COMMISSION

COMMISSION DECISION

of 6 December 2006

on State aid No C 6/2006 (ex N 417/2005) which Germany is planning to implement for Volkswerft Stralsund

(notified under document number C(2006) 5790)

(Only the German version is authentic)

(Text with EEA relevance)

(2007/402/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter of 22 August 2005, registered as received on 26 August, Germany notified to the Commission its intention to grant regional investment aid in favour of Volkswerft Stralsund. The Commission requested information by 13 September 2005, to which Germany replied by letter of 14 October, registered as received on 17 October. By letter of 18 November 2005, it requested further information which Germany provided by letter of 19 December 2005, registered as received on 20 December.

(2) On 22 February 2006 the Commission initiated the formal investigation procedure with respect to the alleged State aid. The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission invited interested parties to submit comments on the presumed aid. Comments were submitted by letter of 10 May 2006, registered as received on 11 May, by the beneficiary Volkswerft Stralsund. By letters of 11 May, registered as received on the same day, the *Verband für Schiffbau und Meerestechnik* (German Shipbuilding and Ocean Industries Association) and *Danske Maritime* (Danish Maritime Industries Association) submitted comments.

(3) The comments were transmitted to the German authorities by letters of 12 May and 19 May. Germany replied to these comments by letter of 2 June 2006, registered as received on the same day.

(4) Germany's response to the initiation of the formal investigation procedure was submitted by letter of 7 April 2006, registered as received on the same day. On 26 July 2006 the Commission requested further information which Germany provided by letter of 22 August 2006, registered as received on 23 August.

II. DESCRIPTION

(5) The beneficiary of the aid is Volkswerft Stralsund GmbH (VWS), a shipyard located in Stralsund, Mecklenburg-Western Pomerania (Germany), an assisted area under Article 87(3)(a) of the Treaty. VWS belongs to the Danish A.P. Möller group and is part of its subgroup of yards led by Odense Steel Shipyard Ltd. It is a large enterprise and does not rank as a small or medium-sized enterprise under the Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises [3].

[1] OJ C 90, 13.4.2006, p. 36.

[2] See footnote 1.

[3] OJ L 124, 20.5.2003, p. 36.

(6) VWS is active in the design and production of sea-going vessels as well as in ship repair and conversion. It produces predominantly medium-sized container vessels but also passenger-cargo vessels, ferries and special vessels such as dredgers, cable-laying vessels, anchor handling tug supply vessels and marine pollution control vessels. VWS can produce ships up to a length of 260 m.

(7) The pre-fabrication of the different components up to sections takes place on specialised production lines. The final assembly — after conservation work and painting — is done in the dock hall, which can accommodate ships of up to 300 m in length. The launching of the ship is done with a 230 metre-long ship lift. This limits the production programme of VWS to ships of up to 260 m.

(8) VWS plans to modernise and rationalise its production as well as to adapt to changes in international demand in order to remain competitive on the world market. While it assumes that the favourable market conditions for cargo vessels will continue for several years to come, it considers that demand will increasingly shift to so-called 'panamax vessels', which VWS is currently not able to produce at competitive costs. Panamax vessels are the largest ships that can transit the Panama Canal, i.e. ships with a maximum length of 300 m and a maximum width of 32,2 m.

(9) VWS is therefore implementing an investment project to improve the productivity of the yard and to allow the shipyard to produce larger panamax vessels efficiently. The project will allow VWS to compete in the market segment of panamax vessels and will therefore increase the yard's sales potential. VWS reckons that this will lead to a more balanced utilisation of the yard's existing installations and will thus reduce significantly the production costs per ship, increasing the yard's productivity.

(10) The investments are in steel processing (panel production and section construction; conservation) so as to be able to build and handle larger steel constructions (sections) and in extending the ship lift by 40 metres to allow the lifting of longer ships.

(11) In the field of panel production and section construction a new production line for panels and for section parts for larger types of vessel will be built in an existing hall. Moreover, four additional sites for section construction will be built on the slipway so as to build larger sections. As regards conservation, the investment concerns the enlargement of two of the four existing conservation facilities to accommodate larger sections. The ability to build and handle larger steel constructions is necessary for the construction of larger vessels from an economic and technical point of view as the final assembly of larger vessels from smaller sections would be inefficient. By extending the ship lift, its capacity will match the capacity of the dock hall.

(12) On completion of the investment project, the productivity of VWS will, according to the information submitted by Germany, increase from around […] (*) t steel/1 000 working hours in 2005 to […] t steel/1 000 working hours. The capacity of the yard measured in compensated gross tonnes (CGT) will not increase as a result of the investment project; only the product mix will change, from medium-sized container vessels to large container vessels. The steel-processing capacity of the yard will increase from around 56 000 tonnes in 2005 to 64 000 tonnes following implementation of the project.

(13) The project was started at the beginning of 2005 and completed by 28 February 2006. It will create 207 new direct jobs.

(14) The investment project involves a reduction in the degree of vertical integration at the shipyard. The share of outsourcing is supposed to increase from 17 % of productive hours in 2005 to around 28 % by the end of 2007. It is estimated that increased outsourcing will lead to the creation of 400 new jobs in the Stralsund region.

(15) Total project costs amount to EUR 18 669 000 and are equal to eligible costs. Theses costs can be broken down as follows:

(EUR)

Ship lift	10 512 000
Panel line and section construction	3 910 000
Conservation	4 247 000
Total	18 669 000

(16) Germany intends to grant State aid amounting to EUR 4 200 500, which is equal to 22,5 % of the eligible investment costs of EUR 18 669 000. The aid will be granted on the basis of two approved regional aid schemes ([4]). The aid application was made before the start of the investment project.

(*) Confidential information, also marked by […] below.

([4]) Joint Federal Government/Länder scheme for improving regional economic structures, 34th general plan; Investment Allowance Law 2005.

III. REASONS FOR INITIATING THE FORMAL INVESTIGATON PROCEDURE

(17) The Commission initiated the formal investigation procedure since it doubted that the grant was compatible with the common market. It had misgivings that the investments in panel production and section construction might go beyond mere investments to improve the productivity of existing installations. It also doubted that the investments in conservation and in extension of the ship lift constituted eligible investments as their objective did not seem to be the improvement of the productivity of existing installations.

(18) In addition, the Commission had misgivings that the investments by VWS might lead to an increase in capacity at the yard that might not be compatible with the Framework on State aid to shipbuilding (the Framework) ([5]) or with the common market.

IV. COMMENTS FROM INTERESTED PARTIES

(19) The Commission received comments from the beneficiary, from the German Shipbuilding and Ocean Industries Association and from the Danish Maritime Industries Association.

1. Comments from the beneficiary (VWS)

(20) In its comments VWS points out that the aim of the investment project was to increase productivity and to improve capacity utilisation. Moreover, an increase in the total capacity of the yard is not the purpose of the investment project, nor does the implementation of the investment project have such an effect. The project is instead a precondition for the product innovation at which VWS is aiming and for entering the market segment of panamax vessels. VWS points out that the market for vessels of between 2 500 TEU ([6]) and 4 999 TEU is the optimal market segment for the yard as the segment has the highest sales potential worldwide and competitive pressure within Europe is low.

(21) VWS furthermore points out that, when the yard was rebuilt in the period from 1993 to 1998, it was already conceived as a panamax yard, as can be seen from the fact that the size of the shipbuilding hall is adapted to the size of panamax vessels. However, at that time, it could not be foreseen that market demand would increasingly turn to panamax vessels. As Bremer Vulkan, which was the owner of VWS at the time, already had yards capable of building panamax vessels, its plans envisaged the production of smaller vessels at VWS and a ship lift with a length of 230 m was thus considered sufficient.

(22) VWS explains that the market situation for VWS has changed in recent years because of several factors. Bremer Vulkan does not exist anymore. The market demand for the original product mix of VWS is not sufficient and so the yard has specialised in container vessels of up to 3 000 TEU and large specialised offshore vessels. Since there is no longer any demand for bulk carriers, fishing vessels, ferries, passenger vessels or tankers, which were part of the original product mix of VWS, these vessels are no longer being built. VWS also points out that the market for smaller container vessels is characterised by strong competition in Germany and, to some extent, in Poland, whereas the larger container vessels of the panamax class are built by only a very few European yards. It argues that its technical equipment, in particular the shipbuilding hall, already allows the construction of panamax vessels.

(23) However, in order to build panamax vessels efficiently, changes in the technical equipment of the yard are necessary. Up to now, VW produced ships between 2 100 and 3 000 TEU and with a length of 197 to 237 m. These vessels were built out of between 95 and 111 steel sections of up to 16 m in length. The manufacture of such sections is limited by the available space in the workshops and the conservation halls. Panamax vessels have a length of 295 m. Without changes in the technical equipment of the yard, this would mean building these vessels using 170 sections per vessel, which would increase handling by between 60 % and 70 % if the size of the sections remained unchanged. As the market price of these vessels is, however, only between 20 % and 23 % higher, VWS has to increase productivity if it is to build these vessels efficiently. Investments in enlarging two of the existing conservation facilities and expanding the production of panels and sections are thus necessary if sections of up to 32 m are to be built and treated.

(24) VWS points out that the launching of panamax vessels is already possible with the existing 230 m ship lift. The part of the vessel exceeding the length of the ship lift would need to be supported, for example, by a floating crane. However, such an operation would entail risks and increase costs.

(25) As regard the capacity of the yard, VWS states that total capacity measured in CGT will not increase. In 2005 VWS built six container vessels of 2 500 TEU, equivalent to 110 000 CGT. This required the processing of 56 000 tonnes of steel taking up 1 725 000 working hours. After completion of the investment project, the yard will be able to deliver seven panamax vessels in 2006 and 2007 using 64 000 tonnes of steel and 1 900 000 working hours per year. Output will be 108 000 CGT in 2006 and in 2007. With CGT unchanged, the amount of steel processed and the number of working hours taken up will increase by 14 %.

([5]) OJ C 317, 30.12.2003, p. 11.
([6]) Twenty-foot Equivalent Units.

(26) VWS stresses that it signed the contracts for the construction of panamax vessels in 2003, when the trend away from smaller vessels to larger vessels of the panamax class started to pose a serious threat to the viability of the yard if it continued building smaller vessels. An analysis of the yard's production flow showed that the investments in question would allow larger ships to be built with a degree of productivity that would be competitive.

(27) The only yards active in the market segment for vessels of between 2 500 and 4 000 TEU (22 000 to 50 000 CGT), i.e. the market segment that will in future be served by VWS, are the German yards of Aker TW (HDW and Schichau Seebeck) and the Polish yards in Gdynia and Szczecin.

(28) The market share of European yards in this segment is 26,3 %, behind Korea (39,1 %) and ahead of China (24,8 %). Korea and China are therefore the main competitors in this segment and will determine the competitive conditions in the future. If VWS did not enter the panamax market, it would remain in the market for offshore vessels, which is characterised by strong intra-European competition, and would rule itself out of participation in the fast-growing segment for panamax vessels. VWS submitted figures showing that the market is increasingly turning towards larger vessels and that the segment for vessels of 2 500 to 5 000 TEU is showing above-average growth.

2. **Comments from the German Shipbuilding and Ocean Industries Association**

(29) The German Shipbuilding and Ocean Industries Association (the Association) observes that the Commission's concern about a potential increase in capacity cannot follow from the Framework on State aid to shipbuilding. Its misgivings are not justified by the current market situation and, in particular, the planned aid will not distort competition.

(30) The Association argues that the orientation of the EU policy on State aid to shipbuilding has changed over time. The Framework does not contain any provision that would prohibit the granting of investment aid in order to increase capacity. The Association presumes therefore that such a provision was no longer considered appropriate. It also points out that the Framework dispenses as far as possible with any sector-specific rules. The capacity issue is mentioned only in the context of closure aid. Other types of aid, e.g. restructuring aid, are covered by the general State aid rules.

(31) The Association also maintains that a restrictive interpretation of the rules would run counter to the LeaderSHIP 2015 initiative, which is one of the measures for implementing the Lisbon Strategy. The competitiveness and productivity of the European industry should be increased through investment in research, development and innovation, including in modern production equipment. If State aid for investment cannot be linked to capacity increases, this would go against the objective of LeaderSHIP 2015, and in particular the objective of safeguarding and expanding the industry's position in selected market segments. One such segment comprised small and medium-sized container vessels, where Europe is still in a very good market position vis-à-vis Korea and China.

(32) The Association argues that the planned investments will not distort competition. There is currently no overcapacity as the world shipbuilding market is experiencing a boom. Demand continues to be favourable, although some weakening is to be expected in 2008/2009. With world trade growing steadily, maritime transport is also expanding, and in particular the transport of industrial goods on container ships. Demand for such vessels can thus be expected to grow further.

(33) The planned investments will enable VWS to build container vessels of up to 5 000 TEU. Until now, it was able to build only vessels of up to 3 000 TEU. The market for container vessels of up to 3 000 TEU is characterised by strong competition since these vessels are built by several German yards, but also by other European yards, and in particular the Polish yards at Gdynia and Szczecin. Even so, the main competitors are still Korea and China.

(34) The structure of the market for vessels of more than 3 000 TEU is different. Although several German and Polish yards are technically equipped to build these vessels, they are built almost exclusively in Korea and China.

(35) The Association assesses the growth potential of the market segment for vessels of more than 3 000 TEU as positive given that the segment of panamax container vessels has grown steadily in recent years. It stresses that the investments by VWS will not distort intra-European competition as these vessels are currently built almost exclusively in Korea and China. It should also be noted that China will continue to increase its shipbuilding capacities and market share, demonstrating that it is a global and not a European market as regards competition. Limiting the investment possibilities for European yards would thus simply benefit competitors in Korea and China.

3. **Comments from the Danish Maritime Industries Association**

(36) The Danish Maritime Industries Association explains that, in the present case, the aid will not have a distortive effect as the ship types that are built and will be built by VWS do not overlap with the production programme of Danish shipyards. It also points out that the planned State aid is aimed at increasing the competitiveness of VWS in the market for larger container vessels. Competition in this new market will presumably come primarily from third countries outside Europe. There is also a general trend towards building larger vessels.

(37) Furthermore, the Danish Maritime Industries Association stresses that the shipbuilding industry in third countries outside Europe is heavily subsidised. In order to be able to withstand the increasing competition, the European shipbuilding industry has to carry out extensive investments.

V. **COMMENTS FROM GERMANY**

(38) In its comments on the initiation of the formal investigation procedure, Germany maintains that point 26 of the Framework on State aid to shipbuilding does not contain any provisions on capacity and, in particular, does not stipulate that investment aid for projects resulting in a capacity increase following an improvement in productivity is inadmissible. It also stresses that improving the productivity of the shipbuilding industry is one of main objectives of Community policy in this sector. It mentions the LeaderSHIP 2015 initiative, which aims at improving the competitive situation of European yards and at reducing the disadvantages faced by the European shipbuilding industry following the subsidisation of shipbuilding in Asia. According to Germany, this can be achieved only through productivity increases.

(39) In Germany's opinion, it cannot be deduced from point 3 of the Framework on State aid to shipbuilding that the impact of an investment project on capacities has to be taken into account in assessing compatibility. Germany goes on to argue that the shipbuilding market is no longer characterised by the factors mentioned in point 3 but instead by a healthy order-book, high prices and capacity shortages.

(40) Germany also points out that the market share of the European shipbuilding industry has contracted in the last twenty years or so and that Japan, Korea and China have increased their shares with the help of State subsidies. This subsidisation is mentioned in point 3(c) of the Framework as one of the sector-specific factors which have to be taken into account. European shipyards must, therefore, make every effort to increase productivity.

(41) According to Germany, every increase in productivity automatically also increases the output of the installation. An increase in productivity as required by the Framework cannot therefore be taken to mean that the same amount is produced but with less input, i.e. less labour. Germany goes on to stress that the purpose of regional aid is to contribute to regional development and job creation. Productivity increases should therefore not result in job cutbacks.

(42) As regards the market situation, Germany points out that freight transport is increasing and that the trend towards larger vessels is discernible in the container vessel market. Vessels with 5 000 TEU already exist and recent forecasts point to vessels with a capacity of 8 000 TEU. As such large vessels can enter only a few ports, smaller vessels such as the ones to be built by VWS will still be needed to handle freight. The trend towards larger vessels therefore has no negative impact on the demand for smaller vessels such as those built by VWS.

(43) Germany furthermore provides details on the investment project of VWS, the steel-processing capacity and the labour input and productivity of the yard before and after completion of the project. It argues that the investments are necessary to ensure the competitiveness of the yard and to safeguard the 1 200 jobs.

(44) As regards a potential increase in the yard's capacity as a result of the investments, Germany points out that the investments do not affect the areas which were identified as technical bottlenecks at the yard. In its decision to initiate the formal investigation procedure, the Commission explained that these technical bottlenecks determine a yard's capacity. Germany thus argues that, according to the Commission's own criteria, the capacity of the yard remains unchanged.

(45) Germany also maintains that Article 87(1) of the EC Treaty is not affected by the granting of the investment aid and makes reference to the market economy investor principle. As VWS is financing 77,5 % of the investments costs from its own funds and is thus taking on a risk, it can be assumed that the investments satisfy market economy criteria.

(46) In Germany's view, the investment aid does not distort competition and so Article 87(1) is not affected as shipbuilding is a worldwide market and is already distorted by the subsidisation of Asian shipyards. European yards also currently operate at high capacity and a significant growth potential is forecast for the coming years. Moreover, in assessing the competitive situation, only competitors that are active in the same market segment, i.e. the construction of panamax vessels, should be taken into account. Their order books for the coming years are full and their capacities are fully taken up.

(47) As regards the future market developments and future potential overcapacities described by the Commission in its decision to initiate the formal investigation procedure, Germany points out that forecasts are not very reliable and that the Commission did not provide any proof for the expected market developments. The fact that there may be overcapacities in the future cannot be taken to mean that planned aid will lead to a distortion of competition within the meaning of Article 87(1) of the Treaty. For the same reasons, trade between Member States is not affected either.

(48) Lastly, as regards compatibility with Article 87(3) of the EC Treaty, Germany argues that the aid is in line with European industrial policy, which aims to improve the position and competitiveness of the European shipbuilding industry as laid down in the LeaderSHIP 2015 initiative.

(49) As regards the comments from third parties, Germany points out that they support Germany's assessment that the planned aid is compatible with the common market.

VI. **ASSESSMENT**

1. **Existence of aid within the meaning of Article 87(1) of the EC Treaty**

(50) According to Article 87 of the 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 is, in so far as it affects trade between Member States, incompatible with the common market. Pursuant to the established case law of the Courts of the European Community, the criterion of trade being affected is met if the recipient firm carries out an economic activity involving trade between Member States.

(51) The aid is provided by the Land of Mecklenburg-Western Pomerania and is thus imputable to the State. It confers on VWS an advantage that the company would not have obtained on the market.

(52) VWS builds sea-going vessels. As these vessels are widely traded, the measure threatens to distort competition and affects trade between Member States. The arguments put forward by Germany in this connection are unconvincing. According to settled case law, where aid strengthens the position of an undertaking as compared with other undertakings competing in intra-Community trade, the latter must normally be regarded as being affected by that aid ([7]).

(53) As regards Germany's argument concerning the absence of proof for future potential overcapacities and thus for a distortion of competition within the meaning of Article 87(1) of the Treaty, it must be pointed out that a measure fulfils the conditions for the application of Article 87(1) of the EC Treaty if it threatens to distort competition and is capable of affecting trade between Member States ([8]).

(54) As regards the argument of the Association to the effect that the measure at issue does not distort intra-European competition as the vessels that will be built by VWS are currently built almost exclusively in Korea and China, the Commission points out that the container ships to be built by VWS cannot be considered as a separate market but are in competition with other container ships built by other European yards.

(55) Consequently, the grant constitutes State aid within the meaning of Article 87(1) of the EC Treaty and has to be assessed accordingly.

2. **Derogations under Article 87(2) and (3) of the EC Treaty**

(56) Article 87(2) and (3) of the EC Treaty provides for exemptions to the general prohibition of State aid laid down in Article 87(1).

([7]) Case 730/79 *Philip Morris v Commission* [1980] 2671, at paragraph 11.

([8]) Case T-23/98 *Alzetta* v *Commission* [2000] ECR II-2319, at paragraph 80.

(57) For assessing aid to shipbuilding, the Commission has adopted the Framework on State aid to shipbuilding (the Framework), according to which shipbuilding means the building, in the Community, of self-propelled seagoing commercial vessels. The activities of VWS fall under this definition and so the aid to VWS has to be assessed in the light of the Framework. The Commission has no indication that VWS also builds fishing vessels for the Community. According to the Guidelines for the examination of State aid to fisheries and aquaculture ([9]), no aid may be granted to shipyards for the construction of Community fishing vessels.

(58) Point 26 of the Framework reads as follows: '*Regional aid to shipbuilding, ship repair or ship conversion may be deemed compatible with the common market only if the aid is granted for investment in upgrading or modernising existing yards, not linked to a financial restructuring of the yard(s) concerned, with the objective of improving the productivity of existing installations*;'.

(59) The aid intensity may not exceed 22,5 % in regions referred to in Article 87(3)(a) of the EC Treaty or the applicable regional aid ceiling, whichever is the lower. Further, the aid must be limited to the eligible expenditure as defined in the applicable Community guidelines on regional aid.

(60) Implementation of the project will allow VWS to build panamax vessels efficiently. According to information submitted by the beneficiary, with the existing installations the yard could already build panamax vessels, which are larger than the vessels it currently builds. Nevertheless, they would be assembled from 170 sections of up to 16 m in length, and this would be inefficient and not competitive. In order to lift these vessels with the existing ship lift, a floating crane would be needed to support the part of the vessel exceeding the current length of the ship lift. This would not be profitable and would entail an increased risk of accident.

(61) After completion of the investment project, the yard will be able to build panamax vessels using 110 sections of up to 32 m in length. The investments in a new production line for panels and section parts and in the building of four additional sites for section construction are necessary for the production of these larger sections. The enlargement of conservation facilities will enable the yard to handle these larger sections. The investment project will thus rationalise the production process of VWS.

(62) The investments in the extension of the ship lift will adapt the length of the lift to the length of the ships that will be lifted. The use of a floating crane would not therefore be necessary. The extension thus improves the lifting process for panamax vessels.

(63) The Commission therefore considers that the adaptation of the production facilities in order to build panamax vessels efficiently can be regarded as a modernisation or upgrading of an existing yard.

(64) After completion of the investment project, productivity will increase from around 32,6 t steel/1 000 working hours in 2005 to around 38,2 t steel/1 000 working hours. The project will thus improve the productivity of the existing installations. The capacity of the yard measured in CGT will not be affected ([10]). Capacity measured in terms of steel processing will increase from 56 000 tonnes in 2005 to 64 000 tonnes in 2006. The Commission considers that this increase in steel-processing capacity is a side-effect of the productivity improvements and is not disproportionate to the productivity increases achieved.

(65) The Commission therefore concludes that, overall, the investment project fulfils the condition of comprising investments in upgrading or modernising existing yards with the objective of improving the productivity of existing installations. It also notes that the aid is limited to supporting eligible expenditure as defined in the Community guidelines on regional aid and that the applicable aid ceiling of 22,5 % is respected.

VII. **CONCLUSION**

(66) The Commission comes to the conclusion that the planned regional aid for VWS is in line with the conditions for regional aid as laid down in the Framework. The aid therefore fulfils the conditions for it to be considered compatible with the common market,

([9]) OJ C 229, 14.9.2004, p. 5.

([10]) Capacity amounted to 110 000 CGT in 2005 and will amount to around 108 000 CGT annually in 2006 and 2007 (following the switch from medium-sized to large container vessels).

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany is planning to implement for Volkswerft Stralsund amounting to EUR 4 200 500 is compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty.

Implementation of the aid amounting to EUR 4 200 500 is accordingly authorised.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 6 December 2006.

For the Commission

Neelie KROES

Member of the Commission