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| <u>Notice No</u> | <u>Contents</u> | <u>Page</u> |
|------------------|---|-------------|
| | I <i>Information</i> | |
| | Commission | |
| 2005/C 40/01 | Euro exchange rates | 1 |
| 2005/C 40/02 | Information relating to courts and redress procedures pursuant to Article 68 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 | 2 |
| 2005/C 40/03 | Communication from the French Government concerning Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons (<i>Notice regarding an application for an exclusive licence to prospect for liquid and gaseous hydrocarbons, entitled 'Permis de Foix'</i>) ⁽¹⁾ | 5 |
| 2005/C 40/04 | Non-opposition to a notified concentration (Case COMP/M.3561 — Deutsche Telekom/Eurotel) ⁽¹⁾ | 7 |
| 2005/C 40/05 | Notice concerning the anti-subsidy and anti-dumping measures in force in respect of imports into the Community of polyethylene terephthalate (PET) film originating in India: change in the name of a company subject to individual countervailing and anti-dumping duty rates | 8 |
| | European Central Bank | |
| 2005/C 40/06 | Opinion of the European Central Bank of 4 February 2005 at the request of the Council of the European Union on a proposal for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing (COM(2004) 448 final) (CON/2005/2) | 9 |

EN

EUROPEAN ECONOMIC AREA

EFTA Court

| | | |
|--------------|--|----|
| 2005/C 40/07 | Request for an Advisory Opinion from the EFTA Court by Frostating lagmannsrett by decision of that court of 23 April 2004 in the case of Fokus Bank ASA v Staten v/Skattedirektoratet (Case E-1/04) | 14 |
| 2005/C 40/08 | Request for an Advisory Opinion from the EFTA Court by Gulating lagmannsrett by decision of that court of 3 May 2004 in the case of Reidar Rasmussen m.fl. v Total E&P Norge AS (Case E-2/04) | 15 |
| 2005/C 40/09 | Request for an Advisory Opinion from the EFTA Court by Gulating lagmannsrett by decision of that court of 28 May 2004 in the case of Tsomakas Athanasios m.fl. v Staten v/Rikstrygdeverket (Case E-3/04) | 16 |
| 2005/C 40/10 | Action brought on 8 November 2004 by the EFTA Surveillance Authority against the Principality of Liechtenstein (Case E-8/04) | 17 |
| 2005/C 40/11 | Action brought on 23 November 2004 by the Bankers' and Securities Dealers' Association of Iceland against the EFTA Surveillance Authority (Case E-9/04) | 18 |

EFTA Standing Committee

| | | |
|--------------|---|----|
| 2005/C 40/12 | National reference laboratory designated by Norway in accordance with Council Decision 1999/313/EC on reference laboratories for monitoring bacteriological and viral contamination of bivalve molluscs | 19 |
|--------------|---|----|

EFTA Surveillance Authority

| | | |
|--------------|---|----|
| 2005/C 40/13 | 43 th amendment of the State aid guidelines — EFTA Surveillance Authority decision to propose appropriate measures | 20 |
| 2005/C 40/14 | EMAS — The Eco-Management and Audit Scheme list of registered sites in Norway in accordance with Regulation (EC) No 761/2001 of the European Parliament and of the council of 19 March 2001 | 21 |

II *Preparatory Acts*

.....



III *Notices*

Commission

| | | |
|--------------|--|----|
| 2005/C 40/15 | IRL-Dublin: operation of scheduled air services — Invitation to tender issued by Ireland under Article 4(1)(d) of Council Regulation (EEC) No 2408/92 in respect of the operation of scheduled air services between Kerry and Dublin, Ireland ⁽¹⁾ | 24 |
| 2005/C 40/16 | IRL-Dublin: operation of scheduled air services — Invitation to tender issued by Ireland under Article 4(1)(d) of Council Regulation (EEC) No 2408/92 in respect of the operation of scheduled air services between Galway and Dublin, Ireland ⁽¹⁾ | 26 |
| 2005/C 40/17 | IRL-Dublin: operation of scheduled air services — Invitation to tender issued by Ireland under Article 4(1)(d) of Council Regulation (EEC) No 2408/92 in respect of the operation of scheduled air services on two internal air routes: Donegal — Dublin and Sligo — Dublin ⁽¹⁾ | 28 |
| 2005/C 40/18 | IRL-Dublin: Operation of scheduled air services — Invitation to tender issued by Ireland under Article 4(1)(d) of Council Regulation (EEC) No 2408/92 in respect of the operation of scheduled air services on two routes: Knock — Dublin and Derry — Dublin ⁽¹⁾ | 30 |



⁽¹⁾ Text with EEA relevance

I

(Information)

COMMISSION

Euro exchange rates ⁽¹⁾

16 February 2005

(2005/C 40/01)

1 euro =

| Currency | Exchange rate | Currency | Exchange rate | | |
|----------|------------------|----------|---------------|--------------------|----------|
| USD | US dollar | 1,3040 | LVL | Latvian lats | 0,6960 |
| JPY | Japanese yen | 137,00 | MTL | Maltese lira | 0,4312 |
| DKK | Danish krone | 7,4429 | PLN | Polish zloty | 4,0059 |
| GBP | Pound sterling | 0,69135 | ROL | Romanian leu | 38 339 |
| SEK | Swedish krona | 9,0761 | SIT | Slovenian tolar | 239,75 |
| CHF | Swiss franc | 1,5469 | SKK | Slovak koruna | 38,072 |
| ISK | Iceland króna | 81,08 | TRY | Turkish lira | 1,7126 |
| NOK | Norwegian krone | 8,3590 | AUD | Australian dollar | 1,6626 |
| BGN | Bulgarian lev | 1,9559 | CAD | Canadian dollar | 1,6078 |
| CYP | Cyprus pound | 0,5831 | HKD | Hong Kong dollar | 10,1708 |
| CZK | Czech koruna | 30,062 | NZD | New Zealand dollar | 1,8237 |
| EEK | Estonian kroon | 15,6466 | SGD | Singapore dollar | 2,1377 |
| HUF | Hungarian forint | 243,85 | KRW | South Korean won | 1 337,90 |
| LTL | Lithuanian litas | 3,4528 | ZAR | South African rand | 7,8139 |

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

Information relating to courts and redress procedures pursuant to Article 68 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000

(2005/C 40/02)

The courts and redress procedures notify to the Commission by the Member States after this date and any amendments thereto, will be published latter

List 1

The applications provided for by Articles 21 and 29 shall be submitted to the following courts:

- in Belgium, the ‘tribunal de première instance’/‘rechtbank van eerste aanleg’/‘erstinstanzliches Gericht’,
- in Czech Republic, the ‘okresní soud’ or ‘soudní exekutor’,
- in Germany:
 - in the district of the ‘Kammergericht’ (Berlin), the ‘Familiengericht’, ‘Pankow/Weissensee’;
 - in the districts of the remaining ‘Oberlandesgerichte’, to the ‘Familiengericht’ located at the seat of the respective ‘Oberlandesgericht’,
- in Estonia, the ‘maakohus’ or the ‘linnakohus’,
- in Greece, the ‘Πρωτοδικείο’.
- in Spain, the ‘Juzgado de Primera Instancia’,
- in France, the ‘juge aux affaires familiales du tribunal de grande instance’,
- in Ireland, the High Court,
- in Italy, the ‘Corte d’appello’,
- in Cyprus, *no information communicated to the European Commission*,
- in Latvia, the ‘rajona (pilsētas) tiesa’,
- in Lithuania, the ‘Lietuvos apeliacinis teismas’,
- in Luxembourg, the presiding Judge of the ‘Tribunal d’arrondissement’,
- in Hungary, *no information communicated to the European Commission*,
- in Malte, the ‘Prim’ Awla tal-Qorti Civili’ or ‘il-Qorti tal Maġistrati ta’ Ghawdex fil-gurisdizzjoni super-juri tagħha’,
- in Netherlands, the ‘voorzieningenrechter van de rechtbank’,
- in Austria, the ‘Bezirksgericht’,
- in Poland, the ‘Sąd okręgowy’,
- in Portugal, the ‘Tribunal de comarca’ or ‘Tribunal de Família e Menores’,
- in Slovenia, the ‘okrožno sodišče’,
- in Slovakia:
 - (a) the ‘Krajský súd v Bratislave’ for an application relating to divorce, legal separation or marriage annulment;
 - (b) the ‘Okresný súd’ for the habitual residence of the child or ‘Okresný súd Bratislava I’ when a child has no habitual residence in the Slovak Republic for an application relating to parental responsibility.

- in Finland, the 'Käräjäoikeus/tingsrätt',
- in Sweden, the 'Svea hovrätt',
- in United Kingdom:
 - (a) in England and Wales, the High Court of Justice — Principal Registry of the Family Division;
 - (b) in Scotland, the Court of Session, Outer House;
 - (c) in Northern Ireland, the High Court of Justice.

List 2

The appeals provided for by Article 33 shall be lodged with the courts listed below:

- in Belgium:
 - (a) a person applying for a declaration of enforceability may lodge an appeal with the 'cour d'appel' or the 'hof van beroep';
 - (b) the person against whom enforcement is sought may lodge opposition with the 'tribunal de première instance'/'rechtbank van eerste aanleg'/'erstinstanzliches Gericht',
- in Czech Republic, the 'okresní soud',
- in Germany, the 'Oberlandesgericht',
- in Estonia, the 'ringkonnakohus'
- in Greece, the 'Εφετείο',
- in Spain, the 'Audiencia Provincial',
- in France, the 'Cour d'appel',
- in Ireland, the High Court,
- in Italy, the 'Corte d'appello',
- in Cyprus, *no information communicated to the European Commission*,
- in Latvia, the 'apgabaltiesā',
- in Lithuania, the 'Lietuvos apeliacinis teismas',
- in Luxembourg, the 'Cour d'appel',
- in Hungary, *no information communicated to the European Commission*,
- in Malte, the 'Qorti tal-Appell' in accordance with the procedure laid down for appeals in the 'Kodiċi tal-Organizzazzjoni u Proċedura Ċivili — Kap. 12',
- in Netherlands, the 'rechtbank',
- in Austria, the 'Bezirksgericht',
- in Poland, the 'Sąd apelacyjny',
- in Portugal, the 'Tribunal da Relação',
- in Slovenia, the 'okrožno sodišče',
- in Slovakia, the 'Okresný súd',
- in Finland, the 'Hovioikeus/hovrätt',
- in Sweden, the 'Svea hovrätt',
- in United Kingdom:
 - (a) in England and Wales, the High Court of Justice — Principal Registry of the Family Division;
 - (b) in Scotland, the Court of Session, Outer House;
 - (c) in Northern Ireland, the High Court of Justice.

List 3

The appeals provided for by Article 34 may be brought only:

- in Belgium, Greece, Spain, France, Italy, Latvia, Luxembourg, Netherlands, by an appeal in cassation,
 - in Czech Republic, by a ‘žaloba pro zmatečnost’ and a ‘dovolání’,
 - in Germany, by a ‘Rechtsbeschwerde’,
 - in Estonia, by ‘kasaatsioonkaebus’,
 - in Ireland, by an appeal on a point of law to the Supreme Court,
 - in Cyprus, *no information communicated to the European Commission*,
 - in Lithuania, by an appeal in cassation to the ‘Lietuvos Aukščiausiasis Teismas’,
 - in Hungary, *no information communicated to the European Commission*,
 - in Austria, by a ‘Revisionsrekurs’,
 - in Poland, by an appeal in cassation to the ‘Sąd Najwyższy’,
 - in Portugal, by a ‘recurso restrito à matéria de direito, para o Supremo Tribunal de Justiça’,
 - in Slovenia, ‘pritožba na Vrhovno sodišče Republike Slovenije’,
 - in Slovakia, by a ‘dovolanie’,
 - in Finland, by an appeal to ‘Korkein oikeus/högsta domstolen’,
 - in Sweden, by an appeal to the ‘Högsta domstolen’,
 - in United Kingdom, by a single further appeal on a point of law:
 - (a) in England and Wales, to the Court of Appeal;
 - (b) in Scotland, to the Court of Session, Inner House;
 - (c) in Northern Ireland, to the Northern Ireland Court of Appeal.
-

Communication from the French Government concerning Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons ⁽¹⁾

(Notice regarding an application for an exclusive licence to prospect for liquid and gaseous hydrocarbons, entitled 'Permis de Foix')

(2005/C 40/03)

(Text with EEA relevance)

By request of 7 October 2004, the company Encana France, with registered offices at 68, rue du Faubourg Saint-Honoré, 75008 Paris (France), asked for an exclusive licence, for a period of five years, to prospect for liquid and gaseous hydrocarbons, entitled 'Permis de Foix', over an area of some 3 478 sq. km., partly in the *départements* of Hautes Pyrénées, Haute-Garonne, Ariège and Aude.

The perimeter of this licence is made up of the meridian and parallel arcs joining the vertices defined below by their geographical coordinates, the original meridian being that of Paris.

| VERTICES | LONGITUDE | LATITUDE |
|----------|-------------|--------------|
| A | 2.30 deg. W | 48.10 deg. N |
| B | 1.40 deg. W | 48.10 deg. N |
| C | 1.40 deg. W | 48.00 deg. N |
| D | 1.10 deg. W | 48.00 deg. N |
| E | 1.10 deg. W | 47;90 deg. N |
| F | 0.80 deg. W | 47.90 deg. N |
| G | 0.80 deg. W | 47.80 deg. N |
| H | 0.20 deg. W | 47.80 deg. N |
| I | 0.20 deg. W | 47.60 deg. N |
| J | 0.70 deg. W | 47.60 deg. N |
| K | 0.70 deg. W | 47.70 deg. N |
| L | 1.00 deg. W | 47.70 deg. N |
| M | 1.00 deg. W | 47.80 deg. N |
| N | 2.30 deg. W | 47.80 deg. N |

The following are excluded from this perimeter:

The area of the Bonrepos-Montastruc concession (47,09 km²),

| VERTICES | LONGITUDE | LATITUDE |
|----------|-------------|--------------|
| O | 2.24 deg. W | 47.98 deg. N |
| P | 2.24 deg. W | 48.04 deg. N |
| Q | 2.20 deg. W | 48.04 deg. N |
| R | 2.20 deg. W | 48.06 deg. N |
| S | 2.15 deg. W | 48.06 deg. N |
| T | 2.15 deg. W | 47.98 deg. N |

⁽¹⁾ OJ L 164, 30.6.1994, p. 3.

The area of the Proupiary concession (13 km²),

| VERTICES | LONGITUDE | LATITUDE |
|----------|--------------|---------------|
| U | 1.723 deg. W | 47.965 deg. N |
| V | 1.686 deg. W | 47.990 deg. N |
| W | 1.641 deg. W | 47.981 deg. N |
| X | 1.640 deg. W | 47.970 deg. N |
| Y | 1.638 deg. W | 47.955 deg. N |
| Z | 1.650 deg. W | 47.957 deg. N |

The area of the Saint Marcet concession (39,43 km²),

| VERTICES | LONGITUDE | LATITUDE |
|----------|----------------|----------------|
| AA | 1.778 deg. W | 48.032 deg. N |
| AB | 1.716 deg. W | 48.032 deg. N |
| AC | 1.700 deg. W | 48.0096 deg. N |
| AD | 1.69316 deg. W | 48.000 deg. N |
| AE | 1.686 deg. W | 47.990 deg. N |
| AF | 1.723 deg. W | 47.965 deg. N |
| AG | 1.796 deg. W | 47.974 deg. N |
| AH | 1.78794 deg. W | 48.000 deg. N |

Interested companies may, within ninety days of the publication of this notice, submit a competing application in accordance with the procedure summarised in the 'Notice regarding the granting of mining rights for hydrocarbons in France' published in *Official Journal of the European Communities* No C 374 of 30 December 1994, page 11, and established by Decree 95-427 of 19 April 1995 regarding mining rights (*Journal officiel de la République française* of 22 April 1995).

Additional information can be obtained from the Ministry of Economic Affairs, Finance and Industry (Directorate-General of Energy and Raw Materials, Directorate of Energy and Mineral Resources, Office for Mining Legislation), 61 Boulevard Vincent-Auriol, Télédéc 133, F-75703 Paris Cedex 13 (Tel. (33) 144 97 02 30, Fax (33) 144 97 05 70).

Non-opposition to a notified concentration
(Case COMP/M.3561 — Deutsche Telekom/Eurotel)

(2005/C 40/04)

(Text with EEA relevance)

On 15 December 2004, 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 (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- from the Europa competition web site (<http://europa.eu.int/comm/competition/mergers/cases/>). This web site provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
 - in electronic form on the EUR-Lex website under document number 32004M3561. EUR-Lex is the on-line access to European law. (<http://europa.eu.int/eur-lex/lex>)
-

Notice concerning the anti-subsidy and anti-dumping measures in force in respect of imports into the Community of polyethylene terephthalate (PET) film originating in India: change in the name of a company subject to individual countervailing and anti-dumping duty rates

(2005/C 40/05)

Imports of polyethylene terephthalate (PET) film originating in India are subject to a definitive countervailing duty imposed by Council Regulation (EC) No 2597/1999 ⁽¹⁾ and to a definitive anti-dumping duty imposed by Council Regulation (EC) No 1676/2001 ⁽²⁾.

The exports to the Community of polyethylene terephthalate (PET) film of MTZ Polyesters Limited, a company located in India, are subject to an individual countervailing duty rate of 8,7 % and an individual anti-dumping duty rate of 49,0 %. An undertaking concerning the imports subject to an anti-dumping duty was accepted by Commission Decision 2001/645/EC ⁽³⁾. The company has informed the Commission that it has changed its name to MTZ Polyfilms Limited. The company has argued that the change of name does not affect the right of the company to benefit from the individual countervailing and anti-dumping duty rates nor the right to benefit from the undertaking given by the company under its previous name of MTZ Polyesters Limited.

The Commission has examined the information supplied and concluded that the change of name in no way affects the findings of Council Regulation (EC) No 2597/1999, of Council Regulation (EC) No 1676/2001 and those of Commission Decision 2001/645/EC. Therefore, the reference to MTZ Polyesters Limited should be read as MTZ Polyfilms Limited in Article 1 of Council Regulation (EC) No 2597/1999, in Article 1 and 2 of Council Regulation (EC) No 1676/2001 and in Article 1 of Commission Decision 2001/645/EC.

The Taric additional code A031 previously attributed to MTZ Polyesters Limited shall apply to MTZ Polyfilms Limited.

⁽¹⁾ OJ L 316, 10.12.1999, p. 1.

⁽²⁾ OJ L 227, 23.8.2001, p. 1.

⁽³⁾ OJ L 227, 23.8.2001, p. 56.

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 4 February 2005

at the request of the Council of the European Union on a proposal for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing

(COM(2004) 448 final)

(CON/2005/2)

(2005/C 40/06)

1. On 22 October 2004, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing (hereinafter the 'proposed directive').
2. The ECB's competence to deliver an opinion is based on the first indent of Article 105(4) of the Treaty establishing the European Community, which provides that the ECB shall be consulted on any proposed Community act in its fields of competence. The ECB's competence to deliver an opinion is also based on Article 105(5) of the Treaty, as the proposed directive concerns one of the tasks of the European System of Central Banks (ESCB), namely to contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system. In addition, the ECB's competence to deliver an opinion is based on Articles 105(2) and 106(1) of the Treaty and Articles 16 to 18 and 21 to 23 of the Statute of the European System of Central Banks and of the European Central Bank, as the proposed directive contains provisions which have implications for certain ESCB tasks. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.
3. This opinion is based on the version of the proposed directive on which the ECB was consulted, namely the version of 13 October 2004. The ECB notes that it has undergone further elaboration under the Dutch Presidency but will for reasons of clarity refrain from commenting on any later version in this opinion.
4. The main objective of the proposed directive is to ensure a coordinated implementation and application among Member States of the revised Forty Recommendations of the Financial Action Task Force on Money Laundering (hereinafter the 'FATF'). The result of the revision of the FATF's Forty Recommendations, which was completed in June 2003, is an enhanced and more comprehensive framework of international standards for safeguarding the integrity of the financial system. In particular, the scope of application of the Forty Recommendations was extended from the field of money laundering to also cover terrorist financing. Against this backdrop, the proposed directive will provide the single market with an enhanced and consistent legal framework for combating money laundering and terrorist financing. In particular, it is, *inter alia*, proposed to: (a) include terrorist financing within the concept of money laundering; (b) amend the definition of 'serious crime' in the current directive on money laundering⁽¹⁾ (hereinafter the 'current Money Laundering Directive'); (c) extend the range of persons and institutions subject to the current Money Laundering Directive to cover, *inter alia*, trust and company

⁽¹⁾ Directive 91/308/EEC of the Council of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ L 166, 28.6.1991, p. 77). Directive as amended by Directive 2001/97/EC (OJ L 344, 28.12.2001, p. 76).

service providers and insurance intermediaries (when they act in respect of life insurance and other investment-related insurance), in both cases to the extent that they are not covered by the current Money Laundering Directive; (d) widen the scope of application of customer due diligence procedures and record-keeping requirements for branches and majority-owned subsidiaries in third countries of institutions covered by the current Money Laundering Directive; (e) explicitly prohibit credit and financial institutions from keeping anonymous accounts, anonymous passbooks or accounts in fictitious names; (f) explicitly prohibit credit institutions from entering into correspondent banking relationships with shell banks; (g) establish more detailed 'know-your-customer' requirements for the institutions and persons subject to the proposed directive, particularly in situations where there is a higher risk of money laundering, including cross-frontier correspondent banking relationships; (h) allow Member States to apply simplified due diligence procedures in cases where there is a low risk of money laundering (the Commission, assisted by a Committee on the Prevention of Money Laundering, is authorised to adopt implementing measures in respect of the criteria for determining when the risk of money laundering is either low or high); (i) subject to certain conditions, provide for mutual recognition of customer due diligence procedures performed by third parties in other Member States; (j) require Member States to establish financial intelligence units to combat money laundering and terrorist financing effectively; and (k) require Member States to establish a licensing or registration system for currency exchange offices, as well as trust and company service providers. The ECB also notes that the proposed directive provides that, with regard to the service of money transmission, the special provisions on customer identification which will be set out in the as yet unpublished Commission proposal for a regulation of the European Parliament and of the Council on payer's information accompanying funds transfers ⁽¹⁾ shall apply.

5. On a general note, the ECB recalls the commitment of the Eurosystem of 'doing everything within its power to contribute to the adoption, implementation and execution of measures against the use of the financial system for terrorist activities', as expressed in the public statement of 1 October 2001 of the Governing Council of the ECB, made in the aftermath of the terrorist attacks in the United States on 11 September 2001. Against this general backdrop, the ECB strongly welcomes the proposed directive since it constitutes an important step towards enhancing the Community's legal framework for protecting the integrity of the financial system, bearing in mind the challenges raised by developments in money laundering and terrorist financing activities. The ECB also welcomes the proposed directive as it facilitates the coordinated implementation and application of the FATF's Forty Recommendations among Member States, thereby contributing to the convergence of practices in this field. Such coordinated application also helps to maintain a level playing field among EU credit and financial institutions. The ECB further welcomes Articles 37 and 38 of the proposed directive, which envisage the Commission adopting implementing measures, with the assistance of the above-mentioned Committee, in order to take account of technical developments in the fight against money laundering and to ensure a uniform application of the proposed directive. These articles should ensure that the framework in the proposed directive remains up-to-date and therefore effective. Furthermore, these articles should contribute to the harmonised application of the proposed directive by the competent authorities. As noted in recital 2 of the proposed directive, Community action in this area is necessary 'in order to avoid Member States' adopting measures to protect their financial systems which could be inconsistent with the functioning of the internal market'.

6. The ECB notes that the application of Articles 7 and 30 (which respectively cover customer due diligence requirements and internal procedures) to credit institutions and other financial institutions will mean a substantial interaction with prudential supervision requirements. These provisions are in line with the recommendations of the Basel Committee on Banking Supervision on 'Customer Due Diligence for Banks' ⁽²⁾, which address this issue from a different perspective in that they aim at reducing operational and reputational risks for banks. The ECB welcomes these enhanced requirements of the proposed directive, since they are consistent with internationally-accepted best practice. The ECB further notes that it is important to ensure in the national transposition of the proposed directive consistency between these procedures and national measures implementing the *acquis communautaire* in

⁽¹⁾ Implementing Special Recommendation VII (on wire transfers) of the FATF's Special Recommendations on Terrorist Financing.

⁽²⁾ Basel Committee on Banking Supervision, 'Customer due diligence for banks', Bank for International Settlements, October 2001.

the area of prudential supervision of credit institutions and other financial institutions, notably with regard to the supervision of banking and financial groups. To this end, a consistent and coordinated application of customer due diligence requirements by the competent authorities should be sought and will be of particular relevance in legislation where the enforcement of compliance with customer due diligence standards is entrusted to authorities other than the prudential supervisor for banks. Consistency and coordination should also lessen the regulatory compliance burden at a cross-border level. In particular, the ECB observes that compliance with customer due diligence requirements is also linked to operational risk, which is addressed in the proposal for the recasting of the Consolidated Banking Directive and the Capital Adequacy Directive ⁽¹⁾. This link stems from the fact that loss directly ⁽²⁾ resulting from inadequate customer due diligence falls within the scope of operational risk, defined in Article 4 of the proposed recast Consolidated Banking Directive to include the risk of loss resulting from inadequate or failed internal processes, people and systems. Therefore the management of operational risk, as required in Annex V, point 11 of the proposed recast Consolidated Banking Directive also encompasses the policies and procedures required under Articles 7 and 30 of the proposed directive. More generally, pursuant to Article 22 of the proposed recast Consolidated Banking Directive, requirements must be imposed on banks to have processes to manage all material actual or future risks, which would include reputational risk resulting from inadequate customer due diligence. The ECB submits that this interaction should be explicitly addressed in Articles 7 and 30 of the proposed directive. As a minimum, the implementation of all related provisions and the subsequent supervision by the competent authorities must be consistent to avoid any undue burden on affected institutions.

7. The ECB notes that Article 11(1) of the proposed directive sets out enhanced customer due diligence requirements in respect of, *inter alia*, 'cross-frontier correspondent banking relationships with credit institutions from other Member States or third countries'. This provision seeks to implement Recommendation 7 of the FATF's Forty Recommendations, which covers cross-frontier correspondent banking relationships. As noted in the explanatory memorandum to the proposed directive, cross-frontier banking relationships are an area where the risk of money laundering and terrorist financing is particularly high, and as such they require particular care.
8. The ECB also notes that the enhanced customer due diligence requirements applicable to cross-frontier correspondent banking relationships do not apply to correspondent banking relationships between two credit institutions in the same Member State. However, the wording of Article 11(1) of the proposed directive does not appear to have taken into account the specific EU system of mutual recognition, as set out in the Consolidated Banking Directive ⁽³⁾. It is questionable whether correspondent banking relationships between credit institutions in two different Member States should, as contemplated by the proposed directive, be regarded as high-risk situations requiring an assessment of *inter alia* the 'quality of supervision' of a credit institution in another Member State or the 'reputation' of a credit institution authorised by another Member State. The ECB therefore suggests that the proposed directive exempt credit institutions from other Member States from enhanced customer due diligence requirements in respect of cross-frontier correspondent banking relationships, on the basis of the EU system of mutual recognition.

(i) **Obligations of credit institutions vis-à-vis central banks under the proposed directive**

9. An issue of particular interest to the central banking community is whether it is intended that the proposed directive's enhanced customer due diligence requirements in respect of cross-frontier correspondent banking relationships should apply to non-EU (as well as EU) central banks' correspondent banking relationships with EU credit institutions. The euro is widely used as an international reserve

⁽¹⁾ Commission proposal for directives of the European Parliament and of the Council re-casting Directive 2000/12/EC of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions and Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions, 14.7.2004, COM(2004) 486 final.

⁽²⁾ Indirect losses arising from damage to the institution's reputation do not form part of operational risk.

⁽³⁾ Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (OJ L 126, 26.5.2000, p. 1). Directive as last amended by Commission Directive 2004/69/EC (OJ L 125, 28.4.2004, p. 44).

currency, and consequently many non-EU central banks and monetary authorities have correspondent banking relationships with EU credit institutions. In the United States, the provisions of the USA PATRIOT Act ⁽¹⁾ that require certification in connection with correspondent accounts administered, established or maintained on behalf of foreign banks do not apply to any foreign central bank or monetary authority that functions as a central bank, or any international financial institution or regional development bank formed by treaty or international agreement. Since correspondent banking relationships with central banks, monetary authorities and international financial institutions are not generally associated with a high risk of money laundering or terrorist financing, with the exception of institutions from countries on the FATF's list of non-cooperative countries and territories, the ECB recommends incorporation of a similar exemption in the proposed directive's enhanced customer due diligence requirements for cross-frontier correspondent banking relationships.

10. In a similar vein, the ECB notes that under Article 23 of the Statute, 'the ECB and the national central banks may establish relations with central banks and financial institutions in other countries and, where appropriate, with international organizations ... [and] conduct all types of banking transactions in relations with third countries and international organizations ... '. The confidential conduct of banking transactions on behalf of such non-EU, as well as other EU, central bank customers and international organisation customers is of critical importance. It is unclear whether counterparties of national central banks (NCBs) in the Eurosystem – for example, credit institutions – would have to apply customer due diligence procedures under the proposed directive when receiving funds placed by NCBs on behalf of customers which are central banks or international organisations. It would therefore be helpful if the proposed directive could be amended so as to require Member States to allow institutions and persons covered by it not to apply customer due diligence in respect of the ECB and the NCBs in the ESCB, including when they act on behalf of third-party customers. In practice central banks represent a very low risk of money laundering and an explicit reference to central banks would increase legal clarity.

(ii) **Obligations of central banks under the proposed directive**

11. As is the case with the current Money Laundering Directive, the proposed directive applies to credit and financial institutions (Article 2(1)). It is unclear whether central banks themselves fall within the scope of the proposed directive. For reasons of legal clarity, the ECB would welcome it if Article 2 of the proposed directive were amended by adding a separate paragraph according to which central banks shall assess the extent to which they represent a risk of being used for money laundering and, where there is a material risk of money laundering occurring, shall take appropriate measures to ensure that they comply with the objectives of the proposed directive.
12. Article 7(3) of the proposed directive provides that, with regard to the service of money transmission, the special provisions on customer identification which will be set out in the as yet unpublished Commission proposal for a regulation of the European Parliament and of the Council on payer's information accompanying funds transfers (hereinafter the 'draft regulation') shall apply ⁽²⁾. The purpose of the draft regulation is to ensure that basic payer's information is immediately available to the appropriate authorities to assist them in combating the financing of terrorism. The draft regulation applies to funds transfers in any currency which are sent, received, or both, by a payment service provider established in the EU ⁽³⁾. The draft regulation also contains requirements applicable to payment service providers relating to the retention of payers' information accompanying funds transfers ⁽⁴⁾. The provisions in the proposed directive concerning payer information do not seem to exempt the application of other customer due diligence procedures to the service of money transmission, including the identification of a beneficial owner. It therefore seems that the proposed directive applies generally to the operation of payment systems. In particular, Article 7(1)(b) of the proposed directive states that identifying a beneficial owner forms part of the customer due diligence requirements, and Article 3(8) provides that beneficial owner means, *inter alia*, the natural person on whose behalf a transaction or activity is being conducted. The particularities of the structure of payment systems are relevant here.

⁽¹⁾ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

⁽²⁾ The ECB assumes that this provision will be amended if the Commission has not published its proposal before the entry into force of the proposed directive.

⁽³⁾ Articles 1(1), 1(2), 3 and 4 of the draft regulation.

⁽⁴⁾ Article 5 of the draft regulation.

As in the case of postal services, payment system operators are only responsible for the orderly collection, sorting, settling, transferring and delivery of the 'envelopes', i.e. payment messages, but generally have neither the mandate to, nor even the technical possibility of, reading or checking the content of the envelopes. A check on the identity of the originator and the beneficiary, including their names and addresses, could only be carried out by their respective financial service providers. This is in line with the requirements of the current Money Laundering Directive, as implemented in the national laws of the Member States. However, as modern payment systems offer fully-automated processing of information, they are not able to carry out any form of quality check, and they usually do not have a business relationship with the originator or ultimate beneficiary of a payment. Payment system operators can only check the mere presence of some information in a field; they cannot check the quality, completeness, accuracy or meaningfulness of that information. The ECB is therefore of the opinion that payment system operators should be exempted from the application of Article 7(1)(b) of the proposed directive, without prejudice to their obligation to ensure that the payment orders entered into such systems can be effectively traced by means of an appropriate identification of the system participants. In some cases, a central bank oversight regulation has been enacted to this end.

Done at Frankfurt am Main, 4 February 2005.

The President of the ECB
Jean-Claude TRICHET

EUROPEAN ECONOMIC AREA

EFTA COURT

Request for an Advisory Opinion from the EFTA Court by Frostating lagmannsrett by decision of that court of 23 April 2004 in the case of Fokus Bank ASA v Staten v/Skattedirektoratet**(Case E-1/04)**

(2005/C 40/07)

A request has been made to the EFTA Court by decision of 23 April 2004 of Frostating lagmannsrett (Frostating Court of Appeal), Trondheim, Norway, which was received at the Court Registry on 27 April 2004, for an Advisory Opinion in the case of Fokus Bank ASA v Staten v/Skattedirektoratet, on the following questions:

1. Is it consistent with Article 40 of the EEA Agreement that imputation tax credit for withholding tax is not granted to taxpayers resident in other member states?
 - (a) Is it of legal significance whether the taxpayer is resident in a member state which, in a tax agreement with Norway, has undertaken to grant credit for withholding tax?
 - (b) Is it of legal significance whether the taxpayer in the specific case actually is granted, or will be granted, credit for the withholding tax?
 2. Is it consistent with the EEA Agreement that a member state deals solely with the distributing company when assessing and reassessing dividend tax (withholding tax) in those cases where the assessment decision for the foreign taxpayers is based on the assumption that the owner for tax purposes is someone other than the person who (1) is the owner under private law; (2) is registered in the VPS register as owner; and (3) is stated as owner in relation to the tax authorities, without either the owner for tax purposes or the VPS-registered owner under private law having been made aware of the reclassification?
-

Request for an Advisory Opinion from the EFTA Court by Gulating lagmannsrett by decision of that court of 3 May 2004 in the case of Reidar Rasmussen m.fl. v Total E&P Norge AS

(Case E-2/04)

(2005/C 40/08)

A request has been made to the EFTA Court by decision of 3 May 2004 of Gulating lagmannsrett (Gulating Court of Appeal), Bergen, Norway, which was received at the Court Registry on 13 May 2004, for an Advisory Opinion in the case of Reidar Rasmussen m.fl. v Total E&P Norge AS, on the following questions:

1. Is Article 1 of Council Directive 77/187/EEC of 14 February 1977 applicable in a situation where part of an undertaking, provided that it is organised as an independent economic entity, is handed over from one company to another, and where the same or corresponding activities are carried out by the acquiring company and an affiliated company within the same group of companies? Does the fact that some working relationships are directly handed over from the transferor to the acquiring company and others to its affiliated company preclude application of the Directive?
 2. Is application of the Directive pursuant to Article 1 precluded in the event that the maintenance and support functions of the undertaking are handed over while the production function is not, and the employees of all these functions work as a team both before and after the transfer?
 3. Is the Directive applicable pursuant to Article 1 in the event of a handover of maintenance tasks on a fixed offshore installation for gas production where a considerable part, in terms of numbers and qualifications, of the workforce which performed this function with the transferor, is handed over to an acquirer that continues to carry out these maintenance tasks on the same installations under a service contract? Is application of the Directive precluded if the ownership of the tools and instruments which the maintenance staff used before the handover, and which they have continued to use after the handover, is not taken over by the acquirer?
 4. Does it follow from Article 3(1) of the Directive that employment relationships are transferred to the transferee simultaneously with and by virtue of the transfer of the undertaking for those employees who have not, prior to the time of transfer, declared that they do not wish to work for the transferee?
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**Request for an Advisory Opinion from the EFTA Court by Gulating lagmannsrett by decision of that court of 28 May 2004 in the case of Tsomakas Athanasios m.fl. v Staten v/Rikstrygdeverket
(Case E-3/04)**

(2005/C 40/09)

A request has been made to the EFTA Court by decision of 28 May 2004 of Gulating lagmannsrett (Gulating Court of Appeal), Bergen, Norway, which was received at the Court Registry on 4 June 2004, for an Advisory Opinion in the case of Tsomakas Athanasios m.fl. v Staten v/Rikstrygdeverket, on the following question:

Is it compatible with the choice of law rules contained in Title II of Regulation (EEC) No 1408/71, that the flag State proceeds from the premise that the State of residence must have issued a form E 101 or a statement containing information equivalent to that found in form E 101, for the legislation of the State of residence to apply in accordance with Article 14b(4), and that in the absence of such documentation, the legislation of the flag State shall apply in accordance with Article 13(2)(c)?

Action brought on 8 November 2004 by the EFTA Surveillance Authority against the Principality of Liechtenstein

(Case E-8/04)

(2005/C 40/10)

An action against the Principality of Liechtenstein was brought before the EFTA Court on 8 November 2004 by the EFTA Surveillance Authority, represented by Niels Fenger and Elisabethann Wright, acting as Agents of the EFTA Surveillance Authority, 35, Rue Belliard, B-1040 Brussels.

The applicant claims that the Court should:

1. Declare that by maintaining in force the provisions of Article 25 of the Banking Act, whereby a residence requirement is imposed on at least one member of the management board and of the executive management in a bank established on its territory, the Principality of Liechtenstein has failed to respect the freedom of establishment for which Article 31 of the Agreement on the European Economic Area provides; and
2. Order the Principality of Liechtenstein to pay the costs of the proceedings.

Legal and factual background and pleas in law adduced in support:

- Article 31(1) EEA requires equal treatment between EEA nationals invoking their right to freedom of establishment and those nationals of the country where the establishment is effected.
 - Article 33 EEA provides a derogation from the right to freedom of establishment.
 - The EFTA Court has stated in Case E-3/98 *Rainford-Towning* [1998] EFTA Ct. Rep. 205, and Case E-2/01 *Pucher* [2002] EFTA Ct. Rep. 44, that 'it is settled case law of the ECJ that the rules of equal treatment prohibit not only overt discrimination based on nationality but also all covert forms of discrimination which, by applying other distinguishing criteria, achieve, in practice, the same result'.
 - Both the EFTA Court and the Court of Justice of the European Communities have concluded that 'national rules under which a distinction is drawn on the basis of residence are liable to operate mainly to the detriment of nationals of other Contracting Parties, as non-residents are in the majority of cases foreigners'. *Rainford-Towning*, paragraph 29.
 - The EFTA Court has further concluded that '[a]s regards justification on grounds of public policy, as envisaged in Article 33 EEA, it must be held that, in so far as it may justify special treatment of foreign nationals who are subject to the EEA Agreement, recourse to the concept of public policy presupposes, in any event, the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine and sufficiently serious threat affecting one of the fundamental interests of society'. *Rainford-Towning*, paragraph 42.
 - The EFTA Court has acknowledged that protection of the function and good reputation of the financial services sector is a legitimate public policy objective and that certain complications may arise from the fact that Liechtenstein is not party to the Lugano Convention.
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Action brought on 23 November 2004 by the Bankers' and Securities Dealers' Association of Iceland against the EFTA Surveillance Authority

(Case E-9/04)

(2005/C 40/11)

An action against the EFTA Surveillance Authority was brought before the EFTA Court on 23 November 2004 by the Bankers' and Securities Dealers' Association of Iceland, represented by Dr. Hans-Jörg Niemeyer of Hengeler Mueller, avenue Cortenberg 1118, B-1000 Brussels and Dr. Ralf Sauer of Hengeler Mueller, Charlottenstraße 35/36, 10117 Berlin, Germany.

The applicant claims that the Court should:

1. Annul the decision of the EFTA Surveillance Authority of 11 August 2004, Decision 213/04/COL (Icelandic Housing Financing Fund); and
2. Order the EFTA Surveillance Authority to pay the costs of the proceedings.

Legal and factual background and pleas in law adduced in support:

- The applicant is the business association of all Icelandic commercial banks and acts as their service and clearing bank.
 - The Icelandic Housing Financing Fund ('HFF') provides general loans to individuals for the purpose of constructing or purchasing residential housing, and additional loans to individuals with low income.
 - The applicant claims that the general loans are normal banking services, and that HFF's de facto state monopoly contravenes the freedom to provide services, the right of establishment, and the free movement of capital.
 - The EFTA Surveillance Authority's Decision 213/04/COL of 11 August 2004 declared the HFF system to be compatible with the State aid rules according to Article 59(2) EEA.
 - The applicant claims that the EFTA Surveillance Authority:
 - violated its obligation to initiate formal proceedings;
 - infringed essential procedural requirements by not providing adequate reasons as required by Article 16 SCA; and,
 - wrongfully interpreted and applied Article 59(2) EEA.
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EFTA STANDING COMMITTEE

National reference laboratory designated by Norway in accordance with Council Decision 1999/313/EC on reference laboratories for monitoring bacteriological and viral contamination of bivalve molluscs

(2005/C 40/12)

The Norwegian School of Veterinary Science
Department of Food Safety and Infection Biology
P.O. Box 8146 Dep.
N-0033 Oslo

EFTA SURVEILLANCE AUTHORITY

43th amendment of the State aid guidelines

EFTA Surveillance Authority decision to propose appropriate measures

(2005/C 40/13)

Date of adoption: 17 March 2004

EFTA State: n.a.

Case No: 47655

Title: Amendments of the Authority's Guidelines Chapter 26A on 'Multisectoral Framework on regional aid for large investment projects' and proposal for appropriate measures.

Legal basis: College Decision No 40/04

Decision: The appropriate measures, proposed by the Authority and accepted by the EFTA States are as follows:

- (i) to continue to apply the existing transitional rules for the synthetic fibres sectors as defined in Annex D of Chapter 26A until 31 December 2006;
 - (ii) for aid amounts exceeding EUR 5 million, expressed in gross grant equivalent, to limit the maximum aid intensity for regional investment aid in the motor vehicle sector as defined in Annex C of Chapter 26A to be granted under existing aid schemes, to 30 % of the corresponding regional aid ceiling.
-

EMAS

The Eco-Management and Audit Scheme list of registered sites in Norway in accordance with Regulation (EC) No 761/2001 of the European Parliament and of the council of 19 March 2001

(2005/C 40/14)

| Registration number | Suspended | Company name and address | Tel./Fax/E-mail | Contact person | Industrial sector |
|---------------------|-----------|--|--|-------------------------|-------------------|
| NO-000001 | | Peterson Linerboard AS Verket 22 N-1543 Moss | +47/ 69 25 65 00 +47/ 69 25 46 95 | Ellen Hilde Grøm | 21.120 |
| NO-000003 | | Norske Skogindustrier ASA Skogn N-7620 Skogn | +47/ 74 08 70 00 +47/ 74 08 71 09 wenche.ravlo@norske-skog.com | Wenche Ravlo | 21 |
| NO-000004 | | Isola AS Fabrikk Eidanger Prestmoen 9 N-3945 Eidanger | +47/ 35 57 57 00 +47/ 35 55 48 44 isola@isola.no | Gunnar Hansen | 26.820 |
| NO-000005 | | Maarud AS N-2114 Disenå | +47/ 62 96 82 00 +47/ 62 96 82 61 kmellem@krafteurope.com | Kari Benterud Mellem | 15.31 |
| NO-000015 | | Rescon Mapei AS Vallsetveien 6 N-2120 Sagstua | +47/ 62 97 20 00 +47/ 62 97 20 99 alan.ulstad@resconmapei.no | Alan K. Ulstad | 24.66 |
| NO-000016 | | Håg ASA Sundveien N-7460 Røros | +47/ 72 40 72 00 +47/ 72 40 72 72 | Maj Britt Fjerdings | 36.11 |
| NO-000017 | | Gyproc AS Habornv 59 N-1631 Gamle Fredrikstad | +47/ 69 35 75 00 +47/ 69 35 75 01 gyprocno@gyproc.com | Jon Gjerløw | 26.62 |
| NO-000019 | | Norske Skogindustrier ASA Saugbruksforeningen Tistedalsg 9-11 N-1756 Halden | +47/ 69 17 40 00 +47/ 69 17 43 30 | Alfred Isaksen | 21.111 21.120 |
| NO-000023 | | Norgips AS Tørkop N-3060 Svelvik | +47/ 33 78 48 00 +47/ 33 78 48 50 john-widar.kalleberg@norgips.com | John Widar Kalleberg | 26.62 |
| NO-000026 | | Domstein Måløy AS Domstein-Måløy Fiskeindustri Trollebø N-6700 Måløy | +47/ 57 85 58 00 +47/ 57 85 58 01 are.natland.boe@domstein.no | Grete Hamre | 15.202 |
| NO-000027 | | Sør-Norge Aluminium AS N-5460 Husnes | +47/ 53 47 50 00 +47/ 53 47 53 90 magne.rekkedal@soral.no | Magne Rekkedal | 27.421 |
| NO-000034 | | Savo AS Fyrstikkbakken 7 N-0667 Oslo | +47/ 22 91 67 00 +47/ 22 63 12 09 | Birgit Madsen | 31.11 |

| Registration number | Suspended | Company name and address | Tel./Fax/E-mail | Contact person | Industrial sector |
|---------------------|-----------|--|---|-------------------|-------------------|
| NO-000035 | | Olsen Skarholmen AS Skarholmen N-5033 Kleppestø | +47/ 56 15 77 70 +47/ 56 15 77 75 bente.nasutvik@panfish.no | Bente Naustvik | 15.202 |
| NO-000044 | | Hydro Aluminium Profiler AS N-2240 Magnor | +47/ 62 83 33 00 +47/ 62 83 33 10 | Øyvind Aasen | 28 |
| NO-000052 | | Gålå Høgfjellshotell og Hytter AS N-2646 Gålå | +47/ 61 29 81 09 +47/ 61 29 85 40 galahot@online.no | Gunther Motzke | 55.110 55.210 |
| NO-000053 | | Dale AS Fabrikkvegen N-5721 Dalekvam | +47/ 56 59 41 00 +47/ 56 59 41 41 daleas@sagatex.no | Knut Skeide | 17.210 |
| NO-000054 | | AS Norske Shell Draugenfeltet Risavika Havnering 300 Postboks 40 N-4098 Tananger | +47/ 51 69 30 00 +47/ 51 69 30 30 | Trym Edvardsson | 11.10 |
| NO-000055 | | Møre Tekstilfabrikk AS Avd Gåseid Kvasnesveien 2 N-6037 Ålesund | +47/ 70 17 53 00 +47/ 70 17 53 90 vidar@more-tekstil.no | Vidar Mittet | 17.60 |
| NO-000056 | | Møre Tekstilfabrikk AS Avd Vegsund Borgundveien 489 N-6015 Ålesund | +47/ 70 17 53 00 +47/ 70 17 53 90 vidar@more-tekstil.no | Vidar Mittet | 17.60 |
| NO-000059 | | Ørsta Gruppen AS N-6151 Ørsta | +47/ 70 04 70 04 +47/ 70 04 71 01 firmapost@orstastaal.no | Rolf O. Hjelle | 28.1 |
| NO-000060 | | Isola AS Fabrikk Platon Lienfossveien 9 N-3670 Notodden | +47/ 35 57 57 00 +47/ 35 55 48 44 isola@isola.no | Gunnar Hansen | 25.20 |
| NO-000062 | | Sødra Cell Folla AS N-7796 Follafoss | +47/ 74 12 36 00 +47/ 74 12 36 01 | Oddvar Aftret | 21.111 |
| NO-000063 | | Pyrox AS N-5685 Uggdal | +47/ 53 43 04 00 +47/ 53 43 04 04 | Eirik Helgesen | 29.2 |
| NO-000071 | | Forestia AS Avd Kvam N-2650 Kvam | +47/ 62 42 82 00 +47/ 61 29 25 30 kvam@forestia.com | Harvey Rønningen | 20.200 |
| NO-000074 | | Brødr Sunde AS Borgundfjordveien 118 N-6022 Ålesund | +47/ 70 17 70 00 +47/ 70 14 34 10 post@sunde.no | Liv Jorunn Valaas | 24.160 |

| Registration number | Suspended | Company name and address | Tel./Fax/E-mail | Contact person | Industrial sector |
|---------------------|-----------|---|--|------------------------------|-------------------|
| NO-000083 | | Total E & P Norge AS Finnestadveien 44 N-4029 Stavanger | +47/ 51 50 39 18 +47/ 51 50 31 40 firmapost@ep.total.no | Ulf Einar Moltu | 11.100 |
| NO-000084 | | Kims Norge AS Postboks 33 N-2857 Skreia | +47/ 61 16 56 00 +47/ 61 16 44 17 | Stein Rønne | 15 |
| NO-000085 | | Kähns Brumunddal AS Strandsagveien 2 N-2381 Brumunddal | +47/ 62 34 66 00 +47/ 62 34 68 59 | Harald Øie | 20.200 |
| NO-000086 | | Grafisk Senter Grøset AS N-2260 Kirkenær | +47/ 62 94 65 00 +47/ 62 99 65 01 firmapost@gsg.no | Mari Lilleåsen | 22.220 |
| NO-000087 | | Norske Skogindustrier ASA Follum N-3505 Hønefoss | +47/ 32 11 21 00 +47/ 32 11 21 00 astrid.broch-due@norske-skog.com | Astrid Broch-Due | 21 |
| NO-000088 | | Moelven Van Severen AS Tiendeholmen N-7800 Namsos | +47/ 74 21 33 00 +47/ 74 21 33 90 post@vanseveren.moelven.com | Frank-Espen Kristoffersen | 20.101 |
| NO-000090 | | AS Oppland Metall Mattisrudsvingen 2 N-2827 Hunndalen | +47/ 61 18 76 70 +47/61 17 04 71 firmapost@opplandmetall.no | Knut Sørli | 37.00, 60.2 |
| NO-000092 | | Forestia AS Braskereidfoss N-2435 Braskereidfoss | +47/ 62 42 82 00 +47/ 62 42 82 78 braskeriedfoss@forestia.com | Per Olav Løken | 20.200 |
| NO-000093 | | Prior Øst BA Industriveien 1 N-1890 Rakkestad | +47/ 69 22 67 00 +47/ 69 22 67 01 | Arne Kristian Kolberg | 15.12 |
| NO-000095 | | Grip Senter Storgata 23 C N-0184 Oslo | +47/ 22 97 98 00 +47/ 22 42 75 10 | Eva Marit Isanger | 91.33 |
| NO-000096 | | Gjøvik Land og Toten Avfalls- selskap DA Dalborgmarka 100 N-2827 Hunndalen | +47/ 61 14 55 80 +47/ 61 13 22 45 | Bjørn E. Berg | 90 |
| NO-000097 | | Hydro Polymers AS Klor/VCM fabrikken & PVC fabrikken Rafnes N-3966 Stahelle | +47/35 00 60 94 +47/35 00 62 98 nils.eirik.stamland@hydro.com | Nils Eirik Stamland | 24.140 |

III

(Notices)

COMMISSION

IRL-Dublin: operation of scheduled air services

Invitation to tender issued by Ireland under Article 4(1)(d) of Council Regulation (EEC) No 2408/92 in respect of the operation of scheduled air services between Kerry and Dublin, Ireland

(Text with EEA relevance)

(2005/C 40/15)

1. **Introduction:** Ireland has amended the public service obligations published in the *Official Journal of the European Communities* C 66/04 of 15.3.2002 pursuant to Article 4(1)(a) of Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes, in respect of scheduled air services operated between Dublin and Kerry with effect from 22 July 2005. The standards required by the revised public service obligation were published in the *Official Journal of the European Union* No C 39 of 16.2.2005.

Insofar as by one month of publication, no air carrier will have commenced or be about to commence such air services in accordance with the public service obligation and without requesting financial compensation, Ireland has decided, in accordance with the procedure laid down by Article 4(1)(d) of that regulation, to continue to limit access to the route to a single air carrier from 22 July 2005 and to offer the right to operate such services by public tender.

2. **Object of invitation to tender:** Operation from 22 July 2005 of scheduled air services between Dublin and Kerry in accordance with the public service obligation imposed on that route and published in the *Official Journal of the European Union* No C 39 of 16.2.2005.

3. **Participation:** Participation is open to all air carriers holding a valid operating licence issued by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers. The services will operate to aerodromes under the jurisdiction of the Irish Aviation Authority.

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

5. **Information for tenderers:** The complete tendering dossier, including the tender proposal form, financial information requirements, a note on demographic and socio-economic features of Kerry airport catchment area, a note on the airport (past passenger numbers, landing fees, technical facilities, etc.) and the full conditions of the contract, may be obtained free of charge from:

Department of Transport, 44 Kildare Street, Att: Mr Liam Keogh, IRL-Dublin 2. Tel. (353-1) 604 15 94. Fax (353-1) 604 16 81. E-mail: liamkeogh@transport.ie.

6. **Information required from tenderers:** In addition to a fully completed tender proposal form, tenderers are required to satisfy the awarding authority, having regard to the requirement for the services to commence on 22 July 2005 and to the requirements for reliability and continuity of services, that they have:

- (a) the financial standing and capacity to undertake and operate the specified services;
- (b) the necessary valid operating licences and certificates (Air Operating Licence and Air Operator's Certificate, issued under the common agreement of JAR-OPS); and
- (c) demonstrated previous experience of operating scheduled passenger services.

Subject to being satisfied in relation to each of (a), (b) and (c) above, tenders will be evaluated according to which tender is the most economically advantageous, while also taking account of the carriers capacity to secure the operation of the PSO air services for the duration of the contract term. However, the awarding authority is not obliged to accept any tender. In certain circumstances, the Minister reserves the right to negotiate with bidders on a price related to his bid, but taking account of projected losses based on operating costs, projected yields etc.

The awarding authority reserves the right to solicit further information about any applicant's financial and/or technical resources and abilities, and without prejudice to the foregoing, to solicit or seek further information, whether from a third party or from the applicant, regarding the ability of the applicant to undertake and operate the relevant scheduled air services.

Tenders should be priced in euro and all supporting documents must be in the English language. The contract shall be considered as a contract made under Irish law and subject to the exclusive jurisdiction of the Irish courts.

7. **Financial compensation:** Tenders must explicitly state the amount of financial compensation required for the operation of the public service obligation on the route for each of the 3 years from the scheduled starting date. The compensation should be calculated in accordance with the required minimum standards.

The actual amount of the compensation payable by the Department of Transport will be determined annually, on an ex-post basis, and will be limited to the actual losses incurred, having regard to actual costs, revenues and if applicable, profit margin, by the successful tenderer in operating the services, subject, as a maximum, to the limit of the amount stated in respect of each year in the tender.

Payments may be claimed by the carrier on a regular instalment basis, in accordance with the procedures set out in the dossier, referred to at 5, above. A balancing payment will be payable at the end of each contract year, subject to receipt by the awarding authority of appropriately documented claims accompanied by certification from the carrier's auditors, in accordance with the terms of the contract.

The contract will include provision for the maximum limit of compensation in any year(s) to be increased, at the sole discretion of the awarding authority, in the event of changes in operating conditions. Without prejudice to the provisions governing the termination of the contract, the awarding authority will, in assessing any proposal for an increase in the maximum limit of subvention in any year(s), have due regard to developments affecting the operation of the services that were not or could not have been anticipated by the tenderer or are due to factors outside the control of the tenderer.

All payments under the contract will be in euro.

8. **Period of validity, amendment and termination of the contract:** The contract will be awarded by the Minister for Transport. The contract will be valid for a period of 3 years from 22 July 2005. A new invitation to tender will be made, if applicable, before the end of a period of 3 years maximum from 22 July 2005. Any amendment or

termination of the contract will be in accordance with the terms of the contract. Variations in the standards required by the public service obligation will be permitted only with the prior agreement of the awarding authority.

9. **Penalties in the event of the carrier failing to comply with the contract:** Where a flight is cancelled for reasons directly attributable to the carrier, the compensation payable will only be in respect of costs, if any, actually incurred by the carriers in handling passengers disrupted by the non-operation of such flights. The awarding authority reserves the right to serve notice of termination of the contract, if having regard to the adequacy of service provided by the carrier and in particular to the number of flights cancelled and/or delayed for reasons directly attributable to the carrier, it is of the opinion that the standards required by the public service obligation have not or are not being met satisfactorily.
10. **Deadline for submission of bids:** Thirty one (31) calendar days from publication of this communication in the *Official Journal of the European Union*.
11. **Application procedure:** Tenders must be submitted by registered letter, date as post-marked, or delivered to:

Department of Transport, 44 Kildare Street, IRL-Dublin 2, by 12.00 noon (Irish time) on the date in point 10, in envelopes marked 'EASP Tender'.
12. **Validity of invitation to tender:** In accordance with the first sentence of Article 4(1)(d) of Regulation (EEC) No 2408/92, the validity of this invitation to tender is subject to the condition that no Community air carrier presents, prior to deadline for submission of bids, a programme for operating the route in accordance with the public service obligation without receiving any financial compensation.
13. **Freedom of Information Act, 1997:** The Department of Transport undertakes to use its best endeavours to hold confidential any information provided by tenderers, subject to the Department's obligations under law, including the Freedom of Information (FOI) Act 1997 as amended by Freedom of Information Act 2003. If tenderers wish that any of the information supplied by them in their tenders should not be disclosed because of its commercial sensitivity, they should, when providing the information, identify same and specify the reasons for its sensitivity. The Department will consult with tenderers about this sensitive information before making a decision regarding release of the information under the provisions of the Freedom of Information Act. If tenderers consider that none of the information supplied by them is commercially sensitive, they should make a statement to that effect and such information may be released in response to an FOI request.

IRL-Dublin: operation of scheduled air services**Invitation to tender issued by Ireland under Article 4(1)(d) of Council Regulation (EEC) No 2408/92 in respect of the operation of scheduled air services between Galway and Dublin, Ireland**

(Text with EEA relevance)

(2005/C 40/16)

1. **Introduction:** Ireland has amended the public service obligations published in the *Official Journal of the European Communities* C 66/05 of 15 March 2002 pursuant to Article 4(1)(a) of Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes, in respect of scheduled air services operated between Dublin and Galway with effect from 22 July 2005. The standards required by the revised public service obligation were published in the *Official Journal of the European Communities* No C 39 of 16.2.2005.

Insofar as by one month of publication, no air carrier will have commenced or be about to commence such air services in accordance with the public service obligation and without requesting financial compensation, Ireland has decided, in accordance with the procedure laid down by Article 4(1)(d) of that Regulation, to continue to limit access to the route to a single air carrier from 22 July 2005 and to offer the right to operate such services by public tender.

2. **Object of invitation to tender:** Operation from 22 July 2005 of scheduled air services between Dublin and Galway in accordance with the public obligation imposed on that route and published in the *Official Journal of the European Communities* No C 39 of 16.2.2005.

3. **Participation:** Participation is open to all air carriers holding a valid operating licence issued by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers. The services will operate to aerodromes under the jurisdiction of the Irish Aviation Authority.

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

5. **Information for tenderers:** The complete tendering dossier, including tender proposal form, financial information requirements, a note on demographic and socio-economic features of Galway airports catchment area, a not on the airport (past passenger numbers, landing fees, technical facilities, etc.) and the full conditions of the contract, may be obtained free of charge from:

Department of Transport, 44 Kildare Street, Att: Mr Liam Keogh, IRL- Dublin 2. Tel. (353-1) 604 15 94. Fax (353-1) 604 16 81. E-mail: liamkeogh@transport.ie.

6. **Information required from tenderers:** In addition to a fully completed tender proposal form, tenderers are required to satisfy the awarding authority, having regard to the requirement for the services to commence on 22 July 2005 and to the requirements for reliability and continuity of services, that they have:

- (a) the financial standing and capacity to undertake and operate the specified services;
- (b) the necessary valid operating licences and certificates (air operating licence and air operator's certificate, issued under the common agreement of JAR-OPS); and
- (c) demonstrated previous experience of operating scheduled passenger services.

Subject to being satisfied in relation to each of a), b) and c) above, tenders will be evaluated according to which tender is the most economically advantageous, while also taking account of the carriers capacity to secure the operation of the PSO air services for the duration of the contract term. However, the awarding authority is not obliged to accept any tender. In certain circumstances, the Minister reserves the right to negotiate with bidders on a price related to his bid, but taking account of projected losses based on operating costs, projected yields etc.

The awarding authority reserves the right to solicit further information about any applicant's financial and/or technical resources and abilities, and without prejudice to the foregoing, to solicit or seek further information, whether from a third party or from the applicant, regarding the ability of the applicant to undertake and operate the relevant scheduled air services.

Tenders should be priced in euro and all supporting documents must be in the English language.

The contract shall be considered as a contract made under Irish law and subject to the exclusive jurisdiction of the Irish courts.

7. **Financial compensation:** Tenders must explicitly state the amount of financial compensation required for the operation of the public service obligation on the route for each of the 3 years from the scheduled starting date. The compensation should be calculated in accordance with the required minimum standards.

The actual amount of the compensation payable by the Department of Transport will be determined annually, on an ex-post basis, and will be limited to the actual losses incurred, having regard to actual costs, revenues and if applicable, profit margin, by the successful tenderer in operating the services, subject, as a maximum, to the limit of the amount stated in respect of each year in the tender.

Payments may be claimed by the carrier on a regular instalment basis, in accordance with the procedures set out in the dossier, referred to at 5, above. A balancing payment will be payable at the end of each contract year, subject to receipt by the awarding authority of appropriately documented claims accompanied by certification from the carrier's auditors, in accordance with the terms of the contract.

The contract will include provision for the maximum limit of compensation in any year(s) to be increased, at the sole discretion of the awarding authority, in the event of changes in operating conditions. Without prejudice to the provisions governing the termination of the contract, the awarding authority will, in assessing any proposal for an increase in the maximum limit of subvention in any year(s), have due regard to developments affecting the operation of the services that were not or could not have been anticipated by the tenderer or are due to factors outside the control of the tenderer.

All payments under the contract will be in euro.

8. **Period of validity, amendment and termination of the contract:** The contract will be awarded by the Minister for Transport. The contract will be valid for a period of 3 years from 22 July 2005. A new invitation to tender will be made, if applicable, before the end of a period of 3 years maximum from 22 July 2005. Any amendment or termination of the contract will be in accordance with the terms of the contract. Variations in the standards required by the public service obligation will be permitted only with the prior agreement of the awarding authority.
9. **Penalties in the event of the carrier failing to comply with the contract:** Where a flight is cancelled for reasons

directly attributable to the carrier, the compensation payable will only be in respect of costs, if any, actually incurred by the carriers in handling passengers disrupted by the non-operation of such flights. The awarding authority reserves the right to serve notice of termination of the contract, if having regard to the adequacy of service provided by the carrier and in particular to the number of flights cancelled and/or delayed for reasons directly attributable to the carrier, it is of the opinion that the standards required by the public service obligation have not or are not being met satisfactorily.

10. **Deadline for submission of bids:** Thirty one (31) calendar days from publication of this communication in the *Official Journal of the European Communities*.

11. **Application procedure:** Tenders must be submitted by registered letter, date as post-marked, or delivered to:

Department of Transport, 44 Kildare Street, IRL-Dublin 2, by 12.00 noon (Irish time) on the date in point 10, in envelopes marked 'EASP Tender'.

12. **Validity of invitation to tender:** In accordance with the first sentence of Article 4(1)(d) of Regulation (EEC) No 2408/92, the validity of this invitation to tender is subject to the condition that no Community air carrier presents, prior to deadline for submission of bids, a programme for operating the route in accordance with the public service obligation without receiving any financial compensation.

13. **Freedom of information Act, 1997:** The Department of Transport undertakes to use its best endeavours to hold confidential any information provided by tenderers, subject to the Department's obligation under law, including the Freedom of Information (FOI) Act 1997 as amended by Freedom of Information Act 2003. If tenderers wish that any of the information supplied by them in their tenders should not be disclosed because of its commercial sensitivity, they should, when providing the information, identify same and specify the reasons for its sensitivity. The Department will consult with tenderers about this sensitive information before making a decision regarding release of the information under the provisions of the Freedom of Information Act. If tenderers consider that none of the information supplied by them is commercially sensitive, they should make a statement to that effect and such information may be released in response to an FOI request.

IRL-Dublin: operation of scheduled air services

Invitation to tender issued by Ireland under Article 4(1)(d) of Council Regulation (EEC) No 2408/92 in respect of the operation of scheduled air services on two internal air routes: Donegal — Dublin and Sligo — Dublin

(Text with EEA relevance)

(2005/C 40/17)

1. **Introduction:** Ireland has amended the public service obligations published in the *Official Journal of the European Communities* C 66/07 and C 66/03 of 15 March 2002 pursuant to Article 4(1)(a) of Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes, in respect of scheduled air services operated between Donegal — Dublin and between Sligo — Dublin with effect from 22 July 2005. The standards required by the revised public service obligation were published in the *Official Journal of the European Union* No C 39 of 16.2.2005.

Insofar as by one month of publication, no air carrier will have commenced or be about to commence such air services in accordance with the public service obligation and without requesting financial compensation, Ireland has decided, in accordance with the procedure laid down by Article 4(1)(d) of that Regulation, to continue to limit access to each route to a single air carrier from 22 July 2005 and to offer the right to operate such services by public tender.

2. **Object of invitation to tender:** Operation from 22 July 2005 of direct scheduled air services on two separate routes: Donegal — Dublin, and Sligo — Dublin in accordance with the public service obligation imposed on those routes and published in the *Official Journal of the European Union* No C 39 of 16.2.2005.

The Right to operate these PSO services is being offered on the basis of a single contract for services on both routes.

3. **Participation:** Participation is open to all air carriers holding a valid operating licence issued by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers. The services will operate to aerodromes under the jurisdiction of the Irish Aviation Authority.

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

5. **Information for tenderers:** The complete tendering dossier, including tender proposal form, financial information requirements, a note on demographic and socio-economic features of Sligo and Donegal, a note on each airport (past passenger numbers, landing fees, technical

facilities, etc.) and the full conditions of the contract, may be obtained free of charge from:

Department of Transport, 44 Kildare Street, IRL-Dublin 2, Att: Mr Liam Keogh. Tel. (353-1) 604 15 94. Fax (353-1) 604 16 81. E-mail: liamkeogh@transport.ie.

6. **Information required from tenderers:** In addition to a fully completed tender proposal form, tenderers are required to satisfy the awarding authority, having regard to the requirement for the services to commence on 22 July 2005 and to the requirements for reliability and continuity of services, that they have:

- (a) the financial standing and capacity to undertake and operate the specified services;
- (b) the necessary valid operating licences and certificates (air operating licence and air operator's certificate, issued under the common agreement of JAR-OPS); and
- (c) demonstrated previous experience of operating scheduled passenger services.

Subject to being satisfied in relation to each of a), b) and c) above, tenders will be evaluated according to which tender is the most economically advantageous, while also taking account of the carriers capacity to secure the operation of the PSO air services for the duration of the contract term. However, the awarding authority is not obliged to accept any tender. In certain circumstances, the Minister reserves the right to negotiate with bidders on a price related to his bid, but taking account of projected losses based on operating costs, projected yields etc.

The awarding authority reserves the right to solicit further information about any applicant's financial and/or technical resources and abilities, and without prejudice to the foregoing, to solicit or seek further information, whether from a third party or from the applicant, regarding the ability of the applicant to undertake and operate the relevant scheduled air services.

Tenders should be priced in euro and all supporting documents must be in the English language.

The contract shall be considered as a contract made under Irish law and subject to the exclusive jurisdiction of the Irish courts.

7. **Financial compensation:** Tenders must explicitly state the amount of financial compensation required for the operation of the public service obligation on the route for each of the 3 years from the scheduled starting date. The compensation should be calculated in accordance with the required minimum standards.

The actual amount of the compensation payable by the Department of Transport will be determined annually, on an ex-post basis, and will be limited to the actual losses incurred, having regard to actual costs, revenues and if applicable, profit margin, by the successful tenderer in operating the services, subject, as a maximum, to the limit of the amount stated in respect of each year in the tender.

Payments may be claimed by the carrier on a regular instalment basis, in accordance with the procedures set out in the dossier, referred to at 5, above. A balancing payment will be payable at the end of each contract year, subject to receipt by the awarding authority of appropriately documented claims accompanied by certification from the carrier's auditors, in accordance with the terms of the contract.

The contract will include provision for the maximum limit of compensation in any year(s) to be increased, at the sole discretion of the awarding authority, in the event of changes in operating conditions. Without prejudice to the provisions governing the termination of the contract, the awarding authority will, in assessing any proposal for an increase in the maximum limit of subvention in any year(s), have due regard to developments affecting the operation of the services that were not or could not have been anticipated by the tenderer or are due to factors outside the control of the tenderer.

All payments under the contract will be in euro.

8. **Period of validity, amendment and termination of the contract:** The contract will be awarded by the Minister for Transport. The contract will be valid for a period of 3 years from 22 July 2005. A new invitation to tender will be made, if applicable, before the end of a period of 3 years maximum from 22 July 2005. Any amendment or termination of the contract will be in accordance with the terms of the contract. Variations in the standards required by the public service obligation will be permitted only with the prior agreement of the awarding authority.
9. **Penalties in the event of the carrier failing to comply with the contract:** Where a flight is cancelled for reasons

directly attributable to the carrier, the compensation payable will only be in respect of costs, if any, actually incurred by the carriers in handling passengers disrupted by the non-operation of such flights. The awarding authority reserves the right to serve notice of termination of the contract, if having regard to the adequacy of service provided by the carrier and in particular to the number of flights cancelled and/or delayed for reasons directly attributable to the carrier, it is of the opinion that the standards required by the public service obligation have not or are not being met satisfactorily.

10. **Deadline for submission of bids:** Thirty one (31) calendar days from publication of this communication in the *Official Journal of the European Communities*.

11. **Application procedure:** Tenders must be submitted by registered letter, date as post-marked, or delivered to:

Department of Transport, 44 Kildare Street, IRL-Dublin 2, by 12.00 noon (Irish time) on the date in point 10, in envelopes marked 'EASP Tender'.

12. **Validity of invitation to tender:** In accordance with the first sentence of Article 4(1)(d) of Regulation (EEC) No 2408/92, the validity of this invitation to tender is subject to the condition that no Community air carrier presents, prior to deadline for submission of bids, a programme for operating the route in accordance with the public service obligation without receiving any financial compensation.

13. **Freedom of information Act, 1997:** The Department of Transport undertakes to use its best endeavours to hold confidential any information provided by tenderers, subject to the Department's obligation under law, including the Freedom of Information (FOI) Act 1997 as amended by Freedom of Information Act 2003. If tenderers wish that any of the information supplied by them in their tenders should not be disclosed because of its commercial sensitivity, they should, when providing the information, identify same and specify the reasons for its sensitivity. The Department will consult with tenderers about this sensitive information before making a decision regarding release of the information under the provisions of the Freedom of Information Act. If tenderers consider that none of the information supplied by them is commercially sensitive, they should make a statement to that effect and such information may be released in response to an FOI request.

IRL-Dublin: Operation of scheduled air services

Invitation to tender issued by Ireland under Article 4(1)(d) of Council Regulation (EEC) No 2408/92 in respect of the operation of scheduled air services on two routes: Knock — Dublin and Derry — Dublin

(Text with EEA relevance)

(2005/C 40/18)

1. **Introduction:** Ireland has amended the public service obligations published in the *Official Journal of the European Communities* C 265/07 of 15.9.2000 (as amended by corrigendum published in OJ C 276 of 28.9.2000) and C 66/06 of 15.3.2002 pursuant to Article 4(1)(a) of Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes, in respect of scheduled air services operated between Knock — Dublin and Derry — Dublin, with effect from 22.7.2005. The standards required by the revised public service obligation were published in the *Official Journal of the European Union* No C 39 of 16.2.2005.

In so far as by one month of publication, no air carrier will have commenced or be about to commence such air services in accordance with the public service obligation and without requesting financial compensation, Ireland has decided, in accordance with the procedure laid down by Article 4(1)(d) of that Regulation, to continue to limit access to each route to a single air carrier from 22.7.2005 and to offer the right to operate such services by public tender.

2. **Object of invitation to tender:** Operation from 22.7.2005 of direct scheduled air services on two separate routes: Knock — Dublin, and Derry — Dublin in accordance with the public service obligations imposed on those routes and published in the *Official Journal of the European Union* No C 39 of 16.2.2005.

The right to operate these PSO services is being offered on the basis of a single contract for services on both routes.

3. **Participation:** Participation is open to all air carriers holding a valid operating licence issued by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23.7.1992 on licensing of air carriers. The services will operate to aerodromes under the jurisdiction of the Irish Aviation Authority.

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

5. **Information for tenderers:** The complete tendering dossier, including the tender proposal form, financial information requirements, a note on demographic and socio-economic features of Knock and Derry, a note on each airport (past passenger numbers, landing fees, technical

facilities, etc.) and the full conditions of the contract, may be obtained free of charge from:

Department of Transport, Att: Mr Liam Keogh, 44 Kildare Street, IRL-Dublin 2. Tel.: (353-1) 604 15 94. Fax: (353-1) 604 16 81. E-mail: liamkeogh@transport.ie.

6. **Information required from tenderers:** In addition to a fully completed tender proposal form, tenderers are required to satisfy the awarding authority, having regard to the requirement for the services to commence on 22.7.2005 and to the requirements for reliability and continuity of services, that they have:

- (a) the financial standing and capacity to undertake and operate the specified services;
- (b) the necessary valid operating licences and certificates (Air Operating Licence and Air Operator's Certificate, issued under the common agreement of JAR-OPS); and,
- (c) demonstrated previous experience of operating scheduled passenger services.

Subject to being satisfied in relation to each of a), b) and c) above, tenders will be evaluated according to which tender is the most economically advantageous, while also taking account of the carrier's capacity to secure the operation of the PSO air services for the duration of the contract term. However, the awarding authority is not obliged to accept any tender. In certain circumstances, the Minister reserves the right to negotiate with bidders on a price related to his bid, but taking account of projected losses based on operating costs, projected yields etc.

The awarding authority reserves the right to solicit further information about any applicant's financial and/or technical resources and abilities, and without prejudice to the foregoing, to solicit or seek further information, whether from a third party or from the applicant, regarding the ability of the applicant to undertake and operate the relevant scheduled air services.

Tenders should be priced in euro and all supporting documents must be in the English language.

The contract shall be considered as a contract made under Irish law and subject to the exclusive jurisdiction of the Irish courts.

7. **Financial compensation:** Tenders must explicitly state the amount of financial compensation required for the operation of the public service obligation on both routes for each of the 3 years from the scheduled starting date. The compensation should be calculated in accordance with the required minimum standards.

The actual amount of the compensation payable by the Department of Transport will be determined annually, on an ex-post basis, and will be limited to the actual losses incurred, having regard to actual costs, revenues and if applicable, profit margin, by the successful tenderer in operating the services, subject, as a maximum, to the limit of the amount stated in respect of each year in the tender.

Payments may be claimed by the carrier on a regular instalment basis, in accordance with the procedures set out in the dossier, referred to at 5, above. A balancing payment will be payable at the end of each contract year, subject to receipt by the awarding authority of appropriately documented claims accompanied by certification from the carrier's auditors, in accordance with the terms of the contract.

The contract will include provision for the maximum limit of compensation in any year(s) to be increased, at the sole discretion of the awarding authority, in the event of changes in operating conditions. Without prejudice to the provisions governing the termination of the contract, the awarding authority will, in assessing any proposal for an increase in the maximum limit of subvention in any year(s), have due regard to developments affecting the operation of the services that were not or could not have been anticipated by the tenderer or are due to factors outside the control of the tenderer.

All payments under the contract will be in euro.

8. **Period of validity, amendment and termination of the contract:** The contract will be awarded by the Minister for Transport. The contract will be valid for a period of 3 years from 22.7.2005. A new invitation to tender will be made, if applicable, before the end of a period of 3 years maximum from 22.7.2005. Any amendment or termination of the contract will be in accordance with the terms of the contract. Variations in the standards required by the public service obligation will be permitted only with the prior agreement of the awarding authority.
9. **Penalties in the event of the carrier failing to comply with the contract:** Where a flight is cancelled for reasons

directly attributable to the carrier, the compensation payable will only be in respect of costs, if any, actually incurred by the carriers in handling passengers disrupted by the non-operation of such flights. The awarding authority reserves the right to serve notice of termination of the contract, if having regard to the adequacy of service provided by the carrier and in particular to the number of flights cancelled and/or delayed for reasons directly attributable to the carrier, it is of the opinion that the standards required by the public service obligation have not or are not being met satisfactorily.

10. **Deadline for submission of bids:** Thirty-one (31) calendar days from publication of this communication in the *Official Journal of the European Union*.

11. **Application procedure:** Tenders must be submitted by registered letter, date as post-marked, or delivered to:

Department of Transport, 44 Kildare Street, IRL-Dublin 2, by 12.00 noon (Irish time) on the date in point 10, in envelopes marked 'EASP Tender'.

12. **Validity of invitation to tender:** In accordance with the first sentence of Article 4(1)(d) of Regulation (EEC) No 2408/92, the validity of this invitation to tender is subject to the condition that no Community air carrier presents, prior to deadline for submission of bids, a programme for operating the route in accordance with the public service obligation without receiving any financial compensation.

13. **Freedom of Information Act, 1997:** The Department of Transport undertakes to use its best endeavours to hold confidential any information provided by tenderers, subject to the Department's obligation under law, including the Freedom of Information (FOI) Act 1997 as amended by Freedom of Information Act 2003. If tenderers wish that any of the information supplied by them in their tenders should not be disclosed because of its commercial sensitivity, they should, when providing the information, identify same and specify the reasons for its sensitivity. The Department will consult with tenderers about this sensitive information before making a decision regarding release of the information under the provisions of the Freedom of Information Act. If tenderers consider that none of the information supplied by them is commercially sensitive, they should make a statement to that effect and such information may be released in response to an FOI request.