

English edition

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I

(Information)

COMMISSION

Euro exchange rates ⁽¹⁾

8 December 2003

(2003/C 297/01)

1 euro =

Currency	Exchange rate	Currency	Exchange rate		
USD	US dollar	1,2218	LVL	Latvian lats	0,6612
JPY	Japanese yen	131,40	MTL	Maltese lira	0,4303
DKK	Danish krone	7,4416	PLN	Polish zloty	4,6494
GBP	Pound sterling	0,7043	ROL	Romanian leu	40 510
SEK	Swedish krona	8,9327	SIT	Slovenian tolar	236,605
CHF	Swiss franc	1,5479	SKK	Slovak koruna	41,045
ISK	Iceland króna	89,90	TRL	Turkish lira	1 753 751
NOK	Norwegian krone	8,0795	AUD	Australian dollar	1,6495
BGN	Bulgarian lev	1,9515	CAD	Canadian dollar	1,59
CYP	Cyprus pound	0,5837	HKD	Hong Kong dollar	9,4872
CZK	Czech koruna	32,213	NZD	New Zealand dollar	1,886
EEK	Estonian kroon	15,6466	SGD	Singapore dollar	2,0906
HUF	Hungarian forint	267,84	KRW	South Korean won	1 449,24
LTL	Lithuanian litas	3,4531	ZAR	South African rand	7,7674

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

Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid

(2003/C 297/02)

(Text with EEA relevance)

Aid No: XT 102/02

Member State: Italy

Region: Autonomous Province of Trento

Title of aid scheme or name of the company receiving an individual aid: Financing procedures and criteria for 2002 for training measures for workers employed under Law No 53 of 8 March 2000

Legal basis: Deliberazione della Giunta Provinciale n. 2695 d.d. 31.10.2002, come modificata dalla deliberazione della Giunta provinciale n. 2767 d.d. 8.11.2002 recante «Procedure e criteri di finanziamento per l'anno 2002 delle azioni formative rivolte a lavoratori occupati in attuazione del comma 4 dell'art. 6 della Legge 8 marzo 2000, n. 53 e riferibili alla gestione dei fondi di cui al Decreto del Ministero del Lavoro e della Previdenza Sociale del 6 giugno 2001 n. 167» (pubblicata sul Bollettino Ufficiale della Regione Trentino Alto Adige n. 48 del 19 novembre 2002)

Annual expenditure planned under the scheme or overall amount of individual aid granted to the company: EUR 373 349,90

Maximum aid intensity:

Specific training for large enterprises: intensity not exceeding 25 %.

Specific training for SMEs: intensity not exceeding 35 %.

General training for large enterprises: intensity not exceeding 50 %.

General training for SMEs: intensity not exceeding 70 %.

The above intensities are increased by 10 percentage points where the training is given to disadvantaged workers within the meaning of Article 2(g) of Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid

Date of implementation: 19 November 2002

Duration of scheme or individual aid award: Indefinite although not beyond 31 December 2006

Objective of aid: The aid is intended for general and special training. The definition of general training given in Regulation (EC) No 68/2001 has been adopted as it is considered sufficiently clear and exhaustive: "general training" shall mean training involving tuition which is not applicable only or principally to the employee's present or future position in

the assisted firm, but which provides qualifications that are largely transferable to other firms or fields of work and thereby substantially improve the employability of the employee'

Economic sector(s) concerned: All sectors

Name and address of the granting authority:

Provincia Autonoma di Trento
Servizio Addestramento e Formazione Professionale
via Gilli, 3
I-38100 Trento

Other information: Since this is an aid scheme, it is not possible to give a description of the content of each project in order to confirm that it corresponds to the definition of general training.

The prior verification procedure applied by the Province to ensure that the highest aid intensity is granted only to general training projects comprises the following steps:

- on submitting the project, the applicant declares whether it involves general or specific training;
- a committee makes a prior assessment of whether individual projects are to be classed as general or specific training; its findings are set out on an assessment grid signed by the experts and attached to the minutes of the committee meeting;
- on the basis of the above assessment, the Province determines the intensity of the funding to be granted to each individual project;
- the Province then adopts the project-funding decision, which also reproduces the committee's assessment of the nature of each project (general or specific training);
- the Province notifies the individual applicants of the outcome of the committee's assessment and, consequently, the intensity of the funding allocated to them.

The committee is composed of:

- three experts on training and the assessment of training activities from outside the Province (all highly qualified university lecturers),
- one official from the Province, appointed by the Provincial Council

Aid No: XT 11/03

Member State: United Kingdom and Republic of Ireland

Region: 32 Counties of the island of Ireland — Northern Ireland and Republic of Ireland

Title of aid scheme or name of the company receiving an individual aid: Fusion

Legal basis: British/Irish Agreement Act 1999 Section 2.3 Part 7 of Annex 2 of the Act empowers InterTradelreland to invest, lend or grant aid for the purposes of its function

Annual expenditure planned under the scheme or overall amount of individual aid granted to the company:

	Maximum cost per company	Maximum total funded element
2002	GBP 29 000	GBP 470 000
2003	GBP 29 000	GBP 1 410 000
2004	GBP 29 000	GBP 921 667
2005	GBP 29 000	GBP 68 333

Notes: 70 projects will be established and implemented on a rolling basis during 2002-2005. Cost per project is GBP 41 000 over 18-month duration (although annual cost is approx GBP 29 000 — as some aspects are pro-rata and others not). The GBP 41 000 per project is paid in quarterly instalments over the 18-month period. Therefore, total expenditure for the overall Fusion scheme of 70 projects varies each year — depending on how many projects have been established on a rolling basis and the number of cumulative projects in any one year.

Total funding element for 70 projects over 4 years = GBP 2 870 000. This represents 60 % of the total project cost with the remaining 40 % attributed by the participating enterprises

Maximum aid intensity: Up to a maximum of GBP 29 000 assistance per project per annum representing 60 % aid intensity

Date of implementation: Proposed scheme to run for 4 years from date of approval. Individual companies will be eligible for assistance for a maximum of 18 months

Duration of scheme or individual aid award: Scheme will run until 2005

Objective of aid: The objective of the aid is to train high-calibre graduates in knowledge and technology transfer between industry and academia as well as general business

management, with a view to preparing them for future senior management. The training is general as it is generic to all participating graduates and provides skills which are transferable across industry

Economic sector(s) concerned: All sectors

Name and address of the granting authority:

InterTradelreland
The Old Gasworks Business Park
Kilmorey Street
Newry
Co Down
Northern Ireland
BT34 2DE

Aid No: XT 13/03

Member State: Germany

Region: North Rhine-Westphalia

Title of aid scheme or name of the company receiving an individual aid: Scheme implementing 'Jugend in Arbeit plus'

Legal basis: § 44 Landeshaushaltsordnung des Landes Nordrhein-Westfalen

Annual expenditure planned under the scheme or overall amount of individual aid granted to the company: EUR 24 700 000 annual allocation in the budget for refinancing of the whole programme

Maximum aid intensity: General training measures are to be supported in small and medium-sized enterprises, not exceeding 70 % of the eligible costs, including only aid towards the costs of the vocational training — no aid is granted towards the costs of teaching in the workplace. The aid is given as a flat-rate subsidy (hourly rate per participant) of up to EUR 3,30

Date of implementation: 1 January 2003 (scheme enters into force)

Duration of scheme or individual aid award: 31 December 2006 (end of financing period)

Objective of aid: General training measures are to be supported by subsidies for day-release vocational training for employees (minimum one day or equivalent of at least 20 % of a normal working contract). In addition to the vocational qualification, the training should also increase the young person's personal and social skills, in order to overcome individual barriers to successful integration into working life

Economic sector(s) concerned: All EU economic sectors

Expenditure under the 'tourism' scheme

Name and address of the granting authority:

Versorgungsamt Köln
Boltensternstraße 10
D-50735 Köln

Other information: The scheme is partially financed with EU Objective 3 funds.

After the exemption regulation expires on 31 December 2006 a six-month transitional period will apply.

The aid scheme 'Jugend in Arbeit plus' incorporates both an employment and a qualification component, so two summary information forms have been provided.

The qualification component falls under Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid and is set out in the summary information form.

The employment component falls under Regulation (EC) No 2204/2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment. Please see the relevant summary information form for employment aid

Aid No: XT 17/03

Member State: Austria

Region: Carinthia

Title of aid scheme or name of the company receiving an individual aid: 'Tourism' scheme. Following amendment to the scheme, under point 1.4.1.(d) and point 1.6.1.(d), aid is provided for training costs in connection with skills development measures

Legal basis: Kärntner Wirtschaftsförderungsgesetz, LGBL. Nr. 6/1993 in der geltenden Fassung

Annual expenditure planned under the scheme or overall amount of individual aid granted to the company: This is an amendment to an existing scheme, and the resources already provided for are sufficient to cover it.

EUR In 1 000

Year	2003	2004	2005	2006	Total
Total expenditure	5 250	5 360	5 470	5 540	21 620
Expenditure under the exemption Regulation on SME aid	4 500	4 600	4 700	4 800	18 600
Expenditure under the exemption Regulation on training aid	150	200	200	200	750

Maximum aid intensity: max. 50 %

Date of implementation: 1 May 2003

Duration of scheme or individual aid award:

- Period of validity: the amendment is to enter into force on 1 May 2003, with aid commitments under the amendment being issued only after approval of the amendment by the European Commission. The scheme will remain in force until 31 December 2006.
- Provided the application is submitted within that period, aid under the scheme may, in accordance with European Commission requirements, be granted up to 30 June 2007

Objective of aid: General training measures. The training measures are not intrinsically designed for use solely or mainly in the recipient firm and may be made use of by employees in various types of establishment

Economic sector(s) concerned: Tourism and the leisure industry

Name and address of the granting authority:

Kärntner Wirtschaftsförderungsfonds
Heuplatz 2
A-9020 Klagenfurt

Aid No: XT 20/03

Member State: Italy

Region: Molise

Title of aid scheme or name of the company receiving an individual aid: Aid scheme for vocational training

Legal basis:

- Legge n. 845 del 21.12.1978 «Legge quadro in materia di formazione professionale» e successive modifiche.
- Legge reg. n. 10 del 30.3.1995 «Nuovo ordinamento della formazione professionale» e successive modifiche

Annual expenditure planned under the scheme or overall amount of individual aid granted to the company: The total planned expenditure is EUR 11 559 057, broken down as follows:

- 2000: EUR 1 607 577,09
- 2001: EUR 2 353 859,75
- 2002: EUR 1 478 159,56
- 2003: EUR 1 637 279,92
- 2004: EUR 1 261 980,52
- 2005: EUR 1 258 380,28
- 2006: EUR 1 961 819,88

Maximum aid intensity: Pursuant to the rules on training aid laid down in Regulation (EC) No 68/2001, the Region of Molise has provided that the gross intensity of training aid granted under the scheme must comply with the ceilings stipulated in the Regulation for assisted and non-assisted areas

Date of implementation: 15 July 2002

Duration of scheme or individual aid award: 2000-2006

Objective of aid: Aid to both specific and general training

Economic sector(s) concerned: All sectors allowed by the Community rules

Name and address of the granting authority:

Regione Molise — Assessorato alla formazione professionale
Via S. Antonio Abate 236/B
I-86100 Campobasso

Aid No: XT 33/03

Member State: United Kingdom

Region: England

Title of aid scheme or name of the company receiving an individual aid: Employer Training Pilot Phase 2 (2003-2004)

Legal basis:

- Employment Act 1973, Section 2(1) and 2(2) as substantiated by Section 25 of the Employment and Training Act 1998 and the Industrial Development Act 1982, Section 11
- Industrial Development Act, 1982, Section 7
- Learning and Skills Council Act 2000

Annual expenditure planned under the scheme or overall amount of individual aid granted to the company: This programme will provide funding of some GBP 120 000 000

(EUR 168 000 000) from 1 July 2003 to 31 December 2004. The estimated annual funding profile is as follows:

- July-December 2003: GBP 30 million (EUR 42 million)
- January-December 2004: GBP 90 million (EUR 126 million)

Maximum aid intensity: In the case of aid schemes and individual training exempted under this scheme, the intensity rates specified in Article 4(2)-(7) of Commission Regulation (EC) No 68/2001 will be adhered to, i.e. 50 % for a large company, 70 % for a SME, + 5 % for assisted areas status and 10 % if the beneficiaries meet the definition of disadvantaged workers. Under this block exemption, the maximum amount available to any one employer will be no more than GBP 100 000 (EUR 140 000 based on Exchange rate of GBP 1 = EUR 1,40 as at 8 May 2003) within the 3-year period to which this notification relates and in any case, will comply with Article 5 of Commission Regulation (EC) No 68/2001

Date of implementation: 1 July 2003

Duration of scheme or individual aid award: 18 months ending December 2004 (split over two financial years and two calendar years)

Objective of aid: The scheme is focused exclusively on low-skilled and poorly qualified employees. The objective of the scheme is to use training to reduce individual employee vulnerability to unemployment and to encourage employers, particularly small employers, of the value of investing in the skills of their workforce. The scheme is a pilot scheme, which will be evaluated with the intention of rolling out a national strategy available to all employers in a future phase building on the lessons learnt in this pilot.

The training (which will be exclusively general) will be in the form of nationally recognised qualifications such as National Vocational Qualifications or other vocationally specific qualifications as defined by the appropriate Sector Skills Council where an NVQ framework is not currently available (see Annex A for examples)

Economic sector(s) concerned: In compliance with Article 3 Commission Regulation (EC) 68/2001, the scope of this training aid block exemption will cover all sectors

Name and address of the granting authority:

Learning and Skills Council
Cheylesmore House
Quinton Road
Coventry
CV1 2WT
United Kingdom

Other information: Contact officer: David Greer
Direct line: 024 76 82 33 27
Mobile: 077 89 65 11 36

Commission communication C(2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions

(2003/C 297/03)

1. INTRODUCTION

- (1) This Communication sets out how the Commission intends to deal with requests by Member States, as addressees of State aid decisions, to consider parts of such decisions as covered by the obligation of professional secrecy and thus not to be disclosed when the decision is published.
- (2) This involves two aspects, namely:
 - (a) the identification of the information which might be covered by the obligation of professional secrecy; and
 - (b) the procedure to be followed for dealing with such requests.

2. LEGAL FRAMEWORK

- (3) Article 287 of the Treaty states that: 'The members of the institutions of the Community, the members of committees, and the officials and other servants of the Community shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components'.
- (4) This is also reflected in Articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾.
- (5) Article 253 of the Treaty states: 'Regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty'.
- (6) Article 6(1), first sentence of Regulation (EC) No 659/1999 further stipulates with regard to decisions to initiate the formal investigation procedures: '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. IDENTIFICATION OF INFORMATION WHICH CAN BE COVERED BY PROFESSIONAL SECRECY

- (7) The Court of Justice has established that although Article 287 of the Treaty primarily refers to information gathered from undertakings, the expression 'in particular' shows that the principle in question is a general one which applies also to other confidential information ⁽²⁾.
- (8) It follows that professional secrecy covers both business secrets and other confidential information.
- (9) There is no reason why the notions of business secret and other confidential information should be interpreted differently from the meaning given to these terms in the context of antitrust and merger procedures. The fact that in antitrust and merger procedures the addressees of the Commission decision are undertakings, while in State aid procedures the addressees are Member States, does not constitute an obstacle to a uniform approach as to the identification of what can constitute business secrets or other confidential information.

3.1. Business secrets

- (10) Business secrets can only concern information relating to a business which has actual or potential economic value, the disclosure or use of which could result in economic benefits for other companies. Typical examples are methods of assessing manufacturing and distribution costs, production secrets (that is to say, a secret, commercially valuable plan, formula, process or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort) and processes, supply sources, quantities produced and sold, market shares, customer and distributor lists, marketing plans, cost price structure, sales policy, and information on the internal organisation of the undertaking.
- (11) It would appear that in principle business secrets can only relate to the beneficiary of the aid (or other third party) and can only concern information submitted by the Member State (or third party). Hence, statements from the Commission itself (for example, expressing doubts about feasibility of a restructuring plan) cannot be covered by the obligation of professional secrecy.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

⁽²⁾ Case 145/83 *Adams v Commission* [1985] ECR 3539, paragraph 34, and Case T-353/94 *Postbank v Commission* [1996] ECR II-921, paragraph 86.

(12) The simple fact that disclosure of information might cause harm to the company is not of itself sufficient grounds to consider that such information should be considered as business secret. For example, a Commission decision to initiate the formal investigation procedure in the case of a restructuring aid may cast doubt on certain aspects of the restructuring plan in the light of information the Commission has received. Such a decision could (further) affect the credit-position of that company. However, that would not necessarily lead to the conclusion that the information on which that decision was based must be considered as business secrets.

(13) In general, the Commission will apply the following non-exhaustive list of criteria to determine whether information can be deemed to constitute business secrets:

- (a) the extent to which the information is known outside the company;
- (b) the extent to which measures have been taken to protect the information within the company, for example, through non-compete clauses or non-disclosure agreements imposed on employees or agents, etc;
- (c) the value of the information for the company and its competitors;
- (d) the effort or investment which the undertaking had to undertake to acquire the information;
- (e) the effort which others would need to undertake to acquire or copy the information;
- (f) the degree of protection offered to such information under the legislation of the Member State concerned.

(14) In principle, the Commission considers that the following information would not normally be covered by the obligation of professional secrecy:

- (a) information which is publicly available, including information available only upon payment through specialised information services or information which is common knowledge among specialists in the field (for example common knowledge among engineers or medical doctors). Likewise, turnover is not normally considered as a business secret, as it is a figure published in the annual accounts or otherwise known to the market. Reasons must be given for requests for confidentiality concerning turnover figures which are not in the public domain and the requests must be evaluated on a case-by-case basis. The fact that information is not publicly available does not necessarily mean that the information can be regarded as a business secret;

(b) historical information, in particular information at least five years old;

(c) statistical or aggregate information;

(d) names of aid recipients, sector of activity, purpose and amount of the aid, etc.

(15) Detailed reasons must be given for any request to derogate from these principles in exceptional cases.

3.2. Other confidential information

(16) In antitrust and merger cases, confidential information includes certain types of information communicated to the Commission on condition that confidentiality is observed (for example a market study commissioned by an undertaking which is party to the procedure and forming part of its property). It seems that a similar approach could be retained for State aid decisions.

(17) In the field of State aid, there may, however, be some forms of confidential information, which would not necessarily be present in antitrust and merger procedures, referring specifically to secrets of the State or other confidential information relating to its organisational activity. Generally, in view of the Commission's obligation to state the reasons for its decisions and the transparency requirement, such information can only in very exceptional circumstances be covered by the obligation of professional secrecy. For example, information regarding the organisation and costs of public services will not normally be considered 'other confidential information' (although it may constitute a business secret, if the criteria laid down in section 3.1 are met).

4. APPLICABLE PROCEDURE

4.1. General principles

(18) The Commission's main task is to reconcile two opposing obligations, namely the requirement to state the reasons for its decisions under Article 253 of the Treaty and therefore ensure that its decisions contain all the essential elements on which they are based, and that of safeguarding the obligation of professional secrecy.

(19) Besides the basic obligation to state the reasons for its decisions, the Commission has to take into account the need for effective application of the State aid rules (*inter alia*, by giving Member States, beneficiaries and interested parties the possibility to comment on or challenge its decisions) and for transparency of its policy. There is therefore an overriding interest in making public the full substance of its decisions. As a general principle, requests for confidential treatment can only be granted where strictly necessary to protect business secrets or other confidential information meriting similar protection.

- (20) Business secrets and other confidential information do not enjoy an absolute protection: this means for example that they could be divulged when they are essential for the Commission's statement of the reasons for its decisions. This means that information necessary for the identification of an aid measure and its beneficiary cannot normally be covered by the obligation of professional secrecy. Similarly, information necessary to demonstrate that the conditions of Article 87(1) of the Treaty are met, cannot normally be covered by the obligation of professional secrecy. However, the Commission will have to consider carefully whether the need for publication is more important, given the specific circumstances of a case, than the prejudice that might be generated for that Member State or undertaking involved.
- (21) The public version of a Commission decision can only feature deletions from the adopted version for reasons of professional secrecy. Paragraphs cannot be moved, and no sentence can be added or altered. Where the Commission considers that certain information cannot be disclosed, a footnote may be added, paraphrasing the non-disclosed information or indicating a range of magnitude or size, if useful to assure the comprehensibility and coherence of the decision.
- (22) Requests not to disclose the full text of a decision or substantial parts of it which would undermine the understanding of the Commission's statement of reasons cannot be accepted.
- (23) If there is a complainant involved, the Commission will take into account the complainant's interest in ascertaining the reasons why the Commission adopted a certain decision, without the need to have recourse to Court proceedings⁽¹⁾. Hence, requests by Member States for parts of the decision which address concerns of complainants to be covered by the obligation of professional secrecy will need to be particularly well reasoned and persuasive. On the other hand, the Commission will not normally be inclined to disclose information alleged to be of the kind covered by the obligation of professional secrecy where there is a suspicion that the complaint has been lodged primarily to obtain access to the information.
- (24) Member States cannot invoke professional secrecy to refuse to provide information to the Commission which the Commission considers necessary for the examination of aid measures. In this respect, reference is made to the procedure set out in Regulation (EC) No 659/1999 (in particular Articles 2(2), 5, 10 and 16).
- considers to be covered by the obligation of professional secrecy. This time period may be extended by agreement between the Commission and the Member State concerned.
- (26) Where the Member State concerned does not indicate which information it considers to be covered by the obligation of professional secrecy within the period prescribed by the Commission, the decision will normally be disclosed in full.
- (27) Where the Member State concerned wishes certain information to be covered by the obligation of professional secrecy, it must indicate the parts it considers to be covered and provide a justification in respect of each part for which non-disclosure is requested.
- (28) The Commission will then examine the request from the Member State without delay. If the Commission does not accept that certain parts of the decision are covered by the obligation of professional secrecy, it will state the reasons why in its view those parts cannot be left out of the public version of the decision. In the absence of an acceptable justification by the Member State for its request (i.e. reasoning which is not manifestly irrelevant or manifestly wrong), the Commission need not further specify the reasons why those parts cannot be left out of the public version of the decision other than by referring to the absence of justification.
- (29) If the Commission decides to accept that certain parts are covered by the obligation of professional secrecy without agreeing in full with the Member State's request, it will notify its decision with a new draft to the Member State indicating the parts which have been omitted. If the Commission accepts that the parts indicated by the Member State are covered by the obligation of professional secrecy, the text of the decision will be published pursuant to Article 26 of Regulation (EC) No 659/1999, with the omission of the parts covered by the obligation of professional secrecy. Such omissions will be indicated in the text⁽²⁾.
- (30) The Member State will have 15 working days following receipt of the Commission's decision stating the reasons for its refusal to accept the non-disclosure of certain parts, to react and provide additional elements to justify its request.

4.2. Procedure

- (25) The Commission currently notifies its decisions to the Member State concerned without delay and gives the latter the opportunity to indicate, normally within a time period of 15 working days, which information it
- (31) If the Member State concerned does not react further within the period prescribed by the Commission, the Commission will normally publish the decision as indicated in its reply to the original request made by the Member State.

⁽¹⁾ Case C-367/95 P *Commission v Sytraval* [ECR] 1998 I-1719, paragraph 64.

⁽²⁾ Using square brackets [...] and indicating in a footnote 'covered by the obligation of professional secrecy'.

- (32) If the Member State concerned does submit any additional elements within the prescribed period, those elements will be examined by the Commission without delay. If the Commission accepts that the parts indicated by the Member State are covered by the obligation of professional secrecy, the text of the decision will be published as set out in paragraph (29).
- (33) In the event that it is not possible to reach agreement, the Commission will proceed with the publication of its decision to initiate the formal investigation procedure forthwith. Such decisions must summarise the relevant issues of fact and law, include a preliminary assessment of the aid character of the proposed measure and set out the doubts as to its compatibility with the common market. Clearly certain essential information must be included in order to enable third parties and the other Member States to comment usefully. The duty of the Commission to provide such essential information will normally prevail over any claim to the protection of business secrets or other confidential information. Furthermore, it is in the interest of the beneficiary as well as interested parties to have access to such a decision as quickly as possible. Permitting any delay in this respect would jeopardise the process of State aid control.
- (34) In the event that it is not possible to reach agreement on requests for certain information in decisions not to raise objections and decisions to close the formal investigation procedure to be covered by the obligation of professional secrecy, the Commission will notify its final decision to the Member State together with the text it intends to publish, giving the Member State another 15 working days to react. In the absence of an answer which the Commission considers pertinent, the Commission will normally proceed with the publication of the text.
- (35) The Commission is currently reviewing its State aid notification forms. In order to avoid unnecessary correspondence with Member States and delay in the publication of decisions, it intends, in the future, to include in the form a question asking whether the notification contains information which should not be published, and the reasons for non-publication. Only if that question is answered in the affirmative will the

Commission enter into correspondence with the Member State in respect of specific cases. Similarly, if additional information is required by the Commission, the Member State will have to indicate at the moment it provides the information requested whether such information should not be published, and the reasons for non-publication. If the Commission uses the information thus identified by the Member State in its decision, it will communicate the adopted decision to the Member State, stating the reasons why in its view these parts cannot be left out from the public version of the decision as laid down in paragraph (28).

- (36) Once the Commission has decided what text it will publish and notified the Member State of its final decision, it is for the Member State to decide whether or not to make use of any judicial procedures available to it, including any interim measures, within the time limits provided for in Article 230 of the EC Treaty.

4.3. Third parties

- (37) Where third parties other than the Member State concerned (for example, complainants, other Member States or the beneficiary) submit information in the context of State aid procedures, these guidelines will be applied *mutatis mutandis*.

4.4. Application in time

- (38) These guidelines cannot establish binding legal rules and do not purport to do so. They merely set out in advance, in the interests of sound administration, the manner in which the Commission intends to address the issue of confidentiality in State aid procedures. As a rule, if agreement cannot be reached, the Commission's decision to publish may be the subject of specific judicial review proceedings. As these guidelines merely pertain to procedural matters (and to a large extent set out existing practice), they will be applied with immediate effect, including for decisions not to raise objections⁽¹⁾ adopted before the entry into force of Regulation (EC) No 659/1999 to which third parties seek access.

⁽¹⁾ Decisions to initiate the formal investigation procedure and final decisions adopted before that date were already published in full in the *Official Journal of the European Communities*. Prior to publication, Member States could indicate whether any information was covered by the obligation of professional secrecy.

Notice pursuant to Article 16(3) of Regulation (EEC) No 3975/87 of 14 December 1987 concerning case COMP/A.38.284/D2

Société Air France/Alitalia Linee Italiane SpA

(2003/C 297/04)

I. STATE OF THE PROCEDURE

1. On 13 November 2001, Alitalia and Air France notified to the Commission a co-operation agreement and applied for negative clearance under Article 3(2) or exemption under Article 5 of Council Regulation (EEC) No 3975/87 ⁽¹⁾.

2. According to Article 5(2) of Regulation (EEC) No 3975/87, the Commission published a summary of the application in the *Official Journal of the European Communities* on 8 May 2002 ⁽²⁾. The notice also summarised the reasons given by the parties for granting an exemption under Article 81(3).

3. On 1 July 2002, the Commission informed the Parties that, in respect to Article 5(3) of Regulation (EEC) 3975/87, it has serious doubts with regard to the applicability of Article 81(3) of the Treaty.

4. Overall, the Commission recognises that the alliance agreement contributes to technical and economic progress, given the improvements in connectivity and the cost savings and synergies achieved by the parties. However, the agreement raises competition concerns on key routes between France and Italy (Paris–Rome, Paris–Milan, Paris–Venice, Paris–Florence, Paris–Bologna, Paris–Naples, and Milan–Lyon).

5. Consequently, the Commission services entered into discussions with the parties with a view to finding appropriate and effective remedies to these concerns. In order to be effective, such remedies should remove existing entry barriers for competitors and thus favour the emergence of competing services on the routes concerned, failing which passengers would have little or no choice and potentially higher prices.

6. As a result of these discussions, the parties have submitted proposed commitments which are set out in what follows. The Commission services have received indications that there are a number of competitors which are interested in entering the markets concerned or re-enforcing their presence on these markets. Under these circumstances, the Commission encourages interested third parties to comment on the proposed remedies, and notably on their effectiveness.

II. PROPOSED COMMITMENTS

7. Société Air France ('Air France' or 'AF') and Alitalia Linee Italiane SpA ('Alitalia' or 'AZ'), collectively the 'Parties', hereby

⁽¹⁾ Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition in the air transport sector (OJ L 374, 31.12.1987, p. 1).

⁽²⁾ OJ C 111, 8.5.2002, p. 7.

offer the Commitments set out below to resolve the competition concerns identified by the European Commission in the course of proceedings in Case COMP/38.284 concerning the cooperation agreement between the Parties in particular in relation to air transport on certain routes between France and Italy.

1. General and Definitions

8. These Commitments shall be annexed to and form an integral part of the Commission's exemption decision.

9. These Commitments shall be binding on the Parties, their subsidiaries, successors and assigns and the Parties commit to cause their subsidiaries, successors and assigns to comply with these Commitments.

10. For the purposes of these Commitments, each of the following city pairs is considered to be an 'Affected Route':

— Paris–Milan;

— Paris–Rome;

— Paris–Venice;

— Paris–Bologna;

— Lyon–Milan;

— Paris–Naples;

— Paris–Florence.

11. For the purpose of these Commitments, references to:

— Paris shall cover Paris-Charles de Gaulle and Paris-Orly airports;

— Milan shall cover Milan-Linate and Milan-Malpensa airports;

— Rome shall cover Rome-Fiumicino and Rome-Ciampino airports.

12. For the purpose of these Commitments, the term 'New Entrant' shall mean any airline independent of and unconnected to the Parties wishing to commence a new non-stop service on an Affected Route or to increase the number of frequencies it operates on an Affected Route after the exemption becomes effective.

A non-stop service includes a multi-stop service using a single aircraft that begins and/or terminates in France, Italy or a third country and has at least one non-stop segment between France and Italy.

13. For the purpose of these Commitments, an airline shall not be deemed to be independent of and unconnected to the Parties when, in particular:

- the effective control⁽¹⁾ of the airline is held solely or in conjunction by the Parties; or
- it is an associated carrier belonging to the same holding company as one of the Parties; or
- it is a member of the SkyTeam alliance; or
- the airline co-operates with the Parties on at least one of the Affected Routes in the provision of passenger air transport services, except if this co-operation is limited to agreements concerning servicing, deliveries, lounge usage or other secondary activities entered into on an arm's length basis.

2. Take-off and landing slots release

14. If a New Entrant wishes to commence a new non-stop service on one or more Affected Routes (each a 'New Entrant City Pair'), the Parties shall make slots available subject to the conditions set out in this Section 2.

2.1. The maximum number of slots to be released

15. The Parties shall be obliged to make available to a New Entrant the number of take-off and landing slots needed to support:

- for flights between Paris and Milan: either (i) up to six (6) frequencies per day in case these frequencies are operated by more than one New Entrant, or (ii) up to five (5) frequencies per day in case these frequencies are operated by a single New Entrant;

⁽¹⁾ Within the meaning of Article 2(g) of Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers.

- for flights between Paris and Rome: up to five (5) frequencies per day;

- for flights between Paris and Venice: up to three (3) frequencies per day;

- for flights between Paris and Bologna: up to two (2) frequencies per day;

- for flights between Paris and Naples: up to one (1) frequency per day;

- for flights between Lyon and Milan: up to two (2) frequencies per day;

- for flights between Paris and Florence: up to two (2) frequencies per day.

2.2. Conditions applicable to all Commitments in Section 2.1

16. The obligation to make slots available as described in Section 2.1 shall only be triggered in the circumstances set out in this Section 2.2.

17. All slots made available pursuant to these Commitments set out in Section 2.1 are to be used on the Affected Route for which the slots were made available.

2.2.1. Frequencies operated by competitors

18. All frequencies operated by airlines independent of and unconnected to the Parties on the Affected Routes ('Competing Frequencies') shall be counted against the number of slots to be released by the Parties under Section 2.1.

19. The Commission may at any time examine whether the airline(s) operating on the Affected Routes is independent of and unconnected to the Parties. Any frequency operated on the affected routes by an airline which is not independent of and unconnected to the Parties shall not be counted against the number of slots to be released by the Parties under Section 2.1.

20. In case the number of Competing Frequencies on an Affected Route decreases (e.g., because a competitor (i) ceases operating the route, (ii) decreases the number of frequencies operated on the route or (iii) can no longer be considered as being independent of and unconnected to the Parties), the Parties' potential slot surrender obligations shall increase by a corresponding number, subject to the limitations in Section 2.1.

21. In case the number of Competing Frequencies on an Affected Route increases as a result of new competing services (because a competitor (i) increases the number of frequencies it already operates on an Affected Route or (ii) enters the market), the Parties' potential slot surrender obligations shall decrease by a corresponding number.

22. In case new Competing Frequencies are added on an Affected route by a competitor without using slots obtained from the Parties and if it leads to a situation where the total number of competing frequencies operated on the route exceeds the number of frequencies specified in Section 2.1:

- (i) the Parties' slot surrender obligations shall decrease by a corresponding number; and
- (ii) slots previously surrendered by the parties which exceed their potential slot surrender obligations shall only be withdrawn after the new Competing Frequencies have been operated for two IATA seasons.

23. Subject to the conditions above, the Parties shall not be required to make a slot available to the New Entrant for an Affected Route insofar that this would result in the Parties' operating less than 60 % of the frequencies or capacity on that Affected Route as measured at the time of the New Entrant's request.

24. The New Entrant which has to return slots to the Parties as a consequence of the last two paragraphs, is entitled to choose which slots to return.

2.2.2. No slots available via the Standard Slot Allocation Procedure

25. At least six (6) weeks prior to the IATA slot conference for the traffic season in which the New Entrant intends to commence a new service or increase the number of services it currently operates, the New Entrant shall notify the Parties of its intention to request for slots pursuant to the Commitments. A New Entrant shall be eligible to receive slots pursuant to the Commitments described in this Section 2 only if it can demonstrate that all reasonable efforts to obtain slots for the New Entrant City Pair through the normal workings of the slot allocation procedure before the beginning of the concerned IATA traffic season (the 'Standard Slot Allocation Procedure') have failed.

26. To this end, the New Entrant shall apply for these slots at the forthcoming IATA slot conference through the normal Slot Allocation Procedure and maintain an 'open book' policy

for the airports concerned during the entire period between the notification of its intention to apply for slots in order to operate services on an Affected Route and the end of the respective IATA scheduling period, including the final allocation of slots by the coordinator following the Slot Return Date ⁽¹⁾.

27. The New Entrant will be deemed not to have exhausted all reasonable efforts if (i) slots were obtained through the Standard Slot Allocation Procedure within forty-five (45) minutes of the times requested but not accepted by the New Entrant and/or (ii) slots were obtained through the Standard Slot Allocation Procedure more than forty-five (45) minutes from the times requested and the New Entrant did not give the Parties the opportunity to exchange those slots for slots within forty-five (45) minutes of the times requested.

28. The slots released by the Parties shall be within forty-five (45) minutes of the time requested by the New Entrant if the Parties have slots available within this time-window. In the event that the Parties do not have slots available within this time-window, they shall propose to the New Entrant to release the slots closest in time to its request.

2.2.3. Ongoing obligation to apply for slots every subsequent season

29. Requests for slots to the slot coordinator and to the parties shall be renewed by the New Entrant for each subsequent IATA scheduling season.

30. If the New Entrant has obtained slots from the Parties pursuant to these Commitments for a particular IATA season and requests some or all of the slots at the same times for the following season, the Parties shall make slots available as close as possible to the slots granted in the preceding season, and in any event within 45 minutes of the time requested, provided that (i) the Parties are still required to surrender slots pursuant to Sections 2.1 and 2.2.1 and hold slots within the relevant time period and, (ii) the New Entrant has complied with the conditions and procedure described above.

2.2.4. Minimum capacity

31. On the Paris–Milan and Paris–Rome city pairs, New Entrant slots shall be used exclusively to operate services with aircraft having a capacity of forty-six (46) or more seats. This condition shall not apply where a New Entrant has commenced service prior to the date on which the Commission's exemption decision becomes effective.

⁽¹⁾ The Slot Return Date shall be the deadline for returning unwanted slots, as defined in Appendix 2 of IATA's Worldwide Scheduling Guidelines (7th Edition, effective 1 December 2002).

2.2.5. Efficient use of the New Entrant slots portfolio

32. Where a New Entrant already operates a service to, from or through one of the airports included in an Affected Route (a 'Prior Service') and reduces frequencies on or ceases to operate the Prior Service, it shall be required to use the slots previously assigned to the Prior Service for service on the New Entrant City Pair if these slots are within forty five (45) minutes of the slots released by the Parties. It shall return to the Parties the same number of New Entrant slots as were previously assigned to the Prior Service.

2.2.6. Non-use of slots released by the Parties

33. Where a New Entrant which has obtained slots pursuant to this Section 2 decides not to commence services on the Affected Route, decides to operate a lower number of frequencies or to cease operating on an Affected Route, it shall inform the Parties in writing and return the unused slots to them immediately.

34. In such cases, the obligation of the Parties to make these slots or the same number of other slots available to New Entrants pursuant to Section 2.1 above continues, subject to the provisions of Section 2.2.1.

35. For the purposes of this Section 2.2.6, a New Entrant will be deemed to have ceased operating on an Affected Route where it has not used at least 80 % of its slots during the scheduling season for which they had been allocated for the city pair in question, unless this non-use of the slots is justified on one of the grounds referred to in Article 10(5) of Regulation (EEC) No 95/93 or in any other regulation that amends or supersedes it. Should the New Entrant be considered to have ceased operating the Affected Route pursuant to this paragraph, the Parties may refuse to surrender slots to the said New Entrant for the next IATA season on this Affected Route.

36. Should a New Entrant which has obtained slots pursuant to this section, decide not to commence services on an Affected Route in two (2) subsequent IATA seasons, the Parties may refuse to surrender slots to the said New Entrant for the next two (2) IATA seasons on this Affected Route.

37. Should the New Entrant notify the Parties too late in a scheduling season for them to use the returned slots pursuant to Article 10(3) of Regulation (EEC) No 95/93, either with immediate effect or after the deadline provided for in Article

10(4) of that Regulation and before the effective start of the scheduling season, the Parties shall be entitled to require the New Entrant to transfer to the Parties a comparable slot as compensation in case the slot is lost. If, for any reason, the New Entrant is unable to transfer to the Parties a comparable slot, they may justify the non-use of the surrendered slot on the basis of Article 10(5) of Regulation (EEC) No 95/93 in order to recover and retain the unused slot.

38. To ensure that the slots provided by the Parties are used in a manner consistent with these conditions, a mechanism shall be agreed between the Parties and the New Entrant that will allow the Parties to monitor how the slots are being used. The Parties shall inform the Commission about the agreed mechanism.

2.2.7. Slot releases shall not be remunerated

39. Slots made available by the Parties under these Commitments shall be offered without any compensation.

2.2.8. Slot releases on a preferential basis

40. All slots made available pursuant to these Commitments shall be released by the Parties on a preferential basis to the New Entrant whose request would allow it to operate the highest number of frequencies compatible with the number of slots which can be obtained from the Parties on the Affected Route in question, pursuant to the Commitments⁽¹⁾.

41. Subject to the provisions of Section 2.2.1, if the number of slots surrendered is lower than the maximum number of slots to be surrendered pursuant to Section 2.1, the remaining slots shall be allocated to other potential New Entrants on the same basis, until there are no slots left to be surrendered.

42. The slots shall be provided to the New Entrant selected by the Parties subject to the Commission's review as described in Section 2.2.9 below.

2.2.9. Selection of New Entrants

43. A New Entrant wishing to obtain slots from the Parties pursuant to these Commitments shall notify the Parties of its intention to apply for these slots at the forthcoming IATA slot conference within the time period specified in Section 2.2.2.

⁽¹⁾ Number of slots already operated by the New Entrant on the route in question + number of slots requested to the parties capped to the maximum number of slots which remain to be surrendered by the parties pursuant to paragraphs 2.1 and 2.2.1 above.

44. A copy of this notification shall be sent at the same time by the New Entrant to the Commission, at the following address:

European Commission
Directorate-General Competition
Antitrust Registry
Case COMP/A.38.284/D2
B-1049 Brussels
Fax (32-2) 295 01 28

45. Should a potential New Entrant be unable to obtain slots through the Standard Slot Allocation Procedure at the IATA slot conference for the traffic season in which services are intended to commence, it shall apply to the Parties for slot releases no more than two (2) weeks following the end of that slot conference. The application shall take into account the slots obtained at the slot conference within 45 minutes of the times requested and give the Parties the opportunity to exchange slots obtained beyond 45 minutes from the times requested, for slots of the Parties within 45 minutes of the times requested pursuant to Section 2.2.2.

46. A copy of this application shall be sent at the same time by the New Entrant to the Commission.

47. No more than four (4) weeks following the end of the IATA slot conference for the traffic season in which services are intended to commence, based on the current expectation as to the allocation of slots for the forthcoming season, the Parties shall submit to the Commission a proposal for the selection of the New Entrant on the Affected Route and a proposal for slot releases to be made to the New Entrant in question.

48. The Commission shall decide whether or not to approve this proposal pursuant to the following criteria:

- the New Entrant is independent of and unconnected to the Parties within the meaning of paragraph 13 above and;
- the New Entrant is a viable existing or potential competitor, with the ability, resources and commitment to operate the Affected Route in the long term as a viable and active competitive force.

49. With this aim in view, the Commission might request the New Entrant to provide a detailed business plan. This plan shall contain a general presentation of the company including its history, its legal status, the list and a description of its shareholders and the two most recent yearly audited financial

reports. The detailed business plan shall provide information on the projects of the company in terms of development of its network, fleet etc, and detailed information on its projects regarding the route on which it wants to operate. The latter should specify in detail the planned operations on the route over a period of 3 years (size of aircraft, number of frequencies operated, planned time-schedule of the flights) and the expected financial results (expected traffic, revenues, profits). The Commission might also request a copy of all co-operation agreements the New Entrant may have with other airlines. Business secrets and confidential information will remain in the Commission confidential file and will not become accessible to other undertakings or to the public.

50. The Parties' proposal and the Commission's approval thereof shall remain subject to adjustment in case of subsequent changes in the anticipated allocation of slots by the slot coordinator that affect the Parties' slot surrender obligations.

51. In the event of any conflicting requests between New Entrants, the New Entrant offering the highest capacity may be favoured.

52. If the Commission does not oppose the Parties' proposal within 6 weeks following the end of the IATA slot conference, this proposal will be deemed accepted.

53. In case the Commission does not approve the proposal submitted by the Parties, if other carriers have applied to the Parties for slots, the Parties shall propose without delay to the Commission other carriers to be selected as New Entrants.

54. Within one (1) week after the approval by the Commission of the selection of the New Entrant on the Affected Route, the Parties shall submit their written proposal for slot releases to this New Entrant.

2.3. Spread of slots at Paris CDG airport

55. To ensure that customers of the Parties enjoy the full benefits of flight connectivity, and without prejudice to Section 2.1, the slots released by the Parties at Paris CDG airport shall be spread as follows.

56. For the purposes of this paragraph, 'Morning Peak Time' shall mean Daily Periods 1 and 2 while 'Evening Peak Time' shall mean Daily Periods 4 and 5.

57. The number of slots released by the Parties at Paris CDG airport for each of the Affected Routes Paris–Milan and Paris–Rome shall not exceed two (2) pairs of slots per ‘Morning Peak Time’ and two (2) pairs of slots per ‘Evening Peak Time’.

58. For each of the other Affected Routes, the number of slots released by the Parties at Paris CDG airport shall not exceed one (1) pair of slots per ‘Morning Peak Time’ and one (1) pair of slots per ‘Evening Peak Time’. Furthermore, for these routes in aggregate, the Parties shall be under no obligation to release more than a total of two (2) pairs of slots during Daily Period 2.

Local Time	Daily Period
6:00	1
7:00	
8:00	
9:00	2
10:00	
11:00	
12:00	3
13:00	
14:00	
15:00	4
16:00	
17:00	
18:00	5
19:00	
20:00	
21:00	6
22:00	
23:00	

2.4. Slot releases at Paris and Milan airports

2.4.1. Slot releases at Paris airports

59. Paris CDG and ORY airports being substitutable, any slots to be made available at Paris airports pursuant to these Commitments may be released from either CDG or ORY at the Parties' discretion.

60. However, the Parties shall be required, upon specific request from a New Entrant, to release slots at ORY airport for operations on an Affected Route in a situation where:

- at the date of the exemption, there is no competing offer in CDG comparable to the one in ORY on this Affected Route;
- such New Entrant already operates services on this Affected Route from ORY at the date of the exemption and wishes to add additional frequencies on this route from this airport;
- the New Entrant has all its scheduled flights serving Paris operated from or to ORY airport, and;
- the New Entrant cannot obtain slots at ORY airport through the Standard Slot Allocation Procedure.

61. In such case, the Parties will make available at ORY airport up to a total of four (4) daily pairs of slots.

62. If all conditions above are fulfilled except the third one, the New Entrant might consider transferring its services currently operated out of ORY on the Affected Route concerned to CDG. In this case, it might apply for slots in CDG pursuant to Section 2.2.2. Its request will then cover all the frequencies it wants to operate on the Affected Route out of CDG, including the frequencies transferred from ORY.

2.4.2. Slot releases at LIN airport

63. The Parties shall be required, upon specific request from a New Entrant, to release slots at LIN airport only if such New Entrant already operates services on an Affected Route from LIN and wishes to add additional frequencies on the route from LIN. In that case, upon fulfilment of the other conditions in these Commitments, the Parties will make slots available within the context of regulatory limits and constraints existing at LIN at the time of the request.

2.5. Slots made available prior to the exemption decision

64. The Parties are ready to anticipate the release of slots to a New Entrant on an Affected Route for the IATA Summer Season 2004 on a voluntary basis. In the event that the Parties have made slots available to a potential New Entrant in the period prior to the adoption of the Commission's exemption decision, those slots shall count towards the number of slots to be released pursuant to these Commitments.

65. A new entrant wishing to obtain slots from the Parties pursuant to this section shall notify its request to the Parties by January 15, 2004.

66. A copy of this request shall be sent at the same time by the New Entrant to the Commission.

67. The New Entrant shall be selected by the Parties according to the criteria set out in Sections 2.2.8 and 2.2.9. The Parties shall submit to the Commission their proposal for the selection of the New Entrant on the Affected Route.

68. If the Commission does not oppose the Parties' proposal within 2 weeks from receipt of the proposal, it will be deemed accepted.

3. Interlining commitment

3.1. Conclusion of Interlining agreements

69. At the request of a New Entrant, the Parties shall enter into an interline agreement concerning any New Entrant City Pair operated by the New Entrant (if it does not have an existing interline agreement with the Parties).

70. Any such interline agreement shall be subject to the following restrictions:

- it shall apply to the first class, business class and leisure travel categories only;
- it shall provide for interlining on the basis of the Parties' published one-way fares when a one-way ticket is issued or half of the Parties' published round-trip fares when a round-trip ticket is issued;
- it shall be limited to true origin and destination traffic operated by the New Entrant;
- it shall be subject to the MITA rules and/or normal commercial conditions;
- it shall include the possibility for the New Entrant, or travel agents, to offer a return trip comprising services provided one-way by the Parties and one-way by the New Entrant.

71. Subject to seat availability in the relevant fare category, the Parties shall carry a passenger holding a coupon issued by a New Entrant for travel on a New Entrant City Pair. However, to avoid abuse, the Parties may require that the New Entrant or the passenger, where appropriate, pay the (positive) difference between the fare charged by the Parties and the fare charged by the New Entrant. In cases where the New Entrant's fare is lower than the value of the coupon issued by them, the Parties may endorse their coupon only up to the value of the fare charged by the New Entrant. A New Entrant shall enjoy the same

protection in cases where the Parties' fare is lower than the value of the coupon issued by it.

72. All interline agreements entered into pursuant to this Section 3 for a particular New Entrant City Pair shall lapse automatically in the event that the New Entrant ceases to operate that city pair.

3.2. Special prorated agreements

73. At the request of a New Entrant, the Parties shall enter into a special prorated agreement with it for traffic with a true origin and destination in either France and/or Italy provided part of the journey involves one of the Affected Routes. The conditions shall be comparable to those entered into with third non-alliance/other alliance carriers in connection with the Affected Route in question.

4. Frequent flyer programme (FFPs)

74. If a New Entrant does not participate in one of the Parties' FFPs or does not have its own comparable FFP, the Parties shall allow it, on request, to be hosted in their joint FFP for the New Entrant City Pairs operated by the New Entrant. The agreement with the New Entrant shall be concluded at market competitive rates for the route(s) it operates.

75. Any agreement relating to a particular New Entrant City Pair and entered into pursuant to this Section 4 shall lapse automatically in the event that the New Entrant ceases to operate that city pair.

5. Commitment to facilitate intermodal passenger transport services

76. At the request of a railway or other surface transport company or sea company operating between France and Italy (an 'Intermodal Partner'), the Parties shall enter into an intermodal agreement whereby they provide passenger air transport on their services on any Affected Route as part of an itinerary that includes surface or sea transportation by the Intermodal Partner.

77. Any intermodal agreement entered into pursuant to this Section 5 shall be based on the MITA principles (including the Intermodal Interline Traffic Agreement — Passenger and IATA Recommended Practice 1780e) and normal commercial conditions.

78. The Parties shall accept full pro-rating according to the terms applied by MITA members, including on routes where only rail services are provided. Where the Intermodal Partner requires notification of a sector mileage, a location identifier or an add-on fare, the Parties shall make such a request to IATA under normal IATA procedures.

79. At the request of a potential Intermodal Partner, the Parties shall make efforts in good faith to reach an agreement on conditions comparable to those granted to other Intermodal Partners, provided that the necessary requirements are met especially with regard to safety, quality of service, insurance coverage and liability limits. The conditions of such an agreement shall override the general obligations arising pursuant to this Section 5.

6. Regulation of frequency increases

80. The Parties shall not add frequencies on an Affected Route, for a period starting when a New Entrant has received slots from the Parties for operations on this Affected Route and covering at least two full consecutive IATA seasons, save in the case of exceptional events requiring additional flights on short term basis.

7. Duration of exemption and conditions

81. The Commitments offered by the Parties shall apply from the date on which the Commission has adopted an exemption decision under Article 5(4) of Regulation (EEC) No 3975/87.

82. The Commitments shall lapse on the date on which the Article 81(3) exemption no longer applies.

83. Should the Commission revoke the Article 81(3) exemption of the cooperation agreement pursuant to Article 6 of Regulation (EEC) No 3975/87 or an equivalent provision in any subsequent regulation, should the Article 81(3)

exemption be annulled, or should the Parties terminate the notified cooperation agreements, the conditions shall be null and void as from the date of revocation, the date of the annulment or the date of termination. In such a case, the Parties shall have the right to demand the return of and to recover any slots provided under these Commitments to an airline which, at the time of the revocation, annulment or termination, is operating services on routes between France and Italy using those slots. The Parties shall also have the right to terminate any interlining, special prorate, FFP or intermodal agreements entered into pursuant to these Commitments.

8. Review clause

84. The Commission may in response to a request from the Parties showing good cause, waive, modify, or substitute any of the Parties' obligations under these Commitments.

III. CONCLUSION

85. In accordance with Article 16 (3) of Regulation (EEC) 3975/87, the Commission invites interested parties to submit their observations on the above notice, and notably the proposed Commitments, within 45 days of the date of publication of this notice, to:

European Commission
Directorate-General for Competition
To the attention of Michel Lamalle or Christine Tomboy
Case COMP/A.38.284/D2
Unit COMP/D2,
Office J-70 02/5
B-1049 Brussels
Rue de la Loi/Wetstraat 200
Fax (32-2) 296 98 12
E-mail: michel.lamalle@cec.eu.int or
christine.tomboy@cec.eu.int

Commission Communication in the framework of the implementation of Council Directive 88/378/EEC of 3 May 1998 concerning the approximation of the laws of the Member States on the safety of toys ⁽¹⁾

(2003/C 297/05)

(Text with EEA relevance)

(Publication of titles and references of European harmonised standards under Directive 88/378/EEC)

ESO ⁽¹⁾	Reference	Title of the standard and reference document	Reference of the superseded standard	Date of cessation of presumption of conformity of the superseded standard	Date of first publication
CEN	EN 71-1:1998	Safety of toys — Part 1: Mechanical and physical properties	EN 71-1:1988 ⁽²⁾	31.1.2001	28.7.1999 ⁽³⁾
CEN	EN 71-1:1998/A5:2000	Safety of toys — Part 1: Mechanical and physical properties — Amendment 5	EN 71-1:1998, clauses 3.7, 4.4, 4.15.1.4, 4.16, 5.4, 7.18, 8.2, 8.4.2.2, 8.11.3, 8.15, 8.17, 8.26.2.2, C.5, C.10, C.30, C.32.	31.5.2001	14.9.2001 ⁽⁴⁾
CEN	EN 71-1:1998/A1:2001	Safety of toys — Part 1: Mechanical and physical properties — Amendment 1	EN 71-1:1998, clauses 4.15.1, 7.11, C.19	31.7.2001	14.9.2001 ⁽⁵⁾
CEN	EN 71-1:1998/A2:2002	Safety of toys — Part 1: Mechanical and physical properties — Amendment 2	EN 71-1:1998, clauses 4.20, 7.8, 8.31.2.4	31.8.2002	8.8.2002 ⁽⁶⁾
CEN	EN 71-1:1998/A6:2002	Safety of toys — Part 1: Mechanical and physical properties — Amendment 6	EN 71-1:1998, clauses 1, 4.17, C.23	30.9.2002	8.8.2002 ⁽⁷⁾
CEN	EN 71-1:1998/A7:2002	Safety of toys — Part 1: Mechanical and physical properties — Amendment 7	EN 71-1:1998, clauses 4.14.1, 8.41, 8.41.1, 8.41.2, C.17	30.11.2002	8.8.2002 ⁽⁸⁾
CEN	EN 71-1:1998/A8:2003	Safety of toys — Part 1: Mechanical and physical properties — Amendment 8	EN 71-1:1998, clauses 3.xx, 4.22, 5.11, 5.12, 7.19, 8.34, 8.35, C.49	31.3.2004	This is the first publication

Notice: The standard EN 71-1:1998/A8:2003 only addresses the risks caused by 'small balls' (as defined in the standard as 'spherical, ovoid, or ellipsoidal object') that are designed to be thrown, hit, kicked, dropped or bounced. The risks covered by small balls are linked to their shape and not to their function. Toys containing small balls which are not covered by the standard shall undergo an EC type-examination certificate before placed on the market.

In accordance with the Commission Decision of 30 July 2001 ⁽⁹⁾, clause 4.20(d) of EN 71-1:1998, concerning the C-weighted peak emission sound pressure level produced by a toy using percussion caps, grants presumption of conformity only as from 1 August 2001.

CEN	EN 71-2:2003	Safety of toys — Part 2: Flammability	EN 71-2:1993	31.3.2004	This is the first publication
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⁽¹⁾ OJ L 187, 16.7.1988.

ESO ⁽¹⁾	Reference	Title of the standard and reference document	Reference of the superseded standard	Date of cessation of presumption of conformity of the superseded standard	Date of first publication
CEN	EN 71-2:1993/ AC:1995	Safety of toys — Part 2: Flammability — corrigendum	Not applicable	Not applicable	8.8.2002 ⁽¹⁰⁾
CEN	EN 71-3:1994	Safety of toys — Part 3: Migration of certain elements	EN 71-3:1988 ⁽¹¹⁾	30.6.1995	12.10.1995 ⁽¹²⁾
CEN	EN 71-3:1994/ AC:2002	Safety of toys — Part 3: Migration of certain elements — corrigendum	Not applicable	Not applicable	15.3.2003 ⁽¹³⁾
CEN	EN 71-3:1994/ A1:2000	Safety of toys — Part 3: Migration of certain elements — Amendment 1	EN 71-3:1994, clauses 8.7.1, 8.7.2, 8.8.1, 8.9.1, 8.9.2, 6.1.6, Annex A, D.5.1, 5, 8.2.1, 8.3.1, 8.4.1, 8.6.1, 8.7.1, 8.7.2, 8.9.1, 8.9.2, D.3	31.10.2000	14.9.2001 ⁽¹⁴⁾
CEN	EN 71-3:1994/ A1:2000/ AC:2000	Safety of toys — Part 3: Migration of certain elements — Amendment 1 — corrigendum	Not applicable	Not applicable	8.8.2002 ⁽¹⁵⁾
CEN	EN 71-4:1990	Safety of toys — part 4: Experimental sets for chemistry and related activities	Not applicable	Not applicable	9.2.1991 ⁽¹⁶⁾
CEN	EN 71-4:1990/ A1:1998	Safety of toys — Part 4: Experimental sets for chemistry and related activities — Amendment 1	EN 71-4:1990, clauses 6.1, 6.2, 6.3, 6.5, 7.1, 7.3.2, 9.1, 9.3	31.10.1998	5.9.1998 ⁽¹⁷⁾
CEN	EN 71-4:1990/ A2:2003	Safety of toys — Part 4: Experimental sets for chemistry and related activities — Amendment 2	EN 71-4:1990, clauses 2.3, 6.2.4, Annex A	31.3.2004	This is the first publication
CEN	EN 71-5:1993	Safety of toys — Part 5: Chemical toys (sets) other than experimental sets	Not applicable	Not applicable	1.9.1993 ⁽¹⁸⁾
CEN	EN 71-6:1994	Safety of toys — Part 6: Graphical symbol for age warning labelling	Not applicable	Not applicable	22.6.1995 ⁽¹⁹⁾
CEN	EN 71-7:2002	Safety of toys — Part 7: Finger paints — Requirements and test methods	Not applicable	Not applicable	15.3.2003 ⁽²⁰⁾
CEN	EN 71-8:2003	Safety of toys — Part 8: Swings, slides and similar activity toys for indoor and outdoor family domestic use	Not applicable	Not applicable	This is the first publication
Cenelec	EN 50088:1996	Safety of electric toys	Not applicable	Not applicable	21.6.1997 ⁽²¹⁾

ESO ⁽¹⁾	Reference	Title of the standard and reference document	Reference of the superseded standard	Date of cessation of presumption of conformity of the superseded standard	Date of first publication
Cenelec	EN 50088:1996/A2:1997	Safety of electric toys — Amendment 2	EN 50088:1996, clauses 1, 3.2.2, H.1, H.5, H.7.1, H.7.4, H.8, H.9.4, H.9.6, H.9.9, H.11, H.12, H.13, H.14, H.15	1.3.2000	27.11.1999 ⁽²²⁾
Cenelec	EN 50088:1996/A1:1996	Safety of electric toys — Amendment 1	EN 50088:1996, clause 14.2	1.10.2001	21.6.1997 ⁽²³⁾
Cenelec	EN 50088:1996/A3:2002	Safety of electric toys — Amendment 3	EN 50088:1996, clauses 1, 2.3.1.6, 3.1.8., 3.2.3, 3.5.1, 3.5.4, 5.1.4, 5.1.5, 6, 6.1, 6.2, 7.1.1, 7.2, 7.3, 7.4, 7.7, 9.2, 9.3, 9.4, 9.5, 9.8, 9.8.2, 9.9, 11.1, 13, 14.6, 14.7, 14.10, 14.12, 16.3, 17.1, 19.2.1, 19.2.2, 19.2.3, 20, Annexes.	1.3.2005	15.3.2003 ⁽²⁴⁾

⁽¹⁾ European standardisation organisation:

— CEN: rue de de Stassart/Stassartstraat 36, B-1050 Brussels; tel. (32-2) 550 08 11, fax (32-2) 550 08 19 (<http://www.cenorm.be>);

— CENELEC: rue de de Stassart/Stassartstraat 35, B-1050 Brussels; tel. (32-2) 519 68 71, fax (32-2) 519 69 19 (<http://www.cenelec.org>);

— ETSI: 650, route des Lucioles, F-06921 Sophia-Antipolis Cedex France, tel. (33-4) 92 94 42 00, fax (33-4) 93 65 47 16 (<http://www.etsi.org>).

⁽²⁾ OJ C 155, 23.6.1989, p. 2.

⁽³⁾ OJ C 215, 28.7.1999, p. 4.

⁽⁴⁾ OJ C 256, 14.9.2001, p. 4.

⁽⁵⁾ OJ C 256, 14.9.2001, p. 4.

⁽⁶⁾ OJ C 188, 8.8.2002, p. 8.

⁽⁷⁾ OJ C 188, 8.8.2002, p. 8.

⁽⁸⁾ OJ C 188, 8.8.2002, p. 8.

⁽⁹⁾ OJ L 205, 31.7.2001 p. 39.

⁽¹⁰⁾ OJ C 188, 8.8.2002, p. 8.

⁽¹¹⁾ OJ C 155, 23.6.1989, p. 2.

⁽¹²⁾ OJ C 265, 12.10.1995, p. 23.

⁽¹³⁾ OJ C 62, 15.3.2003, p. 4.

⁽¹⁴⁾ OJ C 256, 14.9.2001, p. 4.

⁽¹⁵⁾ OJ C 188, 8.8.2002, p. 8.

⁽¹⁶⁾ OJ C 34, 9.2.1991, p. 4.

⁽¹⁷⁾ OJ C 277, 5.9.1998, p. 2.

⁽¹⁸⁾ OJ C 237, 1.9.1993, p. 2.

⁽¹⁹⁾ OJ C 156, 22.6.1995, p. 4.

⁽²⁰⁾ OJ C 62, 15.3.2003, p. 4.

⁽²¹⁾ OJ C 190, 21.6.1997, p. 8.

⁽²²⁾ OJ C 340, 27.11.1999, p. 69.

⁽²³⁾ OJ C 190, 21.6.1997, p. 8.

⁽²⁴⁾ OJ C 62, 15.3.2003, p. 4.

NOTE:

— any information concerning the availability of the standards can be obtained either from the European standardisation organisations ⁽¹⁾ or from the national standardisation bodies of which the list is annexed to European Parliament and Council Directive 98/34/EC ⁽²⁾, as amended by Council Directive 98/48/EC ⁽³⁾.

— publication of the references in the *Official Journal of the European Union* does not imply that the standards are available in all the Community languages.

— this list replaces all the previous lists published in the *Official Journal of the European Union*.

— the Commission ensures the updating of this list.

⁽¹⁾ www.cenorm.be, www.cenelec.org, www.etsi.org

⁽²⁾ OJ L 204/37, 21.7.1998, p. 37.

⁽³⁾ OJ L 217/18, 5.8.1998, p. 18.

COMMISSION OPINION

of 8 December 2003

within the framework of Council Directive 73/23/EEC relating to electrical equipment designed for use within certain voltage limits

Safety of cable reels

(2003/C 297/06)

(Text with EEA relevance)

Article 9 of Council Directive 73/23/EEC of 19 February 1973 on the harmonisation of the laws of Member States relating to electrical equipment designed for use within certain voltage limits ⁽¹⁾ stipulates the procedures where a Member State, for safety reasons, prohibits the placing on the market of electrical equipment or impedes its free movement. In such a case, the Member State informs the other Member States concerned and the Commission, indicating the grounds for its decision and stating in particular whether the non-conformity is attributable to a shortcoming in a harmonised standard referred to in Article 5 of the Directive, incorrect application of a harmonised standard, or failure to comply with good engineering practice referred to in Article 2 of the Directive.

Article 5 of the Directive confers a presumption of conformity to European standards adopted by the European Standards Body Cenelec to the requirements of Directive 73/23/EEC. These standards are called 'harmonised standards'. Their references are published for information purposes by the European Commission in the *Official Journal of the European Union* (previously the *Official Journal of the European Communities*).

In the context of a notification under the safeguard clause procedure in accordance with Article 9 of the Low Voltage Directive, a shortcoming in the harmonised standard EN 61242 has been brought to the attention of the European Commission by the Swedish authorities.

The shortcoming relates to the risk of fire and electrical shock, which might occur if cable reels are subject to a maximum load and the cable is not completely unrolled. The insulation material can melt and live parts may be accessible.

In accordance with Article 5 of Directive 73/23/EEC, a reference to the harmonised standard EN 61242 was published in the *Official Journal of the European Communities* ⁽²⁾.

This standard, as adopted by the European Standards Body Cenelec, is entitled:

— EN 61242 Electrical accessories — Cable reels for household and similar purposes.

⁽¹⁾ OJ L 77, 26.3.1973, Directive as amended by Directive 93/68/EEC (OJ L 220, 30.8.1993, p. 1).

⁽²⁾ OJ C 57, 4.3.2002, p. 1.

The safety objectives, as laid down in Annex I, Section 2 (a-d) of Directive 73/23/EEC require that electrical equipment should be designed and manufactured so as to ensure:

- protection against hazards which may be caused by electrical contact;
- protection against hazards which may be caused by hot temperatures;
- protection against hazards which are revealed by experience;
- a suitable insulation in foreseeable conditions.

The current version of this standard does not adequately address the risk of fire and of electrical shock in cases where there is a foreseeable overload of cable reels. In particular, the test procedure referred to in clause 20.2 of the standard is not considered as sufficient to cover the foreseeable conditions of use.

As a consequence, EN 61242 as listed in the above mentioned publication in the *Official Journal of the European Communities* is not regarded as giving a presumption of conformity with regard to the risk of fire and of electrical shock in cases of foreseeable overload.

These conclusions were supported by experts from national administrations at the meeting of the Administrative Co-operation Working Group of 11 March 2002.

The European Standards body Cenelec has been requested by the European Commission to revise this standard to ensure that the above mentioned risks are adequately addressed.

In the absence of a revised harmonised standard, the manufacturer will need to make a risk assessment regarding cable reels for these aspects in order to ensure that the risk of fire and electrical shock, in cases of foreseeable overload, are adequately addressed, when establishing compliance of relevant electrical equipment with the requirements of the Low Voltage Directive.

As a result of the above, the Commission is of the opinion that

- EN 61242 as listed in the above mentioned publication in the *Official Journal of the European Communities* is not regarded as giving a presumption of conformity with regard to the risk of fire and of electrical shock in cases of foreseeable overload;
- Manufacturers of the relevant products may use thermal or current cut-outs or other appropriate means to ensure that the risk of fire and electrical shock, in cases of foreseeable overload, are adequately addressed;
- Member States' Authorities take account of this opinion in the context of market surveillance. Member States should base their market surveillance measures on a case-by-case evaluation and respect the principle of proportionality.

Non-opposition to a notified concentration

(Case COMP/M.3268 — Sydkraft/Granninge)

(2003/C 297/07)

(Text with EEA relevance)

On 30 October 2003, 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 303M3268. CELEX is the computerised documentation system of European Community law.

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Non-opposition to a notified concentration**(Case COMP/M.3317 — Ratos/Lehmann Brothers/Fastighetstornet)**

(2003/C 297/08)

(Text with EEA relevance)

On 1 December 2003, 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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Non-opposition to a notified concentration**(Case COMP/M.3290 — General Electric/Sophia)**

(2003/C 297/09)

(Text with EEA relevance)

On 1 December 2003 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 French and will be made public after it is cleared of any business secrets it may contain. It will be available:

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Non-opposition to a notified concentration**(Case COMP/M.3279 — Generali/Zurich Financial Services)**

(2003/C 297/10)

(Text with EEA relevance)

On 13 November 2003 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 French and will be made public after it is cleared of any business secrets it may contain. It will be available:

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Non-opposition to a notified concentration**(Case COMP/M.3237 — San Paolo IMI/Santander Group/Allfunds JV)**

(2003/C 297/11)

(Text with EEA relevance)

On 28 November 2003, 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),
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Non-opposition to a notified concentration**(Case COMP/M.3130 — Arla Foods/Express Dairies (M.2579))**

(2003/C 297/12)

(Text with EEA relevance)

On 10 June 2003, 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 303M3130. CELEX is the computerised documentation system of European Community law.

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III

(Notices)

COUNCIL

Texts published in the Official Journal of the European Union C 297 E

(2003/C 297/13)

These texts are available on:

EUR-Lex: <http://europa.eu.int/eur-lex>**CELEX:** <http://europa.eu.int/celex>

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2003/C 297 E/01	Common Position (EC) No 60/2003 of 29 September 2003 adopted by the Council, acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community, with a view to adopting a regulation of the European Parliament and of the Council laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency ⁽¹⁾	1
2003/C 297 E/02	Common Position (EC) No 61/2003 of 29 September 2003 adopted by the Council, acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community, with a view to adopting a directive of the European Parliament and of the Council amending Directive 2001/83/EC on the Community code relating to medicinal products for human use ⁽¹⁾	41
2003/C 297 E/03	Common Position (EC) No 62/2003 of 29 September 2003 adopted by the Council, acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community, with a view to adopting a directive of the European Parliament and of the Council amending Directive 2001/82/EC on the Community code relating to veterinary medicinal products ⁽¹⁾	72

⁽¹⁾ Text with EEA relevance

CORRIGENDA

Corrigendum to the Call for Proposals DG EAC 04/03 — European year of education through sport 2004*(Official Journal of the European Union C 126 of 28 May 2003)*

(2003/C 297/14)

On page 45, footnote 13:

for: 'If the beneficiary refuses to sign this declaration, detailed justification must be attached to the application form. The Commission will take this into consideration when awarding grants.'

read: 'For the cases quoted in (a) till (h) a declaration on oath made by the person concerned is required.'

Corrigendum to diplomas, certificates and other evidence of formal qualifications in architecture which are the object of mutual recognition by the Member States*(Official Journal of the European Union C 294 of 4 December 2003)*

(2003/C 297/15)

On page 5, in the table, the entry for 'PORTUGAL' shall read as follows:

Country	Title of diploma	Body awarding diploma	Certificate accompanying diploma
PORTUGAL	Carta de curso de Licenciatura em Arquitectura Para os cursos iniciados a partir do ano académico de 1991/1992	Faculdade de arquitectura da Universidade técnica de Lisboa Faculdade de arquitectura da Universidade do Porto Escola Superior Artística do Porto Universidade Lusíada do Porto — Faculdade de Arquitectura e Artes	