

## FORM FOR TABLING PARLIAMENTARY QUESTIONS

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To the: COUNCIL   
COMMISSION 

ORAL QUESTIONS	WRITTEN QUESTIONS
Oral Question with debate (Rule 108) <input type="checkbox"/> Question Time (Rule 109) <input type="checkbox"/>	Written Question (Rule 110) <input checked="" type="checkbox"/> Priority Written Question (Rule 110 (4)) <input type="checkbox"/>
AUTHOR(S): Heide Rühle, Alain Lipietz	
SUBJECT: Microsoft - Implementation of article 93 of Financial Rules (please specify)	
<p>TEXT:</p> <p>On march 2004, the Commission adopted a decision declaring that Microsoft had seriously violated EU competition rules by abusing its dominant position in the software market, causing a huge damage both on competitors and consumers. On 17 September 2007, the Court of First Instance (CFI) rejected Microsoft's appeal (Case T-201/04). Microsoft has not appealed the CFI ruling, which can be deemed to have the force of <i>res judicata</i>. Following the 17 September 2007 judgment, the European Commission imposed on 27 February 2008 a substantial fine (899 million euros) on Microsoft for its non-compliance up until 22 October 2007 with its obligations under the Commission's March 2004 Decision to provide interoperability information on reasonable terms.</p> <p>While Microsoft's behaviour had negative effects on millions of offices in companies and governments around the world, this fine for flouting the European competition law represents the highest amount ever imposed in fifty years of EC Competition law for abuse of dominant position. Furthermore, this fine follows a previous one of 280.5 million euros that was imposed in July 2006 essentially for the same reasons.</p> <p>Pursuant to article 93 (b) &amp; (c) of the Financial Regulation, which implements article 45 (2) (c) &amp; (d) of Directive 2004/18/EC on public procurement, candidates or tenderers shall be excluded from participation in procurement procedures if: <b>(b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of <i>res judicata</i>; (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;</b></p> <p>Considering that Microsoft continued to abuse its powerful market position after the Commission's March 2004 decision requiring it to change its practices, and given the fact that it is already the third time in four years that the Commission had to impose fines or penalty payment for non-compliance with a Commission decision, and bearing in mind that the 17 September 2007 CFI judgement has the force of <i>res judicata</i>, does the Commission consider that Article 93 (b) and (c) of Financial Regulation, read in conjunction with article 45(2) of Directive 2004/18/EC could be applied to Microsoft in this particular case and with regard to any ongoing or future public procurement procedure? If it is the case, could we therefore consider that Microsoft does not fulfil the conditions to participate in such public procurement procedure?</p>	
Signature(s):	Date: 9 April 2008