allowed to sell advertising space, has a cross-border effect, especially for homogeneous linguistic areas across national boundaries. Moreover, the ownership structure of commercial broadcasters may extend to more than one Member State.

19. According to the case-law of the Court ([11]), any transfer of State resources to a certain undertaking — also when covering net costs of public service obligations — has to be regarded as State aid (provided that all the conditions for the application of Article 87(1) are fulfilled).

([7]) Bulletin EC 9-1984.

([8]) OJ C 307, 13.11.1993, p. 3.

([9]) Aid NN 88/98, 'Financing of a 24-hour advertising-free news channel with licence fee by the BBC', OJ C 78, 18.3.2000, p. 6 and aid NN 70/98, 'State aid to public broadcasting channels 'Kinderkanal and Phoenix' ' (OJ C 238, 21. 8.1999, p. 3).

([10]) Cases 730/79, *Philip Morris Holland* v *Commission* [1980] ECR 2671, paragraph 11; C-303/88, *Italy* v *Commission* [1991] ECR I-1433, paragraph 27; C-156/98, *Germany* v *Commission* [2000] ECR I-6857, paragraph 33.

([11]) Cases T-106/95, *FFSA and Others* v *Commission* [1997] ECR II-229; T-46/97, *SIC* v *Commission*, [2000] ECR II-2125 and C-332/98, *France* v *Commission*, [2000] ECR I-4833.

4.2. **Nature of the aid: existing aid as opposed to new aid**

20. The funding schemes currently in place in most of the Member States were introduced a long time ago. As a first step, therefore, the Commission must determine whether these schemes may be regarded as 'existing aid' within the meaning of Article 88(1).

21. Existing aid is regulated by Article 88(1), which states that: *'The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market'.*

22. Pursuant to Article 1(b)(i) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([12]), existing aid includes *'. . . all aid which existed prior to the entry into force of the Treaty in the respective Member States, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the Treaty'.*

23. Pursuant to Article 1(b)(v), existing aid also includes *'aid which is deemed to be an existing aid because it can be established that at the time it was put into effect it did not constitute an aid, and subsequently became an aid due to the evolution of the common market and without having been altered by the Member State'.*

24. In accordance with the case-law of the Court ([13]), the Commission must verify whether or not the legal framework under which the aid is granted has changed since its introduction. The Commission must take into account all the legal and economic elements related to the broadcasting system of a given Member State. Although the legal and economic elements relevant for such an assessment present common features in all or most Member States, the Commission believes that a case by case approach is the most appropriate ([14]).

5. **ASSESSMENT OF THE COMPATIBILITY OF STATE AID UNDER ARTICLES 87(2) AND 87(3)**

25. State aid to public broadcasters must be examined by the Commission in order to determine whether or not it can be found compatible with the common market. The derogations listed in Article 87(2) and Article 87(3) can be applied.

([12]) OJ L 83, 27.3.1999, p. 1.

([13]) Case C-44/93, *Namur-Les Assurances du Crédit SA* v *Office National du Ducroire and the Belgian State* [1994] ECR I-3829.

([14]) As concerns recent Commission practice in this field, see footnote 9.

26. In accordance with Article 151(4) of the Treaty, the Community is to take cultural aspects into account in its action under other provisions of the Treaty, in particular in order to respect and to promote the diversity of its cultures. Accordingly, Article 87(3)(d) of the Treaty allows the Commission to regard aid to promote culture as compatible with the common market where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest. It is the Commission's task to decide on the actual application of that provision in the same way as for the other exemption clauses in Article 87(3). It should be recalled that the provisions granting exemption from the prohibition of State aid have to be applied strictly. Therefore, the notion of 'culture' within the meaning of Article 87(3)(d) must be interpreted restrictively. As stated by the Commission in its *Kinderkanal and Phoenix* decision, the educational and democratic needs of a Member State have to be regarded as distinct from the promotion of culture ([15]). In this respect, it should be noted that the Protocol distinguishes between the cultural, the social and the democratic needs of each society. Education may, of course, have a cultural aspect.

27. State aid to public service broadcasters often does not differentiate between those three needs. Consequently, unless a Member State provides for the separate definition and the separate funding of State aid to promote culture alone, such aid cannot generally be approved under Article 87(3)(d). It can normally be assessed, however, on the basis of Article 86(2) concerning services of general economic interest. In any event, whatever the legal base for assessing compatibility, the substantive analysis would be conducted by the Commission on the basis of the same criteria, namely those set out in this communication.

6. ASSESSMENT OF THE COMPATIBILITY OF STATE AID UNDER ARTICLE 86(2)

28. The role of services of general economic interest in attaining the fundamental objectives of the European Union has been fully acknowledged by the Commission in its communication on services of general interest in Europe, mentioned in point 5.

29. The Court has consistently held that Article 86 provides for a derogation and must therefore be interpreted restrictively. The Court has clarified that in order for a measure to benefit from such a derogation, it is necessary that all the following conditions be fulfilled:

(i) the service in question must be a service of general economic interest and clearly defined as such by the Member State (definition);

(ii) the undertaking in question must be explicitly entrusted by the Member State with the provision of that service (entrustment);

(iii) the application of the competition rules of the Treaty (in this case, the ban on State aid) must obstruct the performance of the particular tasks assigned to the undertaking and the exemption from such rules must not affect the development of trade to an extent that would be contrary to the interests of the Community (proportionality test).

30. It is for the Commission, as guardian of the Treaty, to assess whether these criteria are satisfied.

31. In the specific case of public broadcasting the above approach has to be adapted in the light of the interpretative provisions of the Protocol, which refers to the *'public service remit as conferred, defined and organised by each Member State'* (definition and entrustment) and provides for a derogation from the Treaty rules in the case of the funding of public service broadcasting *'in so far as such funding is granted to broadcasting organisations for the fulfilment of the public service remit ... and ... does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account'* (proportionality).

6.1. Definition of public service remit

32. In order to meet the condition mentioned in point 29(i) for application of Article 86(2), it is necessary to establish an official definition of the public service mandate. Only then can the Commission assess with sufficient legal certainty whether the derogation under Article 86(2) is applicable.

33. Definition of the public service mandate falls within the competence of the Member States, which can decide at national, regional or local level. Generally speaking, in exercising that competence, account must be taken of the Community concept of 'services of general economic interest'. However, given the specific nature of the broadcasting sector, a 'wide' definition, entrusting a given broadcaster with the task of providing balanced and varied programming in accordance with the remit, while preserving a certain level of audience, may be considered, in view of the interpretative provisions of the Protocol, legitimate under Article 86(2). Such a definition would be consistent with the objective of fulfilling the democratic, social and cultural needs of a particular society and guaranteeing pluralism, including cultural and linguistic diversity.

34. Similarly, the public service remit might include certain services that are not 'programmes' in the traditional sense, such as on-line information services, to the extent that while taking into account the development and diversification of activities in the digital age, they are addressing the same democratic, social and cultural needs of the society in question.

([15]) See footnote 9.

35. Whenever the scope of the public service remit is extended to cover new services the definition and entrustment act should be modified accordingly, within the limits of Article 86(2).

36. The Commission's task is to verify whether or not Member States respect the Treaty provisions ([16]). As regards the definition of the public service in the broadcasting sector, the role of the Commission is limited to checking for manifest error. It is not for the Commission to decide whether a programme is to be provided as a service of general economic interest, nor to question the nature or the quality of a certain product. The definition of the public service remit would, however, be in manifest error if it included activities that could not reasonably be considered to meet — in the wording of the Protocol — the '*democratic, social and cultural needs of each society*'. That would normally be the position in the case of e-commerce, for example. In this context, it must be recalled that the public service remit describes the services offered to the public in the general interest. The question of the definition of the public service remit must not be confused with the question of the financing mechanism chosen to provide these services. Therefore, whilst public service broadcasters may perform commercial activities such as the sale of advertising space in order to obtain revenue, such activities cannot normally be viewed as part of the public service remit.

37. The definition of the public service mandate should be as precise as possible. It should leave no doubt as to whether a certain activity performed by the entrusted operator is intended by the Member State to be included in the public service remit or not. Without a clear and precise definition of the obligations imposed upon the public service broadcaster, the Commission would not be able to carry out its tasks under Article 86(2) and, therefore, could not grant any exemption under that provision.

38. Clear identification of the activities covered by the public service remit is also important for non-public service operators, so that they can plan their activities.

39. Finally, the terms of the public service remit should be precise, so that Member States' authorities can effectively monitor compliance, as described in the following chapter.

6.2. **Entrustment and supervision**

40. In order to benefit from the exemption under Article 86(2), the public service remit should be entrusted to one or more undertakings by means of an official act (for example, by legislation, contract or terms of reference).

41. It is not sufficient, however, that the public service broadcaster be formally entrusted with the provision of a well-defined public service. It is also necessary that the public service be actually supplied as provided for in the formal agreement between the State and the entrusted undertaking. It is therefore desirable that an appropriate authority or appointed body monitor its application. The need for such an appropriate authority or body in charge of supervision is apparent in the case of quality standards imposed on the entrusted operator. In accordance with the Commission communication on the principles and guidelines for the Community's audiovisual policy in the digital era ([17]), it is not for the Commission to judge on the fulfilment of quality standards: it must be able to rely on appropriate supervision by the Member States.

42. It is within the competence of the Member State to choose the mechanism to ensure effective supervision of the fulfilment of the public service obligations. The role of such a body would seem to be effective only if the authority is independent from the entrusted undertaking.

43. In the absence of sufficient and reliable indications that the public service is actually supplied as mandated, the Commission would not be able to carry out its tasks under Article 86(2) and, therefore, could not grant any exemption under that provision.

6.3. **Funding of public service broadcasting and the proportionality test**

6.3.1. *The choice of funding*

44. Public service duties may be either quantitative or qualitative or both. Whatever their form, they could justify compensation, as long as they entail supplementary costs that the broadcaster would normally not have incurred.

45. Funding schemes can be divided into two broad categories: 'single-funding' and 'dual-funding'. The 'single-funding' category comprises those systems in which public service broadcasting is financed only through public funds, in whatever form. 'Dual-funding' systems comprise a wide range of schemes, where public service broadcasting is financed by different combinations of State funds and revenues from commercial activities, such as the sale of advertising space or programmes.

([16]) See Case C-179/90, *Merci convenzionali porto di Genova SpA* v *Siderurgica Gabrielli SpA* [1991] ECR I-5889.

([17]) COM(1999) 657 final, section 3(6).

46. As stated by the Protocol: *'The provisions of the Treaty establishing the European Community shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting . . .'*. The Commission communication on services of general interest in Europe, mentioned in point 5, further clarifies that: *'The choice of the financing scheme falls within the competence of the Member State, and there can be no objection in principle to the choice of a dual financing scheme (combining public funds and advertising revenues) rather than a single funding scheme (solely public funds) as long as competition in the relevant markets (e.g. advertising, acquisition and/or sale of programmes) is not affected to an extent which is contrary to the Community interest'* ([18]).

47. While Member States are free to choose the means of financing public service broadcasting, the Commission has to verify, under Article 86(2), that the derogation from the normal application of the competition rules for the performance of the service of general economic interest does not affect competition in the common market in a disproportionate manner. The test is of a 'negative' nature: it examines whether the measure adopted is not disproportionate. The aid should also not affect the development of trade to such an extent as would be contrary to the interests of the Community.

48. The Protocol confirms this approach also for public service broadcasting, stating that funding should not *'affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account'*.

6.3.2. *Transparency requirements for the State aid assessment*

49. The above-described assessment by the Commission requires a clear and precise definition of the public service remit and a clear and appropriate separation between public service activities and non-public service activities. Separation of accounts between these two spheres is normally already required at national level to ensure transparency and accountability when using public funds. A separation of accounts is necessary to allow the Commission to carry out its proportionality test. It will provide the Commission with a tool for examining alleged cross-subsidisation and for defending justified compensation payments for general economic interest tasks. Only on the basis of proper cost and revenue allocation can it be determined whether the public financing is actually limited to the net costs of the public service remit and thus acceptable under Article 86(2) and the Protocol.

50. The transparency requirements in the financial relations between public authorities and public undertakings and within undertakings granted special or exclusive rights or entrusted with the operation of a service of general economic interest, are indicated in Directive 80/723/EEC.

51. The Member States have been required by Directive 80/723/EEC to take the measures necessary to ensure — in the case of any undertaking granted special or exclusive rights or entrusted with the operation of a service of general economic interest and receiving State aid in any form whatsoever and which carries out other activities, that is to say, non-public service activities — that: (a) the internal accounts corresponding to different activities, i. e. public service and non-public service activities, are separate; (b) all costs and revenues are correctly assigned or allocated on the basis of consistently applied and objectively justifiable cost accounting principles; and (c) the cost-accounting principles according to which separate accounts are maintained are clearly established.

52. The general transparency requirements apply also to broadcasters as indicated in the fifth recital of Directive 2000/52/EC. The new requirements apply to public service broadcasters, in so far as they are beneficiaries of State aid and they are entrusted with the operation of a service of general economic interest, for which the State aid was not fixed for an appropriate period following an open, transparent and non-discriminatory procedure. The obligation of separation of accounts does not apply to public service broadcasters whose activities are limited to the provision of services of general economic interest and which do not operate activities outside the scope of those services.

53. In the broadcasting sector, separation of accounts poses no particular problem on the revenue side, but may not be straightforward or, indeed, feasible on the cost side. This is due to the fact that, in the broadcasting sector, Member States may consider the whole programming of the broadcasters as covered by the public service remit, while at the same time allowing for its commercial exploitation. In other words, different activities share the same inputs to a large extent.

54. For these reasons, the Commission considers that, on the revenue side, broadcasting operators should give a detailed account of the sources and amount of all income accruing from the performance of non-public service activities.

55. On the expenditure side, costs specific to the non-public service activity should be clearly identified. In addition, whenever the same resources — personnel, equipment, fixed installation etc. — are used to perform public service and non-public service tasks, their costs should be allocated on the basis of the difference in the firm's total costs with and without non-public service activities ([19]).

([18]) See footnote 1, p. 36.

([19]) This implies reference to the hypothetical situation in which the non-public service activities were to be discontinued: the costs that would be so avoided represent the amount of common costs to be allocated to non-public service activities.

56. The above implies that, contrary to the approach generally adopted in other utilities sectors, costs that are entirely attributable to public service activities, while benefiting also commercial activities, need not be apportioned between the two and can be entirely allocated to public service. This could be the case, for example, with the production costs of a programme which is shown as part of the public service remit but is also sold to other broadcasters. The main example, however, would be that of audience, which is generated both to fulfil the public service remit and to sell advertising space. It is considered that a full distribution of these costs between the two activities risks being arbitrary and not meaningful. However, cost allocation from the point of view of transparency of accounts should not be confused with cost recovery in the definition of pricing policies. The latter issue is addressed in point 58.

6.3.3. *Proportionality*

57. In carrying out the proportionality test, the Commission starts from the consideration that the State funding is normally necessary for the undertaking to carry out its public service tasks. However, in order to satisfy this test, it is necessary that the State aid does not exceed the net costs of the public service mission, taking also into account other direct or indirect revenues derived from the public service mission. For this reason, the net benefit that non-public service activities derive from the public service activity will be taken into account in assessing the proportionality of the aid.

58. On the other hand, there might be market distortions which are not necessary for the fulfilment of the public service mission. For example, a public service broadcaster, in so far as lower revenues are covered by the State aid, might be tempted to depress the prices of advertising or other non-public service activities on the market, so as to reduce the revenue of competitors. Such conduct, if demonstrated, could not be considered as intrinsic to the public service mission attributed to the broadcaster. Whenever a public service broadcaster undercuts prices in non-public service activities below what is necessary to recover the stand-alone costs that an efficient commercial operator in a similar situation would normally have to recover, such practice would indicate the presence of overcompensation of public service obligations and would in any event '*affect trading conditions and competition in the Community to an extent which would be contrary to the common interest*' and thus infringe the Protocol.

59. Accordingly, in carrying out the proportionality test, the Commission will consider whether or not any distortion of competition arising from the aid can be justified in terms of the need to perform the public service as defined by the Member State and to provide for its funding. When necessary the Commission will also take action in the light of other Treaty provisions.

60. The analysis of the effects of State aid on competition and development of trade will inevitably have to be based on the specific characteristics of each situation. The actual competitive structure and other characteristics of each of the markets cannot be described in the present communication, as they are generally quite different from each other. For the same reason, this Communication cannot *ex ante* define the conditions under which the prices of the public service broadcasters are in line with the principles explained in point 58. Therefore the assessment under Article 86(2) of the compatibility of State aid to public broadcasters can finally only be made on a case by case basis, according to Commission practice.

61. In its assessment, the Commission will take into account the fact that, to the extent that State aid is necessary to carry out the public service obligation, the system as a whole might also have the positive effect of maintaining an alternative source of supply in some relevant markets ([20]). However, this effect has to be balanced against possible negative effects of the aid, such as preventing other operators from entering these markets, thereby allowing a more oligopolistic market structure, or leading to possible anti-competitive behaviour of public service operators in the relevant markets.

62. The Commission will also take into account the difficulty some smaller Member States may have to collect the necessary funds, if costs per inhabitant of the public service are, *ceteris paribus*, higher ([21]).

([20]) This does not mean that State aid can be justified as a tool, which increases supply and competition in a market. State aid which allows an operator to stay in the market in spite of its recurrent losses causes a major distortion of competition, as it leads in the long run to higher inefficiency, smaller supply and higher prices for consumers. Lifting legal and economic barriers to entry, ensuring an effective anti-trust policy and promoting pluralism are more effective instruments in this respect. Natural monopolies are normally subject to regulation.

([21]) Similar difficulties may also be encountered when public service broadcasting is addressed to linguistic minorities or to local needs.

STATE AID — GERMANY (THÜRINGEN)

Aid C 1/2001 (ex N 831/97) — Guarantee for a company processing vegetables

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

(2001/C 320/05)

By means of the letter dated 8 February 2001, reproduced in the authentic language on the pages following this summary, the Commission notified Germany of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the abovementioned aid.

Interested parties can submit their comments within one month following the date of publication of this summary and the following letter, to:

European Commission
Directorate-General for Agriculture
Directorate Agroeconomic legislation
Rue de la Loi/Wetstraat 200
B-1049 Brussels
Fax (32-2) 296 21 51.

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

SUMMARY

The German Permanent Representation notified the Commission by letter of 5 December 1997, registered on 10 December 1997 of a measure whereby a guarantee would be given by the Thüringer Aufbaubank for loans for the acquisition by the newly created Frenzel Kyffhäuser Tiefkühlkost GmbH of the fixed assets of a manufacturing plant in Ringleben. The company processes in particular root vegetables (carrots, kohlrabi) and potatoes.

A distinction must be made between the loans and the guarantee granted for these loans.

The Commission issues an information injunction with respect to the loans pursuant to the decision in the Italgrani case (C 47/91). The Commission doubts that the schemes on which the loans are based are applicable in the case at hand as sensitive sectors seem excluded.

State guarantees must be assessed on the basis of the Commission notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees [1].

Point 4.2 of the Commission notice lists the conditions which must be met to exclude a qualification as State aid. In the case at hand it appears that certain of these conditions are not met. Therefore, it would seem that the measure constitutes State aid to the borrower.

Furthermore, there may be aid to the lender. It appears that the house bank has pre-financed the investments to avoid delaying the project. The 'definitive' financing will only be made available after the entry into force of the guarantee. If the guarantee would be granted, this would have the effect of the State taking over a risk currently taken by a bank for free. It would thus seem that the conditions mentioned in point 2.2.1 of the Commission notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees are met: a State guarantee is given *ex post* in respect of a loan or other financial obligation already entered into without the terms of this loan or financial loan being adjusted, or one guaranteed loan is used to pay back another non-guaranteed loan to the same credit institution. Therefore, there would also seem to be an aid to the lender. Such an aid would constitute operating aid which is in principle prohibited.

As regards the value of the aid to the borrower, it seems extremely difficult to quantify the aid rate for the guarantee, but the Commission doubts that calculations provided by the German authorities are adequate. First the aid intensity of the loans must be determined, whereafter the additional aid intensity for the guarantee can be determined. This cumulated amount must then be assessed in the light of applicable Commission policy.

[1] OJ C 71, 11.3.2000, p. 14.

The Commission has doubts about the calculation of the aid intensity of the loans provided by the German authorities. These calculations are based on the reference rate, but this reference rate is a floor rate which may be increased in situations involving a particular risk. Such increase would seem justified in the case at hand in view of the capital position of the company. Indeed, the house bank granted a loan at a rate, which according to the German authorities, reflects market conditions. Therefore, it would seem appropriate to calculate the aid intensity of the subsidised loans applying the same interest rate as reference market rate. This would lead to higher subsidy equivalents.

Furthermore in calculating the aid intensity of the guarantee, the German authorities applied an aid intensity of only 0,5 %, based on the range of 0,5 % to 2 % accepted by the Commission in case N 117/96 for viable undertakings (letter of 27 December 1996, SG(96) D/11696). It should be noted that this is the minimum amount of the proposed range, which does not seem justified in the case at hand in view of the capital position of the company. Furthermore, the letter of 27 December 1996 explicitly excludes companies which process and market products listed in Annex I to the EC Treaty. For that reason alone, the Commission has doubts about the appropriateness of the proposed aid intensity. It should also be noted that the proposed aid intensity of 0,5 % would have to be carefully evaluated in the light of the new criteria laid down in the Commission notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, which requires a more individualised approach based on the interest benefit obtained, or the past default rate for companies in the same circumstances. As the German authorities have indicated that the loans [. . .] (*), the Commission cannot exclude that the aid intensity amounts to 100 % of the guarantee. Such an aid intensity would be incompatible with point 4.2 of the Community guidelines for State aid in the agriculture sector.

Furthermore, certain statements of the German authorities cast doubt on the assurance that the company is not in financial difficulties. Indeed, based in the information provided the Commission cannot exclude that the guarantee must in fact be assessed on the basis of the rescue and restructuring guidelines. Assuming the rescue and restructuring guidelines apply, as the German authorities have not submitted a restructuring plan to restore viability, as it is not shown how undue distortions of competition are avoided and in what the own contribution of the beneficiary existed, the Commission would have to express doubt about the compatibility of the proposed measure.

For these reasons, the Commission has decided to open the procedure provided for by Article 88(2) of the EC Treaty against the proposed state guarantee and to enjoin Germany to provide all relevant information necessary for the assessment of whether the loans are effectively covered by aid schemes previously authorised.

(*) Confidential information.

TEXT OF THE LETTER

'Die Europäische Kommission beehrt sich, der Bundesrepublik Deutschland mitzuteilen, dass sie nach Prüfung der von den deutschen Behörden übermittelten Angaben über die vorerwähnte Beihilfe beschlossen hat, Deutschland zur Mitteilung aufzufordern, ob die Darlehen unter zuvor genehmigte Beihilferegelungen fallen, und gegen die vorgeschlagene Bürgschaft das Verfahren nach Artikel 88 Absatz 2 EG-Vertrag einzuleiten.

Der Entscheidung der Kommission liegen folgende Erwägungen zugrunde:

1. **VERFAHREN**

Mit Schreiben vom 5.12.1997, eingegangen am 10.12.1997, hat die Ständige Vertretung der Bundesrepublik Deutschland bei der Europäischen Union den Entwurf dieser Beihilfemaßnahme der Kommission gemäß Artikel 88 Absatz 3 notifiziert. Zusätzliche Informationen wurden übermittelt mit Schreiben vom 7.4.1998, eingegangen am 14.4.1998, vom 20.10.1998, eingegangen am 26.10.1998, vom 9.2.1999, eingegangen am 12.2.1999, vom 13.8.1999, eingegangen am 24.8.1999, zwei Schreiben vom 22.11.1999, eingegangen am 25.11.1999 bzw. am 26.11.1999, mit Schreiben vom 17.8.2000, eingegangen am 22.8.2000, und vom 29.11.2000, eingegangen am 5.12.2000.

2. **BESCHREIBUNG**

2.1 **Titel**

Bürgschaft für einen Gemüseverarbeitungsbetrieb

2.2 **Begünstigter**

Frenzel Kyffhäuser Tiefkühlkost GmbH

Die Beihilfe ist für den Erwerb des Anlagevermögens einer Produktionsstätte in Ringleben durch die neu gegründete Frenzel Kyffhäuser Tiefkühlkost GmbH bestimmt. Das Unternehmen verarbeitet insbesondere Wurzelgemüse (Karotten, Kohlrabi) und Kartoffeln.

2.3 **Beihilfemaßnahme**

2.3.1 *Staatliche Bürgschaft*

Von der Thüringer Aufbaubank wird eine staatliche Bürgschaft für 65 % eines Darlehens in Höhe von [. . .] (**) DEM mit Vorabbefriedigungsrecht an den vereinbarten Sicherheiten übernommen. Die Darlehen wurden am 22.12.1997 gewährt und am 31.12.1997 ausgezahlt. Die Bürgschaft wurde gleichzeitig vorbehaltlich der Genehmigung durch die Europäische Kommission übernommen.

Sicherheiten:

— [. . .] DEM erstrangige Grundschulden auf die Betriebsimmobilie in Ringleben;

(**) Betriebsgeheimnis.

— Sicherungsübereignung der Maschinen;

— selbstschuldnerische Höchstbetragsbürgschaft des geschäftsführenden Gesellschafters Herrn Frenzel;

— Abtretung der Auszahlungsansprüche aus einer Risikolebensversicherung für Herrn Frenzel in Höhe von [. . .] DEM.

Verbürgt werden folgende Darlehen:

— [. . .] DEM ERP-Aufbauprogramm ([2])

Vertrag geschlossen am 22.12.1997, Laufzeit bis 30.9.2017

[. . .][. . .]

Verbürgt bis 31.3.2013

— [. . .] DEM KfW-Mittelstandsprogramm ([3])

Vertrag geschlossen am 22.12.1997, Laufzeit bis 31.12.2005

[. . .][. . .]

Einmalige Bearbeitungsgebühr von 2 %, Disagio 4 %, Risikoprämie für „a. p."-Tilgung von 2 %

— [. . .] DEM Hausbankdarlehen ([4])

Vertrag geschlossen am 8.12.1997, Laufzeit bis 20.12.2007

[. . .][. . .]

Einmalige Bearbeitungsgebühr von 10 000 DEM.

Im Zusammenhang mit der Bürgschaft entstehen folgende Kosten:

— einmalige Bearbeitungsgebühr von 0,375 % des Bürgschaftsobligos,

— Bürgschaftsentgelt von 0,75 % p. a. des Bürgschaftsobligos.

Der Kaufpreis für die Sachanlage samt Inventar beläuft sich auf [. . .] DEM. Die deutschen Behörden haben angegeben, dass es dem Unternehmen trotz der gestellten Sicherheiten aus folgenden Gründen nicht möglich war, für den Kauf ein normales Darlehen auf dem freien Markt ohne zusätzliche Bürgschaft zu erhalten: der Standort des Unternehmens (Region Nord-Thüringen, genauer gesagt das Gebiet Artern, in dem seit der deutschen Einigung eine überdurchschnittlich hohe Zahl an Konkursen zu verzeichnen ist), der spezifische Charakter der Sachanlage (im Insolvenzfall muss ein privater Investor gefunden werden, der bereit ist, diese zu übernehmen) sowie die Bankpraxis in Bezug auf die Bewertung von Nahrungsmittelbeständen.

Zur finanziellen Situation des Unternehmens haben die deutschen Behörden ausgeführt, dass der Umsatz und der Cashflow des Unternehmens von 1994 bis 1996 konstant zugenommen haben, der Eigenkapitalanteil des Unternehmens ([. . .] % im Dezember 1996) jedoch beschränkt ist und sowohl vom Unternehmen selbst als auch von den Gläubigern als niedrig angesehen wird. Die Kapitalsituation wirkt sich auch auf die neuen Investitionen aus (verfügbare Eigenmittel in Höhe von [. . .] DEM). Der vorläufige Jahresabschluss vom Dezember 1998 zeigt, dass das Unternehmen auf dem richtigen Weg ist. Sowohl die angestrebten Gewinne als auch der Cashflow-Zuwachs liegen leicht über der Vorausschätzung.

Im Allgemeinen kann das Unternehmen nach Auffassung der deutschen Behörden nicht als in finanziellen Schwierigkeiten befindlich betrachtet werden.

2.3.2 *Auswirkungen auf die Kapazitäten*

Bei der zu übernehmenden Produktionsstätte in Ringleben handelt es sich um ein Verarbeitungsunternehmen mit diversen Verarbeitungslinien sowie einer Kühlanlage mit Kartoffelbelüftungsanlage und zwei Frostern. Die derzeitige Verarbeitungskapazität wird nicht ausgeweitet.

Zur bestehenden Anlage wurden folgende Angaben gemacht:

Frischschällinie: 8 400 t Rohware bzw. 4 200 t Fertigware p. a.,

Dampfschällinie: 22 000 t Rohware bzw. 15 000 t Fertigware p. a.,

Mischungslinie: 2 600 t Fertigware p. a.,

Röstlinie: 1 800 t Fertigware p. a.

Die Angaben beziehen sich auf die maximale Kapazität bei einem Dreischichtbetrieb. Später wird die Anlage in zwei Schichten betrieben werden.

2.3.3 *Auswirkungen auf den Markt*

Die neu gegründete Frenzel Kyffhäuser Tiefkühlkost GmbH ist in einem dynamischen Markt tätig. Die Nachfrage nach Tiefkühlkost nimmt zu. Da der Pro-Kopf-Verbrauch von Tiefkühlkost in Deutschland noch immer unter dem Durchschnitt der übrigen westeuropäischen Länder liegt, ist mit einer Zunahme des Verbrauchs zu rechnen. Die Produktion der Frenzel Kyffhäuser Tiefkühlkost GmbH ist ausschließlich für den deutschen Markt bestimmt.

Durch die enge wirtschaftliche Verflechtung des neu gegründeten Unternehmens mit einem bereits bestehenden Unternehmen des Geschäftsführers, Herrn Frenzel, in Sachsen (Frenzel Eiscrem und Tiefkühlkost) eröffnen sich im Rahmen der existierenden Vertriebsstrukturen erhöhte Absatzmöglichkeiten für die in Ringleben hergestellten Produkte.

Das Unternehmen hat seinen Sitz in einer Region mit hoher Arbeitslosigkeit (25,1 % im Oktober 1997). Durch die Maßnahme werden 47 Arbeitsplätze erhalten. Für 1998 ist die Schaffung weiterer 12 Arbeitsplätze geplant.

Die Erzeugnisse werden in ganz Deutschland vertrieben, sowohl direkt an die Märkte als auch an Zentrallager. Es gibt Kontakte zu allen Supermarktketten in Deutschland. Nach den Angaben der deutschen Behörden werden die Erzeugnisse der Marke „Fürstlich essen wie August der Starke" zu [. . .] % in Thüringen, zu [. . .] % in Ostberlin und den übrigen neuen Bundesländern und zu [. . .] % im restlichen Deutschland abgesetzt.

([2]) Die deutschen Behörden haben angegeben, dass dieses Darlehen aus öffentlichen Mitteln finanziert wird und von der Kommission genehmigt wurde (N 951/95, genehmigt mit Schreiben vom 1.3.1996).

([3]) Die deutschen Behörden haben angegeben, dass dieses Darlehen aus öffentlichen Mitteln finanziert wird und von der Kommission genehmigt wurde (NN 24/96, genehmigt mit Schreiben vom 29.3.1996).

([4]) Die deutschen Behörden haben erklärt, dass dieses Darlehen zu Marktkonditionen gewährt wurde.

2.4 **Beihilfeintensität**

Die deutschen Behörden haben angegeben, dass sich die Gesamtinvestitionskosten auf [. . .] DEM ([. . .] DEM über die Darlehen finanziert, [. . .] DEM Eigenmittel) belaufen, wobei das Beihilfeelement 300 000 DEM beträgt.

Die deutschen Behörden haben folgende Übersicht über die Berechnung der Beihilfeintensität übermittelt:

	Subventionsäquivalent	
Eigenmittel	[. . .] DEM	—
Hausbankdarlehen	[. . .] DEM	—
ERP-Aufbauprogramm	[. . .] DEM	195 410 DEM
KfW-Mittelstandsprogramm	[. . .] DEM	26 378 DEM
Insgesamt		221 788 DEM

Der Wert der Bürgschaft (65 % von [. . .] DEM, d. h. [. . .] DEM) entspricht einer Beihilfeintensität von 0,5 % p. a. für wirtschaftlich lebensfähige Unternehmen bis 18 200 DEM p. a. Die deutschen Behörden gründen die Beihilfeintensität auf die Spanne 0,5 %—2 %, die von der Kommission im Fall N 117/96 für lebensfähige Unternehmen akzeptiert wurde (Schreiben vom 27.12.1996, SG(96) D/11696). In einem getrennten Schreiben vom 11.11.1998 (D/54570) hat die Kommission für Unternehmen, die sich nicht in finanziellen Schwierigkeiten befinden, einen Beihilfesatz von 0,5 % akzeptiert.

2.5 **Rechtsgrundlage**

Bürgschaftsrichtlinie des Freistaates Thüringen für die gewerbliche Wirtschaft und die freien Berufe vom 8. November 1995.

3. **WÜRDIGUNG**

3.1 **Anordnung zur Auskunftserteilung hinsichtlich der Darlehen**

Es muss unterschieden werden zwischen den Darlehen und der für die Darlehen gewährten Bürgschaft.

Nach Angaben der deutschen Behörden ist das Hausbankdarlehen zu Marktbedingungen gewährt worden, während die beiden anderen Darlehen auf der Grundlage des ERP-Aufbauprogramms und des KfW-Mittelstandsprogramms gewährt wurden, die bereits genehmigt worden sind. Nach dem Urteil des Gerichtshofs in der Rechtssache Italgrani [5] gilt Folgendes: Die Kommission kann, wenn sie es mit einer individuellen Beihilfe zu tun hat, von der behauptet wird, sie sei aufgrund einer zuvor genehmigten Regelung gewährt worden, diese Gewährung nicht ohne weiteres unmittelbar am EG-Vertrag messen. Sie darf zunächst — bevor sie ein Verfahren eröffnet — nur prüfen, ob die Beihilfe durch die allgemeine Regelung gedeckt ist und die in der Entscheidung über die Genehmigung dieser Regelung gestellten Bedingungen erfüllt. Stellt die Kommission im Anschluss an eine in dieser Weise beschränkte Überprüfung fest, dass die individuelle Beihilfe ihrer Entscheidung über die Genehmigung der Regelung entspricht, so muss sie sie wie eine genehmigte, d. h. wie eine bestehende Beihilfe behandeln. Umgekehrt ist die individuelle Beihilfe dann wie eine neue Beihilfe anzusehen, wenn die Kommission feststellt, dass sie nicht durch ihre Entscheidung über die Genehmigung der Regelung gedeckt ist.

Im vorliegenden Fall zweifelt die Kommission auf der Grundlage der ihr vorliegenden Informationen daran, dass sich die beiden von den deutschen Behörden angeführten Beihilferegelungen auf empfindliche Sektoren (einschließlich der Landwirtschaft) beziehen.

Aufgrund vorstehender Erwägungen und gemäß dem Urteil des Gerichtshofs in der Rechtssache C-47/91 erachtet die Kommission es für notwendig, die deutsche Regierung förmlich aufzufordern, ihr innerhalb eines Monats alle erforderlichen Unterlagen, Angaben und Daten zu übermitteln, damit die Kommission ermitteln kann, ob die Darlehen tatsächlich unter zuvor genehmigte Beihilferegelungen fallen.

3.2 **Vorliegen einer Beihilfe im Sinne von Artikel 87 Absatz 1 EG-Vertrag hinsichtlich der Bürgschaft**

Damit Artikel 87 Absatz 1 EG-Vertrag hinsichtlich der Bürgschaft zur Anwendung kommt, muss sie dem betreffenden Unternehmen einen wirtschaftlichen Vorteil verschaffen, den es unter normalen Marktbedingungen nicht erhalten würde; die Beihilfe muss bestimmten Unternehmen gewährt werden; die Zuwendung muss von einem Mitgliedstaat oder aus staatlichen Mitteln gewährt werden und die Beihilfe muss geeignet sein, den Handel zwischen den Mitgliedstaaten spürbar zu beeinträchtigen.

Ob es sich bei staatlichen Bürgschaften um staatliche Beihilfen handelt, muss anhand der Mitteilung der Kommission über die Anwendung der Artikel 87 und 88 EG-Vertrag auf staatliche Beihilfen in Form von Haftungsverpflichtungen und Bürgschaften [6] festgestellt werden. Aus Nummer 2.1.4 der Mitteilung geht hervor, dass sowohl vom Staat direkt gewährte Bürgschaften als auch von Unternehmen, auf die öffentliche Stellen einen beherrschenden Einfluss ausüben, gewährte Bürgschaften eine staatliche Beihilfe im Sinne von Artikel 87 Absatz 1 EG-Vertrag darstellen können.

In Nummer 4.2 der Mitteilung sind die Voraussetzungen aufgeführt, die erfüllt werden müssen, damit eine staatliche Bürgschaft keine staatliche Beihilfe darstellt. Die deutschen Behörden haben bestätigt, dass der Kreditnehmer nicht in der Lage wäre, ohne Eingreifen des Staates auf den Finanzmärkten Gelder zu Marktbedingungen aufzunehmen. Somit wäre die Voraussetzung von Nummer 4.2 Buchstabe c) der Mitteilung nicht erfüllt. Außerdem wird zwar eine Prämie gezahlt, um das vom Staat getragene Risiko im Zusammenhang mit der Bürgschaft auszugleichen, aber in Anbetracht der Umstände (begrenztes Eigenkapital und Bestätigung durch die deutschen Behörden, dass die Bürgschaft für die Finanzierung erforderlich ist), scheint die Prämie nicht dem Marktpreis für die Bürgschaft zu entsprechen. Somit wird auch die Voraussetzung von Nummer 4.2 Buchstabe d) der Mitteilung nicht erfüllt. Bei der Maßnahme scheint es sich also um eine staatliche Beihilfe für den Kreditnehmer zu handeln.

[5] Rechtssache C-47/91 vom 5. Oktober 1994, [Slg.] 1994, S. I-4635.

[6] ABl. C 71 vom 11.3.2000, S. 14.

Außerdem könnte der Kreditgeber eine Beihilfe erhalten. Es scheint, dass die Hausbank die Investitionen vorfinanziert hat, um Verzögerungen bei dem Vorhaben zu vermeiden. Die „endgültige" Finanzierung wird erst nach Inkrafttreten der Bürgschaft verfügbar. Wird die Bürgschaft gewährt, so würde dies bedeuten, dass der Staat ein Risiko übernimmt, das eine Bank bisher kostenlos übernommen hat. Es scheint also, dass die Voraussetzungen von Nummer 2.2.1 der vorgenannten Mitteilung erfüllt sind: für ein bereits gewährtes Darlehen oder eine sonstige bereits eingegangene finanzielle Verpflichtung wird eine staatliche Bürgschaft übernommen, ohne dass die Konditionen des Darlehens oder der finanziellen Verpflichtung entsprechend angepasst werden, oder ein mit einer Bürgschaft versehenes Darlehen wird dazu benutzt, um ein anderes, nicht mit einer Bürgschaft ausgestattetes Darlehen an dasselbe Kreditinstitut zurückzuzahlen. Somit profitiert anscheinend auch der Kreditgeber von der Beihilfe.

3.3 **Anwendbarer Rechtsrahmen**

Beihilfen in Form von Bürgschaften müssen von der Kommission anhand der Regeln geprüft werden, die sie bei dieser Art von Beihilfemaßnahmen anwendet (Investitionen, Rettung und Umstrukturierung usw.) ([7]). Deshalb muss der angemessene Rahmen für die Prüfung des Erwerbs der Vermögenswerte geschaffen werden.

Die deutschen Behörden haben die Maßnahme als Bürgschaft für eine Investitionsbeihilfe bezeichnet. Somit müsste der Investitionsaspekt normalerweise anhand des Gemeinschaftsrahmens für staatliche Beihilfen im Agrarsektor ([8]) geprüft werden.

Nun scheint die Maßnahme jedoch den Erwerb aller Vermögenswerte einer Produktionsstätte eines in Gesamtvollstreckung befindlichen Unternehmens durch ein neu gegründetes Unternehmen zu betreffen, das jedoch von Anfang an unzureichend mit Kapital ausgestattet war. Somit kann also nicht ausgeschlossen werden, dass es sich eigentlich um eine Rettungs- und Umstrukturierungsbeihilfe handelt, die anhand der Leitlinien für die Beurteilung von staatlichen Beihilfen zur Rettung und Umstrukturierung von Unternehmen in Schwierigkeiten ([9]) beurteilt werden muss. Die Feststellung der deutschen Behörden, dass das Unternehmen [. . .], wenn es die Bürgschaft nicht erhält, scheint darauf hinzuweisen. Da die deutschen Behörden die Finanzbuchhaltung des Unternehmens nicht übermittelt haben, muss die Kommission Zweifel am anwendbaren Rechtsrahmen anmelden. Gemäß Nummer 4.2.3 der Gemeinschaftsleitlinien muss das Unternehmen aufgrund einer Bewertung seiner Aussichten wirtschaftlich lebensfähig sein. Solche Bewertungen sind nicht vorgelegt worden.

Geht man davon aus, dass die Leitlinien für die Rettung und Umstrukturierung gelten, so muss die Kommission Zweifel an der Vereinbarkeit der vorgeschlagenen Maßnahme mit den Leitlinien anmelden, weil die deutschen Behörden keinen Umstrukturierungsplan zur Wiederherstellung der Lebensfähigkeit vorgelegt haben und weil nicht deutlich ist, wie ungerechtfertigte Wettbewerbsverzerrungen vermieden würden und worin der Eigenbeitrag des Empfängers bestand. Es ist auch darauf hinzuweisen, dass die neuen Leitlinien der Gemeinschaft für staatliche Beihilfen zur Rettung und Umstrukturierung von Unternehmen in Schwierigkeiten ([10]) Rettungs- und Umstrukturierungsbeihilfen für neu gegründete Unternehmen ausschließen. Dies gilt insbesondere für neue Unternehmen, die aus der Abwicklung oder der Übernahme der Vermögenswerte eines anderen Unternehmens hervorgegangen sind (Nummer 7 der Rettungs- und Umstrukturierungsleitlinien). Ausnahmen sind nur in bestimmten Fällen in den neuen Bundesländern möglich (siehe Fußnote 10 der Leitlinien, mit der die gängige Praxis kodifiziert wird). Außerdem wurde mit den neuen Leitlinien auch der Grundsatz der einmaligen Beihilfe (Nummern 50 und 51 ([11]) der Leitlinien) festgelegt — gemäß Fußnote 28, mit der die gängige Praxis kodifiziert wird, kann eine Ausnahme vom Grundsatz der einmaligen Beihilfe nur durch außergewöhnliche Umstände gerechtfertigt werden, die nichts mit dem Unternehmen zu tun haben. Dies bedeutet, dass überprüft werden muss, dass sich das neue Unternehmen deutlich von dem alten Unternehmen unterscheidet.

Da der Kommission jedoch nicht mitgeteilt worden ist, wann das alte Unternehmen liquidiert und das neue Unternehmen gegründet worden ist, kann sie nicht feststellen, welche Bestimmungen der Leitlinien in diesem Fall gelten. Die Zweifel der Kommission werden dadurch verstärkt, dass ihr keine Angaben über den Verkauf der Vermögenswerte vorliegen: Wer war der vorherige Besitzer, gibt es eine Verbindung zum Begünstigten, wie wurde der Kaufpreis festgesetzt, welche Bedingungen galten für den Verkauf? Die deutschen Behörden müssten auch mitteilen, ob dem Unternehmen nach Dezember 1997 eine neue Beihilfe gewährt worden ist. Je nachdem, ob und wann eine solche Beihilfe gewährt wurde, könnten die neuen Rettungs- und Umstrukturierungsleitlinien gelten.

Auch wenn davon ausgegangen wird, dass der Gemeinschaftsrahmen für staatliche Beihilfen im Agrarsektor die geeignete Rechtsgrundlage darstellt, hat die Kommission doch Zweifel an der Vereinbarkeit der Maßnahme. Die deutschen Behörden haben bestätigt, dass die Bedingungen von Nummer 4.2 des Gemeinschaftsrahmens eingehalten werden, insbesondere, dass der Beihilfesatz 50 % der zuschussfähigen Investitionen in Ziel-1-Regionen nicht überschreiten darf. Diese Versicherung gründet sich jedoch auf die vorstehend beschriebenen Berechnungen der Beihilfeintensität und des Subventionsäquivalents der Darlehen und Bürgschaften (vgl. Abschnitt II Buchstabe D). Die Kommission hat aus nachstehend angeführten Gründen Zweifel an diesen Berechnungen.

3.4 **Beihilfeintensität**

Gemäß der Mitteilung der Kommission über die Anwendung der Artikel 87 und 88 EG-Vertrag auf staatliche Beihilfen in Form von Haftungsverpflichtungen und Bürgschaften lässt sich das Barzuschussäquivalent einer Kreditbürgschaft in einem bestimmten Jahr auf dieselbe Weise berechnen wie das Zuschussäquivalent eines zinsvergünstigten Darlehens; der Zinszuschuss macht dabei die Differenz zwischen dem Marktzins und dem Zins aus, der dank der staatlichen Bürgschaft angewandt wird, nach Abzug etwaiger Prämienzahlungen.

([7]) Vgl. Nummer 5.2 der Mitteilung der Kommission über die Anwendung der Artikel 87 und 88 EG-Vertrag auf staatliche Beihilfen in Form von Haftungsverpflichtungen und Bürgschaften.

([8]) ABl. C 28, vom 1.2.2000, S. 2, Berichtigung in ABl. C 232 vom 12.8.2000, S. 17.

([9]) ABl. C 283 vom 19.9.1997, weil die Beihilfe vor dem 30.4.2000 notifiziert wurde, siehe ABl. C 288 vom 9.10.1999, geändert durch ABl. C 121 vom 29.4.2000.

([10]) ABl. C 288 vom 9.10.1999, S. 2.

([11]) Die den Erwerb von Vermögenswerten auch ausdrücklich untersagt.

In dem vorliegenden Fall erscheint es äußerst schwierig, die Beihilferate für die Bürgschaft zu berechnen, die Kommission bezweifelt jedoch, dass die von den deutschen Behörden übermittelten Berechnungen richtig sind. Zunächst muss die Beihilfeintensität der Darlehen bestimmt werden; dann kann die zusätzliche Beihilfeintensität für die Bürgschaft bestimmt werden. Der kumulierte Betrag muss dann im Rahmen der anwendbaren Kommissionspolitik beurteilt werden.

Die Beihilfeintensität des Darlehens ist vorstehend berechnet worden, indem die Zinsvergütung mit dem Referenzzinssatz verglichen wird. Im Dezember 1997 belief sich der Referenzzinssatz auf 5,54 %. Bei diesem Referenzzinssatz handelt es sich jedoch um einen Mindestsatz, der in besonderen Risikofällen erhöht werden kann (z. B. Unternehmen in Schwierigkeiten, Mangel an üblicherweise von Banken geforderten Sicherheiten). In diesen Fällen kann sich der Zuschlag auf 400 Basispunkte oder mehr belaufen, wenn keine Privatbank zur Gewährung des betreffenden Darlehens bereit gewesen wäre. Dies scheint hier infolge der Kapitallage des Unternehmens der Fall gewesen zu sein (obwohl die deutschen Behörden versichern, dass sich das Unternehmen nicht in finanziellen Schwierigkeiten befindet). Die Hausbank hat in der Tat ein Darlehen mit dem Zinssatz [. . .] % gewährt, das den deutschen Behörden zufolge die Marktbedingungen widerspiegelt. Deshalb wäre es wohl angemessen, die Beihilfeintensität der zinsverbilligten Darlehen unter Zugrundelegung desselben Zinssatzes von [. . .] % als Referenzmarktzinssatz zu berechnen. Dies würde natürlich zu höheren Subventionsäquivalenten führen.

Bei der Berechnung der Beihilfeintensität der Bürgschaft haben die deutschen Behörden außerdem eine Beihilfeintensität von nur 0,5 % angewendet, auf der Grundlage der Spanne, die die Kommission im Fall N 117/96 ([12]) für lebensfähige Unternehmen akzeptiert hat (Schreiben vom 27.12.1996, SG(96) D/11696). Es ist darauf hinzuweisen, dass dies der Mindestwert der vorgeschlagenen Spanne ist, was im vorliegenden Fall aufgrund der Kapitalsituation des Unternehmens nicht als gerechtfertigt erscheint. Außerdem werden im Schreiben vom 27.12.1996 ausdrücklich Unternehmen ausgeschlossen, die Erzeugnisse im Sinne von Anhang I des EG-Vertrags verarbeiten und vermarkten. Allein aus diesem Grund hat die Kommission Zweifel an der Angemessenheit der vorgeschlagenen Beihilfeintensität. Es ist auch darauf hinzuweisen, dass die vorgeschlagene Beihilfeintensität von 0,5 unter Zugrundelegung der neuen Kriterien in der Mitteilung der Kommission über die Anwendung der Artikel 87 und 88 EG-Vertrag auf staatliche Beihilfen in Form von Haftungsverpflichtungen und Bürgschaften eingehend geprüft werden sollte, die ein individualisierteres Konzept auf der Grundlage der erlassenen Zinsen oder der früheren Ausfallrate von Unternehmen in der gleichen Lage erfordert. Da die deutschen Behörden angegeben haben, dass die Darlehen [. . .] gewährt werden [. . .], kann die Kommission eine Beihilfeintensität in Höhe von 100 % des durch die Bürgschaft gedeckten Betrags nicht ausschließen ([13]). Die Behauptung der deutschen Behörden über [. . .] lässt außerdem Zweifel an der Versicherung aufkommen, dass sich das Unternehmen nicht in finanziellen Schwierigkeiten befindet.

Hinsichtlich der möglichen Beihilfe zugunsten des Kreditgebers scheint es sich hier um eine reine Betriebsbeihilfe zu handeln (vgl. Nummer 5.4 der Mitteilung der Kommission). Das Darlehen wird stärker gesichert, ohne dass der Kreditgeber eine Gegenleistung erbringen muss. Anhand der derzeit verfügbaren Angaben scheint der Wert dieser Beihilfe wiederum sehr schwer zu ermitteln. Die Kommission kann nicht ausschließen, dass 100 % des durch die Bürgschaft gedeckten Betrags als die angemessene Beihilfeintensität betrachtet werden müssen. In Anbetracht der Tatsache, dass die Bürgschaft 65 % des Darlehens deckt, würde dies bedeuten, dass sich das Beihilfeäquivalent für den Kreditgeber auf [65 % von [. . .] DEM=] [. . .] DEM belaufen würde.

4. **ENTSCHEIDUNG**

Aus den vorstehend dargelegten Gründen hat die Kommission beim derzeitigen Verfahrensstand erhebliche Bedenken, dass die geplante Beihilfemaßnahme als im gemeinsamen Interesse liegend gelten und somit für eine Freistellung gemäß Artikel 87 Absatz 3 Buchstabe c) EG-Vertrag in Betracht kommen kann.

Die Kommission möchte Deutschland daher mitteilen, dass sie nach Prüfung der ihr bislang vorliegenden Angaben zu der betreffenden staatlichen Beihilfe beschlossen hat, gegen die vorgeschlagene Bürgschaft das Verfahren nach Artikel 88 Absatz 2 EG-Vertrag einzuleiten. Außerdem fordert die Kommission Deutschland aus den vorgenannten Gründen und infolge der Rechtssache „Italgrani“ im Wege einer Anordnung zur Auskunftserteilung auf, ihr innerhalb eines Monats nach Eingang dieses Schreibens alle Unterlagen, Angaben und Daten zu übermitteln, die für die Prüfung der Tatsache, ob die Darlehen tatsächlich unter zuvor genehmigte Beihilferegelungen fallen, sachdienlich sind. Es sind insbesondere alle Angaben über die Regelungen zu übermitteln, gemäß denen die Darlehen gewährt worden sind (insbesondere sektoraler Geltungsbereich und Genehmigung durch die Kommission).

Sollte die Kommission zu den genannten Fragen keine Auskünfte erhalten, so wird sie eine Entscheidung auf der Grundlage der ihr vorliegenden Elemente erlassen.

Aus diesen Gründen fordert die Kommission Deutschland im Rahmen des Verfahrens nach Artikel 88 Absatz 2 EG-Vertrag auf, innerhalb eines Monats nach Eingang dieses Schreibens seine Stellungnahme abzugeben und alle für die Würdigung der Maßnahme sachdienlichen Informationen zu übermitteln. Sie bittet die deutschen Behörden, dem etwaigen Beihilfeempfänger unmittelbar eine Kopie dieses Schreibens zuzuleiten.

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 von den Empfängern zurückgefordert werden können.’

([12]) Bürgschaftsrichtlinie der Thüringer Aufbaubank.

([13]) Siehe Nummer 3.2 der Mitteilung der Kommission über die Anwendung der Artikel 87 und 88 EG-Vertrag auf staatliche Beihilfen in Form von Haftungsverpflichtungen und Bürgschaften: „Ist es bei Übernahme der Garantie sehr wahrscheinlich, dass der Kreditnehmer seinen Verpflichtungen nicht wird nachkommen können, z. B. weil er in finanziellen Schwierigkeiten ist, so kann der Wert der Garantie genauso hoch sein wie der Betrag, der durch die Garantie effektiv gedeckt ist.“

Members of the advisory committee for cancer prevention

(2001/C 320/06)

By a decision of 9 October 2001, the Commission has appointed the following persons as members of the advisory committee for cancer prevention. The three-year period provided for in Article 6 of Commission Decision 96/469/EC will take effect on the day following the adoption of the abovementioned decision.

Michael MICKSCHE

Hendrik VAN POPPEL

Hans STORM

Harri VERTIO

Jean FAIVRE

Volker DIEHL

Georgios SAMONIS

Peter A. DALY

Alberto COSTA

Mario DICATO

K. W. VAN DE POLL

Edward LIMBERT

D. Gonzalo LOPEZ-ABENTE

Ulrik RINGBORG

James FRIEND

Non-opposition to a notified concentration

(Case COMP/M.2569 — Interbrew/Beck's)

(2001/C 320/07)

(Text with EEA relevance)

On 26 October 2001 the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

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

— in electronic form in the 'CEN' version of the CELEX database, under document No 301M2569. CELEX is the computerised documentation system of European Community law.

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Tel. (352) 29 29 427 18, fax (352) 29 29 427 09.

Prior notification of a concentration

(Case COMP/M.2550 — Mezzo/Muzzik)

(2001/C 320/08)

(Text with EEA relevance)

1. On 6 November 2001 the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 [1], as last amended by Regulation (EC) No 1310/97 [2], by which Mezzo, jointly controlled by France Télécom and France Télévision, enters into a full merger, within the meaning of Article 3(1)(a) of the Regulation, with MCM Classique Jazz-Muzzik (Muzzik), jointly controlled by Lagardère and Vivendi Universal, by purchase of assets.

2. The business activities of the undertakings concerned are:

— Mezzo: edition and commercialisation of a thematic channel showing programmes dedicated to classical music, jazz and world music,

— Mezzo: edition and commercialisation of a thematic channel showing programmes dedicated to classical music, opera and dance,

— France Télécom: provision of telecommunications services,

— France Télévision: broadcasting of public channels, audiovisual production and commercialisation of audiovisual rights,

— Lagardère: communications and media, automotive and high-tech industries,

— Vivendi Universal: communications and media, and services for the environment.

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

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

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference COMP/M.2550 — Mezzo/Muzzik, to:

European Commission,
Directorate-General for Competition,
Directorate B — Merger Task Force,
Rue Joseph II/Jozef II-straat 70,
B-1000 Brussels.

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

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

III

(Notices)

COMMISSION

Advance notice of call for proposals for the specific programme for research, technological development and demonstration on 'Promotion of innovation and encouragement of SME participation' (1998 to 2002)

(2001/C 320/09)

The Commission, within the context of the specific programme referred to above, intends to publish in the *Official Journal of the European Communities* of 15 December 2001 a call for proposals for:

Innovation projects

Information relating to this call can be obtained using one of the following addresses:

European Commission
Innovation Help Desk
E-mail: innovation@cec.eu.int
Web: http://www.cordis.lu/fp5/src/calls.htm

Amendment to the notice of invitation to tender for the refund for the export of common wheat to all third countries except Poland

(2001/C 320/10)

(Official Journal of the European Communities C 143 of 16 May 2001)

Page 8, the text of point 2, under heading I 'Subject', reads as follows:

'2. The total quantity in respect of which there may be fixed a maximum export refund as provided in Article 4(1) of Commission Regulation (EC) No 1501/95 [1], as last amended by Regulation (EC) No 602/2001 [2], is approximately 3 000 000 tonnes.'

[1] OJ L 147, 30.6.1995, p. 7.
[2] OJ L 89, 29.3.2001, p. 16.