

Official Journal

of the European Communities

ISSN 0378-6986

C 283

Volume 45

20 November 2002

English edition

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I

(Information)

EUROPEAN PARLIAMENT
COUNCIL
COMMISSION

INTERINSTITUTIONAL AGREEMENT

of 7 November 2002

between the European Parliament, the Council and the Commission on the financing of the European Union Solidarity Fund supplementing the Interinstitutional Agreement of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure

(2002/C 283/01)

1. The European Parliament, the Council and the Commission hereby agree upon the following flexibility mechanism concerning the European Union Solidarity Fund, hereinafter referred to as 'the Fund', established by Council Regulation (EC) No 2012/2002 ⁽¹⁾.

The Fund is intended to allow rapid financial assistance in the event of a major disaster occurring on the territory of a Member State or of a candidate country whose accession to the European Union is currently under negotiation, as defined in the relevant basic act.

2. There shall be a ceiling on the annual amount available for expenditure by the Fund of EUR 1 thousand million. On 1 October each year, at least one-quarter of the annual amount should remain available in order to cover needs arising until the end of the year. No non-budgetised portion of the annual amount may be carried over.

In exceptional cases and if the remaining financial resources available in the Fund in the year of the occurrence of the disaster, as defined in the relevant basic act, are not sufficient to cover the amount of assistance deemed necessary by the budgetary authority, the Commission may propose that the difference be financed through the next year's Fund. The annual budgetary ceiling of the Fund in the year of the occurrence of the disaster and the following year shall under all circumstances be respected.

3. When the conditions for mobilising the Fund as set out in the relevant basic act are met, the Commission will make a proposal to deploy the flexibility mechanism. Where there is scope for reallocating appropriations under the heading requiring additional expenditure, the Commission shall take this into account when making the necessary

proposal, in accordance with the Financial Regulation in force by the appropriate budgetary instrument.

The corresponding expenditure shall be entered in the budget over and above the relevant headings in the financial perspective, as laid down in Annex I to the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure ⁽²⁾.

4. At the same time as it presents its proposal to deploy the flexibility mechanism, the Commission will initiate a dialogue procedure, if necessary in a simplified form, to secure the agreement of the two arms of the budgetary authority on the need to resort to the flexibility mechanism and on the amount to be allocated over and above each heading. The decision to deploy the flexibility mechanism will be taken jointly by the two arms of the budgetary authority in accordance with the voting rules under the fifth subparagraph of Article 272(9) of the Treaty establishing the European Community.

5. Following the agreement reached in the tripartite dialogue and the adoption of the joint decision, the two arms of the budgetary authority will undertake to adopt the relevant amending budget as soon as possible and preferably in a single reading by each of the institutions concerned.

6. This Interinstitutional Agreement supplements the Interinstitutional Agreement of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure from the budgetary year 2002 and for the duration of the current financial perspective, as defined in that Agreement.

⁽¹⁾ OJ L 311, 14.11.2002, p. 3.

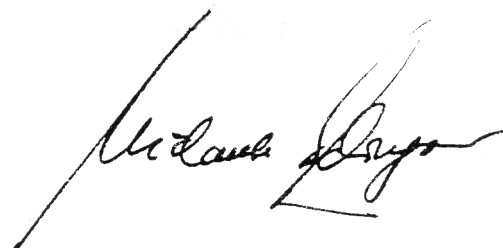

⁽²⁾ OJ C 172, 18.6.1999, p. 1.

Done at Brussels, on 7 November 2002.

For the European Parliament
The President

For the Council
The President

For the European Commission
The President



COMMISSION

Euro exchange rates ⁽¹⁾

19 November 2002

(2002/C 283/02)

1 euro =

Currency			Exchange rate	Currency			Exchange rate
USD	US dollar		1,0125	LVL	Latvian lats		0,6046
JPY	Japanese yen		122,75	MTL	Maltese lira		0,4151
DKK	Danish krone		7,4274	PLN	Polish zloty		3,9337
GBP	Pound sterling		0,6373	ROL	Romanian leu		33885
SEK	Swedish krona		9,0723	SIT	Slovenian tolar		229,8515
CHF	Swiss franc		1,4681	SKK	Slovak koruna		41,466
ISK	Iceland króna		85,89	TRL	Turkish lira		1603000
NOK	Norwegian krone		7,327	AUD	Australian dollar		1,7988
BGN	Bulgarian lev		1,9496	CAD	Canadian dollar		1,6101
CYP	Cyprus pound		0,57215	HKD	Hong Kong dollar		7,8968
CZK	Czech koruna		30,546	NZD	New Zealand dollar		2,0325
EEK	Estonian kroon		15,6466	SGD	Singapore dollar		1,7848
HUF	Hungarian forint		236,62	KRW	South Korean won		1216,01
LTL	Lithuanian litas		3,4522	ZAR	South African rand		9,6906

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

Information procedure — Technical rules

(2002/C 283/03)

(Text with EEA relevance)

Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and rules on Information Society services (OJ L 204, 21.7.1998, p. 37; OJ L 217, 5.8.1998, p. 18).

Notifications of draft national technical rules received by the Commission

Reference ⁽¹⁾	Title	End of three-month standstill period ⁽²⁾
2002/418/A	Order of the Provincial Government on the design of nursing homes (Order on residential building)	27.1.2003
2002/419/S	Order amending the Order on the protection of species (1998:179)	27.1.2003
2002/420/FIN	General quality requirements for bridge construction (Parts SYL-3 Concrete Structures, SYL-4 Steel Structures and SYL-5 Timber Structures)	27.1.2003
2002/421/DK	Order on the import, sale and export of mercury and products containing mercury	29.1.2003
2002/422/D	Order on building inspection requirements pertaining to hospitals and nursing homes in the Federal State of Brandenburg (The Brandenburg Hospitals and Nursing Homes Building Order (German designation: BbgKPBauV))	30.1.2003
2002/423/B	Royal Decree concerning technical rules on the operation of automatic games of chance whose organisation is permitted in class I gambling establishments	20.1.2003
2002/424/B	Draft Royal Decree concerning radiation from networks of coaxial cables	20.1.2003
2002/425/NL	Decree laying down rules relating to the management of vehicle tyres and amending a number of Decrees in connection with the abolition of provisions relating to the procedure regulated in section 3.5 of the General Administrative Law Act (Vehicle Tyre Management Decree)	3.2.2003
2002/426/UK	The Sludge (Use in Agriculture) (Amendment) (England and Wales) Regulations 2002	5.2.2003
2002/427/A	Guidelines for the small-scale renovation of old houses (German designation: KLAS-NEU)	4.11.2002
2002/428/A	Guidelines for the model for promoting the renovation of multi-family dwellings (German designation: MHAS-NEU)	4.11.2002
2002/429/FIN	Ministry of Agriculture and Forestry regulation regarding certified supplementary and planting material	6.2.2003
2002/430/NL	Regulation concerning micro-light aeroplanes (Regulation on MLAs)	10.2.2003

⁽¹⁾ Year — registration number — Member State of origin.

⁽²⁾ Period during which the draft may not be adopted.

⁽³⁾ No standstill period since the Commission accepts the grounds of urgent adoption invoked by the notifying Member State.

⁽⁴⁾ No standstill period since the measure concerns technical specifications or other requirements linked to fiscal or financial measures, pursuant to the third indent of the second paragraph of Article 1(11) of Directive 98/34/EC.

⁽⁵⁾ Information procedure closed.

The Commission draws attention to the judgment given on 30 April 1996 in the 'CIA Security' case (C-194/94 — ECR I, p. 2201), in which the Court of Justice ruled that Articles 8 and 9 of Directive 98/34/EC (formerly 83/189/EEC) are to be interpreted as meaning that individuals may rely on them before the national court which must decline to apply a national technical regulation which has not been notified in accordance with the Directive.

This judgment confirms the Commission's Communication of 1 October 1986 (OJ C 245, 1.10.1986, p. 4).

Accordingly, breach of the obligation to notify renders the technical regulations concerned inapplicable, so that they are unenforceable against individuals.

If you require any information on these notifications, please contact the national departments listed below:

LIST OF NATIONAL DEPARTMENTS RESPONSIBLE FOR THE MANAGEMENT OF DIRECTIVE 98/34/EC

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UNITED KINGDOM

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STATE AID — UNITED KINGDOM**Aid C 61/2002 (ex N 196/2002) — Aid to newsprint reprocessing capacity support under the WRAP programme****Invitation to submit comments pursuant to Article 88(2) of the EC Treaty**

(2002/C 283/04)

(Text with EEA relevance)

By means of the letter dated 2 October 2002, reproduced in the authentic language on the pages following this summary, the Commission notified United Kingdom of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the abovementioned aid.

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

European Commission
Directorate-General for Competition
State Aid Registry
B-1049 Brussels
Fax (32-2) 296 12 42.

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

SUMMARY**1. Procedure**

In December 2001, the Commission received a complaint, against a planned aid measure by the UK Government for the erection of a newsprint reprocessing facility under the WRAP programme. The subsequent correspondence between the Commission and the UK resulted in a notification dated 20 March 2002, of an aid project for a newsprint reprocessing capacity under the Waste and resources action programme. By letter registered on 16 July 2002, the UK notified the general scheme 'Waste and resources action programme', registered under number N 474/02. This notification will be subject to a separate assessment.

2. Description of the measure**2.1. The WRAP programme**

The aid is given within the framework of the Waste and resources action programme (WRAP). WRAP is an entity established to promote sustainable waste management. It is funded by the government for the period 2001-2004. WRAP intends to promote the creation of a newsprint reprocessing capacity which utilises waste newspapers and magazines as its raw material input.

2.2. The tender process

WRAP has issued a competitive tender process in July 2001. The tender was submitted to two key conditions: first of all, the

reprocessing facility had to produce newsprint, and must be located within the United Kingdom. Secondly, the reprocessing facility must use an agreed tonnage of waste paper per year recovered from the municipal waste stream as raw material input for the duration of the life of the facility. The agreed tonnage must be in excess of the aggregate amount of waste paper used by the successful bidder in a prior calendar year in its newsprint manufacturing facilities in the UK. A funding agreement was entered into on 21 February 2002. The funding is subject to state aid clearance.

2.3. The beneficiary: Shotton

Shotton is based in Shotton, Flintshire, North Wales, being an area eligible for regional aid under Article 87(3)(c) of the EC Treaty. Shotton is owned by UPM-Kymmene Corporation, a Finnish company. The present site of Shotton disposes of two paper machines, using pulp derived from virgin wood and from recycled wastepaper.

2.4. The project presented by Shotton

The project proposes the adaptation of the paper machines to enable wastepaper to substitute for virgin pulp. It proposes also the enhancement of one of the de-inking lines for the recycled paper feeding one of the paper machines. This would allow an increase in wastepaper consumption of approximately 321 000 tonnes per year. The adaptations of the facility will be finished in 2003, and the facility will be fully operating by 2005.

Shotton will source the waste paper from local authorities and waste management companies, which will need to build up a wastepaper collection infrastructure. UPM-Kymmene aims to enter into long term contractual arrangements with local authorities for the major part of its needs in waste paper. Other specific environmental obligations are imposed on Shotton in the specific funding agreement, concerning the reduction of the CO₂ emissions, the reduction of the lorry movements, the reduction of emissions of volatile organic compounds, and the recycling of water.

The total costs of the project are estimated at GBP 127,9 million (EUR 199,16 million), of which the element attributable to recycling constitutes GBP 88,2 million (EUR 137,34 million). The remaining GBP 39,7 million (EUR 61,82 million) represent enhancements to the production and quality capabilities of the existing paper machines, and do not relate to recycling. Shotton has applied for a support of GBP 23 million (EUR 35,81 million).

According to the UK authorities the eligible costs amount to GBP 88 200 000 from which they deduct the investment to meet the mandatory environmental standards ⁽¹⁾ (GBP 35 000), and the benefits in the year 1-5 (GBP 824 000) ⁽²⁾. This brings the eligible costs to a total of GBP 87 341 000. As the support asked amounts to GBP 23 million, the aid intensity would be 26,334 %.

3. Assessment of the measure

The measure is funded by resources, granted by the State under the WRAP programme. The measure is granted to an individual beneficiary. It distorts or threatens to distort competition, and could affect trade between Member States, since both newsprint and waste paper are traded internationally. Therefore, the Commission considers at this stage that the measure qualifies as State aid under article 87(1) of the EC Treaty.

3.1. Applicability of the environmental guidelines ⁽³⁾

The Commission has doubts on the fact that the aid would qualify for an assessment under the environmental guidelines. In general, investment aid approved under these guidelines aims at reducing the pollution caused by the beneficiary, but not at indirect environmental effect, like in the case at hand.

In the first place, the Commission notes that the investment is not designed to improve on standards directly applicable to the company, but to comply with Community standards that apply to the United Kingdom.

The use of waste paper for the production of newsprint seems to be the current state of the art. Paper reprocessing facilities exist in all Member States. Waste paper appears to be a normal raw material with an economic value, subject to trade on the markets.

⁽¹⁾ This amount is relating to the part of the investment necessary to meet environmental standards, and concerning the monitoring of air emissions.

⁽²⁾ These benefits were calculated taking into account the difference between the actual facility and the future facility during the first five years of the investment.

⁽³⁾ OJ C 37, 3.2.2001, p. 3.

According to the tender, the aid should be used for the production of newsprint, and the project should be located within the UK. The winning company should commit itself to take up an agreed tonnage of waste paper from the municipal waste stream. The first two conditions in the tender (i.e. the fact that the aid should be used for the production of newsprint, and the condition for the undertaking to be located in the UK) might be seen as excessive in order to achieve the environmental objectives, since it excludes solutions for the waste problem based on direct incentives for collection systems which may rely on the market for waste paper to ensure that the collected waste paper is recycled. Therefore, the Commission has doubts for the justification of these conditions for considering the aid to pursue an environmental objective.

Taking the above considerations into account and based on the information available, the Commission doubts whether the investment qualifies as an investment in the meaning of point 29 of the guidelines. The investment, at least in part, may rather constitute an investment, to which the environmental guidelines do not apply.

Given the doubts on the compliance with the environmental aid guidelines, the commission assessed the measure as well under the guidelines for national regional aid ⁽⁴⁾. However, since it seems that the investment not only concerns an initial investment, but at least partly a replacement investment, not all the investment costs would be eligible. Furthermore, the aid intensity of the project amounts to 17 %, assuming that all costs would be eligible for regional aid. This exceeds the maximum aid intensity applicable in the Flintshire region, which amounts to 15 %. Moreover, the aid would have to be assessed under the multisectoral framework ⁽⁵⁾. Other exemptions under article 87(2) and (3) of the EC Treaty do not seem to apply either.

3.2. Compatibility with the environmental guidelines

Although the Commission expressed doubts, at this stage, on the applicability of the environmental guidelines, it is appropriate for the Commission to try and assess environmental guidelines, as the UK notified the aid on that basis. According to the UK, the maximum intensity allowed would amount to 35 %. Increasing the recycling rate of waste paper brings undoubtedly benefits for the environment and this objective is in line with EU-policy on waste management.

First of all, point 37 of the environmental guidelines requires that the eligible costs must be strictly confined to the extra investment costs necessary to meet the environmental objectives. In the present case, the eligible costs presented by the UK refer to the overall investment for the conversion of the existing paper mills to mills using waste paper.

⁽⁴⁾ Guidelines on national regional aid (OJ C 74, 10.3.1998, p. 9).

⁽⁵⁾ Multisectoral framework on regional aid for large investment projects (OJ C 107, 7.4.1998, p. 7).

Secondly, point 37 of the environmental guidelines requires the Commission to calculate the cost net of the benefits accruing from any increase in capacity, cost savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period. The UK provided detailed information, but despite the Commission's request, the UK has not provided full information on the assumptions as regards input and output prices.

Therefore, the Commission has, at this stage and based on the information available, doubts on the compatibility of this aid with the environmental guidelines.

4. Conclusion

In the light of the foregoing considerations, on basis of the information available, and of the preceding preliminary assessment, the Commission decided to initiate the proceedings according to Article 88(2) of the EC Treaty. In accordance with Article 14 of Council Regulation (EC) No 659/1999, all unlawful aid can be subject to recovery from the recipient.

TEXT OF THE LETTER

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

1. PROCEDURE

By letter dated 20 December 2001 and registered on 21 December 2001 under number A/40145, the Commission received a complaint, against a planned aid measure by the UK Government for the erection of a newsprint reprocessing facility under the WRAP programme. The complaint was registered by the Commission under number CP 219/01. Following this complaint, the Commission asked for clarifications to the UK by letter dated 24 January 2002 and registered under number D/50289. The UK replied by letter dated 5 February 2002, and registered on 7 February 2002 under number A/30923. The Commission asked further questions by letter dated 14 February 2002, and registered under number D/50655. The UK replied by letter dated 7 March 2002, and registered on 11 March 2002 under number A/31885.

By letter dated 20 March 2002, and registered by the Commission on 20 March 2002, under number A/32132, the authorities of the UK notified an aid project for a newsprint reprocessing capacity under the Waste and resources action programme. The notification was registered under number N 196/02. According to the notification, the UK authorities intended, at a later stage, to notify the general scheme 'Waste and resources action programme'. The Commission informed the UK authorities that the notification was considered to be incomplete, and asked for further questions by letter dated 15 May 2002 and registered under number D/52364. The UK submitted the answers by letter dated 14 June 2002, and registered on 19 June 2002 under number A/34497. By letter registered on 16 July 2002, the UK

notified the WRAP scheme. This scheme has been registered under number N 474/02, and will be subject to a separate assessment. By letter dated 26 July 2002, and registered on the same date under number A/35727, the UK asked for a meeting, and agreed to extend the time limit for the Commission to take a decision until 20 October 2002. A meeting was held on 29 August 2002 between the Commission and representatives of the UK Government and of the WRAP programme. The UK provided further information by letter dated 6 September 2002.

2. DESCRIPTION OF THE MEASURE

2.1. The WRAP programme

The aid is given within the framework of the WRAP programme (hereafter WRAP). According to the information submitted by the UK, WRAP is an entity established to promote sustainable waste management, and more specifically to promote efficient markets for recycled materials and products. Its central objective is to enable recycled markets to function more effectively by stimulating demand for recycled materials and products, thereby improving the economics of collection. WRAP's members comprise the charity Wastewatch, the Environmental Services Association as well as the Secretary of State for Environment, Food and Rural Affairs. It has as duty to administer the aid, and is funded by the government for the period 2001-2004. WRAP ensures that the funds for recycling projects are the minimum necessary, are proportionate to WRAP's objectives, and that the use of non-government funding is maximised. WRAP functions as an adjunct to the government, and implements government policies, although it has a private corporate form. The financial support in itself is provided through WREB (Waste and Resources Environmental Body Limited), a subsidiary of WRAP. WREB is also in charge with the process for identifying the recipient of the support.

In the present case, WRAP has chosen to give support for the creation of newsprint reprocessing capacity for the following reasons: in the UK newsprint sector, there seems to be an established demand for the recycled products, but a market failure seems to have led to a shortage of reprocessing capacity (%). The UK identified the main cause of the market failure to be the lack of sufficient reprocessing capacity for waste newsprint, which is currently being landfilled in the UK because of the low prices for landfilling. With a greater recycling capability, waste paper would be in strong demand. This market failure would have led to difficulties experienced in sourcing wastepaper in the last decade, and attendant price fluctuations. For this reason, an increase in reprocessing capacity has been hampered by lack of investor confidence. In order to correct for this market failure, WRAP decided, by way of a competitive tender process, to offer support to the private sector to increase newsprint reprocessing capacity which utilises waste newspapers and magazines as its raw material input. According to the UK, the current project will create a real market demand for waste paper, which will provide environmental benefits over time.

2.2. The tender process

In the present case, WRAP has issued a competitive tender in July 2001 inspired by EC public procurement procedures (⁷), in view to promote the creation of newsprint reprocessing capacity. The specific aim expressed in the tender procedure was to provide a subsidy towards the creation of a newsprint reprocessing facility in return for a commitment to use an agreed tonnage of waste newspapers and magazines recovered from the municipal waste stream as the raw material for the new facility. WRAP's waste input target was for the agreed tonnage to exceed 300 000 tonnes per year, and the facility to enter into production in 2003, with full capacity to be reached as soon as possible thereafter. The tender was submitted to two key conditions: first of all, the reprocessing facility has to produce newsprint, and must be located within the United Kingdom. Secondly, the reprocessing facility must use an agreed tonnage of waste paper per year recovered from the municipal waste stream as raw material input for the duration of the life of the facility. The agreed tonnage must be in excess of the aggregate amount of waste paper used by the successful bidder in a prior calendar year in its newsprint manufacturing facilities in the UK. Tenderers needed to specify the level of support required to bring forward their proposals, and to demonstrate technological developments and environmental benefits. Furthermore, the tender specification stipulated that any costing included in the tender bids should only refer to the activities and investments needed to achieve the required environmental benefits.

Following the tender procedure, a prequalification pack was sent to five companies, four of which did prequalify and received a tender invitation document. Applications were finally received from two companies: Aylesford Newsprint Limited, and UPM Kymmene — Shotton (hereafter 'Shotton'). Aylesford Newsprint was appointed preferred bidder in November 2001, but during the discussion between WRAP and Aylesford Newsprint, it appeared that Aylesford Newsprint would not be able to enter into the level of contractual commitment which would enable WRAP to achieve its objectives. That is why WRAP reviewed its position, and appointed Shotton preferred bidder. The decision was taken on 18 January 2002. Discussions then followed between WRAP and Shotton, regarding the completion of the funding arrangements to enable the overall investment to proceed. The funding is subject to state aid clearance. A funding agreement was entered into on 21 February 2002.

According to the UK, the fact that there has been a competitive tender to ensure that the minimum necessary is paid to secure the environmental benefits, avoids the existence of any distortion of competition. That is why the UK authorities consider it arguable that the funding does not constitute State aid. But in order to obtain full legal certainty, it has been decided by the UK to notify the project.

2.3. The beneficiary: Shotton

Shotton is based in Shotton, Flintshire, in North Wales, being an area eligible for regional aid under Article 87(3)(c) of the EC Treaty. Shotton is owned by UPM-Kymmene Corporation, a Finnish company. The present site of Shotton disposes of two paper machines, using pulp derived from a combination of virgin wood and from recycled wastepaper.

2.4. The project

The project proposes the adaptation of the current paper machines to enable wastepaper to substitute for virgin pulp. It proposes also the enhancement of one of the de-inking lines for the recycled paper feeding one of the paper machines. According to the UK authorities, this project will allow to achieve an increase in wastepaper consumption of approximately 321 000 tonnes per annum over that achieved in the UK in 2000. This exceeds WRAP's objective of achieving a net increase target of 300 000 tonnes per annum in the year 2000. The adaptations of the facility will be finished in 2003, and the facility will be fully operating by 2005.

The UK authorities explain that the waste paper used by Shotton as raw material in its newsprint production process will source from local authorities and waste management companies. UPM-Kymmene aims to enter into long term contractual arrangements with local authorities for the major part of its feedstock. This will enable the local authorities to implement comprehensive long term collection systems where they do not currently exist. The excess wastepaper collected prior to commissioning will be diverted to other paper mills within the UPM-Kymmene group. According to the UK, the local authorities and the waste management companies will need to build up a wastepaper collection infrastructure.

Apart from the fact that Shotton has to use an agreed tonnage of waste newspapers and magazines recovered from the municipal waste stream as the raw material for the new facility, the support to Shotton is submitted to other environmental obligations set out in the funding agreement. These comprise:

- an additional reduction of 118 000 tonnes of CO₂ emissions,
- an annual reduction of some 6 500 lorry movements (this means a minimum reduction of some 325 000 lorry miles per year),
- an annual reduction of 53 tonnes of emissions of volatile organic compounds,
- the recycling of an additional total of 54 600 m³ of water.

According to the UK, the main objective of the current project is to achieve additional newsprint recycling. But the UK argues that the investment project would bring about other environmental benefits consisting in a reduction of the waste going to landfills (⁸), in the reduction of carbon dioxide and methane emissions from landfills, and in the virgin timber conservation of 1,9 million tonnes. Furthermore, they claim that this project will lead to the creation of an increasing demand for a major proportion of the household waste stream in the region concerned to be recycled. This demand for waste newspapers and magazines, being 30-40 % of household waste by weight, would provide a stable economic platform for the establishment and maintenance of separated collections for household waste for recycling. The simultaneous collection of other recyclable materials at much higher rates could therefore also be supported. This leads to the conclusion that the facility would enable greater proportions of household waste to be recycled (⁹). This will bring benefits for the environment, while this will also allow less waste to be disposed in the landfills.

The UK authorities argue that the investment in the newsprint facility will enable the UK to make significant progress toward achieving its obligations within the framework of European waste management policy, and deliver tangible environmental benefits. These environmental benefits bring the UK to affirm that the aid qualifies for investment aid under point 29 of the Community guidelines on State aid for environmental protection⁽¹⁰⁾ (hereafter 'environmental guidelines'), when firms undertake investment in the absence of mandatory Community standards. According to the UK authorities, there are no specific mandatory requirements for any newsprint manufacturer to use recycled wastepaper as a raw material. As far as concerns the waste water standards, the new investment in the facility does not involve any additional expenditure on waste water treatment. In the case of air emissions, there is only a very small part referable to mandatory air emissions standards. This investment concerns the installation of equipment for online monitoring of emissions, and amounts approximately to GBP 35 000.

Concerning the costs of the project, the total costs are estimated at GBP 127,9 million (EUR 199,16 million)⁽¹¹⁾, of which the elements attributable to recycling constitutes GBP 88,2 million (EUR 137,34 million). The remaining GBP 39,7 million (EUR 61,82 million) represent enhancements to the production and quality capabilities of the existing paper machines, and do not relate to recycling. Shotton has applied for a support of GBP 23 million (EUR 35,81 million). The UK provided a detailed schedule of the payment of the GBP 23 million.

The elements attributable to recycling are distributed as follows:

	(thousand GBP)
Rebuild of recycled fibre mill line 1	8 400
Recycled fibre mill line 3	40 600
Extension of recycled fibre storage	6 700
Sludge combustion	22 200
Sludge dewatering	4 000
Power distribution	1 600
Raw water treatment	1 500
Effluent treatment	700
Mill site installations	2 500
Total	88 200

This total includes the amount of GBP 35 000 relating to the part of the investment necessary to meet environmental standards, and concerning the monitoring of air emissions. According to the UK, the switch from the current paper

mills to the new paper mills using only waste paper will result in an increase in the total earnings of GBP 824 000 over the five year period from the date of full operation.

The UK authorities calculated the aid intensity in the present case on the following manner, based on point 37 of the environmental guidelines: the eligible costs amount to GBP 88 200 000 and they deducted from this figure the investment to meet the mandatory environmental standards (GBP 35 000), and the benefits in the year 1-5 (GBP 824 000). These benefits were calculated taking into account the difference between the actual facility and the future facility during the first five years of the investment. According to the UK, this brings the eligible costs to a total of GBP 87 341 000. As the support asked amounts to GBP 23 million, the aid intensity would be 26,334 %. According to the UK, this aid intensity would be below the maximum intensity, which would amount to 35 % (30 % + 5 %) because of the fact that the investment is located in a region eligible for regional aid under Article 87(3)(c) of the EC Treaty⁽¹²⁾.

As far as concerns the employment, the UK authorities argue that the level of employment after the investment is expected to be similar to the present plant.

3. PRELIMINARY ASSESSMENT OF THE MEASURE

According to Article 6 of the Procedural Regulation⁽¹³⁾, the decision to initiate the formal investigation procedure shall summarise the relevant issues of fact and law, shall include a preliminary assessment of the Commission as to the aid character of the proposed measure, and shall set out the doubts as to its compatibility with the common market.

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

Under Article 87(1) EC Treaty, 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market'.

In this case, the measure is funded by resources, granted by the State under the WRAP programme. The measure is granted to an individual beneficiary. The aid granted under the WRAP programme will cover a significant part of investment costs, which will relieve the company from costs it should normally have had to bear. The measure distorts or threatens to distort competition, and could affect trade between Member States, since both newsprint and waste paper are traded internationally⁽¹⁴⁾. In fact, a large part of the UK paper consumption is imported mainly from other Member States⁽¹⁵⁾. It should also be noted that the UK exported 138 000 tonnes of newsprint paper in 2001. It is also clear from the case-law of the Court that when aid granted by the State strengthens the position of an undertaking vis-à-vis other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid⁽¹⁶⁾.

Therefore, the measure qualifies as State aid under Article 87(1) of the EC Treaty.

3.2. *Assessment under rules other than the Community guidelines on State aid for environmental protection* ⁽¹⁷⁾

The Commission must assess the compatibility of the eventual aid with the EC Treaty. Consequently, the Commission has to consider if the exemptions set out in Article 87(2) and (3) of the EC Treaty apply. The exemptions in paragraph 2 of Article 87 of the EC Treaty could serve as a basis to consider aid compatible with the common market. However, the aid measures (a) do not have a social character and are not granted to individual consumers, (b) do not make good the damages caused by natural disasters or exceptional occurrences and (c) are not required in order to compensate for the economic disadvantages caused by the division of Germany. Neither apply the exemptions of Article 87(3)(a), (b) and (d) of the EC Treaty that refer to promotion of the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, to projects of common European interest and to the promotion of culture and conservation.

The investment takes place in an area eligible for regional aid under Article 87(3)(c) of the EC Treaty. For this reason, the aid could be assessed as regional investment aid. However, since the investment seems not to concern only an initial investment, but seems to be at least partly a replacement investment, not all the investment costs would be eligible for regional aid under the Guidelines for national regional aid ⁽¹⁸⁾. Furthermore, the aid intensity of the project amounts to 17 %, assuming that all costs would be eligible for regional aid. This exceeds the maximum aid intensity applicable in the Flintshire region, which amounts to 15 %. Moreover, as the amount of the investment exceeds EUR 50 million, the cumulative aid intensity expressed as a percentage of the eligible investment costs is at least 50 % of the regional aid ceiling for large companies, and the aid per job created or safeguarded amounts to at least EUR 40 000, it would have to be assessed under the multisectoral framework ⁽¹⁹⁾. The Commission does not have all the information for such an assessment, but the allowable intensity can only become lower. For this reason, the aid could not be approved. Furthermore, according to the UK authorities, the investment will not lead to the creation of employment, as the level of employment is expected to be the similar to that at present. For these reasons, the regional benefits of the project seem to be doubtful to the Commission.

3.3. *Assessment of the aid under the Community guidelines on State aid for environmental protection* ⁽²⁰⁾

3.3.1. *Applicability of the Community guidelines on State aid for environmental protection*

Increasing the recycling rate of waste paper brings undoubtedly benefits for the environment and this objective is in line with EU policy on waste management. However, the Commission has doubts that the notified aid for the investment would qualify for an assessment under the environmental guidelines. It results from point 36 of the environmental guidelines that these guidelines are applicable *inter alia* to investments which are strictly necessary to meet environmental objectives. In general, investment aid approved under the environmental guidelines aims at reducing the pollution caused by the beneficiary, but not at indirect environmental effects, like the case at

hand. Due to the particularities of this investment, the Commission doubts whether the aim of the environmental guidelines is to apply to such cases. This is also confirmed by the fact that (at least for the last years) all aid for similar projects has been approved by the Commission as regional investment aid on the basis of the multisectoral framework, and not under the current environmental guidelines ⁽²¹⁾.

According to point 6 of the environmental guidelines, the concept of environmental protection refers to any action taken to remedy or prevent damage to our physical surroundings or natural resources, or to encourage the efficient use of these resources.

According to the conditions set out in the tender, the aid should be used for the production of newsprint, and the project is to be located within the UK. Furthermore, the winning company should commit itself to take up an agreed tonnage of waste paper from the municipal waste stream. The first two conditions in the tender (i.e. the fact that the aid should be used for the production of newsprint, and the condition for the undertaking to be located in the UK) might be seen as excessive in order to achieve the environmental objectives, since it excludes solutions for the waste problem based on direct incentives for collection systems which may rely on the market for waste paper to ensure that the collected waste paper is recycled. Therefore, at this stage, the Commission has doubts on the justification of these two conditions for considering the aid to pursue an environmental objective.

According to point 29 of the guidelines, 'investment aid enabling firms to improve on the Community standards applicable may be authorised up to not more than 30 % gross of the eligible investment costs as defined in point 37. These conditions also apply to aid where firms undertake investment in the absence of mandatory Community standards [...]'.

The Commission notes that the investment is not designed to improve on standards which would directly apply to the undertakings, but to improve the recycling ration in the UK.

According to the information of which the Commission disposes, the use of waste paper for the production of newsprint seems to be the current state of the art. It seems that paper reprocessing facilities exist in all Member States, and that they function similarly. Waste paper appears to be a normal raw material with an economic value, subject to trade on the markets. According to the information available on the website of the Confederation of the European Paper Industry, it seems that 65 % of the newsprint paper is produced on the basis of waste paper ⁽²²⁾. Furthermore, nearly the total amount of newsprint seems to be produced on the basis of waste paper in the United Kingdom ⁽²³⁾. Waste paper seems therefore to be the normal raw material for the production of newsprint. This is confirmed by the fact that Shotton already uses waste paper in part of its current plant.

Taking the above considerations into account and based on the information available, the Commission doubts whether the investment qualifies as an investment in the meaning of point 29 of the guidelines. The investment, at least in part, may rather constitute an investment, to which the environmental guidelines do not apply.

3.3.2. Compatibility with the environmental guidelines

Although the Commission expressed doubts, at this stage, in the former paragraph about the applicability of the environmental guidelines, it does not prejudice their applicability in the present case. Therefore, it is appropriate for the Commission to try and assess the aid under these guidelines, on basis of the fact that the UK authorities notified the aid on that basis.

First of all, at this stage, the calculation of the eligible costs raises doubts as far as concerning the definition of the eligible costs. Point 37 of the environmental guidelines requires that the eligible costs must be strictly confined to the extra investment costs necessary to meet the environmental objectives. In the present case, the eligible costs presented by the UK refer to the overall investment for the conversion of the existing paper mills to mills using waste paper. Even though the remaining operational life of the existing machines seems to be 10-20 years, the replacement of the existing machines should not be considered as a whole to be admissible as an eligible cost strictly necessary to achieve an environmental benefit.

Secondly, point 37 of the environmental guidelines require the Commission to calculate the cost net of the benefits accruing from any increase in capacity, cost savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period. The UK provided detailed information, but despite the Commission's request, the UK has not provided full information on the assumptions as regards input and output prices. It should

also be noted that, according to the British Recovered Paper Association, it seems preferable to use recycled fibres in large volumes, because it is very expensive to install the necessary de-inking and cleaning equipment to allow recovered paper to be re-processed⁽²⁴⁾. For this reason, the Commission doubts whether the benefits resulting from the switch to using waste paper as raw material instead of virgin wood pulp could be more important than the amount of GBP 824 000 estimated by the UK.

Therefore, the Commission has, at this stage and based on the information available, doubts on the compatibility of this aid with the environmental guidelines.

4. CONCLUSION

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 88(2) of the EC Treaty, requests the United Kingdom to submit its comments and to provide all such information as may help to assess the aid, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission wishes to remind the United Kingdom that Article 88(3) of the EC Treaty has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.⁷

⁽⁶⁾ According to the information submitted by the UK, each time the recycling capacity increased in the UK, the price of mixed waste paper and magazines increased. The supply responds very slowly to the increasing demand, and causes upward pressure on prices.

⁽⁷⁾ According to the UK, since the process related to the award of financial support rather than the procurement of a work, supply or service, there could be no publication in the Official Journal. The structure of the process was however informed by the EC procurement rules.

⁽⁸⁾ In the region where UPM-Kymmene is located, there is an abundance of low cost landfills, therefore local authorities have not been motivated to invest in the collection of waste materials for recycling.

⁽⁹⁾ According to the UK, it is estimated that the demand for newsprint of the scale created by the development of this facility will allow around 596 Kt of other materials (steel, aluminium, glass, newsprint, plastic) to be recycled per year.

⁽¹⁰⁾ OJ C 37, 3.2.2001, p. 3.

⁽¹¹⁾ Exchange rate on 20 June 2002.

⁽¹²⁾ Point 34(a) of the environmental guidelines.

⁽¹³⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1).

⁽¹⁴⁾ According to the statistics provided by the Confederation of European Paper Industries, the trade balance of waste paper amounted to 1 774 million tonnes in the EU in the year 2000.

⁽¹⁵⁾ Source: British Recovered Paper Association (<http://www.recycledpaper.org.uk/cpi.htm>).

⁽¹⁶⁾ Court of Justice, C-310/99, 7.3.2002, *Italy v Commission*.

⁽¹⁷⁾ OJ C 37, 3.2.2001, p. 3.

⁽¹⁸⁾ Guidelines on national regional aid (OJ C 74, 10.3.1998, p. 9).

⁽¹⁹⁾ Multisectoral framework on regional aid for large investment projects (OJ C 107, 7.4.1998, p. 7).

⁽²⁰⁾ OJ C 37, 3.2.2001, p. 3.

⁽²¹⁾ For example, *Hamburger AG* (C 72/01), Commission Decision of 9 April 2002 (not yet published); *Kartogroup* (N 184/2000), Commission Decision of 18 July 2001 (http://europa.eu.int/comm/secretariat_general/sgb/state_aid/industrie/n184-00.pdf).

⁽²²⁾ 'Special recycling 2000 statistics', CEPI, <http://www.cepi.org/htdocs/pdfs/recycling/stats2000.pdf>

⁽²³⁾ <http://www.paper.org.uk/htdocs/Statistics/recovered-by-sector.html>

⁽²⁴⁾ British Recovered Paper Association, 'Recycled content of paper products', Confederation of Paper Industries, Confederation of Paper Industries — Position Paper, <http://www.recycledpaper.org.uk/cpi.htm>

**Notice published pursuant to Article 19(3) of Regulation No 17⁽¹⁾ concerning notification
COMP/A37.904/F3 — Interbrew**

(2002/C 283/05)

(Text with EEA relevance)

I. THE NOTIFICATION

1. On 30 June 2000 Interbrew Belgium NV (hereafter 'Interbrew') notified pursuant to Article 4 of Council Regulation No 17 its brewery contracts concluded with operators of Horeca outlets⁽²⁾ in Belgium. The notified brewery contracts can be divided in five different types: loan agreements, (sub)lease agreements, concession agreements, franchise agreements and the 'afstand openingstaks' agreements. Each of these agreements contains a tie for beer, that will be described below.

2. Interbrew has requested a negative clearance under Article 81(1) of the EC Treaty or an individual exemption pursuant to Article 81(3) of the EC Treaty. The notification was amended by Interbrew in November 2001 and in June 2002.

II. INTERBREW

3. Interbrew is the largest Belgian brewer. Interbrew's most important brands in Belgium are Jupiler and Artois (pils), Hoegaarden (wheat beer) and Leffe (abbey beer). All four brands are in the top ten of most sold brands in Belgium.

4. Interbrew NV is the parent company of Interbrew. Interbrew NV is a public company based in Brussels and runs operations in 20 countries, across North America, western and eastern Europe and Asia.

III. THE MARKET

5. This case concerns the distribution of beer to the Horeca market in Belgium.

6. Brewers sell roughly 60 % of all their beer in the Belgian Horeca sector. The remaining 40 % are sold in the take-home sector (supermarkets, shops, etc.). In the Horeca sector, about 65 % of all beer consumed is draught beer (as opposed to beer in bottles or cans).

7. Interbrew holds an overall market share of roughly 56 % of the Belgian Horeca sector. The second brewer Alken-Maes (now part of Scottish & Newcastle, previously part of Danone) has around 13 % of this market. The share of the third largest brewer Haacht is somewhere around 6 %. These three brewers all have a pils beer which generates most of their turnover. The fourth brewer, Palm, who holds roughly 7 % of the market, achieves most of its sales with an amber beer (although it also has a pils beer in its portfolio). Together, the four main

brewers represent around 80 % of the Belgian Horeca market.

8. Most of the 52 000 Horeca outlets in Belgium are pubs (35 500) and [< 20 000] pubs sell Interbrew beers. However, only [11 000-13 000] pubs are subject to a non-compete obligation and sell nothing but Interbrew beers.

9. In 1999, Interbrew's beer turnover in the Horeca sector was 3 382 657 hectolitres. Interbrew estimates that it sold [30-40] % through outlets which are tied to it by means of a non-compete obligation. It bases this estimate on an average pub output of 100 hl per year. This gives Interbrew a *tied* market share in the Horeca sector of [17-22] %.

10. Almost all of the [11 000-13 000] Interbrew ties are either loan ties or lease/sublease ties. In 1999 [8 000-9 000] were loan ties (i.e. operator of outlet owns his outlet or rents it from a third party but obtains from Interbrew a loan of money or material or a bank guarantee). These loan-tied outlets achieved sales representing a tied market share of [11-16] %. The remaining [3 000-4 000] outlets were lease or sublease ties (i.e. operator rents the outlet from Interbrew which is either the owner or the head lessee). Their sales correspond to a tied market share of [4-8] %.

11. Since 1999, the number of Interbrew loan and lease/sublease ties has decreased slightly. Figures on 31 August 2001 give [...] loan ties and [...] lease ties.

IV. THE AGREEMENTS

1. Loan ties

12. The general principle of the loan ties is that in return for a loan by Interbrew, the outlet operator accepts a non-compete obligation for beer. This means that he has the obligation to purchase all his beer requirements from Interbrew and is not allowed to resell beers from third brewers. Interbrew's loan ties cover a wide variety of loans: non-refundable loans, money loans, guarantees and equipment loans. The duration of these contracts is typically five years.

13. In the case of non-refundable loans, Interbrew grants the operator an amount of money for (re)furbishing the pub. The publican is not obliged to repay the money as long as he strictly fulfils the non-compete obligation.

⁽¹⁾ OJ 13, 21.12.1962, p. 204/62.

⁽²⁾ Hotels, restaurants and cafés.

14. Interbrew also provides money loans to operators. The borrower will have to repay the loan, but the financial benefit for the operator is that the loan is provided under favourable conditions (e.g. lower interest rates than standard bank rates).
15. In order to provide the outlet operator with a loan, Interbrew can also act as an intermediary with banks and other credit institutions. Often, Interbrew enters into a financial obligation towards the bank in favour of the operator: Interbrew either guarantees the loan and/or contributes to the payment of the interest of the loan. These are the so-called guaranteed loans.
16. The last type of loans are the equipment loans: Interbrew provides the operator with the equipment he needs (e.g. beer taps, coolers, furniture, publicity materials etc.). Upon expiry of the contract, the operator has to return the equipment to Interbrew in good condition.

2. Lease and sublease ties

17. There are outlets which Interbrew either owns or leases from a third party. It then leases or subleases the premises to an outlet operator who in return accepts a non-compete obligation. These are the so-called lease and sublease ties (sometimes also called property ties). In line with Belgian law, the duration of the lease contracts is nine years, which is renewable for further terms of nine years, up to a maximum duration of 27 years.

3. Franchises

18. Interbrew has around 20 franchise contracts for either Leffe pubs, Hoegaarden pubs or Radio 2 pubs. As in the case of lease or sublease ties, Interbrew mostly owns the premises of the franchised pub or it is the head lessee of these premises.
19. In all these cases, Interbrew gives the outlet operator a concession for the exploitation of the franchise formula. The operator has to pay a monthly royalty fee to Interbrew. Interbrew grants the operator a territorial exclusivity for the franchise formula and provides him with commercial assistance services. In return, the operator accepts a non-compete obligation. The franchisee does not enjoy an exclusivity for the beers sold in the exclusive territory.

4. Concessions

20. Interbrew regularly tenders for public contracts to operate an outlet in cultural centres, sports facilities, recreation parks etc. The concession is awarded by the public authority to the brewer or beer wholesaler that offers the best conditions.

21. If Interbrew wins the concession, it enters into an agreement with the outlet operator allowing it to run the outlet for the period of the concession. Interbrew also provides the equipment (beertaps, coolers, furniture, etc.). The operator subscribes to a non-compete obligation.
22. Interbrew has approximately 100 concession outlets. The duration of the concession varies from five to 10 years, sometimes even longer.

5. 'Afstand openingstaks'

23. According to Belgian statutory law, every outlet operator must pay an 'opening tax' of three times the rental value of the outlet as estimated by the public administration. When the brewers or beer wholesalers are the owners or the head lessees of the property, they — rather than the outlet operator — will pay the opening tax.
24. The payment of the opening tax is valid for 15 years, but every five years the rental value is re-estimated and the brewer or beer wholesaler has to pay a surcharge. When Interbrew decides to terminate the exploitation of the outlet, it is legally obliged to inform the competent public authorities. It cannot claim back part of the opening tax. However, if Interbrew transfers the Horeca outlet to someone else within one year of terminating the exploitation, the new outlet operator will only have to pay an opening tax of once the estimated rental value.
25. In return for this financial benefit (which amounts to twice the estimated rental value), Interbrew imposes a non-compete obligation upon the new outlet operator.
26. Although in Flanders the opening tax was reduced to zero on 1 January 2002, there are still Flemish operators that are tied to Interbrew based on a contract concluded before this date.

6. The non-compete obligations in the notified contracts

A. The originally notified contracts (30 June 2000)

27. For all types of brewery contracts, i.e. loans, leases, subleases, franchises, concessions and 'afstand openingstaks' situations, the original notification contains in principle (and subject to two exceptions which are explained below) unqualified non-compete obligations for the operator of the outlet. This means that the outlet operator is obliged to buy all his requirements for beers as well as other drinks specified in the brewery contract from Interbrew for the duration of the contract and cannot resell competing beers or other drinks. In the franchise agreements, the operator must in addition achieve a minimum sale of Leffe or Hoegaarden (depending on the franchise formula) of 25 % of his sales of all beer.

28. For the loan contracts and 'afstand openingstaks' contracts, the original notification provides for two exceptions. First, all contracts entered into from 1 March 2001 contain a non-compete obligation covering draught beer only (so no beer in bottles and cans nor other drinks) and those concluded as from 1 June 2001 are terminable annually by the operator on three months' notice. Second, for loan and 'afstand openingstaks' contracts entered into after 1 July 2001, Interbrew changes the non-compete obligation into a minimum purchase obligation by requiring from the operator that he purchase at least 75 % of his total beer turnover from Interbrew.

B. The first amendments of the original notification (November 2001)

29. In November 2001, Interbrew harmonised the non-compete obligations for all its existing loan and 'afstand openingstaks' contracts: (i) the non-compete obligation covers beer only (no other drinks); (ii) the operator is obliged to purchase at least 75 % of his total beer turnover from Interbrew; (iii) the contracts are terminable annually by the operator on three months' notice; and (iv) the penalty for not respecting the minimum purchase obligation (in absolute volume) has been deleted.

30. For all other contracts (lease/sublease ties, franchises and concessions), the non-compete obligations remained those described in the original notifications (see paragraph 26 above).

C. The second amendments of the original notification (June 2002)

31. Following discussions with the Commission services, Interbrew offered further amendments to the originally notified agreements. These amendments were formally notified in June-October 2002.

6.1. Loan ties

32. As said (see paragraph 10 above), loan ties represent the largest number of brewery contracts and yield a tied market share of [11-16] %. Interbrew now accepts to limit the quantity forcing clause to *draught pils*, provided that the outlet at least buys 50 % of its total beer requirements from Interbrew. In other words, the quantity forcing clause on the operators no longer covers bottled or canned pils nor does it cover any other type of beer than pils (e.g. wheat beer, abbey beer, amber beer), whether draught or bottled. This means that in future other brewers will be able to have access to Interbrew's loan-tied outlets with all their beers, except draught pils.

33. Moreover, Interbrew now accepts that the operator can terminate its brewery contract any time, provided the operator gives a three months' notice. Interbrew will insert a clear reminder of this right to terminate in its sales conditions featuring on the back of every invoice.

34. When the outlet operator terminates the contract, he/she (or any brewer who takes over) has to repay the outstanding balance of the loan without an early repayment penalty or other financial compensation ⁽¹⁾.

35. In the case of an equipment loan, the operator will have to either return the equipment in good condition (fair wear and tear excluded) or buy the equipment for its residual value, based on a linear depreciation over five years or 60 months.

36. The duration of the loan contracts is maximum five years. However, Interbrew still has approximately 2 000 money loan and bank guarantee agreements which it entered into with operators between 1 January 1997 and 1 January 2000 and which have a duration of 10 years. Interbrew has committed itself to terminate the quantity forcing clause at the latest on 31 December 2006 (i.e. five years after the end of the transitional period provided for in Article 12 of Commission Regulation (EC) No 2790/1999).

6.2. Lease and sublease ties

37. Lease or sublease ties represent a tied market share of [4-8] % (see paragraph 10 above). For these ties, Interbrew limits the non-compete obligation to *all types of draught beer* (pils or any other type) *brewed by Interbrew* under its own brands or under a licence agreement. The amended tie no longer applies to types of draught beer not brewed by Interbrew (i.e. Trappist). Furthermore, since the reference to licence agreements in fact only refers to Tuborg and not to existing cooperation agreements under which Interbrew distributes beers from third brewers, the non-compete obligation no longer applies to beer from Orval, Rodenbach, Van Honsebrouck (Kasteelbier) or De Koninck. Interbrew has also deleted the minimum purchase obligation (in absolute volume) for the operator.

38. This means that in future the tied outlet operator will be free to sell draught Trappist beer and all types of beer in bottles and cans.

39. If in future, other types of draught beers would appear to exist that are not brewed by Interbrew, if Interbrew would start brewing a Trappist beer or if it would wish to conclude licence agreements with other third party brewers, the Commission will reassess the scope of the amended quantity forcing clause.

⁽¹⁾ In most term loans, the borrower is not only obliged to pay back the outstanding capital when he/she repays early, but on top of that a sum of money to compensate the lender for the fact that the latter gets his capital back too early and will no longer receive the expected interest income on it.

6.3. Franchises

40. For the small number of Leffe or Hoegaarden franchises, Interbrew will limit the non-compete obligation to the type of beer (draught, bottled and canned) that is subject of the franchise formula. It will, however, impose a minimum purchase obligation for this type of beer of 25 % of all beer purchases. For the Radio 2 franchise system, there will not be any non-compete obligation or quantity forcing clause.
41. This means that in future any Leffe or Hoegaarden franchisee will be free to purchase and resell any type of beer (be it draught, bottled or canned) from third brewers, with the exception of abbey beer for a Leffe pub or wheat beer for a Hoegaarden pub. A Radio 2 franchisee will be free to purchase and resell any type of beer from third brewers (draught, bottled and canned).
42. As stated above (paragraph 18), Interbrew owns most franchised outlets or rents them as head lessee. Interbrew reserves itself the right to convert the existing franchise contracts into a sublease contract. In that case, it will impose the loosened quantity forcing clause for lease/sublease contracts without combining it with the 25 % minimum purchase obligation for the 'franchise beer'.

6.4. Concessions

43. Interbrew will treat the 100 or so concession agreements in the same way as the (sub)lease contracts. Where Interbrew wins the concession, the situation is very similar to that where Interbrew is the head lessee. It will appoint an outlet operator as sublessee and the latter will be subject to the non-compete obligation for lease/sublease contracts.

44. This means that the outlet operator who effectively runs the concession will be free to sell draught Trappist beer and all other types of beer in bottles and cans.

6.5. 'Afstand openingstaks'

45. Interbrew has informed the Commission that it will no longer impose non-compete obligations or quantity forcing clauses on outlet operators who take over the outlet from Interbrew within one year after Interbrew has terminated its exploitation.

V. CONCLUSION

In view of the amendments of the notified agreements, the Commission intends to take a favourable position in respect of these agreements. Before adopting a favourable position, the Commission invites third parties to send their observations within one month of the publication of this notice by mail to the following address or by fax to the following number quoting the reference Case COMP/A37.904/F3 — Interbrew:

European Commission
Directorate-General for Competition
Directorate F
B-1049 Brussels
Fax (32-2) 296 98 02.

If a party considers that its observations contain business secrets, it must indicate the passages which in its opinion ought not to be disclosed on the ground that they contain business secrets or other confidential material, and state the reasons. If the Commission does not receive a request with reasons it will assume that the observations do not contain any confidential information.

Prior notification of a concentration (Case COMP/M.2981 — Knauf/Alcopor)

Candidate case for simplified procedure

(2002/C 283/06)

(Text with EEA relevance)

1. On 12 November 2002 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 French undertaking Knauf La Rhénana SAS, belonging to the German Knauf Group (Knauf), acquires, within the meaning of Article 3(1)(b) of the Regulation, control of the Swiss undertaking Alcopor Knauf Holding AG (Alcopor) by way of purchase of shares.

2. The business activities of the undertakings concerned are:

- Knauf manufacture of thermal and acoustic insulation products, gypsum and gypsum products, and other building materials,
- Alcopor: manufacture of thermal and acoustic insulation products.

⁽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.

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. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Regulation (EEC) No 4064/89 ⁽¹⁾, it should be noted that this case is a candidate for treatment under the procedure set out in the notice.

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.2981 — Knauf/Alcopor, to:

European Commission,
Directorate-General for Competition,
Directorate B — Merger Task Force,
J-70,
B-1049 Brussels.

⁽¹⁾ OJ C 217, 29.7.2000, p. 32.

Prior notification of a concentration

(Case COMP/M.3013 — Carlyle Group/Edscha)

(2002/C 283/07)

(Text with EEA relevance)

1. On 13 November 2002 the Commission received a 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 Cayman Islands-based undertaking CEP General Partner LP, belonging to the US-based The Carlyle Group (Carlyle), acquires, within the meaning of Article 3(1)(b) of the Regulation, control of the whole of the German undertaking Edscha AG (Edscha) by way of purchase of shares.

2. The business activities of the undertakings concerned are:

- Carlyle: private equity investment group controlling a wide range of companies among which the automotive components and aluminium extrusions producer Honsel International Technologies,
- Edscha: manufacture of automotive components, in particular, hinge systems and convertible roof systems.

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.3013 — Carlyle Group/Edscha, to:

European Commission,
Directorate-General for Competition,
Directorate B — Merger Task Force,
J-70,
B-1049 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.

III

(Notices)

COMMISSION

CALL FOR PROPOSALS

for CARDS regional programme — Democratic stabilisation — Support to free and independent media in the western Balkans — issued by the European Community

(2002/C 283/08)

1. Publication reference

EuropeAid/114704/C/G/Multi.

2. Programme and financing source

Support to free and independent media in the western Balkans is part of the democratic stabilisation process which forms part of the CARDS regional programme, budget line B7-541 under CARDS.

3. Nature of activities, geographical area and project duration

(a) The support to free and independent media in the western Balkans aims at encouraging an environment in which professional and independent media can function properly. The main objectives are to promote editorial independence, strong professional associations and institutions, local journalism and management training capacity, the implementation of a legal framework in line with European standards and regional cooperation between media organisations.

(b) Geographical area: CARDS countries.

(c) Maximum project duration: 18 months.

For details, see the 'Guidelines for applicants' referred to in point 12.

4. Overall amount available for this call for proposals

EUR 1,5 million.

5. Maximum and minimum grant amounts

(a) Minimum grant for a project: EUR 100 000.

(b) Maximum grant for a project: EUR 300 000.

(c) Maximum proportion of project costs to be covered by Community funding: 80 %

6. Maximum number of grants to be awarded

Fifteen projects.

7. Eligibility: who may apply

Applicants must:

— be non-profit-making; exceptionally, media organisations, not receiving profit from the action proposed, may apply for a grant even if they are generally profit-making,

— fall into one of the following categories of organisation: trade associations, trade unions, public journalism training schools/universities etc., non-governmental organisations such as associations in the media sector, media centres, etc.,

— have their headquarters within one of the countries eligible to participate in the CARDS programme (Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia), or in the European Union.

8. Provisional notification date of results of the award process

July 2003.

9. Award criteria

See section 2.3 of the guidelines for applicants mentioned in point 12.

10. Application format and details to be provided

Applications must be submitted using the **standard application form** attached to the guidelines for applicants mentioned in point 12, whose format and instructions must be strictly observed. For each application, **one signed original** and **four copies** must be supplied by the applicant.

11. Deadline for applications

The deadline for the reception of applications is 24 February 2003, 16.00 CET.

Any application received by the contracting authority after this deadline will not be considered.

12. Detailed information

Detailed information on this call for proposals is contained in the guidelines for applicants, which are published together with this notice on the Internet website of the EuropeAid:

http://europa.eu.int/comm/europeaid/index_en.htm

Any questions regarding this call for proposals should be sent by e-mail (including the publication reference of this call for proposals shown in point 1) to:

huguette.tas@cec.eu.int

All applicants are encouraged to consult the above Internet web page regularly before the deadline for applications since the Commission will publish the most frequently asked questions and the corresponding replies.
