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Information and Notices

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I

(Information)

COMMISSION

Euro exchange rates ⁽¹⁾**5 December 2001**

(2001/C 344/01)

1 euro	=	7,4456	Danish krone
	=	9,4457	Swedish krona
	=	0,627	Pound sterling
	=	0,8919	United States dollar
	=	1,4035	Canadian dollar
	=	110,84	Japanese yen
	=	1,4747	Swiss franc
	=	8	Norwegian krone
	=	97,15	Icelandic króna ⁽²⁾
	=	1,7323	Australian dollar
	=	2,1551	New Zealand dollar
	=	9,6506	South African rand ⁽²⁾

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

⁽²⁾ Source: Commission.

Non-opposition to a notified concentration**(Case COMP/M.2523 — Siemens/AEM/E-Utile)**

(2001/C 344/02)

(Text with EEA relevance)

On 23 November 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 301M2523. CELEX is the computerised documentation system of European Community law.

For more information concerning subscriptions please contact:

EUR-OP,
Information, Marketing and Public Relations,
2, rue Mercier,
L-2985 Luxembourg.
Tel. (352) 29 29 427 18, fax (352) 29 29 427 09.

Non-opposition to a notified concentration**(Case COMP/M.2417 — Skanska/Sita)**

(2001/C 344/03)

(Text with EEA relevance)

On 23 November 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:

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Prior notification of a concentration**(Case COMP/M.2176 — K + S/Solvay/JV)**

(2001/C 344/04)

(Text with EEA relevance)

1. On 28 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 the undertakings K + S Aktiengesellschaft (K + S, Germany) and Solvay SA (Solvay, Belgium) acquire, within the meaning of Article 3(1)(b) of the Regulation, joint control of the undertaking European Salt Company (ESCO, Germany) by way of purchase of shares in a newly created company constituting a joint venture.

2. The business activities of the undertakings concerned are:

- K + S: production and distribution of salt, fertilisers and potash-based products, waste disposal services,
- Solvay: production and distribution of salt, chemicals, plastics and pharmaceutical products.

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.2176 — K + S/Solvay/JV, to:

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

⁽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.

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 16 November 2001

at the request of the Council of the European Union on a proposal for a Directive of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading (COM(2001) 280 final)

(CON/2001/36)

(2001/C 344/05)

1. On 5 July 2001 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Directive of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading (COM(2001) 280 final) (hereinafter referred to as the 'proposed Directive').
2. The ECB's competence to deliver an opinion is based on the first indent of Article 105(4), of the Treaty establishing the European Community (hereinafter referred to as 'the Treaty'), since the proposed Directive constitutes an instrument essential to ensure the integrity of the Community financial markets and to enhance investor confidence in those markets and contains provisions with a bearing on the issuance of securities by the ECB. The ECB also notes that Article 105(1) of the Treaty and Article 2 of the Statute of the European System of Central Banks and of the European Central Bank state that the ESCB shall support the general economic policies in the Community. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the ECB, this opinion has been adopted by the Governing Council of the ECB.
3. The main objective of the proposed Directive is the introduction of a single passport for issuers offering securities at European Union level. It provides the possibility of offering securities or admitting securities to trading on the basis of a simple notification of the prospectus approved by the home competent authority. In order to attain this objective, the proposed Directive introduces the necessary harmonisation of the rules applicable to public offer and of the information contained in a prospectus thus ensuring equivalent protection for investors at Community level. The disclosure standards introduced by the proposed Directive are in line with international standards regarding public offer of securities and admission to trading.
4. The ECB generally welcomes and supports the aims pursued by the proposed Directive, as the ECB sees the proposal as an effective means of advancing European financial markets integration. The Eurosystem has a keen interest in the developments of financial markets. The achievement of the primary objective of the Eurosystem, the maintenance of price stability, requires that monetary policy impulses be transmitted in a smooth way throughout the euro area by means of integrated and efficient financial markets. Securities markets, together with the unsecured money market and the banking sector, play a key role in this respect. The existence of some degree of segmentation of financial markets in the jurisdiction of a central bank is not an uncommon phenomenon. However, obstacles to the integration of securities markets in the euro area may slow down or distort the transmission of monetary impulses to the economy. In addition, the Treaty states that without prejudice to the objective of price stability, the Eurosystem shall contribute to the achievement of the objectives of the Community. A prominent objective of the Community is to achieve balanced and sustainable development, by establishing a common market. In this respect, the introduction of a single currency is proving to be a powerful triggering event, leading towards easier access to borrowing and investment opportunities. Ultimately, this will enhance the capacity of issuers to raise capital on an EU-wide basis, by reducing the cost of financing and improving the efficiency of the allocation of financial resources throughout the euro area. Therefore, it is in the interest of the Eurosystem that obstacles to the integration of securities markets do not thwart the full benefits of EMU.
5. Generally, efficient and integrated securities markets can facilitate economic growth and reduce the cost of raising capital in the EU. In addition, European securities markets will become more liquid, therefore attracting more investments and also more issuers from third countries. The proposed Directive, with the introduction of a single passport for issuers, will improve market access for raising capital in the EU and eliminate existing obstacles to cross-border offering of securities. On account of the new language regime for multinational offerings and admissions to trading costly translation will be significantly reduced. Regulatory compliance will be simplified, since host Member States will be deprived of the possibility of requiring adherence to additional national rules. As a consequence, raising capital should become easier and cheaper for companies of all sizes. The introduction of harmonised and enhanced disclosure standards in line with international standards for public offer of securities

and admission to trading is likely to increase investor confidence, in particular as regards investing on an EU-wide basis. However, a high level of disclosure has to be balanced against the need for an efficient issuance process, with costs proportional to the size of the issuing company and the type of security issued. Standardised, easily available and regularly updated information will improve and widen the basis for well-founded decision making by investors. The positive implications of the proposed Directive for both issuers and investors will enhance the ability of the financial markets to fulfil their function of efficient capital allocation, as they become more liquid and efficient. Moreover, the ECB holds the view that the enhancement of issuer disclosure will favour selection by investors of new investment projects and reduce information asymmetry, leading in turn to greater market liquidity. The ECB also notes that the above-mentioned benefits are in principle a consequence of any enhancement in corporate disclosure. In this respect, the ECB notes that the Lisbon European Council urged that steps be taken to enhance the quality and the comparability of corporate disclosure for listed companies, and that the Commission has already launched a number of new initiatives, which aim to build a new EU regime on disclosure requirements.

6. The ECB welcomes the proposed introduction of a harmonised definition of public offer, which will avoid different interpretations of Community rules and ensure the same level of investor protection throughout the EU. The ECB notes that Article 3(2) of the proposed Directive defines offers to which the obligation of publishing a prospectus does not apply as offers either to qualified investors for their account, or to a restricted circle of persons, or concerning securities which can be acquired only for a consideration of at least EUR 150 000 per investor. In this respect, the ECB welcomes the fact that clarification and adaptation of the exemptions are under comitology procedure in order to ensure the necessary degree of flexibility. In addition, the ECB notes that the definition of qualified investors should also include the ECB and the central banks of the Member States.
7. The ECB welcomes the use of the comitology procedure in the proposed Directive, as recommended by the Committee of Wise Men. Following the endorsement by the resolution of the Stockholm European Council of March 2001, the new approach aims to make the European Union securities legislation more effective and transparent, allowing adequate and timely response to dynamic market developments. Generally, the ECB holds the view that the application of the comitology procedure to securities market regulation should take account of the advisory role that the Treaty confers on the ECB, by allowing for the incorporation of the ECB's views in the regulatory process. More specifically, as regards the proposed Directive, the ECB notes that for the sake of clarity as to the application of the procedure it may be advisable either to restate in Article 22(2) the articles subject to the comitology procedure or, as a minimum, to assemble all implementing measures subject to the comitology procedure in one single article.
8. The ECB notes that Article 6(2) of the proposed Directive refers to the work of the International Organisation of Securities Commissions (IOSCO), by stating that rules concerning the information to be included in the prospectus, adopted by the Commission under comitology procedure, shall be in accordance with the information requirements set out by IOSCO, where it is possible and appropriate. The ECB welcomes the aim of bringing European securities legislation in line with IOSCO standards. The adoption of internationally accepted principles such as those enacted by IOSCO would lead to convergence of international financial systems towards a more harmonised securities disclosure regime. The ECB also notes that Article 18(1) of the proposed Directive stipulates conformity with IOSCO standards as a necessary requirement for the approval by a Member State of a prospectus drawn up for an offer or admission to trading in a third country.
9. In addition, the ECB holds the view that greater clarity could be obtained regarding the coverage of the Directive if reference was made to existing international and European standards such as ESA95. This applies in particular to the definition of the term 'securities' and the identification of the 'sector' of the issuer. While Article 2 of the proposed Directive defines the term 'securities', further elaboration is needed to obtain a common definition of securities that takes into account debt and equity securities. A possible starting point could be the definitions used in ESA95. Finally, the ECB notes that the proposed Directive shall apply to issuers except *inter alia* Member States and certain international organisations. Greater clarity would be desirable as to which economic entities are within the scope of the proposed Directive or conversely, to define which entities fall outside its scope. Again, the ESA95 definitions could be a good reference point.
10. The ECB welcomes the exclusion from the scope of the proposed Directive of securities issued by the ECB. In this respect the ECB wants to underline that this exclusion is vital for the unhampered conduct of the single monetary policy of the Eurosystem. The single monetary policy relies on a number of different instruments, *inter alia* ECB debt certificates, which might be issued with the aim of adjusting the structural position of the Eurosystem vis-à-vis the financial sector so as to create (or enlarge) a liquidity shortage in the market, in accordance with section 3.3 of the general documentation on Eurosystem monetary

policy instruments and procedures, November 2000 (Annex 1 to Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem)⁽¹⁾. As the formulation and the implementation of the Eurosystem monetary policy lies within the exclusive competence of the ECB's decision-making bodies, as laid down by the Treaty, the use of the instruments necessary to fulfil that task should be as smooth and unhampered by legal and operational obstacles as possible. Consequently, the necessary degree of transparency of the conditions applicable to the securities issued by the Eurosystem will be ensured by the publication of the applicable legal documentation (the aforementioned Guideline ECB/2000/7 as well as the respective legal documentation of the national central banks). Any additional formal requirements might compromise the necessity of the Eurosystem to react quickly and flexibly to financial market developments. In the light of the above-mentioned considerations, Article 1 of the proposed Directive should also exclude the national central banks from the scope of the Directive.

11. The ECB notes that it appears desirable to clarify in the proposed Directive the regime applicable to public offers of debt securities issued by credit institutions. As regards such intermediaries, it must be taken into account that the raising of capital from the public by issuing debt instruments falls within their institutional activities, and that they are subject to public supervision and to specific transparency requirements in order to protect savings. Therefore, it could be considered retaining the provision existing in the current Directive, which allows Member States to exempt credit institutions from the obligation to publish a prospectus when the latter are issuing debt securities or other transferable securities equivalent to debt securities in a continuous or repeated manner.
12. The ECB supports the requirement that the issue prospectus shall be available in an electronic format to the general public on the websites of the competent national authorities. The information should be made available to any holder or potential holder immediately on request. In this context the ECB wants to emphasise the importance of ensuring timely publication and updates, and would therefore propose introducing a minimum time frame for publishing the prospectus before the security is issued. Regarding the detailed technical rules referred to in Article 12(7) of the proposed Directive, the ECB would suggest that they be extended to the reporting of the prospectuses (in addition to publication and availability).
13. The ECB notes that Article 19 requires each Member State to designate the administrative authority competent to carry out the duties introduced by the proposed Directive, listing the powers given to the competent authority. In the explanatory memorandum the Commission refers to the need to ensure the independence of the competent authorities, avoiding possible conflicts of interest. The ECB notes that the avoidance of conflicts of interest will gain importance as more and more exchanges are transformed into for-profit entities while these exchanges remain entrusted with listing and certain 'public functions' such as the formal approval of prospectuses. Consequently, there is a need to find appropriate regulatory means to address and solve potential conflicts of interest resulting from the changing nature of the exchanges.
14. The ECB holds the view that the proposed Directive might envisage a broader scope for supervisory cooperation. The proposed Directive refers solely to cooperation between the 'competent authority' of the home and the host Member States in the field of supervision as defined by the proposed Directive, and in particular, it does not foresee the possibility or obligation of cooperation between the competent authorities in the field of supervision under the proposed Directive and the competent authorities in the field of supervision of regulated entities (credit institutions, insurance undertakings, and investment firms and perhaps also collective asset management firms). The ECB suggests that the usefulness be considered of a provision foreseeing the possibility or even obligation of close cooperation between supervisors in the meaning of the proposed Directive and supervisors of regulated entities. Both functions may benefit from cooperation and exchange of information between the respective supervisory authorities. Regulated entities may simultaneously be involved both as 'issuer' (see Article 2(1)(d)), 'person making the offer' (see Article 2(1)(e)), and as 'the financial institution in charge of the public offer procedures' (see Article 21(1)). Transactions in these capacities with indications hinting at misconduct may give rise to reputational risk or question the adequacy of management procedures of an institution under supervision by a competent authority.
15. The ECB notes that, while it is generally understood that at least some regulated financial entities may act as 'the financial institution in charge of the public offer procedures' it is less clear how this wording, used in Article 21 of the proposed Directive, fits with the definitions used for this kind of service in the sectoral directives. The ECB suggests that it be considered using harmonised definitions to the widest extent possible. In this respect it might be clarified with regard to the proposed Directive whether 'underwriting' is encompassed

⁽¹⁾ OJ L 310, 11.12.2000, p. 1.

by an 'offer of securities to the public'. While the proposed Directive includes 'placing of securities through financial intermediaries' in the definition of such an offer, the Investment Services Directive (93/22/EEC) ⁽¹⁾ in paragraph 4 of Section A of its Annex introduces a distinction between 'underwriting' and 'the placing of such issues'. Furthermore, the codified Banking Directive (2000/12/EC) ⁽²⁾ refers in paragraph 8 of Annex I to 'participation in securities issues and the provision of services related to such issues' when listing the activities that are subject to mutual recognition. Thus, the ECB sees benefits in a clearer identification and further harmonisation of what constitutes an offer and the placing of

securities in the proposed Directive, also in the light of the current review of the Investment Services Directive.

16. This opinion shall be published in the *Official Journal of the European Communities*.

Done at Frankfurt am Main on 16 November 2001.

The President of the ECB

Willem F. DUISENBERG

⁽¹⁾ OJ L 141, 11.6.1993, p. 27.

⁽²⁾ OJ L 126, 26.5.2000, p. 1.

EUROPEAN ECONOMIC AREA
EFTA COURT

Request for an Advisory Opinion from the EFTA Court by Oslo byrett by decision of that court of 22 August 2001 in the case of CIBA Specialty Chemicals and others v The Government of Norway, represented by the Ministry of Local Government and Regional Development

(Case E-6/01)

(2001/C 344/06)

A request has been made to the EFTA Court by decision of 22 August 2001 of Oslo byrett (Oslo City Court), Norway, which was received at the Court Registry on 31 August 2001, for an Advisory Opinion in the case of CIBA Specialty Chemicals and others v The Government of Norway, represented by the Ministry of Local Government and Regional Development, on the following question:

Is the EEA Joint Committee after the adoption of the Joint Statement of 22 June 1995, empowered to decide that Norway may adopt derogations from the existing Community *acquis*, such as the derogations contained in the Joint Statement of 26 March 1999 of the EEA Committee as interpreted by the EFTA Court in its Case E-2/00?

COMPOSITION OF THE EFTA COURT

(2001/C 344/07)

Appointment of the Registrar of the EFTA Court

Mr Lucien Dedichen was appointed Registrar of the EFTA Court pursuant to Article 9, Protocol 5 of the ESA/Court Agreement for the period from 1 September 2001 to 31 August 2003, to succeed Mr Gunnar Selvik. At a public sitting of the EFTA Court of 19 October 2001, Mr Lucien Dedichen took the oath prescribed in Article 10, Protocol 5 of the ESA/Court Agreement.

EFTA SURVEILLANCE AUTHORITY

Decisions by Norway to grant or revoke operating licences pursuant to Article 13(4) of Council Regulation (EEC) No 2407/92 on licensing of air carriers

(2001/C 344/08)

NORWAY

Operating licence revoke

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

Name of air carrier	Address of air carrier	Decision effective since
Guard Air AS	Peder Bogensgate 4B N-3238 Sandefjord	22.8.2001

EFTA Surveillance Authority decision to close the case without further action

(2001/C 344/09)

Date of adoption:	27 July 2001
EFTA State:	Iceland
Aid No:	SAM 090.300.002
Title:	Alleged aid to Iceland Post and Telecom Ltd
Sector:	Telecommunications
Legal basis:	Law on the establishment of Iceland Post and Telecom Ltd (Act No 103/1996)
Amount of aid:	Undervaluation of assets transferred from the former Post and Telecom Administration to the newly established company Iceland Post and Telecom Ltd amounting to ISK 3,8 billion (approximately EUR 43 million); exemption from stamp duty amounting to ISK 42,5 million (approximately EUR 480 000)
Other measures:	Reduction of obligations towards the Government Employees' Pension Fund not constituting aid
Other information:	Icelandic Government adopted measures to recover aid from Iceland Telecom Ltd (successor of Iceland Post and Telecom Ltd) with interest A copy of the decision, from which all confidential information has been removed, may be obtained in the authentic language version from the EFTA Surveillance Authority

Decisions by Norway to grant or revoke operating licences pursuant to Article 13(4) of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers

(2001/C 344/10)

NORWAY

Operating licence revoke

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

Name of air carrier	Address of air carrier	Decision effective since
Midt-Fly AS	Bolås N-7717 Steinkjer	4.9.2001

Authorisation of State aid pursuant to Articles 59(2), 61 and 63 of the EEA Agreement, Article 1(3) of Protocol 3 to the Surveillance and Court Agreement

(EFTA Surveillance Authority decision not to raise objections)

(2001/C 344/11)

A copy of the decision may be obtained in the authentic language version upon request addressed to:

EFTA Surveillance Authority
Competition and State Aid Directorate
Rue de Trèves, 74
B-1040 Brussels.

Date of adoption: 19 September 2001

EFTA State: Norway

Aid No: SAM 030.01.005

Title: Compensation granted to Widerøe's Flyveselskap ASA for the temporary operation of air transport services on the route between Oslo and Fagernes

Objective: Maintenance of transport services on air route in the public interest

Sector: Transport (civil aviation)

Legal basis: Contract between Royal Ministry of Transport and Communications and air carrier; State Budget

Form of aid: Grant

Aid amount: NOK 3 430 200 (approximately EUR 429 999)

Duration: 1 October 2001 to 31 March 2002

Communication from the EFTA Surveillance Authority under Article 7 of the Act referred to in point 18 of Annex VII to the EEA Agreement (Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services)

(2001/C 344/12)

Diplomas, certificates and other evidence of formal qualifications in architecture, which are the object of mutual recognition under the EEA Agreement

The EFTA Surveillance Authority has the task, in accordance with Article 7 of the Act referred to in point 18 of Annex VII to the EEA Agreement (Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services), to publish diplomas in architecture awarded by Norway, Iceland and Liechtenstein, which meet the criteria laid down in Articles 3 and 4 of the Act.

The list of diplomas, which so far contained one diploma, shall be extended by the following three diplomas communicated by an EFTA State to the EFTA Surveillance Authority. These diplomas are to be recognised by the contracting parties to the EEA Agreement in respect of those students who began their studies in architecture in the academic year 2001/2002.

The Act also provides for the recognition of other qualifications in architectures. These are listed in Articles 5, 12 and 14 of the Act.

Updating of this list shall be published periodically by the EFTA Surveillance Authority pursuant to Article 7(2) of the Act.

Country	Title of diploma	Body awarding diploma	Certificate accompanying diploma
Norway	sivilarkitekt	<ul style="list-style-type: none"> — Norges Teknisk-naturvitenskapelige Universitet — Arkitektthøgskolen i Oslo — Bergen Arkitektskole 	

Auction of spectrum licences for GSM1800

(2001/C 344/13)

The Norwegian Post and Telecommunications Authority will assign additional spectrum licences for mobile phones (GSM) through an auction to be held the first week of December 2001. Information concerning the procedures will be published on: <http://www.npt.no>

CORRIGENDA

Corrigendum to the new open call for proposals for RTD actions under the specific programme for research, technological development and demonstration on 'energy, environment and sustainable development' (1998 to 2002)

(Part B: Energy)

(Call identifier: 'Energie-Open')

(Official Journal of the European Communities C 303 of 24 October 2000)

(2001/C 344/14)

On page 13, the Annex is replaced by the following:

'ANNEX

Deadlines for receipt and indicative budget 2001-2002

Type of activity	2001-2002 (million EUR)	Proposals will be evaluated by batches according to the following deadlines for receipt ⁽¹⁾
RTD activities of a generic nature		
RTD activities of a generic nature	8,4	9.2.2001, 14.12.2001
Training		
Individual fellowships	Up to 5,6	9.2.2001, 14.12.2001
Host fellowships		
Accompanying measures		
	Up to 33,42 ⁽²⁾	9.2.2001, 14.12.2001, 28.2.2002
SME measures		
Exploratory awards	Up to 25	17.1.2001, 18.4.2001
Cooperative research		17.1.2001, 18.4.2001, 19.9.2001 28.2.2002

⁽¹⁾ The competent Director-General may modify the dates of the call or of the deadlines for receipt by one month earlier or later than initially foreseen.

⁽²⁾ Including OPET.