

## MEMORANDUM TO THE BUDGETARY AUTHORITY

**SUBJECT:** Information from the Commission to the budgetary authority, in accordance with Article 179(3) of the Financial Regulation, concerning the conclusion of a tenancy agreement for the Jean Monnet Building and a Memorandum of Understanding relating to the provision of land on the Kirchberg Plateau, Luxembourg, and arrangements for the provision of a new replacement administrative complex.

### 1. SUBJECT

The purpose of note is to request the opinion of the budgetary authority regarding the conclusion of:

- a) a tenancy agreement with the *Fonds d'Urbanisation et d'Aménagement du Plateau de Kirchberg* (Kirchberg Plateau Development Fund – "The Fund"), which manages the occupancy of the Jean Monnet Building (JMO) in Luxembourg, and
- b) a Memorandum of Understanding with the Luxembourg government and the Fund laying down the overall framework for the provision of land for an administrative complex to replace the JMO, which the Luxembourg State will build or have built. It should be noted that the Commission will subsequently consult the budgetary authority to conclude a framework contract that will define the technical and financial details of the project until its completion.

### 2. OBJECTIVES AND JUSTIFICATION

The Jean Monnet Building (JMO) was built in 1975 and it was originally expected to be occupied for 25 years. Most of the European Commission's departments in Luxembourg are based in the JMO.

Since 1994, the Commission has been in discussions with the Luxembourg State authorities with a view to agreeing on the future arrangements for housing those departments in Luxembourg. A balanced outcome has now been reached, and this is reflected in the draft Memorandum of Understanding and draft tenancy agreement herein.

With a view to becoming more environmentally friendly (*inter alia*, by reducing mobility needs), to improving staff working conditions and to keeping tighter control over building maintenance costs, the Commission is looking to streamline its operations in Luxembourg by bringing all of its departments (except those currently housed in the Euroforum and BECH buildings) into one complex on the Kirchberg Plateau.

Mindful of the financial impact of this move, the Commission will look to strike the most favourable balance between construction costs and operating profits.

The Jean Monnet administrative building has a total area under lease of 120 000 m<sup>2</sup>, including 65 000 m<sup>2</sup> (offices, conference centre and computer centre) above ground and 1 100 parking

spaces below ground, and can house 1 900 out of a total staff of 3 800 in all of its departments. It was built in 1975 on land belonging to the Fund. The Luxembourg State is the custodian of the Fund, which acquired full ownership of the building on 1 April 1998. Since then, the Commission has occupied the JMO without being covered by a valid tenancy agreement, given that the parties had not been able, until that date, to agree on the terms of such an agreement, in particular the amount of the rent, the duration of the agreement and the prior conditions for its entry into force.

In the absence of an agreement acceptable to both parties, two Memoranda of Understanding were concluded in 1998 and 2000, the second of which lays down two prerequisites to the signature of a tenancy agreement:

- refurbishment work to bring the building into conformity with current standards, with a view to obtaining an operating licence pursuant to the legal provisions applicable in the Grand Duchy of Luxembourg, and
- drafting of an expert report on the lease value of the building, which would act as the basis for setting the rent.

As part of these discussions, the Commission sought to establish an inextricable link between, on the one hand, the conditions under which the JMO is occupied and, on the other, the long-term replacement of the current JMO. The Luxembourg State accepted the Commission's request in this regard.

The work undertaken by the Commission and the government as political authorities has yielded the following results:

- The Fund undertook refurbishment work on the building and work to bring the building into conformity. The operating licences sought have therefore been granted, namely Environment: authorised on 12 October 2005 valid until 31 December 2012 and The Luxembourg Labour and Mines Inspectorate (ITM) authorised on 24 July 2006 valid until 28 December 2014;
- The expert report on the lease value of the JMO Building has been drawn up and the parties have agreed the terms for setting the rent;
- Plots for building a replacement JMO complex have been identified on the Kirchberg plateau, from a selection of five sites in Luxembourg, following a comparative analysis funded by the Luxembourg State;
- The Luxembourg State is in a position to make available and sell to the Commission, at the symbolic price of one euro, the land needed for the building of a replacement administrative complex for the JMO, including the scope to extend the building;
- The Luxembourg State has agreed to supervise the works and to prefinance the construction of a replacement complex.

## **2.1. Tenancy agreement for the Jean Monnet Building**

The Commission currently occupies the building, not as a tenant but as an occupant with no legal right or title, paying an annual 'occupation fee' of EUR 6.2 million. In order to cover its legal responsibilities, it is in the Commission's interest to conclude a valid tenancy agreement laying down the parties' rights and obligations.

## **2.2. Construction of a replacement office complex**

The JMO is coming to the end of its life, and the period of its occupancy is limited, due to the poor state of repair of the building and its technical infrastructure.

A structural integrity test is carried out on the building every two years in order to ensure that it is in good condition.

Under the current authorisations obtained by the owner, the staff can be housed until the end of 2014 in conditions that comply with the relevant regulation. It is therefore essential to start planning immediately for a replacement building.

The Commission in Luxembourg currently occupies around 143 000 m<sup>2</sup> (offices and annexes, conference centre, computer centre and training rooms) above ground, divided into five administrative buildings, which are spread across two areas of the city – Kirchberg (the JMO and BECH buildings) and Gasperich (the Euroform, Hitec and Drosbach buildings). Given that a 30-year lease for the Euroform building was concluded in 2004, the Commission will occupy the Gasperich site for the foreseeable future.

In this context, a new administrative complex to be called Jean Monnet 2 (JMO 2), with a total area of 120 000 m<sup>2</sup> above ground should initially replace the current Jean Monnet Building (JMO 1) and, subsequently, the Hitec and Drosbach Buildings, which the Commission is occupying as a tenant on the Gasperich site. Provision is made for the building to be extended if necessary by a further 32 000 m<sup>2</sup> to house the departments currently in the BECH building once its tenancy agreement expires in 2023. This option will, if necessary, make it possible to house extra staff, for example following future rounds of European Union enlargement.

Agreements guaranteeing the completion of the JMO 1 replacement project at the earliest opportunity should be concluded with the Luxembourg authorities, in view of:

- the political gesture made by the local authorities in making land available, and at the symbolic price of one euro;
- the Luxembourg State's agreement to supervise the works and to prefinance the construction under the best possible conditions exploiting its rating on the financial markets;
- the scope of the project and the time constraints for carrying out the administrative, technical and financial procedures;
- the scarcity of local office space in the 120 000 m<sup>2</sup> range that would meet the Commission's specific needs;
- guarantees offered by the Luxembourg State with respect to the conditions for occupying JMO 1 until the Commission's departments housed there are transferred definitively to the replacement complex.

## **3. CONTRACT TERMS**

The Commission and the Luxembourg State will, on the same day, sign a Memorandum of Understanding and a tenancy agreement for JMO 1.

The Memorandum of Understanding covers both the general framework for cooperation between the parties regarding the construction of an administrative complex to replace JMO 1 and the Luxembourg State's guarantees to abide by the tenancy agreement for JMO 1, in particular as regards the housing of staff under conditions that conform to the legislation in force until the move to the replacement building.

### **3.1. Memorandum of Understanding – JMO 2 and JMO 1**

The Commission and the Luxembourg State wish to set out in a Memorandum of Understanding the broad principles governing their cooperation and the planning stages of the JMO 1 replacement building. The major principles of the parties' commitment can be summed up as follows:

- The government agrees to make available and sell to the Commission, for the symbolic price of one euro, the 2.65 hectares of land located between Boulevard Konrad Adenauer and Rue Saint-Exupéry on the Kirchberg Plateau, the site being suitable for the construction of a building with a gross floor area of 120 000 m<sup>2</sup> above ground. This building will comply with the 'Programme' document drawn up by the Commission and contained in the annex to the Memorandum. Provision is made for an extension of around 32 000 m<sup>2</sup> above ground on an adjacent plot.
- The State agrees to build or have built a complex to replace JMO 1, to guarantee the prefinancing thereof and to make it available to the Commission on a turnkey basis. This project will comprise two phases: a first phase of 76 000 m<sup>2</sup> within six years of the publication of the outcome of the competition to select an architect, which is scheduled for the first half of 2010, and a second phase of 44 000 m<sup>2</sup>, four years after the first phase is handed over. The possible construction of a 32 000 m<sup>2</sup> extension on an adjacent plot of land will be covered in a subsequent agreement between the parties.
- The Commission agrees to acquire the complex when all of it is made available, either by purchase in instalments or by means of a tenancy, the terms of which will be specified in the abovementioned framework contract.
- The Commission is entitled to withdraw from the project, thereby terminating the Memorandum, if the total cost of all the tenders for carcass work is more than 10% higher than the total cost of the estimates drawn up at the detailed pre-project stage (see Stages of the JMO 2 project below). In that event, the State will be entitled only to the costs incurred prior to the termination of the Memorandum and any costs arising from the termination itself. The Commission will not be required to reimburse the extra costs resulting from a failure attributable to the developer.
- The government guarantees the Commission fulfilment of the obligations undertaken by the Fund, in the tenancy agreement to be signed on the same day, including any necessary work to obtain authorisation to use JMO 1 throughout the period of its occupation and until the departments are moved definitively to the replacement complex.

The next step will be the conclusion of a framework contract with the government in order to determine the cost of constructing the replacement building and the conditions for the financing and acquisition of the new building to be made available to the Commission. This step will only be taken after a further note has been sent to the budgetary authority.

### **Stages of the JMO 2 project**

The main stages of the project, as laid down in the Memorandum of Understanding, are as follows:

- (1) competition to select a European architect, based on the 'Programme' document drawn up by the Commission;
- (2) appointment of the architect(s);
- (3) definition of the architect's or architects' responsibilities and how these are to be fulfilled;
- (4) definition of the project manager's responsibilities and how these are to be fulfilled;
- (5) drafting of the preliminary design study, containing a breakdown of the estimated costs;
- (6) drafting of the detailed preliminary design and of a detailed estimate of the construction costs;
- (7) steps taken to obtain all of the necessary authorisations;
- (8) drafting, on the basis of the detailed preliminary design of draft financing legislation and launching of the legislative process;
- (9) preparation and launch of a call for tenders for the financing of the project to be conducted by the Luxembourg State, as developer, pursuant to the relevant national legislation;
- (10) establishment of project studies and specifications by the project manager;
- (11) preparation of, call for and evaluation of tenders for the construction work;
- (12) supervision, monitoring and completion of the work, and checking of invoices;
- (13) acceptance of the work;
- (14) final breakdown of the work to determine the construction and financing costs.

At each stage of the project, before moving on to the next, the government shall seek a favourable opinion from the Commission. This will give the Commission a means of supervising the project, in particular the financial and technical aspects thereof.

### **3.2. Tenancy agreement – JMO 1**

- Entry into force – duration: The tenancy agreement shall enter into force on the date of its signature and shall finish on the date on which all departments housed in JMO 1 have moved out of the building and/or on the date on which the operating licence expires.

- Effective date: The new rent arrangement becomes effective, retroactively, as of 1 April 2007, seven years to the day after the signature in 2000 of the Memorandum of Understanding.
- No provision is made for renewal/extension, given that the contract will expire on the date on which the departments housed in the building are moved to the replacement building.
- Rent – Payments to offset rent reductions: Following the expert report on the lease value of the building after the work has been carried out by the owner, the rent can be defined as follows:
  - Until 30 March 2007, payment of a fixed building occupancy fee of EUR 6 197 328 per year, or EUR 516 444 per month, pursuant to the Memorandum of Understanding of 12 December 2000.
  - As of 1 April 2007, rent based on the expert report on the lease value (annual basic amount of EUR 12 345 561 at the base index of 88.66 of November 2000) indexed once in 2007 and once in 2008.
  - For 2009-2010, rent (2008 value) not indexed.
  - For 2011-2014, gradual reduction of rent (2008 value) by a further 10% every year.
  - For 2011-2014, to offset the rent reductions, 10% contribution to the owner's actual expenditure in 2011, increasing by 10% extra per year until the end of 2014. At that stage, the base figure for estimating the contribution to the owner's actual costs will be EUR 1 053 000 (base index of 88.66 of November 2000).
  - As of January 2015, annual rent reduced to EUR 1 053 000 (at the base index of 88.66 of November 2000) reflecting changes in harmonised consumer prices. No contribution to the owner's actual costs will be payable.

The rent and estimated contribution to the owner's actual expenditure during the different years of the tenancy are set out in the financial statement attached.

- In the event of non-compliance with the conditions laid down in the operating licences imposed by the legislation, or if the ageing of the building were to give rise to a serious risk to the health and safety of the occupants, in particular due to asbestos, the landlord is obliged to provide the Commission with replacement office space and to bear the costs relating to the re-housing of staff and to the replacement space itself.

## **4. BUDGETARY IMPLICATIONS**

### **4.1. Memorandum of Understanding**

At this stage, any expenditure relates solely to costs incurred in holding the competition to select an architect, which is to be prefinanced by the Luxembourg State. The procedure for reimbursing those costs, estimated at EUR 1 million, will be specified in the framework contract.

#### **4.2. Tenancy agreement**

Additional expenditure relating to the rental of JMO 1 between 1 April 2007 and 31 March 2016 (the projected date on which the first phase of the replacement complex will be made available) is **EUR 85 175 976** in rent, attributable to heading 26 01 23 02 (Acquisition and rental of buildings in Luxembourg), and **EUR 1 406 550** in estimated costs of the contribution to the owner's actual expenditure, attributable to heading 26 01 23 03 (Expenditure relating to buildings in Luxembourg).

No additional credit will be sought from the Budgetary Authority in respect of rent arrears from 2007 to 2009 totalling EUR 14 865.206, which will be covered by transfers within the Commission's existing administrative resources.

Annexes :        1.- Financial Statement JMO 1  
                     2.- Draft tenancy agreement JMO 1  
                     3.- Draft Memorandum of understanding JMO 2