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COMMUNICATION FROM THE COMMISSION
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

BERLAYMONT - STATE OF PLAY IN FINANCIAL AND CONTRACTUAL NEGOTIATIONS

COMMUNICATION

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At its 1317th meeting held on 27 November 1996, the Commission approved document SC(96)217412 which described the status of the Berlaymont project. This communication outlined the prevailing situation, describing the preliminary plans for renovating the building - which had been presented to the Members of the Commission - and included a mandate for Mr Liikanen and Mr Williamson to initiate the financial and contractual negotiations necessary to envisage a return to the Berlaymont. The text of the communication was sent for information to the budgetary authority.

In the intervening period, detailed planning has continued on the project so that some aspects (the carcass work, for example) have attained a degree of definition enabling the works to be virtually ready to be put out to tender. This activity was carried out within the organisational structure laid down, with wide-ranging consultation of the various services involved and of the trade unions and staff association.

Negotiations between, on the one hand, Mr Williamson, Secretary-General, and Mr Vander Eycken, Chief Executive Officer of SA BERLAYMONT 2000, and, on the other, between Mr. Liikanen and Mr Flahaut, the responsible Belgian Minister, were held simultaneously with these technical discussions. The negociations have led to an outline agreement, which is now submitted for approval to the Commission, after having been examined by the Steering Committee and presented to a special meeting of the Heads of Cabinet.

As indicated at the last consultation of the Commission, the budgetary authority must also be informed of this agreement, which should then be subject to the normal property procedure before being transposed into legal acts.

BACKGROUND

When the Commission decided to leave the Berlaymont in May 1991, an approach was agreed with the Belgian government that the relevant costs should be shared. The basic principle was that, while the Berlaymont remained unoccupied, the operation should be as neutral as possible for the Commission budget.

It was also necessary to share the one-off costs of leaving the building. In this framework, the expenditure incurred in 1991 was borne 56% by the Commission and 44% by the Belgian government. Thereafter, under a convention signed in 1991, the Belgian government, through the Régie des Bâtiments (property department), provided ten replacement buildings representing the equivalent of the surface area of the Berlaymont.

On the expenditure side, the Commission agreed to continue paying the rent for the Berlaymont (approximately **13 Mio ECU** per year at the time) and the "*précompte immobilier*" (property tax) and normal running costs for the replacement buildings. On moving out, the rents of the replacement buildings amounted to approximately **31 Mio ECU** per year, which meant that the Commission enjoyed a financial advantage of around **18 Mio ECU** per year, to be maintained until the Berlaymont could be reoccupied. This represents a cumulative financial contribution by the Belgian government of some **150 Mio ECU**, for rents alone.

The reasons for this disparity in levels of expenditure is to be found in the initial rental agreement for the Berlaymont, enshrined in the 1975 lease which is still current. Belgium in fact accepted, as a gesture of political goodwill, to set the rent at the time roughly 20% below the going property market rate. Since this rent has never been reviewed, only indexed, the divergence between it and the market level grew progressively greater and reached 60% when the Berlaymont was vacated. This situation, which the Commission was able to confirm when the above mentioned convention was signed, has been greatly in the Commission's favour.

COMPONENTS OF THE OUTLINE AGREEMENT

It would have been theoretically possible to ask the Belgian government simply to prolong the rental lease for the Berlaymont on the pre-existing basis. This approach had to be discarded for two main reasons : first and foremost, it is quite obvious that after its planned renovation, the building itself will be totally transformed and enjoy a level of technical quality and comfort ensuring high health and environmental standards in no way comparable to that which existed in the Berlaymont on departure. Leaving aside the asbestos problem, the building would in fact have had to undergo a major renovation in any event in order to rectify a number of inherent defects which will be removed during the forthcoming renovation exercise.

In addition, the seats of the Institutions and specifically of the Commission were established in 1992. The purely rental approach, generally adopted up to then for the Commission's building stock - and criticized by the way as early as 1979 by the Court of Auditors - lost its major justification, i.e. the relative uncertainty of installation. As a result, as was confirmed in the "Property Policy 1996-2005" document adopted by the Commission in June 1996 (SEC(96)1095), purchasing formulas should be found for a significant proportion of buildings occupied. The main other themes of this policy were :

- to regroup the Commissions services in a functional manner in large buildings or complexes;
- to integrate these buildings into the urban environment and situate them close to public transport nodes.

In this context, the principles of reoccupying a building of the size of the Berlaymont and purchasing the Commission's future headquarters building (as has been the case for the Council and Parliament) appear fully justified.

The negotiations, conducted jointly with the Belgian government (Mr Liikanen with his Belgian counterpart, Mr Flahaut) and the SA BERLAYMONT 2000 (Mr Williamson with the Chief Executive Officer, Mr Vander Eycken) have led to a definition of the expenditure to be borne by each party, in the Commission's case via annual reimbursement payments. Starting from this premise, the negotiation was aimed at obtaining in the first instance real title to the building (emphyteusis or long lease with automatic exemption from all taxes) and subsequently assuming full ownership of both land and building on expiry of the initial contractual arrangement. This approach is presented in annex 1.

The compromise arrived at may be summarized as follows :

- the Belgian government will bear all the costs of asbestos removal (estimated at **3.6 billion BF or 90 Mio ECU**) and transfer the property rights to the land and building for the symbolic price of **1 BF or 1 EURO** at the end of the emphyteotic lease period (estimated value of land and building rights is **3.7 billion BF or 92.5 Mio ECU)**. It will also guarantee the coverage of all rents for replacement buildings up to the end of 2000 (estimated value of **750 million BF or 18.75 Mio ECU**) and of the Beaulieu 1/5/9 complex until the end of 2001 (estimated value **450 million BF or 11.25 Mio ECU**). This **1.2 billion BF or 30 Mio ECU** should be added to the **6 billion BF** or **150 Mio ECU** mentioned above representing the difference in rents borne by the Belgian government since 1991. This amounts to an estimated total value of **14.5 billion BF or 362.5 ECU.**

- SA BERLAYMONT 2000 will renounce **1 billion FB or 25 Mio ECU** of the estimated value of the concrete and steel shell and foundations which will be incorporated into the renovation project (initial total estimate was **3 billion BF or 75 Mio ECU**). It will also forego its profit margin of 4% (estimated value **400 Mio BF or 10 Mio ECU**)so that it will finish the arrangement in a break-even position. It will also transfer the period remaining on its emphyteotic lease (until 2089) to the Commission for the symbolic price of **1 BF or 1 EURO** at the end of the initial emphyteusis arrangement i.e. when the costs have been reimbursed. This represents an estimated total value of **1.4 billion BF or 35 Mio ECU**;

- the Commission will reimburse the cost of the reconstruction works proper (estimated value **10.4 billion BF or 260 Mio ECU**, including approximately **2.5 billion BF or 62.5 Mio ECU** for the Commission's own fitting out works as defined at present, together with a reserve of 5% for unforeseen works). These do not include the cost of construction of the tunnel protection structure which will be borne by the SNCB (Belgian railways). The Commission will also bear the cost of studies, fees and project management services provided by Berlaymont 2000 estimated at 17% of the renovation costs and representing approximately **1.7 billion BF or 42.5 Mio ECU.** Finally, the Commission will cover the interim financing charges on the works until deliveRy (estimated value **900 million BF or 22.5 Mio ECU**). An amount of **2 billion BF or 50 Mio ECU**, representing the value of the existing concrete and steel shell and foundation mentioned above, will be added to this total. The Commission will therefore have to reimburse, according to a financing formula to be agreed which must offer the best possible terms to the Commission, a total of **15 billion BF or 375 Mio ECU** over 27 years in order to assume ownership of the land and renovated building. All the above outgoing are to be carried out on an "open-book" basis, using contracts concluded by BERLAYMONT 2000 after tendering procedures under the directives on public works and services. They will be checked by the Commission using financial expertise obtained by tender and the risks pertaining to cost and/or time overruns on the project will be suitably catered for in the contract to be signed. The overall cost breakdown is presented in Annex 2.

ELEMENTS OF COMPARISON

In order to ascertain whether the above proposal is financially attractive for the Commission, it is necessary both to evaluate its probable financial impact and to compare this with recent transactions,.while bearing in mind that the Berlaymont, in view of its size and special characteristics, is not strictly comparable to other buildings available on the market.

Firstly, it should be pointed out that the **15 billion BF or 375 Mio ECU** mentioned can be influenced by the Commission itself - at the outset, when specifying its requirements and, subsequently, by monitoring and checking the actual expenditure incurred. In this framework, all participants in the project must be made aware of the cost/effectiveness approach supported by the Commission and of the need for sober, functional and environmentally sustainable solutions to be found when defining and implementing the project. Similarly, the risks involved in possible time and/or cost overruns will have to be examined and dealt with in the contract.

In order to limit the financial impact on annual budgets, it is intended that the Commission should, as it has done in other recent operations, use a financing formula via BERLAYMONT 2000 over 27 years, the annual payment being indexed on the Eurostat price index for Belgium. This formula will be subject to Commission approval in order to ensure the best possible terms are obtained. As interest rates now stand, this would mean an annual payment of **27 Mio ECU**. This should be compared with the total expenditure (including property tax) which will be due for the existing Berlaymont in the year 2000, i.e. **17 Mio ECU**.

This gross annual increase of approximately **10 Mio ECU** or 60% can be justified by the qualitative difference between the characteristics of the old and new building and by the aim of purchasing the property. It is indeed important not to underestimate the real value represented by becoming owner of both land and buildings, particularly for the future when this will give the Commission a potential flexibility of use which a lessee can never enjoy.

In addition, the planned level of payments can be compared to that for recent transactions. If this is compared with the annual payments for the basic buildings (leaving aside fitting-out costs) in the case of the Charlemagne (long rental arrangement) there is a **25%** advantage in favour of the Berlaymont. For the Belliard 232 (long lease with option to buy for 1 ECU) the difference is **27.5%**. It is perfectly reasonable to expect that this initial reduction over market levels - which is the fruit of the various concessions obtained above - will be influenced by the same phenomenon observed for the initial rental lease, i.e. it will increase over time.

OVERALL FRAMEWORK

As described in the "background" section above, this exercise has to be set in the broader context of the total operation to vacate and return to the Berlaymont over 9 years. At the present time, it is planned that the Berlaymont should be ready for reoccupation in July 2000. In the 1991 convention, the Belgian government agreed to cover the rental payments for the replacement buildings only up to this date. Virtually all the leases were in fact signed with due dates in June or July 2000. The two exceptions are constituted by part of **Genève 1** (+/- 4.000 m²), whose lease runs out in December 2000, and the **Beaulieu 1/5/9** complex, whose lease extends to December 2001.

The overall impact is also affected by the plan for retaining or leaving both replacement buildings and buildings leased directly by the Commission. It was in fact made clear in the property policy document that a major programme of rationalisation of the installation of services could be carried out upon return to the Berlaymont.

This will involve maintaining occupancy of a number of replacement buildings corresponding to the building policy criteria, for which the Commission will of course then have to pay the rent, possibly after renegotiation, and leaving those which do not meet these criteria, together with some of the unsatisfactory buildings the Commission itself rents. In this way, it should prove possible to carry out a virtually space-neutral operation (leaving approximately 110.000 m² of office space) while keeping the increase in property expenditure within reasonable bounds. The estimated additional cost in the scenario is roughly **8 Mio ECU**, spread over three years (2000, 2001, 2002). Thereafter property costs will remain stable (apart from indexation). The budgetary impact of this approach is summarized in Annex 3

Naturally, this approach can only be applied in full if, between today and the year 2000, the hypothesis of zero growth in staff numbers (apart from that related to the last enlargement) with an unchanged structure is maintained.

CONCLUSION

Through the approach outlined above, the Commission can :

- become in time owner of the totally renoved building and the plot of land on which it is situated;
- obtain exemption from property taxes on the Berlaymont;
- begin to reimburse the cost of the renovation, which it will have monitored by its own devices, at a level 25% below present market rates;
- ensure that the return to the Berlaymont can be carried out in a programmed manner while keeping the increase in property expenditure to a minimum.

ANNEX 1

PROPOSED LEGAL FRAMEWORK

1. **1975** signature of purely rental lease still current although modified by codicil (base rent set 20% below market rate).

2. **1991** signature of convention for provision of replacement buildings by Belgian government incorporating payment of property taxes and running costs on these buildings.

3. **1994** Codicil to existing (1975) lease prolonging it until 1997 and annually thereafter (consolidation of financial arrangement).

4. **1997** (planned) signature of private emphyteusis sublease with BERLAYMONT 2000 and Belgian government, including clauses on future financial arrangements and sharing costs and risks. No payments involved.

5. **2000** (planned) signature of definitive emphyteotic sublease before notaries. Annual payments begin at this time and run for 27 years.

6. **2027** (planned) end of emphyteotic sublease. BERLAYMONT 2000 transfers its remaining emphyteotic rights to the Commission (up to 2089) for **1 BF or 1 EURO**. Belgian government transfers its property rights to the Commission for **1 BF or 1 EURO**. Emphyteusis lease is thereby extinguished and Commission becomes full owner of land and building.

Annex 2

OPERATIONAL COST BREAKDOWN

	Belgian government	SA B. 2000	Commission
1. Property rights to land + building	3.7 billion Bfr 92.5 Mio Ecu	0	1 Bfr or 1 Euro
2. Asbestos removal	3.6 billion Bfr 90 Mio Ecu	0	0
3. Replacement buildings rents, incl. rent difference (2000/2001)	7.2 billion Bfr 180 Mio Ecu	0	0
4. Existing concrete/steel structure + fondations	0	1 billion Bfr 25 Mio Ecu	2 billion Bfr 50 Mio Ecu
5. Profit margin	0	400 Mio Bfr 10 Mio Ecu	0
6. Renovation include fees + financing	0	0	13 billion Bfr 325 Mio Ecu
7. Transfer emphyteusis	0	0	1 Bfr or 1 Euro
	14.5 billion Bfr 362.5 Mio Ecu	1.4 billion Bfr 35 Mio Ecu	15 billion + 2 Bfr 375 Mio + 2 Euro

Budgetary impact **- Berlaymont**
- Property rationalisation

	1999	2000	2001	2002
Berlaymont rent	14,25	20,50	27,00	27,00
Substitute buildings				
- rent	0,00	0,00	9,50	21,00
- property tax	2,75	2,75	1,50	1,50
Commission buildings vacated	14,50	14,25	3,50	0,00
	31,50	37,50	41,50	49,50