

POMOC PAŃSTWA — ZJEDNOCZONE KRÓLESTWO**Pomoc państwa C 45/2005 (ex N 364/2005) — Programy działania w zakresie odpadów i zasobów: pomoc na rzecz zwiększenia mocy przetwórczych w zakresie papieru zadrukowanego i zapisanego****Zaproszenie do zgłaszania uwag zgodnie z art. 88 ust. 2 Traktatu WE**

(2006/C 9/04)

(Tekst mający znaczenie dla EOG)

Pismem z dnia 7 grudnia 2005 r., zamieszczonym w autentycznej wersji językowej na stronach następujących po niniejszym streszczeniu, Komisja powiadomiła Zjednoczone Królestwo o swojej decyzji o wszczęciu postępowania określonego w art. 88 ust. 2 Traktatu WE, dotyczącego wyżej wymienionego środka pomocy.

Zainteresowane strony mogą zgłaszać uwagi w terminie jednego miesiąca od dnia publikacji niniejszego streszczenia i towarzyszącego mu pisma, kierując je do Dyrekcji Generalnej ds. Konkurencji w Komisji Europejskiej na następujący adres lub numer faksu:

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Uwagi te zostaną przekazane Zjednoczonemu Królestwu. Zainteresowane strony zgłaszające uwagi mogą wystąpić z odpowiednio umotywowanym pisemnym wnioskiem o objęcie ich tożsamości klauzulą poufności.

STRESZCZENIE

W lipcu 2005 r. Zjednoczone Królestwo powiadomiło Komisję o programie pomocy inwestycyjnej na rzecz zwiększenia mocy produkcyjnych w zakresie papieru do druku i do pisania wytwarzanego z włókien odzyskanych.

obecny stan. Spodziewany budżet programu wynosi pomiędzy 6 mln GBP a 20 mln GBP. Ze względu na fakt, że poziomy pomocy zostaną określone w trakcie procedury przetargowej, intensywność pomocy nie jest jeszcze znana. Potencjalnymi beneficjentami jest mniej niż dziesięć papierni. Władze Zjednoczonego Królestwa spodziewają się przyznać pomoc do kwietnia 2006 r.

1. Opis środka

W Zjednoczonym Królestwie makulatura z biur nie jest zbierana ani przetwarzana. Aby zmienić ten stan rzeczy, organ rządowy odpowiedzialny za program działania w zakresie odpadów i zasobów (WRAP) planuje przeprowadzić przetargi na dotacje dla papierni. Dotacje zwiększą popyt na zbieranie makulatury z biur poprzez współfinansowanie zwiększenia mocy przerobowych papierni w zakresie papieru zadrukowanego i zapisanego. W zamian za pomoc papiernie muszą zobowiązać się do wykorzystywania większej ilości makulatury, przy czym pewien minimalny odsetek lub pewną minimalną ilość ton musi stanowić papier zadrukowany i zapisany, odzyskany z biur. W celu jak najlepszego wykorzystania zebranego papieru zadrukowanego i zapisanego, zwiększone moce produkcyjne papieru będą wykorzystane do wytwarzania nowego papieru do druku i do pisania.

Procedura przetargu będzie brać pod uwagę wykorzystanie elementów nowej technologii, demonstrację i innowacje, które wspierają opracowanie zrównoważonego procesu w zakresie odzyskiwania odpadów, tj. elementów wykraczających poza

2. Ocena środka pomocy

Odnośnie do wytycznych w sprawie pomocy państwa na rzecz ochrony środowiska⁽¹⁾, Komisja ma wątpliwości, czy omawiany program wchodzi w zakres pkt 29 wytycznych, gdyż inwestycje w nowe moce produkcyjne papieru przy wykorzystaniu makulatury nie wpłyną na zmniejszenie zanieczyszczenia powodowanego przez własne zakłady. Beneficjenci będą wykorzystywać makulaturę pochodzącą od *któregokolwiek* producenta papieru.

Jeśli chodzi o inne zasady niż wytyczne w sprawie pomocy państwa na rzecz ochrony środowiska, Komisja ma wątpliwości, czy inne zwolnienia, o których mowa w art. 87 ust. 2 i 3 Traktatu WE, mają zastosowanie. Jednak beneficjenci nie zostali jeszcze wybrani, a zatem nie można ocenić, czy inwestycje zostaną poczynione w obszarach kwalifikujących się do pomocy regionalnej i czy wytyczne w sprawie krajowej pomocy regionalnej⁽²⁾ będą miały zastosowanie w całości lub częściowo.

⁽¹⁾ Dz.U. C 37 z 3.2.2001, str. 3.

⁽²⁾ Dz.U. C 74 z 10.3.1998, str. 9.

W przypadku, gdyby wytyczne w sprawie pomocy państwa na rzecz ochrony środowiska nie miały zastosowania, Komisja musi dokonać oceny bezpośrednio w oparciu o art. 87 ust. 3 lit. c). Komisja postępowala już podobnie w przeszłości, zwłaszcza w przypadku programu dotyczącego odzyskiwania odpadów⁽³⁾ oraz w dwóch innych przypadkach dotyczących przemysłu papierowego.⁽⁴⁾ Kryteria zastosowane przez Komisję opierały się na motywacyjnym aspekcie pomocy oraz na tym, czy inwestycje konieczne do uzyskania korzyści z tytułu ochrony środowiska wykraczają poza „obecny stan” na poziomie UE.

W innych sprawach, w których Komisja oceniała pomoc inwestycyjną na stworzenie mocy do przetwarzania papieru, kryteria zastosowane przez Komisję opierały się na motywacyjnym aspekcie pomocy oraz na tym, czy inwestycje konieczne do uzyskania korzyści z tytułu ochrony środowiska wykraczały poza „obecny stan” na poziomie UE. Komisja ma wątpliwości co do tego, czy uzasadnienie użyte przez władze Zjednoczonego Królestwa, jakoby bardzo niski obecnie w UE poziom udziału papieru z odzysku w procesie produkcji papieru do druku i do pisania, było wystarczające do stwierdzenia, że wytwarzanie papieru do druku i do pisania z włókien odzyskanych wykracza poza „obecny stan” na poziomie UE.

Komisja ma wątpliwości odnośnie do aspektu motywacyjnego zbiórki papieru zadrukowanego i zapisanego w ramach omawianego programu.

Komisja ma także wątpliwości odnośnie do większych korzyści dla środowiska z wytwarzania papieru do drukowania i pisania z makulatury z papieru zadrukowanego i zapisanego w świetle faktu, że wykorzystanie makulatury z papieru zadrukowanego i zapisanego do wytwarzania innych rodzajów papierów jest podejściem powszechniejszym.

Komisja ma ponadto wątpliwości co do tego, czy koszty kwalifikujące się do objęcia pomocą będą ograniczały się do dodatkowych kosztów inwestycyjnych koniecznych do osiągnięcia celów związanych z ochroną środowiska, gdyż Zjednoczone Królestwo nie zamierza odliczyć od kosztów inwestycyjnych kwalifikujących się do przyznania pomocy kosztów inwestycji w porównywalne moce, które nie przyniosłyby takiej samej korzyści dla środowiska. Stąd też nie jest jasne, czy w przypadku przyznawania pomocy na inwestycje w nowe moce do wytwarzania papieru do drukowania i pisania przy wykorzystaniu papieru zadrukowanego i zapisanego odjęty zostanie koszt tradycyjnych urządzeń do wytwarzania papieru do druku i do pisania.

Komisja wątpi także, czy środek zaproponowany przez Zjednoczone Królestwo jest najmniej zakłócającym konkurencję środkiem do rozwiązania przedmiotowego problemu. Inne środki, np. środki skupiające się na zbiorce, mogą w mniejszym stopniu zakłócić sytuację na rynku makulatury i produktów końcowych.

⁽³⁾ Dz.U. L 102 z 7.4.2004, str. 59. Zjednoczone Królestwo zgłosiło rozszerzenie i przedłużenie wspomnianego programu, który jest obecnie oceniany.

⁽⁴⁾ Odpowiednio Dz.U. L 314 z 28.11.2003, str. 26 oraz Dz.U. L 53 z 26.2.2005, str. 66. Kryteria zastosowane w tych sprawach zostały także omówione w sprawozdaniu dotyczącym polityki konkurencji za rok 2004.

3. Podsumowanie

W świetle powyższych uwag, Komisja postanawia wszczęć postępowanie zgodnie z art. 88 ust. 2 Traktatu WE. Zainteresowane strony wzywa się do przekazania uwag zwłaszcza odniesieniu do 1) tego, co powinno zostać uznane za „stan obecny” w kontekście wykorzystania makulatury (papieru zadrukowanego i zapisanego) do wytwarzania nowego papieru do drukowania i pisania, 2) konieczności pomocy w świetle spodziewanego wzrostu ilości zbieranego papieru zadrukowanego i zapisanego, 3) spodziewanego stopnia zakłócenia konkurencji zarówno na rynkach nowego papieru, jak i rynkach makulatury oraz 4) spodziewanych korzyści dla środowiska wynikających ze zgłaszanego środka w porównaniu do korzyści, jakie mogą być osiągnięte za pomocą innych środków.

TEKST PISMA

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

1. PROCEDURE

- (1) Following informal discussions, by letter of 22 July 2005, registered in the Commission on 26 July 2005 under number A/6948, the United Kingdom notified to the Commission a scheme for increasing the manufacturing capacity of printing and writings paper from recycled fibre under the Waste and Resources Action Programme (WRAP). The notification was registered under number N 364/05. The Commission asked further information by letter dated 9 September 2005, registered under number D/56952. The United Kingdom replied by letter dated 28 October 2005, and registered on 7 November 2002 under number A/38954.

2. DESCRIPTION OF THE MEASURE

- (2) WRAP is an entity established to promote sustainable waste management, and more specifically to promote efficient markets for recycled materials and products. Its central objective is to enable recycled markets to function more effectively by stimulating demand for recycled materials and products, thereby improving the economics of collection. Although WRAP functions as an adjunct to the Government and implements government policies, it has the form of a private company. WRAP's shareholders comprise several representatives of the industries with some interests in waste management, among them the Confederation of Paper Industries and the Chartered Institute of Waste Management, charities like Wastewatch, and representatives of the devolved and British governments.
- (3) In the present case, WRAP has chosen to give support for the creation of printing and writing reprocessing capacity. The definition of printing and writing paper used by the UK authorities includes the following types of papers: paper for printed publications, copier/printer paper and magazine papers.

- (4) By increasing reprocessing capacity of printing and writing paper (hereinafter "P&W paper"), WRAP wants to address the problems of paper collection and recycling in offices and business. According to the United Kingdom most of the paper produced by businesses and offices is not collected and sorted for recycling. The reasons for this lie in a dual system of waste collection, where city councils are responsible for collecting domestic waste but have no responsibility for collecting waste from businesses and offices, and the low costs of landfill. Businesses and offices pay private waste managers for the collection of their waste. The low costs of landfill, the difficulties experienced in sourcing waste paper in the last decade, and attendant price fluctuations has led to a market failure consisting of a shortage of reprocessing capacity and a preference by waste managers to dump waste paper from offices and businesses in the landfill and to a shortage of reprocessing capacity. In order to correct this market failure, WRAP intends to offer grants to paper manufacturers to increase paper reprocessing capacity which utilises waste paper from offices and businesses as its raw material input.
- (5) WRAP is planning to issue a competitive tender process, inspired by EC public procurement procedures, and grant the aid to paper mills before April 2006. The specific aim expressed in the tender procedure will be to provide a subsidy towards the creation of new P&W paper reprocessing capacity and promote the development of recycled paper technology within this paper grade. Successful bidders will be those whose collections are predominantly from offices and business and are of P&W waste paper. According to the UK authorities, it is highly probable that a bid that included a high proportion of (low quality) household waste, rather than P&W waste paper from offices and/or businesses, will not succeed. According to the order of priority given by WRAP in the tender invitation document to raw material sources, the most important source is offices or business. In return to the grant, the successful paper manufacturers will commit to an increased agreed tonnage of P&W waste paper newly recovered from the waste stream as the raw material for the new facilities, with a minimum percentage or tonnage being recovered printing and writing paper from offices. Tenderers will need to specify the level of support required to bring forward their proposals, and to demonstrate technological developments and environmental benefits.
- (6) Among the criteria for the selection of the successful tenderers is the inclusion in the facility of elements of new technology or processes, whose trialling or demonstration will assist the development of sustainable processes in waste recycling. In addition, the demonstration by the tenderer that the process used goes beyond current "state of the art".
- (7) According to the United Kingdom, the competitive tender will ensure that the minimum necessary is paid to secure the environmental benefits.
- (8) The United Kingdom argues that the investment project would bring about a major environmental benefit consisting in the creation of an increasing demand for a major proportion of office and businesses waste stream. This will bring benefits for the environment, while this will also allow less waste to be disposed in the landfills.
- (9) The budget for this measure is between GBP 6 million and GBP 20 millions. The budget will cover a period from the date of clearance to 31 December 2008. The number of beneficiaries is expected to be between two and ten paper mill companies, depending on the quality of the proposals. The aid is financed through the general budget of the Department for Environment, Food and Rural Affairs (DEFRA).

3. PRELIMINARY ASSESSMENT OF THE MEASURE

- (10) According to Article 6 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁽⁵⁾, the decision to initiate the formal investigation procedure shall summarise the relevant issues of fact and law, shall include a preliminary assessment of the Commission as to the aid character of the proposed measure, and shall set out the doubts as to its compatibility with the common market.

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

- (11) Under Article 87(1) EC Treaty, "any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market."
- (12) In this case, the measure will be funded by resources granted by the State under the WRAP programme. The aid will be granted to individual beneficiaries. The competitive selection procedures may ensure that the amount of the subsidy is limited to the minimum, but does not take away the aid character of the measure. The measure distorts or threatens to distort competition, as it may cover a significant part of investment costs, which would allow the beneficiary to charge a lower price for the P&W paper it produces. The measure will affect the market for new paper, but also the market for waste paper, which is valuable commodity in demand by the paper industry. The measure is likely to affect trade between Member States, since both new paper and waste paper are traded internationally. In fact, a big amount of the UK paper consumption is imported mainly from other Member States and the United Kingdom was the biggest European exporter of waste paper in 2004⁽⁶⁾.
- (13) Therefore, the scheme qualifies as State aid under Article 87(1) of the EC Treaty.
- (14) By notifying to the Commission the current scheme, the United Kingdom has fulfilled with the obligation of Article 88(3) of the EC Treaty.

⁽⁵⁾ OJ L 83, 27.3.1999, p. 1.

⁽⁶⁾ CEPI, Special Recycling 2004 Statistics. Page 5, available at <http://www.cepi.org/files/Sp%20Rec%202005-135002A.pdf>

3.2. Compatibility of the aid under the environmental aid guidelines

- (15) The UK authorities claim that the scheme brings environmental benefits. Therefore, the Commission assessed whether the scheme would be justified under the Community guidelines on State aid for environmental protection (hereinafter the environmental aid guidelines) ⁽⁷⁾.
- (16) The Commission does not deny that the reuse of waste paper is more environmentally friendly than putting it into landfill. However, it has doubts that point 29 of the environmental aid guidelines justify the scheme in as far as it increases the recycling rate of P&W paper. Pursuant to this point, the Commission may authorise (1) investment aid enabling firms to improve on the community standards applicable and (2) investment aid where firms undertake investment in the absence of mandatory Community standards or where they have to undertake investments in order to comply with national standards that are more stringent than the applicable Community standards.
- (17) First of all, the Commission recalls that according to the general principles of law, an exception should be interpreted in a restrictive manner. The guidelines define the conditions under which the Commission may consider that aid is compatible with the common market in accordance with Article 87(3)(c) of the Treaty, and therefore form an exception to the general prohibition laid down in Article 87(1) of the Treaty. It should also be recalled that the environmental aid guidelines are based on the general principle of "the polluter pays", and that every interpretation of the guidelines should strictly comply with this underlying principle.
- (18) The scheme may increase the capacity to produce P&W paper, which would lead to increase quantities of waste paper, which would only be partially recycled. In any case, only part of the waste paper used to manufacture P&W paper will be paper sold by each beneficiary itself. Consequently, the Commission has doubts that the investment will reduce the beneficiaries' own pollution. It is more likely that the environmental benefits may derive from indirect effects on supply and demand for waste paper that affect all users and provide of waste paper concerned, not only the beneficiary.
- (19) The United Kingdom agrees that there are no Community standards applicable to the beneficiaries. Therefore, first situation referred to in point 29 of the environmental aid guidelines, which allows aid to be granted in order to enable firms to improve on Community standards does not apply in this case.
- (20) In relation to the second situation described in the environmental guidelines, concerning aid to firms to undertake investments in absence of Community standards, the Commission also has doubts that it would apply in this

case. The Commission considers that point 29 of the environmental aid guidelines concerns cases where an undertaking invests to improve its own environmental record, and to reduce its own pollution. In such cases, aid can be allowed as an incentive to improve the environmental performance of the company.

- (21) This interpretation is confirmed by point 18(b) of the environmental aid guidelines, which states that aid "may act as an incentive to firms to improve on standards or to undertake further investment designed to reduce pollution from their plants".
- (22) Other interpretation of the guidelines might result in Member States subsidising large investments, with high intensities, in all those sectors where used products can be used as materials for production or where such use is the general practice in that sector. Such aid could be granted in non-assisted areas or, in any event, without having to comply with regional aid rules and might have serious consequences on the relevant markets. Moreover, following such interpretation, the rules could be circumvented by granting aid not to the polluters, that under Community law would not be obliged to take care of the other company's pollution, but to the companies taking care of the pollution.
- (23) It is not excluded that part(s) of the selected investment projects will be eligible for environmental aid for other reasons, but as the projects have not been selected yet and as the United Kingdom has not guaranteed that aid would be given only in situations foreseen by the environmental guidelines, the Commission doubts whether the aid can be justified under the environmental aid guidelines.

3.3. Compatibility of aid under the regional guidelines and other provisions of the Treaty

- (24) The beneficiaries have not been chosen yet, and therefore it is impossible to assess if the investments will take place in areas eligible for regional aid and that the Guidelines on national regional aid ⁽⁸⁾ would apply wholly or in part. In fact, it should be noted that similar projects have already been approved by the Commission based on the rules for regional aid, but not as environmental aid ⁽⁹⁾.

⁽⁸⁾ OJ C 74, 10.3.1998, p. 9.

⁽⁹⁾ E.g. *Hamburger AG* (C 72/01), Commission decision 9 April 2002, OJ L 296, 20.10.2002, p. 50.
Kartogroup (N184/2000), Commission decision 18 July 2001 available at http://europa.eu.int/comm/secretariat_general/sgb/state_aid/industrie/n184-00.pdf

⁽⁷⁾ OJ C 37, 3.2.2001, p. 3.

(25) The Commission furthermore doubts that other rules based on Article 87(3)(c) are applicable or that other exemptions set out in Article 87(2) and (3) of the EC-Treaty are applicable.

3.4. Compatibility of aid directly on the basis of Article 87(3)(c)

(26) Should the Environmental aid guidelines not be applicable, the case has to be assessed directly on the basis of Article 87(3)(c). In fact, the Commission has done so in the past, notably for a recycling scheme administered by WRAP⁽¹⁰⁾ and two other cases in the paper industry⁽¹¹⁾.

(27) In past cases dealing with investment to increase recycling capacity in the paper industry⁽¹²⁾, the criteria applied by the Commission was based on the incentive effect of the aid and whether the necessary investments to obtain the environmental benefits were going beyond the "state of the art" at EU level. Since the use of recycled fibre to manufacture paper is common practice in the EU, the Commission has not accepted that the mere fact that the aid aims to increase the amount of recycled paper fibre in the manufacturing of paper is enough to qualify it as environmental aid.

Investments going beyond the state of the art?

(28) The UK authorities argue that the fact that very small amounts of P&W paper are made from recycled fibre in the EU, qualifies the investments as going beyond the current "state of the art". The Commission is aware of technological barriers to increased rates of recycled fibres used in particular in P&W paper, like the de-inking of digital print, the removal of ashes with washers and the increased amount of bleaching, flotation, dispersion and sludge disposal. It would, however, normally expect a certain level of innovation from a market operator that wants to compete and be in the vanguard of the product market, in particular in the paper market, where many operators are large multinational producers. In past cases, the Commission concluded that "any paper producer that wishes to remain technologically and environmentally competitive in the long run has to make such investments in innovation from time to time"⁽¹³⁾. The relatively small amounts of P&W paper manufactured from waste paper would seem to indicate that it is possible to implement such processes and that the technology exists. According to information available to the Commission the production of P&W papers using recycled fibre has increased by 6,8 % in 2004⁽¹⁴⁾. The production of P&W paper using

recycled fibre is currently the fastest growing type of recycled paper in Europe.

(29) Therefore, the Commission has doubts that the justification used by the UK authorities that the current very low utilisation of recycled content in the production of P&W papers in the EU is enough to state that manufacturing P&W paper using recycle fibre goes beyond the current "state of the art" in the EU.

Increasing collection rates?

(30) According to information available to the Commission, it seems that the current situation of the market of P&W waste paper is changing fast and that paper companies are becoming very interested on P&W waste paper due to its high quality⁽¹⁵⁾. In fact, in Sweden it is expected that the recycling rate of office papers office will pass from 57 % in 2003 to 75 % in 2006. Given the situation on the waste paper market, it is reasonable to expect increased interest in waste P&W paper from paper producers.

(31) Therefore, the Commission has doubts that an increase in paper manufacturing capacity in the United Kingdom is needed to increase the collection demand. In the last years, there has been a big demand for waste paper in countries of East Asia. It would seem that such an increase has converted the United Kingdom to a net exporter of P&W waste paper.

(32) Therefore, the Commission has doubts about the necessity of aid for increasing the collection of P&W waste paper.

Proper targeting to maximise environmental benefits?

(33) The Commission doubts whether the measure is properly targeted, ensuring the highest environmental benefits. The United Kingdom argues that the biggest environmental gains are obtained if high quality waste paper is used for high quality new paper, i.e. P&W paper. The Commission, however, wonders whether a more common approach like using P&W waste paper to manufacture other types of paper might have the same impact in the collection of paper from offices and, taking the broadest possible perspective, bring the same environmental benefits.

Proper calculation of eligible investment cost?

(34) If it were appropriate to base the assessment directly on Article 87(3)(c), the Commission would draw a parallel to points 36 and 37 of the environmental aid guidelines to calculate the eligible cost. In accordance with these points, eligible cost must be confined to the extra investment costs necessary to meet the environmental objectives.

⁽¹⁰⁾ OJ L 102, 7.4.2004, p. 59. The waste products that are concerned under this scheme are wood, glass, plastics, aggregates and compost. The Commission noted that the objective of this measure is to encourage the development of waste recycling, which is a clear objective of the Community environmental policy. The Commission also noted that the aid does not subsidise "state of the art" techniques in the industries concerned, which are economically profitable and do not need State aid. Therefore, the Commission considered that this scheme was compatible with Article 87(3)(c) of the EC Treaty.

⁽¹¹⁾ OJ L 314, 28.11.2003, p. 26 and OJ L 53, 26.2.2005, p. 66 respectively. The criteria used in these cases are also commented upon in the Annual Competition report of 2004.

⁽¹²⁾ OJ L 314, 28.11.2003, p. 26 and OJ L 53, 26.2.2005, p.66 respectively. The criteria used in these cases are also commented upon in the Annual Competition report of 2004.

⁽¹³⁾ OJ L 53, 26.2.2005, p. 76.

⁽¹⁴⁾ CEPI, Special Recycling 2004 Statistics, p. 1.

⁽¹⁵⁾ This is, e.g., signalled in a study on recycling waste »Support in the drafting of an ExIA on the Thematic Strategy on the Prevention and Recycling of Waste« by EPEC, Page 82, available at http://europa.eu.int/comm/environment/waste/pdf/epec_report_05.pdf, published by DG ENV.

- (35) The method used by the UK authorities to calculate the eligible costs will be based on the premise that where the market would not give rise to the investment in question, then the relevant eligible costs are all the costs of the investment. Only those costs necessary to make the required investment, and to achieve the environmental objective, will be considered to be eligible and any net benefits during the first five years of production will be deducted. The cost of a reference investment which creates the same capacity but which does not provide the same environmental benefits, would not be subtracted.
- (36) The Commission has doubts whether this interpretation is acceptable. Substantial parts of the selected investment projects might be essential as well for investment projects in similar production capacity that is not based on using waste P&W paper. In case of investment in new capacity, the whole investment cost would be necessary to obtain the environmental benefit, but it is not clear why the investment of a conventional plant should not be subtracted. Without taking account of such a reference investment, the cost calculation would be disproportioned.

Choice for the least distortive instrument?

- (37) The United Kingdom has chosen to grant aid directly to the paper producers instead of to collection schemes, because it reduces its administrative costs and the amount of support. The Commission, however, doubts whether the measure proposed by the United Kingdom is the least distortive instrument to address the problem at stake.

Other instruments, e.g. instruments that focus on the collection, are likely to less distort the markets of waste paper and of end products.

4. CONCLUSION

- (38) In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 88(2) of the EC Treaty, requests the United Kingdom to submit its comments and to provide all such information as may help to assess the aid, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.
- (39) The Commission wishes to remind the United Kingdom that Article 88(3) of the EC Treaty has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.
- (40) The Commission warns the United Kingdom that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication."