



EUROPEAN COMMISSION

Brussels, 20.12.2011

C (2011) 9389

In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].

PUBLIC VERSION
WORKING LANGUAGE
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Subject: State aid SA. 32307 (2011/N) – France

Chaufferie biomasse sur le site de production Ajinomoto Eurolysine S.A.S à Amiens

Sir,

The Commission wishes to inform you that the individual aid to Dalkia S.A.S. for the construction of a biomass heater at Ajinomoto S.A.S.'s Amiens factory is compatible with the common market in accordance with Article 107(3)(c) of the Treaty for the Functioning of the European Union ("TFEU") and has therefore decided not to raise objections to the notified measure.

1. PROCEDURE

1. Following prenotification contacts, France notified its proposed measure on 13 October 2011.
2. The Commission sent a first request for information on 28 October 2011, to which the French authorities replied on 25 November 2011.

2. DESCRIPTION

2.1. Background and objective

3. The French authorities have notified their intention to provide EUR 11.15 million in investment aid to support an individual company, Dalkia S.A.S. (hereinafter "Dalkia"), in the construction of two biomass boilers for the exclusive production of heat to Ajinomoto on its Amiens site. The aid is planned to back-up a commercial proposal of

Dalkia to enter into a heat supply contract with Ajinomoto Eurolysine S.A.S. (hereinafter "Ajinomoto").

4. Ajinomoto is a subsidiary of the Japanese group Ajinomoto, an important world producer of amino acids with an annual turnover of about EUR 10 billion. At its facility near Amiens, Ajinomoto produces amino acids which are used as nutrients for livestock farming, in particular lysine, threonine, tryptophan and valin.
5. Heat is used in Ajinomoto's production process to sterilize, increase the concentration of, and dry certain intermediate products used in the production of amino acids. Heat, as well as electricity, is also consumed in the fermentation of the amino acids. The Amiens site utilizes about [...]*

2.2. Project description and environmental impact

6. Dalkia's proposal to Ajinomoto envisages the construction of two biomass boilers capable of providing 30 tonnes of heat per hour (hereinafter "t/h¹" each, for a total of 60 t/h. The biomass-fuelled boilers would be complemented by a gas-fuelled boiler providing 110 t/h, of which 25 t/h co-generated heat and 75 t/h post-combustion heat, which will be an integral part of the infrastructure for standard use, and by two smaller gas boilers, of respectively 15 t/h and 25 t/h, to be used solely as an emergency back up solution in case of system failure.
7. Dalkia's proposal is in the context of the ongoing negotiations between Dalkia and Ajinomoto on how to structure their commercial relationship going forward. Ajinomoto is currently using a combined gas boiler/turbine built and managed by Dalkia, which provides 110 t/h and 45 MW, as well as two owned 35 t/h gas boilers. Smaller emergency boilers built and run by Ajinomoto are also in place.
8. Ajinomoto has chosen Dalkia as a commercial partner since [...], [...]. However that contract is due to expire on [...], and the combined gas boiler/turbine is to be shut down on [...]. [...].
9. Ajinomoto is considering their options and has suggested that they may seek alternatives to the current commercial relationship with Dalkia. Such alternative may well come in the form of self-provisioning, which is described by Dalkia as being standard practice for Ajinomoto, as testified by the current setup in Amiens where Ajinomoto built and runs the two 35 t/h boilers.
10. The biomass project at the centre of the notification is, among the solutions which have been negotiated between the parties, the one which appears most attractive for Ajinomoto. [...], the reason why the biomass project is attractive to Ajinomoto is

* Business secrets.

¹ A ton of heat is 12,000 British thermal units per hour or 3.5 kilowatts.

twofold: (i) in order to ensure that its future heat needs, [...], will be met; and (ii) to limit its exposure to gas price volatility and exploit savings allowed by CO₂ permits. [...].

11. The biomass boilers would be capable of providing an average of [...] of the total heat needed for the production process of Ajinomoto, based on 2009 numbers. The complementary gas boiler would provide the remaining [...] of heat.
12. The alternative for Ajinomoto would be to build two boilers with an equivalent heat output of 30 t/h but using gas technology. This is thus the relevant counterfactual for the purposes of the present assessment. [...], hence they can be ignored in the present assessment.
13. The French authorities also addressed the issue of the sustainability of the project from an environmental point of view, given that while the use of heat produced using biomass to substitute for heat produced using gas certainly lowers CO₂ emissions from the combustion of fossil fuel, the use of biomass may in itself trigger sustainability concerns.
14. Biomass is the biodegradable fraction of products, waste and residues from agriculture (including animal and vegetable substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste.² The biomass boilers need to be working permanently during the year to achieve operating efficiency. The biomass fuel will consist of forest woods and will be taken from two geographic areas: about 70,000 tonnes of wood will come from the Aquitaine and Limousin area and be transported by train, while another 70,000 tonnes will come from an area within 150km of radius from Amiens.
15. The impact on the environment has been assessed by the ADEME, together with the other competent authorities in France, the Direction régionale de l'environnement, de l'aménagement et du logement (DREAL) and the Direction Régionale de l'Agriculture et de la Forêt (DRAF). The sourcing plan has been validated based on four criteria: the perennial nature of the resources; the absence of disputes in relation to their use; the area of collection and the mode of transport; and an independent environmental assessment. The latter is provided by the certification that the biomass used consists solely of products classified as PEFC, which implies the sustainability of the forests involved.
16. The biomass boilers will produce [...], to be compared with [...] produced by the counterfactual gas boilers.

² See paragraph 70(6) of the 2008 Community Guidelines on State Aid for Environmental Protection, OJ C 82, 1.4.2008.

2.3. Scope of the notification, legal basis, granting authority

17. The notification concerns investment aid for the generation of heat from biomass based on biomass combustion.
18. The aid was granted, but not yet disbursed, by the French Agency for the Environment and the Management of Energy (hereinafter "ADEME") following an open call for biomass projects across all regions and using objective eligibility criteria,³ such as mix of biomass used and level of reduction in emission. The Dalkia proposal was ranked 16 out of 37 shortlisted projects.
19. The call for projects was part of the "Régime d'aides aux énergies renouvelables de l'Agence De l'Environnement e de la Maitrise de l'Energie 2009-2013," notified to the Commission as Case N 584/2008 and approved on 17 June 2009. The current regime replaces an earlier scheme, which was approved by the Commission on 13 May 2005 as Case N 64/2005.
20. The legal basis for the present aid is Decision n° 10-3-17 of 30 June 2010 together with Decision n° 08-5-4 of 9 October 2008 of the ADEME's Council of Administration. The objectives pursued by ADEME are set in the "Code de l'environnement", and in particular Articles L. 141-3, R. 131-2 et R 131-3, which stipulate that ADEME's actions consist in stimulating, co-ordinating, facilitating and, where applicable, carrying out any operation having the aim of saving energy and basic input materials, as well as developing renewable sources of energy.
21. The ADEME granted the funds pending notification and assessment of the project by the Commission, and will relinquish the aid funds only after approval of the aid by the Commission. Notification of the measure was necessary pursuant to the 2008 Community Guidelines on State Aid for Environmental Protection (hereinafter referred to as "the Environmental Aid Guidelines"),⁴ which stipulates that Member States should notify in advance any investment aid granted under an already authorised scheme, where the amount of such aid exceeds EUR 7.5 million.⁵

2.4. Beneficiary, form of the aid, aid intensity

22. The investment aid concerns only one beneficiary, i.e. Dalkia. The aid shall take the form of a grant, which is to be disbursed in six instalments, the first one of which will consist of 25% of the total aid amount and will follow approval of the project by the Commission. The remaining five instalments will consist of 15% of the total aid amount per year for the following five years.

³ Project BCIAT 2010, launched in October 2009.

⁴ OJ C 82, 1.4.2008, p. 1.

⁵ Point 160 b) i), of the Environmental Aid Guidelines..

23. Ajinomoto does not benefit from the aid, given that Dalkia fully bears the risk of the investment net of the aid received by the ADEME. Ajinomoto will buy the heat from Dalkia at an agreed price set in advance. The indicative price has been already set and will be in line with market prices, and notably with the price of steam produced through gas-fuelled boilers – indeed, the price of heat produced through biomass is on average somewhat higher than the price of heat produced through gas in the period 2006-2010. The final price will be set when the contract is signed and will be very close to the indicative price.
24. The total investment cost in the biomass boilers is EUR 25,490,000. The construction of the two equivalent gas boilers in the counterfactual would require an investment cost of EUR 1,037,000.
25. The five-year operating costs for the biomass boilers are [...], while the equivalent period operating costs for the gas boilers are [...].

2.5. Financial aspects

26. The French authorities indicate that the internal rate of return of the biomass investment would be [...] without aid, and [...] with aid. [...]. [...].
27. However Dalkia considers the project to be of strategic value, for two main reasons. First, the company is seeking to build its portfolio of renewable energy projects to help meet its objective of producing 20% of energy from renewable sources by 2020. Developing the biomass value chain is considered important in this regard, as is in particular the move to an industrialized collection and treatment of biomass material to be used as fuel, compared to the current situation where the lack of an adequate number of projects implies that biomass is collected and treated on an *ad hoc* basis. Second, the project would allow Dalkia to continue its relationship with Ajinomoto.
28. Dalkia's commercial policy allows it to consider projects with a lower return rate than [...] when a third party can be involved in funding those projects. Dalkia has therefore based its proposal to Ajinomoto on the involvement of a third party investor, [...]. [...].
29. Currently the main candidate for the provision of the lease is [...], a financial firm specialising in the provision of financial services to environmental and energy projects. [...]. However Dalkia is open to offers from other companies which provide the same service. [...].
30. According to the French authorities the current proposal is based on a lease with an interest rate of [...] and duration of [...] years. However the exact terms and conditions of the lease have not yet been set, given that they will be market rates applied at the moment when the project will commence, which will only take place after the Commission approval.

3. ASSESSMENT

3.1. State aid within the meaning of Article 107(1) TFEU

31. State aid is defined in Article 107(1) TFEU as 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 in so far as it affects trade between Member States.
32. In its decisions concerning State aids N 64/2005 and N 584/2008, the Commission already came to the conclusion that grants under the scheme of which the notified measure is part constitute State aid. France does not dispute such conclusion.
33. Accordingly, the Commission concludes that the notified measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Lawfulness of the aid

34. Given that it exceeds EUR 7.5 million, and as stipulated in the Environmental Aid Guidelines,⁶ the French authorities notified the aid measure to the Commission before its implementation, and confirmed that the transfer of funds is subject to the approval by the Commission of the measure. The Commission thus considers that the French authorities fulfilled their obligation according to Article 108(3) of the TFEU.

3.3. Compatibility of the aid

35. The Commission has assessed the compatibility of the notified measure according to Article 107(3)(c) TFEU and in light of the Environmental Aid Guidelines.
36. Given the fact that the notified measure concerns investment aid for energy produced from renewable energy sources, namely biomass, the compatibility conditions laid down in Section 3.1.6.1 (investment aid for renewable energy sources) of the Environmental Aid Guidelines apply.
37. First, the Commission notes that the French authorities have confirmed that the aid is only granted in respect of the production of heat using renewable energy sources as defined in paragraph 70(5) of the Environmental Aid Guidelines.
38. Second, the lack of existence of mandatory EU standards concerning the share of energy from renewable sources for individual undertakings means that the aid may be justified, as prescribed in paragraph 101 of the Environmental Aid Guidelines.
39. Paragraph 102 of the Environmental Aid Guidelines prescribe that the investment aid intensity of measures destined to the use of renewable energy sources must not exceed 60% of the eligible costs, and paragraph 106 further specifies that eligible costs must be net of any operating benefits and operating costs during the first five years of operations.

⁶ OJ C 82, 1.4.2008, p. 1.

40. The aid of EUR 11,150,800, read in conjunction with the operating costs provided in Section 2.4 above, results in an aid intensity of [...], as Table 1 below shows. Given that any benefit deriving from CO₂ prices is going to accrue to Ajinomoto based on Dalkia's proposal, there are no operating benefits for Dalkia.

Table 1 – Aid Level and Aid Intensity

[...]

Source: French authorities

41. The Commission thus considers that the aid is compatible with the criteria laid out in Section 3.1.6.1 of the Environmental Aid Guidelines.
42. Given that the notified measure exceeds EUR 7.5 million, it must also be assessed in the light of Section 5 of the Environmental Aid Guidelines.

3.3.1. Existence of a market failure

43. The combustion of fossil fuels entails externalities which are not factored in their price as compared to that of renewable energy sources such as biomass. The recognition of this market failure lays at the heart of the Environmental Aid Guidelines and justifies, under certain conditions, certain state aid measures, including those highlighted in the Environmental Aid Guidelines.
44. First, the Commission notes that in the absence of aid, Ajinomoto would not consider Dalkia's proposal and would in all likelihood choose the considerably cheaper alternative of building two gas-fuelled boilers. This counterfactual will be used throughout this Section.
45. As regards the notified measure, the production of heat using biomass fuels has direct benefits for the environment based on the specific activity of Ajinomoto. The biomass project will clearly translate into lower CO₂ emissions, as indicated in paragraphs 16 above and 53-54 below.
46. The Commission also notes that the beneficiary, Dalkia, is setting its own target of producing 20% of its total energy from renewable sources by 2020, a target which it pursues through an expansion in the use of biomass in its portfolio of projects, allowing the company to pursue a policy in this area, in which there are no EU standards, within the meaning of point 70 (3) of the Environmental Aid Guidelines.
47. For these reasons, the Commission considers that the measure will contribute to mitigating the market failure related to the use of heat production from fossil fuels and, in particular, through gas-fuelleled boilers in this case.

3.3.2. Appropriate instrument

48. The Commission needs to consider whether providing state aid is an appropriate instrument to attain the objective of environmental protection, in particular in light of

the potential existence of less distortive instruments which may be able to achieve the same result.

49. There are a number of instruments which are being used throughout the European Union to protect the environment and limit polluting activities. The Emission Trading System is the main one and the Europe 2020 objectives include the promotion of sustainable growth.⁷
50. However the type of investment needed for the specific type of technology under consideration, i.e. biomass, and for the size being considered, i.e. at the level of a single production facility, would be unlikely to be undertaken in the absence of *ad hoc* aid measures. The aid allows Ajinomoto to switch to a more environmentally sustainable production process, which it would not otherwise be likely to use.
51. For these considerations, the Commission concludes that the notified measure is an appropriate instrument to achieve the aim of reducing CO₂ emission.

3.3.3. Incentive effect and necessity

52. The counterfactual scenario, where two gas-fuelled boilers would be built, is a clearly less environmentally friendly solution to be adopted.
53. The use of the biomass boilers would entail a direct and quantifiable benefit to the environment. The production of heat through biomass will produce [...], to be compared with [...] produced by the counterfactual gas boilers. This implies savings of [...], which would not take place without the aid.
54. The measure may also have positive repercussions on the future deployment of biomass projects and the development of biomass-related production facilities. Dalkia considers the Ajinomoto project as strategic because it can lead to a higher level in the collection and provision of biomass in the region, a level which can only be attained by industrialising the biomass product chain. By contributing to reaping economies of scale in the collection and use of biomass, the project further supports beyond its intrinsic advantages the increased spread of biomass technology.
55. Based on the information provided, the beneficiary applied for the ADEME funds before implementing the project. Hence the aid can have an incentive effect, as specified in paragraph 143 of the Environmental Aid Guidelines, provided that the conditions under Section 5.2.1.3 are satisfied.
56. According to paragraph 171 of the Environmental Aid Guidelines, a state aid is necessary when it results in the recipient changing its behaviour to increase the level of environmental protection.

⁷ COM(2010) 2020, 3.3.2010

57. The Commission notes that the internal rate of return of the project would be [...] in the absence of aid, rising to [...] if aid is granted. [...]. However, Dalkia has engineered a solution which sees the involvement of a third party investor [...], as explained in Section 2.5 above.
58. Without aid, the project would have an internal rate of return which would make it unattractive even if a third party investor were to be involved. Hence, without aid, the specific biomass project would never be undertaken.
59. Hence the notified measure is likely to result in a change of behaviour which has a clear environmental benefit.
60. On the other hand, the use of biomass boilers does not yield any production advantage for Ajinomoto. The only apparent advantage which Ajinomoto is likely to consider is that by using biomass, the price of heat is independent of the price of gas, which would be the fuel to produce it under the counterfactual scenario. Also, Ajinomoto is likely to see a benefit in the use of biomass fuel if it takes into account the price of CO₂ emissions which it would need to pay under the Emission Trading System.
61. However French authorities showed that under their assessment, the implicit price of heat produced through the biomass installation is generally higher than the price of heat produced through gas boilers. In particular, the price remains higher in the absence of CO₂ prices, when considering average gas prices in the period 2006-2010. It becomes marginally higher when considering a CO₂ price of EUR 16.5 per tonne, and it becomes marginally lower only in a scenario where the price of CO₂ rises to EUR 25 per tonne.
62. Hence the notified measure is not expected to result in a clear production advantage for the user of heat, Ajinomoto.
63. There are no planned future mandatory standards in the area of fuel consumption for the purposes of heat production, which would lead to a level of environmental protection comparable to the one which would be achieved if the state aid were to be provided. In fact, market pressures should normally lead Ajinomoto to choose the lower-priced gas-fuelled boilers in the absence of aid.
64. For these considerations, the Commission concludes that the notified measure is necessary to achieve the aim of reducing CO₂ emissions in the present case.

3.3.4. Proportionality of the aid

65. The French authorities have provided a detailed and credible assessment of the eligible costs, in line with the methodology which the Commission assessed positively in its decision in case N 584/2008. In particular, the ADEME has verified that the costs provided by Dalkia are consistent and justifiable.
66. The ADEME has also selected the project through a competitive and open call for applications, based on objective criteria. The BCIAT 2010 call envisaged a selection of the candidate projects based on, among other things, a minimum performance level of

the biomass boiler and different residue emission levels corresponding to different power level of the boiler.⁸

67. The projects have been then classified based on the ratio of aid requested to energy produced through biomass boilers. Dalkia's project ranked 16 out of 37 selected projects, with a ratio of EUR 400 per unit of energy produced by biomass per year.
68. The aid intensity remains below the maximum thresholds allowed under point 103 of the Environmental Aid Guidelines. In particular, the planned aid intensity is 44%, to be compared with a maximum aid intensity of 60% for this type of investment. At such a level of aid intensity, the profitability of the project is relatively low compared to the commercially set standards of the beneficiary, Dalkia.
69. The project profitability for Dalkia over a longer time span, or over the entire life of the boilers, would not change as a result of changes in the CO₂ prices, since the price that Ajinomoto pays is fixed. Indeed, it is only Ajinomoto which bears the risk of CO₂ price movements.
70. The aid can be considered to have been kept at a minimum also because it was the result of a competitive process, through which Dalkia's project was competing with similar projects based on their cost per unit of biomass energy produced.
71. For these considerations, the Commission concludes that the notified measure is proportional to achieve the aim of reducing CO₂ emission in the present case.

3.3.5. Potential distortions of competition and trade

72. The extent of the distortion of competition entailed by the aid, either in the market where Dalkia operates or in the one where Ajinomoto operates, is not such as to be an obstacle to the compatibility of the aid.
73. Indeed, Dalkia's biomass project is barely competitive to the counterfactual project, based on its offer price and on its profitability for the seller. The notified measure is also not likely to provide a major production advantage to Ajinomoto, taking into account the documented costs of obtaining heat supplies accruing from combustion of the subsidised boilers, as compared to those of gas-fuelled ones.
74. The only advantage which Ajinomoto may derive from the use of biomass technology for its heat needs is a more stable price of heat, and a price which may, under certain conditions, be lower than the price of heat produced by gas. However the price of biomass-produced heat is comparable to the price of gas-produced heat, and under most conditions remains, on average, higher at the prices prevailing in the period 2006-2010.

⁸ See BCIAT 2010 *Cahier de charges*, p. 6.

75. The beneficiary of the aid will not gain a first mover advantage from devising a new product or from mastering a new technology. Dalkia is already proficient in the deployment of biomass infrastructure. Nor will the aid maintain inefficient firms afloat since, as shown above, Dalkia pursues a commercial policy which would not normally prompt it to undertake the planned investment.
76. The aid is not being used to strengthen or maintain the market power of either Dalkia or Ajinomoto. A single installation which constitutes a potential, and as of yet uncertain, continuation of the previous contract between Dalkia and Ajinomoto is not likely to have a substantial impact on Dalkia's position in the market where it operates, i.e. the market for the provision of heat to intermediate production processes.
77. The market for the provision of district heating is the one closest to the market impacted by the notified measure, however it is also substantially different, since it centres around the supply of heat to a number of buildings using relatively large district heating plants. For these reasons, the market for district heating is normally considered to be local in nature and the companies which operate in it are considered to have 100% of market share on it.⁹
78. The market in which Dalkia operates in the notified project is likely to be larger both in respect of its geographic and its product dimensions. In particular, such market is likely to be at least EU-wide in scope, and possibly worldwide, from the geographic point of view, since any boiler using any technology can be used at Ajinomoto's plant. Also, in this market Dalkia competes against any producer of heat-producing devices using a range of technologies, including indeed biomass- and gas-fuelled boilers.
79. For these reasons, the impact of the notified project on the structure of this market and on Dalkia's position in it can be expected to be limited. In this project, Dalkia provides a relatively small boiler for a single plant and competes against self-provision by Ajinomoto, as well as against any supplier of heat-producing boilers.
80. Moreover, the project revolves around a type of boiler the technology of which, i.e. biomass, would not be likely to be seen as a competitive constraint on the use of the more established and inexpensive gas technology. In fact, the biomass solution can be deemed to compete in the same market as gas only as a result of the provision of the aid, which makes the technology competitive as a relatively close substitute for gas-fuelled boilers, as indeed it is often to be expected in state aid cases.
81. Similarly, even if it were to be considered as an indirect beneficiary of the aid, Ajinomoto will not gain a competitive advantage from the use of biomass and its performance on the market where it operates, which is likely to be EU-wide, if not worldwide, in geographical terms, will not be impacted by the use of biomass rather than the counterfactual technology.

⁹ Despite such considerations, the Commission has not opposed concentrations involving Dalkia companies in such markets. See e.g. Case COMP/M.6363 Dalkia Polska S.A., and Case COMP /M.5793, Dalkia Česká republika, a.s. OJ C 171, 30.06.2010

82. Finally, the aid also is not expected to have significant negative spill-over on other Member States as a result of its effect on trade or on the location of firms. Indeed, Dalkia is already active in a number of Member States and the decisions on location of its plants shall not be influenced by the success or failure of the planned project. As regards Ajinomoto, the information available shows that the alternative contemplated, in the absence of the boiler planned to be aided, would be gas-fuelled boilers at the same location, still in Amiens.
83. For these considerations, the Commission concludes that the negative impact on competition and the effect on trade between Member States of the notified aid measure are limited.

3.4. Conclusion and balancing test

84. The Commission concludes that the positive effects of the notified measure offset its negative effects, and that the potential distortions caused by the measure do not alter market conditions to such an extent as to be detrimental to the common interest.

4. CONCLUSION

85. In the light of the foregoing, the Commission concludes that the notified aid to Chaufferie biomasse sur le site de production Ajinomoto Eurolysine S.A.S à Amiens is compatible with the internal market in accordance with Article 107(3)(c) TFEU and has therefore decided not to raise objections to it.
86. The Commission reminds the French authorities that, in accordance with Article 108(3) TFEU, plans to refinance, alter or change this scheme have to be notified to the Commission pursuant to provisions of Commission Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 [now 108] of the TFEU.¹⁰
87. If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

http://ec.europa.eu/eu_law/state_aids/state_aids_texts_en.htm

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
B-1049 Brussels
Fax No: 32 2 296 12 42

¹⁰ OJ L 140, 30.4. 2004, p.1.

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President