Competition law in the European Communities

Volume IIA
Rules applicable to State aid

Situation at 31 December 1994

EUROPEAN COMMISSION
DIRECTORATE-GENERAL IV
COMPETITION

EUROPEAN COMMISSION

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Introduction

The 1951 Treaty establishing the European Coal and Steel Community (ECSC) and the 1957 Treaty establishing the European Economic Community (EEC) both contain rules on government assistance to industry (State aid) which are applicable throughout the common market.

This volume is a collection of the basic texts on State aid, showing how the Community competition policy has developed in this area. It is a companion volume to the collection of basic texts on EEC and ECSC antitrust law published by the Commission.

To provide as complete a picture as possible, the collection includes texts of different kinds, which have not necessarily been published in the Official Journal and naturally also have differing legal status.

It does not seek to be exhaustive, however, and some older texts are omitted where more recent ones provide an accurate picture of how competition policy is applied.

This edition does not include the basic texts on State aid to agriculture (products listed in Annex II to the EC Treaty).

A — Provisions of the Treaties

I — Provisions of the EC Treaty

Article 42

The provisions of the Chapter relating to rules on competition shall apply to production of, and trade in, agricultural products only to the extent determined by the Council within the framework of Article 43(2) and (3) and in accordance with the procedure laid down therein, account being taken of the objectives set out in Article 39.

The Council may, in particular, authorize the granting of aid:

(a) for the protection of enterprises handicapped by structural or natural conditions;

(b) within the framework of economic development programmes.

Article 77

Aid shall be compatible with this Treaty if it meets the needs of coordination of transport or if it represents reimbursement for the discharge of certain obligations inherent in the concept of a public service.

Article 90

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 6 and Articles 85 to 94.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

3. The Commission shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate directives or decisions to Member States.

Article 92

1. Save as otherwise provided in this 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 shall, in so far as it affects trade between Member States, be incompatible with the common market.

2. The following shall be compatible with the common market:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences;

(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.

3. The following may be considered to be compatible with the common market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. However, the aids granted to shipbuilding as of 1 January 1957 shall, in so far as they serve only to compensate for the absence of customs protection, be progressively reduced under the same conditions as apply to the elimination of customs duties, subject to the provisions of this Treaty concerning common commercial policy towards third countries;

(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest;[1]

(e) such other categories of aid as may be specified by a decision of the Council acting by a qualified majority on a proposal from the Commission.

Article 93

1. The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market.

2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources, is not compatible with the common market having regard to Article 92, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

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[1] Point (d) as inserted by Article G(18) TEU.

If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 169 and 170, refer the matter to the Court of Justice direct.

On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the common market, in derogation from the provisions of Article 92 or from the regulations provided for in Article 94, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 92, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

Article 94[1]

The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, may make any appropriate regulations for the application of Articles 92 and 93 and may in particular determine the conditions in which Article 93(3) shall apply and the categories of aid exempted from this procedure.

[1] As amended by Article G(19) TEU.

II — Provisions of the ECSC Treaty

Article 4

The following are recognized as incompatible with the common market for coal and steel and shall accordingly be abolished and prohibited within the Community, as provided in this Treaty:

(a) import and export duties, or charges having equivalent effect, and quantitative restrictions on the movement of products;

(b) measures or practices which discriminate between producers, between purchasers or between consumers, especially in prices and delivery terms or transport rates and conditions, and measures or practices which interfere with the purchaser's free choice of supplier;

(c) subsidies or aid granted by States, or special charges imposed by States, in any form whatsoever;

(d) restrictive practices which tend towards the sharing or exploiting of markets.

Article 54

The High Authority may facilitate the carrying out of investment programmes by granting loans to undertakings or by guaranteeing other loans which they may contract.

With the unanimous assent of the Council, the High Authority may, by the same means, assist the financing of works and installations which contribute directly and primarily to increasing the production, reducing the production costs of facilitating the marketing of products within its jurisdiction.

In order to encourage coordinated development of investment, the High Authority may, in accordance with Article 47, require undertakings to inform it of individual programmes in advance, either by a special request addressed to the undertaking concerned or by a decision stating what kind and scale of programme must be communicated.

The High Authority may, after giving the parties concerned full opportunity to submit their comments, deliver a reasoned opinion on such programmes within the framework of the general objectives provided for in Article 46. If application is made by the undertaking concerned, the High Authority must deliver a reasoned opinion. The High Authority shall notify the opinion to the undertaking concerned and shall bring the opinion to the attention of its government. Lists of such opinions shall be published.

If the High Authority finds that the financing of a programme or the operation of the installations therein planned would involve subsidies, aid, protection or discrimination contrary to this Treaty, the adverse opinion delivered by it on these grounds shall have the force of a decision within the meaning of Article 14 and the effect of prohibiting the undertaking concerned from drawing on resources other than its own funds to carry out the programme.

The High Authority may impose on undertakings which disregard the prohibition referred to in the preceding paragraph, fines not exceeding the amounts improperly devoted to carrying out the programme in question.

Article 95

In all cases not provided for in this Treaty where it becomes apparent that a decision or recommendation of the High Authority is necessary to attain, within the common market in coal and steel and in accordance with Article 5, one of the objectives of the Community set out in Articles 2, 3 and 4, the decision may be taken, or the recommendation made with the unanimous assent of the Council and after the Consultative Committee has been consulted.

Any decision so taken or recommendation so made shall determine what penalties, if any, may be imposed.

If, after the end of the transitional period provided in the Convention on the Transitional Provisions, unforeseen difficulties emerging in the light of experience in the application of this Treaty, or fundamental economic or technical changes directly affecting the common market in coal and steel, make it necessary to adapt the rules for the High Authority's exercise of its powers, appropriate amendments may be made; they must not, however, conflict with the provisions of Articles 2, 3 and 4 or interfere with the relationship between the powers of the High Authority and those of the other institutions of the Community.

The amendments shall be proposed jointly by the High Authority and the Council, acting by an eight-ninths majority of its members, and shall be submitted to the Court for its opinion. In considering them, the Court shall have full power to assess all points of fact and of law. If as a result of such consideration it finds the proposals compatible with the provisions of the preceding paragraph, they shall be forwarded to the Assembly and shall enter into force if approved by a majority of three-quarters of the votes cast and two-thirds of the members of the Assembly.

B — General procedural rules

I — Guide to procedures in State aid cases

Introduction

Sources of law and practice

1. Article 93 of the EC Treaty makes the European Commission ('the Commission') responsible for enforcing Article 92, which declares State aid that affects trade between the Member States of the Community to be incompatible with the common market (paragraph 1) except in certain circumstances where an exemption is, or may be granted (paragraphs 2 and 3). So far, the procedural rules for applying Articles 92 and 93 have been developed in a piecemeal fashion by Commission decisions and judgments of the European Court of Justice. Whenever an important procedural issue has been clarified, the Commission has written to the Member States drawing their attention to it and has often also issued a public notice in the EC Official Journal. From time to time the Council or the Commission have also laid down special procedural provisions for particular industries or for aid of certain types or for certain purposes.

2. However, the procedural rules in State aid cases have never been codified. This brief guide is intended to make up for that deficiency. The source materials — the Treaty articles, Council and Commission legislation, communications from the Commission to the Member States and notices in the EC Official Journal — are reproduced — or in the case of Court judgments summarized — elsewhere in this volume. The guide only deals with aid falling under the EC Treaty, and not with the special rules for the coal and steel industries under the ECSC Treaty.

Status of guide

3. The guide attempts to describe the current state of law and practice derived from these various sources. The Commission's understanding of the law is, of course, subject to any different interpretation ultimately given to it by the Court of Justice. Nor does the guide preclude the adoption of different procedural rules for State aid in particular sectors or circumstances at a later date.

Layout

4. The guide first deals chronologically with the various steps in the procedure for a normal case, where the Member State notifies the aid to the Commission for approval and awaits its decision. Sections 1 to 3 are thus:

(1) Notification (Article 93(3)): Member States are required to inform the Commission when they plan to grant aid.

(2) Decisions without the opening of a formal investigation under Article 93(2): the Commission normally has two months to decide whether to authorize the aid[1] without further scrutiny or to begin a formal investigation.

(3) Formal investigation proceedings (Article 93(2)) and decisions concluding them: the proceedings end with the Commission deciding either to authorize the Member State to grant the aid or to prohibit it from doing so.

5. The next section describes the procedure in cases where Member States breach their obligation to notify proposed aid to the Commission and not to grant it until authorized.

(4) Procedure in cases of unnotified aid, including decisions to order suspension or recovery: if the Commission finds that a Member State has granted, or is in the process of granting, aid without authorization and that the aid could not have been or cannot be authorized, it can order the Member State to recover aid already paid and to cease payment if the aid is still being granted. The Commission can also order the Member State to supply information about the aid.

6. The Commission is required to monitor aid schemes it has previously authorized, or which date from before the entry into force of the Treaty, or before the accession of the Member State concerned. The next section thus covers:

(5) Review of existing aid (Article 93(1)): the Commission may recommend the Member State to change or abolish a scheme if necessary and, if the Member State declines, the Commission can require it to do so after a formal investigation under Article 93(2).

This section also describes the Commission's practice when overhauling its general policy towards aid of particular types or for particular purposes or sectors and issuing either binding rules that apply to all existing aid schemes of that type or notices setting out its future policy towards such aid. The reporting requirements the Commission imposes for monitoring purposes when approving aid are also described in this section.

7. The guide concludes with Sections 6 and 7 on complaints and the publication of decisions.

8. In Annex 1, a short description of the administrative arrangements in the Commission is given, with a flowchart showing the paths taken by cases from notification to decision. The Annex also explains the counting of time-limits.

Annex 2 describes the arrangements for cooperation between the Commission and the EFTA Surveillance Authority and for publication of each other's decisions under the European Economic Area Agreement. References to the Commission in the text of the guide should be taken to include, where appropriate, the EFTA Surveillance Authority. Under the EEA Agreements, the EFTA Surveillance Authority performed the same aid control functions as the Commission in 1994 in relation to Austria, Finland and Sweden and continues to do so in relation to the EFTA States members of the EEA that have not joined the EC.

The guide does not deal with the procedure involving the Council provided for in the third and fourth subparagraphs of Article 93(2).

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[1] That is not to raise objection to its granting, on the ground that the aid is compatible with the common market.

1. Notification

1.1. Treaty provisions

9. Article 93(3) states: 'The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 92, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision'.

10. This provision places procedural obligations both on the Member State concerned and on the Commission.

The Member State:

(a) must notify new aid and alterations to existing aid arrangements in advance (first sentence), and

(b) may not put the proposed measures into effect until the Commission has taken a decision on the case (third sentence).

For its part, the Commission must:

(c) within a reasonable time 'submit its comments', i.e., decide either to authorize the aid because it qualifies for exemption or to initiate the formal investigation procedure under Article 93(2) if it has doubts whether the aid qualifies for exemption (first and second sentences).

1.2. Notification in practice

1.2.1. Scope of the notification requirement

11. Member States are required to notify the Commission for approval of all plans to grant aid or to alter existing aid arrangements.[1] This also applies to aid that may qualify for approval under Article 92(2), if the requisite conditions are met, because the Commission has to check that this is the case. The only exception to the notification obligation for new aid is for that classed as *de minimis* because the amount is considered to be too small to affect trade between Member States significantly and thus to fall within Article 92(1) of the

[1] For the definition of 'existing aid' and the scope of the obligation to notify alterations to existing aid arrangements, see paragraph 73 and Case C-44/93 *Namur –Les assurances du crédit SA* v *OND and Belgium*, 9.8.1994 not yet reported (paragraph 32).

Treaty. This is the case where the amount of aid to an individual firm for either of two broad categories of expenditure, namely investment and other activities, together with any other aid received or receivable for the same purpose over a three-year period, will not exceed ECU 50 000.[1] Notification is also waived for increases in the authorized budget of an existing aid scheme by not more than 20%.[2]

12. The Commission receives notification of general schemes or programmes of aid, as well as of plans to grant aid to individual firms. Once a scheme has been authorized by the Commission, individual awards of aid under the scheme need not be notified.[3] However, under some of the aid codes or frameworks for particular industries or particular types of aid, individual notification is required of all awards of aid, or of awards exceeding a certain amount.[4] Individual notification may also be required in some cases by the terms of the Commission's authorization of a given programme.

13. If a government wishes to grant aid outside the framework of any authorized scheme or programme, such one-off awards must be notified.

14. If the Member State subsequently alters the proposal notified, it must notify the Commission of the alteration. The notification of the alteration is regarded as a new notification.[5] The period allowed for taking a decision begins to run afresh from the date the altered proposal is received.

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1 Paragraph 3.2 of the Community guidelines on State aid for SMEs (OJ C 213, 19.8.1992, p. 2), and letter to the Member States IV/D/6878 of 23 March 1993. Export aid and aid in sectors subject to special rules (namely, agriculture, fisheries, transport, coal, steel, shipbuilding and synthetic fibres) are excluded from the dispensation.

2 Notice on standardized notifications and reports, letter to Member States SG(94) D/2472-2494 of 22 February 1994.

3 See Cases 166 and 226/86 *Irish Cement* v Commission, [1988] ECR 6473; Case C-47/91 *Italy* v *Commission*, not yet reported.

4 Namely:
synthetic fibres (OJ C 346, 30.12.1992, p. 2): all awards;
shipbuilding (OJ L 380, 31.12.1990, p. 27 and OJ L 326, 28.12.1993, p. 62):
contracts for which yards in two Member States are competing, Article 4(5), second subparagraph, and Article 11(2)(c); contracts to be subsidized by overseas development aid, Article 4(7) and Article 11(2)(c); and awards under general, i.e. non-industry-specific, or regional aid schemes, Article 11(2)(b);
the motor industry (OJ C 123, 18.5.1989, p. 3, OJ C 81, 26.3.1991, p. 4 and OJ C 36, 10.2.1993, p. 17): projects involving investment of over ECU 12 million (paragraph 2.2.);
agriculture: awards for investment normally excluded from aid in agricultural product processing and marketing sectors, see Commission notice (OJ C 71, 23.3.1995, p. 3);
fisheries (OJ C 260, 17.9.1994, p. 3): aid for various specified purposes;
steel processing not falling within the ECSC Treaty (OJ C 320, 13.12.1988, p. 3): awards of aid to seamless tube and large-diameter welded pipe manufacturers (paragraph 4(1)(a));
R&D aid (OJ C 83, 11.4.1986, p. 2, paragraph 5.5, and letters to the Member States reference DG/IV (86)3934 of 4.11.1986 and SG(90) 1620 of 5.2.1990): major projects, including collaborative projects between firms and universities or public research institutes, costing over ECU 20 million and Eureka projects costing over ECU 30 million);
packages of aid for investment projects: see Commission notice on cumulation, (OJ C 3, 5.1.1985, p. 2); aid for rescuing and restructuring firms in difficulty (OJ C 368, 23.12.1994, p. 2): all awards to firms larger than small and medium-sized enterprises.

5 Cases 91 and 127/83 *Heineken Brouwerijen* v *Inspecteurs der Vennootschapsbelasting* [1984] ECR 3435, 3452-3453 (paragraphs 16-18).

15. Notification is required whenever there is a sufficient likelihood in the light of the case-law of the Court of Justice and the Commission's practice that a measure involves State aid.[1] Thus, Member States must also inform the Commission of plans to make financial transfers from public funds to public, or private sector enterprises in circumstances in which capital injections may involve aid.[2]

1.2.2. Notification formalities

16. Notification should be made by the central government authorities of a Member State, even if the scheme is administered or the aid is to be granted by regional or local authorities. The notification is usually forwarded to the Commission by the Member State's Permanent Representation to the EU in Brussels.

17. The notification should refer to Article 93(3) or to other Community law provisions requiring notification.[3] It should be sent to one of the following departments of the Commission, depending on the circumstances:

the Secretariat-General if it is proposed to introduce a new aid scheme, alter an existing scheme or to award aid to an individual firm or project outside a scheme or programme;

the responsible Directorate-General, namely Competition, Agriculture, Transport or Fisheries, in the case of notifiable individual awards of aid under schemes authorized by the Commission subject to notification of all or major awards,[4] or of amendments of existing aid schemes that the Commission has previously authorized which qualify for the accelerated clearance procedure;[5]

or the Directorate-General for Competition in the case of a new aid scheme for small and medium-sized enterprises that fulfils the conditions for the accelerated clearance procedure.[6]

Notifications are to be sent direct to the Directorate-General responsible in the cases referred to in the latter two indents in order to save time in processing, since the Commission has set itself shorter time-limits in these cases (see paragraph 32 below).

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1 The Commission is willing to give informal advice on whether notification is required.

2 Paragraphs 4.3 and 4.4 of notice on government capital injections, Bull. EC 9-1984, and paragraphs 27-31 of notice on public enterprises OJ C 307, 13.11.1993, p. 3. Financial transfers to public enterprises which clearly do not involve aid are not subject to prior notification but to *ex post* reporting in certain circumstances; notice on public enterprises, paragraphs 35-37.

3 Such as paragraph 2.2 of the motor industry aid framework, the synthetic fibres industry aid framework and Article 11(2) of the shipbuilding aid code; see note 6 above and Commission's letter reference SG(81) 12740 of 2.10.1981.

4 See Commission letters reference SG(81) 12740 of 2.10.1981 and SG(89) D/5521 of 27.4.1989 and the notice on unnotified aid, OJ C 318, 24.11.1983, p. 3. See also Section 4 below on unnotified aid.

5 Commission notice on the accelerated clearance of aid schemes for SMEs and of amendments of existing schemes, OJ C 213, 19.8.1992, p. 10. Qualifying amendments are extensions in time and minor changes in the conditions. An increase in the budget of a scheme by not more than 20% of the budget authorized (where the annual budgets were notified) or of the initial one (where the budgets for some later years were not notified), without any extension in time, need no longer be notified: notice on standardized notifications and reports, letter to Member States reference SG(94) D/2472-2494 of 22.2.1994.

6 OJ C 213, 19.8.1992, p. 10. For new SME aid schemes the accelerated procedure is not available for aid in agriculture, fisheries, transport, the motor industry, synthetic fibres, coal or steel.

18. After receipt of the notification, the Secretariat-General or, as the case may be, the responsible Directorate-General sends the Permanent Representation of the Member State concerned an acknowledgment which states the date on which the notification was received and undertakes that the Commission will ask for any further information it may need, should it find the notification to be incomplete, usually within 15 working days from that date.[1]

19. The date of receipt is the reference date for the calculation of the time-limit by which the Commission must make a determination on the case, i.e., decide to approve the aid or to launch a formal investigation under Article 93(2).[2]

20. As aid may not be granted until the Commission has authorized it, Member States should notify their plans sufficiently in advance of the planned implementation date to allow time for the Commission to make its decision. The minimum periods of two months for a new scheme, 30 working days for an award made under an approved scheme and 20 working days for the accelerated procedure (see paragraphs 30-32 below) may not suffice if the Commission has to ask for further information or clarifications.

1.2.3. Content of notifications and requests for additional information

21. The Commission recommends use of a checklist of standard items of information for notifying aid schemes and individual aid awards.[3] For the motor industry[4] and the advertising of agricultural products,[5] special checklists are laid down. A special checklist is also provided for notifications for the accelerated procedure[6] and for information on unnotified aid awards to individual firms.[7] One of the required pieces of information about schemes that are to run for several years or indefinitely is the budget. If the budgets for later years of a scheme are not indicated in the original notification, they must be notified separately later. This need not be done, however, if the budget is not more than 20% bigger than the original.[8]

22. A notification is incomplete when it does not contain all the information the Commission needs in order to form a view of the compatibility of the measure with the Treaty.[9]

23. If a notification is incomplete, the responsible Directorate-General requests the further information required usually within 15 working days from the date of receipt of the notifi-

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1 Commission letter to Member States reference SG(81) 12740 of 2.10.1981, as amended by letter reference SG(95) 4315 of 4.4.1995. When a Member State gives advance notice of capital injections, the Commission informs the Member State within 15 working days whether it considers aid is involved, see note 9 above.

2 See Commission letter reference SG(81) 12740 of 2.10.1981. If the notification is incomplete, the time-limit is only counted from the date of receipt of complete information (see paragraph 23).

3 Notice on standardized notifications and reports, letter to Member States reference SG(94) D/2472-2494 of 22.2.1994. This requires additional items of information to be provided for R&D aid.

4 See note 6.

5 OJ C 302, 12.11.1987, p. 6.

6 See note 12.

7 Letter on unnotified aid SG(91) D/17956 of 27.9.1991.

8 Notice on standardized notifications and reports, letter to Member States SG(94) D/2472-2494 of 22.2.1994.

9 See Commission letter to the Member States SG(81) 12740 of 2.10.1981.

cation. A request for further information cancels the start of the period allowed for processing the notification. The whole period begins to run afresh from the date on which the requested further information is received.[1]

24. The Commission usually asks for the further information to be supplied within 20 working days. It is requested by, and should be sent directly to, the Directorate-General concerned. If there is no answer or the answer is incomplete, the Directorate-General concerned sends a reminder or a further request for the missing information, usually allowing 15 working days. Letters asking for information remind the Member State of the prohibition against implementing the aid proposal until the Commission has taken a decision (see paragraphs 26-28).

25. The Secretariat-General sends the Member State an acknowledgment of receipt of the further information.

1.3. Prohibition against implementing the aid proposal during the Commission's investigation

26. The last sentence of Article 93(3) provides that the Member State shall not put its proposed measures into effect until the Article 93(2) procedure has resulted in a final decision. In fact, the prohibition against carrying out plans to grant aid without having received clearance from the Commission applies generally: it prohibits the implementation of notified aid proposals before clearance, even in cases where formal proceedings are not opened.[2]

27. By 'putting into effect' is meant not only the actual granting of aid but the conferment of powers enabling the aid to be granted without further formality.[3] To avoid breaching this requirement when passing aid legislation, Member States can either notify the legislation while it is still at the drafting stage or, if not, write into it a clause whereby the aid-granting body can only make payments after the Commission has cleared the aid.[4]

28. If aid legislation that has been notified is enacted in such a form that the aid can be granted before the Commission has given clearance, the case will be reclassified as 'unnotified aid'. The Commission will then apply the procedure set out in Section 4 below, as in cases when the Member State fails to notify aid at all.

1.4. Withdrawal of notification

29. If the Member State withdraws the notification, the Commission informs it by letter that the file is being closed on the case.

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1 Ibid and Commission letter SG(95) D/4315 of 4.4.1995.

2 Case 120/73 *Lorenz* v *Germany* [1973] ECR 1471, 1481 (paragraph 4); see also Case 6/64 *Costa* v *ENEL* [1964] ECR 585, 595-596; Cases 31 and 53/77R *Commission* v *United Kingdom* [1977] ECR 921, 924 (paragraph 16); Cases 67, 68 and 70/85R *Van der Kooy* v *Commission* [1985] ECR 1315, 1327 (paragraph 35); and Case 310/85 *Deufil* v *Commission* [1987] ECR 901, 927 (paragraph 24); Cases C-278-280/92 *Spain* v *Commission*, not yet reported, paragraphs 12-15; see also the Commission's notices on notification, OJ C 252, 30.3.1980, p. 2, and on unnotified aid, OJ C 318, 24.11.1983, p. 3, respectively and its letter SG(89) D/5521 of 27 April 1989.

3 See Commission letter SG(89) D/5521 of 27 April 1989.

4 Finance bills setting annual appropriations for transfers to public enterprises are not notifiable, but only the individual financing plans: see paragraph 15.

2. *Decisions of the Commission to approve notified aid without opening Article 93(2) proceedings*

2.1. Commission's duty to make a determination within a reasonable time

30. The Commission has a duty to let the Member State that has notified an aid proposal know of its view within a reasonable time.[1] The Court of Justice has set a general time-limit of two months from notification, and the Commission has set itself shorter time-limits in certain cases (see below). In agreement with the Member State concerned, these time-limits can be extended. If the Commission, without having obtained an extension, fails to respond to the notification within the two months allowed by the Court, and if the Member State then gives notice of its intention to implement the proposal and the Commission fails to object, the aid can be legally granted and becomes 'existing aid'.[2]

2.2. Time-limits

31. The normal time-limit for making a determination on a notification is hence two months.[3] This applies both to schemes and to individual awards of aid outside of schemes.

32. The Commission has set itself a shorter time-limit of:

(i) 30 working days

for notifiable individual awards of aid under schemes already authorized by it,[4]

and

for significant individual cases of cumulation of aid[5], and

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1 See Case 120/73 *Lorenz* v *Germany* [1973] ECR 1471, 1481, (paragraphs 4 and 5); Case 84/82 *Germany* v *Commission* [1984] ECR 1451, 1488 (paragraph 12).

2 See note 85.

3 See Case 84/82 *Germany* v *Commission* [1984] ECR 1451, 1488 (paragraph 11), and Case C-312/90 *Spain* v *Commission* [1992] ECR I-4117, I-4139 and I-4142 (paragraphs 8 and 18-19), referring to Case 120/73 *Lorenz* v *Germany* [1973] ECR 1471; see also the Commission's notices in OJ C 252, 30.9.1980, p. 2 and OJ C 318, 24.11.1983, p. 3 and its letter reference SG(81) 12740 of 2.10.1981.

4 See Commission letter reference SG(81) 12740 of 2.10.1981 and its notice in OJ C 318, 24.11.1983, p. 3. The 30-day time limit also applies to notifiable individual awards in industries subject to specific aid codes or frameworks (see note 6). However, in the non-ECSC steel processing industry, the Commission undertakes to deal with all individual cases within 30 working days (paragraph 4.2. of code), while in shipbuilding it does so only for aid awards under Article 4(5) of the directive.

5 See Commission notice on cumulation, OJ C 3, 5.1.1985, p. 2.

(ii) 20 working days

for new aid schemes for small and medium-sized enterprises which qualify for the accelerated clearance procedure,[1]

and for amendments of authorized aid schemes qualifying for the accelerated clearance procedure.[2]

The Commission could also set itself shorter time-limits for other cases.[3]

2.3. Procedure

33. The Commission can decide to raise no objection to aid notified to it without opening Article 93(2) proceedings.[4] The decision can be on the grounds that the measure does not involve aid under Article 92(1), that the aid is covered by an authorized scheme or that it is eligible for exemption under Article 92(2) or (3).

34. Before taking a decision to clear aid without opening Article 93(2) proceedings, the Commission is under no obligation to inform the other Member States and interested parties.[5]

35. The decisions are communicated to the Member State by letter.

36. Like all decisions they must meet the requirements of adequate reasoning laid down in Article 190.[6] To inform the other Member States and interested third parties, the Commission publishes a notice on the decision in the EC Official Journal.[7] The description of the case given in the notice varies in length according to the nature and importance of the case. It usually takes the form of a list of standard items of information.[8] No notices are at present published on cases cleared by accelerated procedure.[9]

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1 See notice in OJ C 213, 19.8.1992, p. 10. The accelerated procedure is not applicable to new SME schemes in agriculture and fisheries or other sectors with special rules, namely transport, coal, steel, shipbuilding, man-made fibres and the motor industry.

2 Ibid, and note 11. If the Directorate-General concerned considers that the case does not fulfil the conditions for accelerated clearance, it informs the Member State that the case will be dealt with under the ordinary procedure, sending a copy of the letter to the Secretariat-General.

3 For example, it advises Member States whether proposed government capital injections involve aid and therefore need to be notified within 15 working days: paragraph 4.4 of the 1984 notice, see note 9.

4 A decision to approve notified aid without opening proceedings may not impose conditions: see note 42.

5 See Case C-225/91, *Matra* v *Commission* [1993] ECR I-3203, I-3254-3255 and I-3263 (paragraphs 16 and 52-54).

6 See paragraph 51.

7 See Section 7.

8 See Commission letter to Member States of 11.10.1990, reference SG(90) D/28091. The notices are in fact published in the 'C' series of the OJ. Interested parties contemplating an appeal can obtain further information from the Commission on request, but normally not more than the letter to the Member State announcing the decision. See Case 236/86, *Dillinger Hüttenwerke* v *Commission* [1988] ECR 3761, 3784 (paragraph 14), and C-180/88, *Wirtschaftsvereinigung Eisen- und Stahlindustrie* v *Commission* [1990] ECR I-4413, I-4440-4441 (paragraphs 22-24).

9 See letter referred to in note 39 and notice on accelerated clearance of SME aid schemes and of amendments of existing schemes, OJ C 213, 19.8.1992, p. 10.

3. Formal investigation procedure under Article 93(2)

3.1. Treaty provisions

37. Article 93(2) states: 'If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the common market having regard to Article 92, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission'.

3.2. Cases in which the Commission must open an investigation

38. The Commission is obliged to open the procedure provided for in Article 93(2) whenever it has serious difficulty in determining the compatibility of aid with the common market[1] or considers that the aid can be authorized but conditions must be imposed.[2] The procedure is applicable in all types of cases, whether of notified, unnotified, or existing aid, although in the latter case it must be preceded by the proposal of 'appropriate measures' under Article 93(1).[3] The Commission must also open Article 93(2) proceedings if it finds that authorized aid is being misused, or further aid granted, in disregard of the terms of the authorization.[4]

39. The decision to open proceedings is without prejudice to the final decision, which may still be to find that the aid is compatible with the common market. The purpose of Article 93(2) proceedings is to ensure a comprehensive examination of the case by exploring doubtful matters further with the Member State concerned and by hearing the views of interested parties.[5]

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1 Case 84/82 *Germany* v *Commission* [1984] ECR 1451, 1488 (paragraphs 12-19); Case C-198/91 *William Cook* v *Commission* [1993] ECR I-2487, I-2529-2531 (paragraphs 29-31); Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203, I-3258-3259 (paragraphs 33-39).

2 The need for conditions, i.e., restrictions on the type, amounts, beneficiaries, purposes or duration of aid that were not provided for in the notification and are not generally applicable, implies doubt that otherwise competition might be unduly distorted and points to the need for a fuller investigation. The Commission is willing to advise Member States when aid proposals are unlikely to be authorizable and for this purpose encourages contacts before notification. These often lead to proposals being altered to make them eligible for authorization, thus avoiding a formal enquiry. See also note 8.

3 See paragraphs 77-79 and Case C-312/90 *Spain* v *Commission* [1992] ECR I-4117; and Case C-47/91 *Italy* v *Commission* [1992] ECR I-4145.

4 In the former case it may also refer the matter directly to the Court of Justice: Case C-294/90 *British Aerospace and Rover Group* v *Commission* [1992] ECR I-493, I-522 (paragraphs 11-13).

5 Case 84/82 *Germany* v *Commission* [1984] ECR 1451, 1488-1489 (paragraph 13); Case C-294/90 *British Aerospace and Rover Group* v *Commission* [1992] ECR I-493, I-521-522 (paragraphs 7-14).

40. With certain agricultural aid the Commission cannot open Article 93(2) proceedings even when it considers that the aid is incompatible with the common market, but can only make recommendations.[1]

3.3. Conduct of Article 93(2) proceedings

41. The Member State concerned is informed of the commencement of proceedings by letter. The other Member States and interested parties are informed by notice in the EC Official Journal.

42. The Commission aims to close the proceedings within six months of their being commenced and for this purpose has laid down target dates for completing the various stages.[2]

3.3.1. Contacts with Member States

43. The letter serving notice of proceedings states the reasons for the Commission's objections to the aid and invites the Member State to answer these objections within a stated period, usually one month.[3] The letter reminds the Member State of the ban on putting the aid into effect before the Commission has authorized it.[4]

44. If the Member State wishes to make oral submissions to the Commission, the meetings for this purpose should be held within three months of the service of notice of proceedings. Written confirmation of information supplied at such meetings, and any additional information or consequent amendments of the aid proposals, should be in the Commission's possession within four months.[5]

45. The Commission must give the Member State an opportunity to reply to comments and allegations made by other Member States and third parties in response to the public notice it places in the EC Official Journal. For this purpose the Directorate-General responsible sends the Member State a letter enclosing the submissions it has received. Member States are well advised to react to submissions as soon as possible, as the Commission is otherwise free to take the submissions into account in its decision without hearing the Member State's response to them.[6] Usually, the Commission asks for the Member State's reaction within 15 days.

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1 Under Article 4 of Council Regulation No 26/62, (OJ 30, 20.4.1962, p. 993), only Article 93(1) and the first sentence of Article 93(3) apply to aid granted for certain agricultural products to which the Council has not yet made all the provisions of Articles 92 and 93 applicable under Article 42 of the EC Treaty. A similar situation obtains under Council Regulation 706/73/EEC (OJ L 68, 15.3.1973, p. 1) for trade in agricultural products with the Channel Islands and the Isle of Man.

2 Letter reference SG(87) D/5540 of 30.4.1987.

3 Ibid.

4 If necessary, the Commission can issue an injunction to this effect: Case C-301/87 *France* v *Commission* [1990] ECR I-307, I-356 (paragraph 20).

5 Letter reference SG(87) D/5540 of 30.4.1987.

6 See paragraph 50.

3.3.2. Comments of other Member States and interested parties

46. The notice to other Member States and interested parties gives them one month from the date of publication to comment. The notice reproduces the letter that the Commission has sent to the Member State concerned, informing it of the opening of proceedings, with any commercially sensitive information deleted.[1]

47. The rights of third parties in the Article 93(2) procedure flow from the requirement to give 'notice to the parties concerned to submit their comments'. The 'parties concerned', are not only the firm or firms receiving aid but also firms, individuals or associations whose interests might be affected by the grant of the aid, in particular competing firms and trade associations.[2] The Court of Justice has held that a public notice is an appropriate means of informing all the parties concerned and that Article 93(2) does not require individual notice to be given to particular persons.[3]

48. In the notice, the Commission states its objections to the aid.[4]

3.4. Final decision

49. Unless the aid proposal is withdrawn, the Commission can take either a 'positive' decision on the aid, as in cases where no Article 93(2) proceedings are opened – i.e., it can find that the measure does not involve aid under Article 92(1) or that it is eligible for exemption under Article 92(2) or (3) – or it can take a 'negative' decision. A negative decision states that the Member State may not grant the aid.[5] A decision can be partly positive and partly negative. Positive decisions taken after Article 93(2) proceedings may impose conditions, i.e. restrictions on the type, amounts, beneficiaries, purposes or duration of the aid that were not provided for in the original aid proposal and are not generally applicable.

50. If the Member State fails to take its opportunity to reply to the opening of proceedings, the Commission is entitled to take a decision on the basis of the information available to it without having heard any counter-argument from the Member State.[6] However, if it does not have sufficient information, it must first issue an injunction to the Member State ordering it to supply the missing information.[7]

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1 Commission letter of 27.6.1989, reference SG(89) D/8546.

2 Case 323/82 *Intermills* v *Commission* [1984] ECR 3809, 3826-3827 (paragraph 16).

3 Ibid., 3827 (paragraph 17). However, if there is only one beneficiary, notice should be given direct. See also Case C-102/92 *Ferriere Acciaierie Sarde* v *Commission* [1993] ECR I-801, I-806-807 (paragraphs 17-18).

4 Case 323/82 *Intermills* v *Commission* [1984] ECR 3809, 3827-3828 (paragraph 21).

5 In unnotified aid cases, negative decisions can order the recovery of aid already paid: see Section 4.

6 See Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959, 1010 (paragraph 18); Case C-301/87 *France* v *Commission* (*Boussac*) [1990] ECR I-307, 357 (paragraph 22); Case 102/87 *France* v *Commission* [1988] ECR 4067, 4089 (paragraph 27); Case 40/85 *Belgium* v *Commission* [1986] ECR 2321, 2346-2347 (paragraphs 20 and 22); Case 234/84 *Belgium* v *Commission* [1986] ECR 2263, 2286-2288 (paragraphs 16, 17 and 22) and Commission letters reference SG(91) D/4577 of 4.3.1991 and SG(87) D/5542 of 30.4.1987.

7 See Case C-324/90 and C-342/90 *Germany and Pleuger Worthington* v *Commission*, not yet reported. See also note 49 and paragraphs 61-64.

51. The operative part of a decision has to specify the action the decision requires from the Member State and any other obligations and conditions imposed on it.[1] Article 93(2) also requires the Commission to set a time-limit by which the Member State must carry out the action required. The time-limit varies with the circumstances, but is usually one or two months.[2] Furthermore, Article 190 of the EC Treaty requires that the decision must clearly state the facts and legal considerations on which it is based, so that the parties are aware of them and the Court of Justice can exercise its powers of review.[3]

52. The Secretariat-General informs the Permanent Representation of the Member State concerned of the decision in a brief letter as soon as the decision is taken.[4]

53. In accordance with Article 191 of the Treaty, the Commission serves on the Member State concerned the full text of negative or partly negative decisions and decisions laying down conditions and informs the Member State of positive decisions by letter. The full text of a negative, partly negative or conditional decision is published in the 'L' series of the Official Journal. In the case of a positive decision, a notice reproducing the letter informing the Member State of the decision is published in the 'C' series of the Official Journal.[5]

3.5. Failure of Member State to comply

54. If the Member State concerned fails to conform to the decision, or to comply with any conditions that have been imposed, within the period laid down, the Commission may refer the matter directly to the Court in accordance with the second subparagraph of Article 93(2), applying if appropriate for interim measures under Article 186 of the EC Treaty.

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1 Case 70/72 *Commission* v *Germany* [1973] ECR 813, 832 (paragraph 23); Cases 67, 68 and 70/85 *Van der Kooy* v *Commission* [1988] ECR 219, 277-278 (paragraphs 62-67); and Case 213/85 *Commission* v *Netherlands* [1988] ECR 281, 299-300, 302 (paragraphs 19 and 29-30).

2 Obligations to submit restructuring plans may allow up to six months.

3 Cases 67, 68 and 70/85 *Van der Kooy* v *Commission* [1988] ECR 219, 278-279 (paragraphs 69-76); Cases 296 and 318/82, *Netherlands and Leeuwarder Papierwarenfabriek* v *Commission* [1985] ECR 809, 823-825 (paragraphs 19 and 22-27); Case 248/84 *Germany* v *Commission* [1987] ECR 4013, 4041-4042 (paragraphs 18 and 21-22); Case 323/82 *Intermills* v *Commission* [1984] ECR 3809, 3828 and 3831-3832 (paragraphs 23 and 35-39); Cases 62 and 72/87 *Exécutif régional wallon* v *Commission* [1988] ECR 1573, 1595 (paragraphs 24 and following), Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959, 1015 (paragraph 40); and Case C-364/90 *Italy* v *Commission* [1993] ECR I-2097, I-2130 (paragraphs 44-45).

4 Commission letter to Member States of 27.6.1989, reference SG(59) D/8546.

5 Ibid. See also C-102/92 *Ferriere Acciaierie Sarde* v *Commission* [1993] ECR I-801.

4. *Unnotified aid cases*

4.1. Notion of unnotified aid

55. The notion of 'unnotified aid' covers aid provided or committed without notification for whatever reason (including doubt as to the aid character) and aid that has already been 'put into effect' when it is notified or is 'put into effect' after being notified but before the Commission reached a decision.[1] Aid granted before authorization is illegal.

4.2. Procedure in unnotified aid cases

56. The procedure leading up to decisions in unnotified aid cases and the content of decisions is the same as with notifications (see Sections 2 and 3 above), except in the following respects which are a consequence of the illegality of such aid and the possible damage to competitors.

57. Firstly, the Commission has a power of injunction to prevent or stop the payment of aid pending the conclusion of Article 93(2) proceedings and to order the Member State to supply full particulars of suspected illegal aid. Secondly, if the Commission finds that the aid was ineligible for exemption, it orders the Member State to recover the aid, with interest, from the recipient. In the case of agricultural products, the Commission can refuse to charge to the Community budget expenditure which has been artificially increased by national aid measures.[2] Third, if a Member State were found to be regularly violating its notification obligations, the Commission could commence infringement proceedings against it under Article 169 of the EC Treaty.[3] The Commission often learns of illegal aid from complaints from third parties.[4]

58. The Commission has issued notices and has written to Member States warning them and the potential recipients of illegal aid of such consequences.[5]

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1 See paragraph 27 for the interpretation of 'put into effect'.

2 See notice in OJ C 318, 24.11.1983, p. 3.

3 See notice in OJ C 252, 30.9.1980, p. 2. Note also the possibility now in Article 171 of the EC Treaty to fine Member States for breaches of Community law.

4 See paragraphs 85-86. Third parties, especially competitors injured or threatened with injury through illegal aid, can also take action before national courts. The prohibition, against granting aid without authorization by the Commission is absolute and categorical and, as such, is directly effective law which can be enforced in national courts: see Case 120/73 *Lorenz* v *Germany* [1973] ECR 1471, 1483 (paragraphs 8-9); Case C-354/90 *Fédération nationale du commerce extérieur des produits alimentaires France*, [1991] ECR I-5505, I-5527-5528 (paragraphs 11-14). Consequently, third parties may be able to obtain an injunction from a national court or a judgment that the decision of the public authorities granting the aid was illegal and unenforceable.

5 See notices on unnotified aid in OJ C 318, 24.11.1983, p. 3 and OJ C 252, 30.9.1980, p. 2 and letters of 4.3.1991, reference SG(91) D/4577, and 27.9.1991, reference SG(91) D/17956.

4.2.1. Request for information

59. In cases where the supposed aid has not been notified, the Commission first requests the Member States concerned to supply full details of the aid within 15 working days. If there is no answer or the answer is incomplete, the Member State is again asked to give detailed information within another 15 working days.[1] If this still fails to elicit the required information, the Commission issues an injunction (see next section).

60. If the Commission requires further information about aid that has been put into effect before notification, it will ask the Member State to supply the information within 20 working days, the same as the usual period allowed for supplying additional information in notified aid cases (see paragraph 24 above). A reminder will be sent if necessary.

4.2.2. Injunction ('interim measures')

61. The Commission has the power to issue an injunction ordering the Member State to suspend payment of the aid pending the outcome of the investigation and/or to supply information needed for the Commission to take a decision on the case, which has not been forthcoming despite requests.[2]

62. Before issuing the injunction, the Commission must give the Member State concerned an opportunity to submit its comments.[3] It will normally already have opened proceedings against the Member States under Article 93(2) or will do so at the same time (see below).

63. If the Member State fails to suspend payment of the aid, the Commission is entitled, while carrying out the examination on the substance of the matter, to bring the matter directly before the Court and apply for a declaration that such payment amounts to an infringement of the Treaty and/or for an injunction.[4]

64. The Commission may also use its powers of injunction to order the disclosure of information about aid awards which the Member State maintains are within the terms of an approved aid scheme. If the Commission has doubts, it must ascertain the true facts, if necessary by means of an injunction. Only when it has done so and either is certain that the aid is not covered by the previous aid scheme authorization or still has serious doubts, can it order aid payments to be suspended.[5]

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1 See letters reference SG(91) D/4574 of 4.3.1991 and SG(91) D/17956 of 27.9.1991. The reference in the March 1991 letter to a 30-day time-limit for replying to requests for information has combined the two 15-day periods into one. A list of standard items of information required on unnotified aid to individual firms is given in an annex to the letter of September 1991. The move to tighten up procedures on unnotified aid was prompted by the Court's *Boussac* judgment, Case C-301/87 *France* v *Commission* [1990] ECR 1-307.

2 See Case C-301/87 *France* v *Commission* [1990] ECR I-307, I-356 (paragraphs 18-20) Case C-142/87; *Belgium* v *Commission* [1990] ECR I-959, I-1009-1010 (paragraphs 15-18); Cases C-324/90 and C-342/90 *Germany and Pleuger Worthington* v *Commission,* not yet reported; see also paragraph 43.

3 *Boussac* judgment, I-356 (paragraph 19).

4 Ibid., I-357 (paragraph 23). See also Cases 31/77R and 53/77R *Commission* v *United Kingdom* [1977] ECR 921.

5 ECJ, 5.10.1994, Case C-47/91 *Italy* v *Commission* not yet reported, paragraphs 33-35.

4.2.3. Decision to authorize the aid or to open proceedings under Article 93(2)[1]

65. As in cases of notified aid (see paragraph 33 above), the Commission may decide to raise no objection to the aid on the ground that the measure does not involve aid under Article 92(1), that the aid is covered by an authorized scheme or that it is eligible for exemption under Article 92(2) or (3).

66. On the other hand, if the Member State fails to supply sufficient – or any – information within the 30 working days allowed, the Commission opens proceedings under Article 93(2) immediately and may also issue an injunction.

67. In unnotified aid cases, the Commission is not subject to any binding time-limit for making its determination on whether to raise no objection to the aid or to open Article 93(2) proceedings, but it endeavours to do so within two months of receiving complete information, as in notified cases.

68. If it opens proceedings, in the letter announcing that it has done so the Commission asks the Member State to confirm within 10 working days that any ongoing aid payments are being suspended, failing which an injunction may be issued.

69. If the Member State fails to reply to the opening of proceedings, and to an injunction ordering it to supply the information the Commission needs to take a decision, the Commission can take a decision on the basis of the information available, including that which it may have received form third parties in response to the public notice and which it has communicated to the Member State.[2]

4.2.4. Recovery orders

70. In negative decisions on cases of unnotified aid, the Commission requires the Member State to reclaim the aid from the recipient,[3] except in duly justified exceptional cases.[4]

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1 Despite the wording of Article 93(3), Article 93(2) proceedings obviously can be opened in unnotified aid cases just as in notified ones. Therefore, the sanction of a prohibition order at the end of Article 93(2) proceedings is available when a Member State fails to notify aid, just as when it has notified the aid. See paragraph 38.

2 See Case C-324/90 and C-342/90 *Germany and Pleuger Worthington* v *Commission* not yet reported, and paragraph 45. Member States are under a duty to cooperate with the Commission: see C-364/90 *Italy* v *Commission* [1993] ECR I-2097, I-2125 and 2128 (paragraphs 20-22 and 33-35).

3 First stated in Case 70/72 *Commission* v *Germany* [1973] ECR 813, 828-829 (paragraphs 10-13); see also Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959, 1020 (paragraphs 65-66); ECJ, 2.2.1989, Case 94/87 *Commission* v *Germany* [1989] ECR 175; ECJ, 24.2.1987, Case 310/85 *Deufil* v *Commission* [1987] ECR 901, 927 (paragraph 24); and the many judgments upholding decisions containing recovery orders, for example, Case 40/85 *Belgium* v *Commission* [1986] ECR 2321; Case 234/84 *Belgium* v *Commission* [1986] ECR 2263; Case C-183/91 *Commission* v *Greece* [1993] ECR I-3131, I-3150 (paragraph 16).

4 See, for example, Commission Decision of 25.7.1990, *IOR* [1992] OJ L 183, 3.7.1992, p. 30.

71. The recovery is to be effected in accordance with national law. However, national law cannot be invoked to frustrate recovery or render it practically impossible.[1] Nor can the recipients normally invoke legitimate expectations, because they have a duty of care before receiving aid to ensure that it is granted lawfully,[2] or a Member State refuse to recover the aid on the grounds of the supposed legitimate expectations of the aid recipients.[3] The Commission monitors the recovery of the aid. If the Member State has difficulties in doing so, it must cooperate with the Commission in finding ways of overcoming the difficulties.[4]

72. The decision will normally require interest to be charged from the date the unlawful aid was awarded until it is recovered.[5]

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1 See Case C-5/89 *Commission* v *Germany* [1990] ECR I-3437; Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959, 1018-1020 (paragraphs 58-63); Case C-74/89 *Commission* v *Belgium* [1990] ECR I-491; Case 94/87 *Commission* v *Germany* [1989] ECR 175; Case C-183/91 *Commission* v *Greece* [1993] ECR I-3131, I-3150-3151 (paragraphs 18-19).

2 Case C-5/89 *Commission* v *Germany* [1990] ECR I-3437, I-3457-3458 (paragraphs 14-17); Case C-102/92 *Ferriere Acciaierie Sarde* v *Commission* [1993] ECR I-801, I-806 (paragraph 13). See however, Case 223/85, *RSV* v *Commission* [1987] ECR 4617, 4659 (paragraph 17).

3 Case C-5/89 *Commission* v *Germany,* ibid.; Case C-183/91 *Commission* v *Greece* [1993] ECR I-3131, I-3150-3151 (paragraph 18).

4 Case C-183/91 *Commission* v *Greece* [1993] ECR I-3131, I-3151 (paragraph 19).

5 See letter on unnotified aid SG(91) D/4577 of 4.3.1991.

5. *Monitoring of 'existing aid' under Article 93(1), review of general policy and reporting requirements*

5.1. Notion of 'existing aid'

73. Existing aid within the meaning of Article 93(1) includes:

(i) old or 'pre-accession' aid, i.e. aid schemes in operation or aid committed, or in the process of being granted before the entry into force of the EEC Treaty (1 January 1958, the relevant date of accession in the case of Member States which joined the Community later, or 1 January 1994 in the case of the EFTA States signatories of the EEA Agreement) which has never been formally investigated and authorized by the Commission;

(ii) authorized aid, i.e. aid schemes or ongoing provisions of aid that have been authorized by the Commission after notification, or after being put into effect without notification;[1]

and

(iii) aid authorized by default, i.e. legally granted after the Commission has failed to make a determination within the two-month period allowed for examining a notification[2] and the Member State has given the Commission notice that it is going ahead, without any reaction from the latter.[3]

5.2. Purpose of the 'existing aid' procedure

74. The purpose of the 'existing aid' procedure is to provide a means of dealing with all three categories of existing aid. Article 93(1) is designed to enable the Commission to secure the abolition or adaptation of old or pre-accession aid that is incompatible with the common market[4] and to review aid schemes or provisions which were authorized in the past but which may no longer be compatible with the common market under the conditions currently prevailing.[5] The procedure is applied not only to review individual Member State's aid

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1 Case 84/82 *Germany* v *Commission* [1984] ECR 1451, 1488 (paragraph 12); Cases 166 and 220/86 *Irish Cement* v *Commission* [1988] ECR 6473; Case C-47/91 *Italy* v *Commission* [1992] ECR I-4145; Case C-47/91 *Italy* v *Commission*, not yet reported.

2 See paragraphs 30-32 above.

3 Case 120/73 *Lorenz* v *Germany* [1973] ECR 1471, 1481 (paragraph 4); Case 171/83R *Commission* v *France* [1983] ECR 2621, 2628 (paragraphs 13-15); Case 84/82 *Germany* v *Commission* [1984] ECR 1451, 1488 (paragraph 11); Case C-312/90 *Spain* v *Commission* [1992] ECR I-4117, I-4139 and I-4142 (paragraphs 8 and 18-19). The Commission understands the case-law to mean that after receiving notice from the Member State that it intends to implement the proposal, the Commission may still, within a reasonably short period (say, two weeks), take a decision to open the Article 93(2) procedure.

4 See Case 6/64 *Costa* v *ENEL* [1964] ECR 585, 595-596.

5 See *Twentieth Report on Competition Policy* (1990), point 171, and *Twenty-first Report on Competition Policy* (1991), points 240-241.

schemes, but also when the Commission wishes to obtain changes to existing aid schemes, for example, as regards particular sectors or particular purposes, in all Member States at once.[1]

5.3. Treaty provisions

75. Article 93(1) states: 'The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market'.

76. This provision places obligations both on the Commission and on the Member State concerned. The Commission must keep under constant review, in cooperation with the Member States concerned, all systems of aid existing in the Member States and must propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market. Member States have a duty to cooperate with the Commission.

5.4. Procedure

5.4.1. Initiation of review

77. Whenever the Commission believes that an existing aid scheme may be harming the functioning or development of the common market, it begins a review normally by writing for information to the Member State concerned. The initiation of a review does not require operation of the aid scheme to be suspended.

78. The Member State is under an obligation to provide the information required by the Commission. To enable the review to be carried out with the necessary dispatch, the Commission may set time-limits for supplying information similar to those in notified aid cases, as described in paragraph 24 above.

5.4.2. Proposal of 'appropriate measures'

79. Having considered the existing aid scheme in the light of the information supplied by the Member State, the Commission may decide that no change in the scheme is necessary and close the file on the case, or it may propose whatever changes may appear appropriate to bring the scheme into line with current requirements. The proposal of 'appropriate measures' is communicated to the Member State by letter. The appropriate measures may include a recommendation to abolish the scheme. The Commission must give reasons for the measures it proposes.[2] If the Member State agrees to make the changes recommended, the Commission closes the case.

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[1] See paragraphs 82-84.

[2] See Case 78/76 *Steinike & Weinlig* v *Germany* [1977] ECR 595, 609 (paragraph 9).

5.4.3. Article 93(2) proceedings if Member State refuses

80. If, on the other hand, the Member State declines to carry out the appropriate measures proposed and the Commission, having heard its arguments, still considers that they are necessary, the Commission may only require the Member State to comply through the Article 93(2) procedure. The decision requiring the changes is not retroactive and must allow the Member State a reasonable period to comply.[1]

5.5. General reviews of existing aid schemes concerning particular sectors or for particular purposes

81. As well as for reviewing individual Member State's aid schemes, the Commission also uses the Article 93(1) procedure to secure changes to existing aid schemes in all the Member States at once. For example, if the Commission sees a need to tighten up the control of aid to particular sectors, and for this purpose requires individual notification of aid awards to firms in the sectors even when the aid is granted under existing general or regional schemes, it is more convenient to introduce such changes *erga omnes* than by reviewing each existing scheme individually.[2] As when reviewing individual schemes, the Commission recommends the proposed changes to Member States as appropriate measures. If they give their consent, the new rules become binding on them. If a Member State declines, the Commission may take a decision under the Article 93(2) procedure, making the rules binding on the country concerned.[3]

82. The Commission also carries out general reviews of policy on aid for particular purposes and announces new or codified rules on such aid without seeking immediate across-the-board changes in existing schemes to comply with the new rules but instead allowing a certain period of time for adjustment. In such cases, the Commission applies the rules to new or amended schemes as and when they are notified and at the same time reviews individually under Article 93(1) any existing schemes not renotified within a certain period. For such rules, the Commission does not ask for the Member States' consent under Article 93(1) as the introduction of the rules does not of itself involve changes to existing schemes, but they are applied to each scheme individually afterwards.[4]

83. To discuss proposed new aid rules or codifications and other aid issues, the Commission holds at least twice-yearly multilateral meetings with Member States' aid experts.[5]

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1 See Case 173/73 *Italy* v *Commission* [1974] ECR 709, 716-717 (paragraphs 5-7).

2 See the motor industry and synthetic fibres aid codes which were applied to aid under authorized regional schemes. See Case C-47/91 *Italy* v *Commission* [1992] ECR I-4145; *Twentieth Report on Competition Policy*, point 249; Case C-313/90, *CIRFS* v *Commission* [1993] ECR I-1125, I-1186 (paragraphs 34-36).

3 See, for example *Nineteenth Report on Competition Policy*, point 127; *Twentieth Report on Competition Policy*, point 249.

4 See, for example R&D aid framework (OJ C 86, 11.4.1986, p. 2), SME aid guidelines (OJ C 213, 19.8.1992, p. 2), environmental aid guidelines (OJ C 72, 10.9.1994, p. 3), and rescue and restructuring aid guidelines (OJ C 368, 23.12.1994, p. 12).

5 See *Twentieth Report on Competition Policy*, point 170.

5.6. Member States' reporting requirements

84. To be able to monitor existing aid schemes the Commission requires Member States to supply it with annual reports. For the major schemes detailed reports are required, for the less important schemes the reports may be in abridged form, while only summary reports are to be supplied for schemes treated by accelerated procedure or with an annual budget of under ECU 5 million. Checklists of the various items of information to be included in each type of report — covering the amounts of aid awarded, the number, size, sector and location of firms receiving the aid, etc. — are laid down.[1] Reports are also sometimes required on individual aid awards, for example in connection with the execution of an investment project or restructuring plan. Decisions ordering the recovery of aid ask for a report within a certain period, often two months, on the arrangements made for reclaiming the money. Special reporting requirements are imposed in some aid frameworks for particular industries.[2] In relation to agricultural products, reports are only requested on a case-by-case basis as necessary.

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[1] See notice on standardized notifications and reports, letter to Member States SG(94) D/2472-2494 of 22.2.1994.

[2] Namely, motor industry (OJ C 123, 18.5.1990, p. 3, paragraphs 2.2, 2.3 and Annex II), shipbuilding (OJ L 380, 31.12.1990, p. 27, Article 12 and Annex), and non-ECSC steel processing (OJ C 320, 13.12.1988, p. 3, paragraph 4.1).

6. Complaints

6.1. Importance and status

85. Third parties writing to the Commission are an important source of information about State aid, as are press reports. Such information can lead to the detection of unnotified aid and of abuses of aid that have been authorized. However, by no means do all such allegations turn out to be accurate or, even if accurate, actionable by the Commission. If the measure complained of lacks the features of State aid for the purposes of Article 92(1), then the Commission cannot take any action under this provision. In other cases the Commission finds that the aid complained of has already been authorized and that the relevant limits have been observed.[1]

86. The types of third parties supplying information to the Commission range from private individuals complaining about the waste of taxpayers' money to competitors of the firms allegedly receiving aid. Nevertheless, the Commission examines, and replies to, all complaints.[2] If it takes a decision on the aid complained of, it sends the complainant a copy of its letter to the Member State announcing the decision.

6.2. Procedure

87. Complaints need not be in any particular form and can be lodged by the individuals or firms concerned or their lawyers, or, for example, through their parliamentary representatives, governments or trade associations. Complaints may be addressed to the Commission in Brussels or to one of its offices in a Member State. An acknowledgement of receipt is sent to the complainant.

88. Unless the complaint clearly lacks foundation, the examining department will write to the Member State concerned for information to verify or refute the allegations. It may also ask the complainant to elaborate on the allegations or to supply further evidence. The Commission keeps the name of the complainant or informant secret unless the latter agrees to their identity being disclosed, and will not divulge to either party information for which the other party claims confidentiality. However, the Member State must be given an opportunity to defend itself against any allegation or piece of evidence which the Commission wishes to use.[3] If the allegations of unnotified aid or abuse of an aid scheme are found to be proven or at least plausible, the examining department will have the case registered as unnotified aid and thereafter will follow the usual procedure.[4] This will also be done if no satisfactory reply is received. The complainant will be informed that an unnotified aid case has been opened and will also be advised if the case is later closed.

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1 See Cases 166 and 220/86 *Irish Cement* v *Commission* [1988] ECR 6473.
2 See Commission notice OJ C 26, 1.2.1989, p. 7.
3 See, for example, *Hoffman-La Roche* v *Commission* [1979] ECR 461, 512 (paragraph 11).
4 See Section 4.

7. Publication of decisions

7.1. Treaty requirements

89. Article 191 of the EC Treaty provides that decisions of the EC institutions shall be served on their addressees. Article 93(2) of the Treaty also requires the Commission to give interested parties notice of the opening of proceedings. In fact, the Commission publicizes its State aid decisions more widely than the Treaty requires. As well as making it easier for interested parties to seek judicial review of final decisions, wider publicity improves the transparency of its policy and fosters voluntary compliance by Member States.

7.2. Practice

90. Member States other than the Member State granting the aid, interested parties and the general public are informed of decisions as follows:

(a) when a case is cleared without opening proceedings under Article 93(2), by a short notice in the form of a list of standard items of information.[1] The only exceptions from this practice of systematically publishing announcements of such decisions are cases cleared by accelerated procedure;

(b) when Article 93(2) proceedings are opened, by a notice in the 'C' series of the Official Journal, which reproduces the letter the Commission has sent to the Member State concerned;[2]

(c) on final positive decisions taken after Article 93(2) proceedings, also by a notice in the 'C' series of the Official Journal reproducing the letter to the Member State;[3]

(d) on final negative decisions or positive decisions imposing conditions taken after Article 93(2) proceedings, by publication of the full text of the decision in the 'L' series of the Official Journal.[4]

91. A press notice is issued, usually on the day the decision is taken, on virtually all decisions in State aid cases except minor ones. In addition, the more important decisions are reported in the Commission's monthly Bulletin and Annual Reports on Competition Policy.

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[1] See paragraph 36.
[2] See paragraph 45.
[3] See paragraph 53.
[4] Ibid.

92. As required by Article 214 of the EC Treaty all published information on State aid cases omits material of a kind covered by the obligation of professional secrecy. This does not include the identity of the aid recipients. When in doubt, the Commission clears intended publications with the Member State concerned beforehand in order to remove any commercially sensitive material.[1]

[1] See Case 145/84 *Netherlands and Leeuwarder Papierwarenfabriek* v *Commission* [1985] ECR 809, 823 (paragraph 18).

ANNEX 1

ADMINISTRATIVE ARRANGEMENTS IN THE COMMISSION AND COUNTING OF TIME-LIMITS

Administrative arrangements

Several departments in the Commission handle State aid cases. The Directorates-General for Agriculture (DG VI), Transport (DG VII) and Fisheries (DG XIV) are in charge of cases in their particular fields and the Directorate-General for Energy (DG XVII) handles aid to the coal industry. In other cases the lead department is the Directorate-General for Competition (DG IV).

The Secretariat-General of the Commission is responsible for allocating notified cases between departments, supervising and coordinating decision-making, service of decisions on the Member State, and publication of decisions in the Official Journal. The Secretariat-General keeps a central register of all pending State aid cases. Cases are classified into notified (N), unnotified (NN), existing aid (E) and cases in which formal investigation proceedings have been opened (C). The case number consists of one of these letters followed by the serial number and year of registration in the relevant part of the register, for example, N 162/91, NN 5/92.

The flowchart on the following pages represents the typical paths of cases through the machinery.

Counting of time-limits

Time-limits are laid down for various kinds of action in State aid cases. They are expressed as a period of months or working days. The period is started by the receipt[1] of correspondence or the publication of notices.

Periods expressed in months end on the same date, n months later, as that on which the correspondence was received or the notice published. For example, the two-month deadline for deciding on a notification received on 5 May is 5 July.

Periods expressed in working days end on the n^{th} working day counted from the working day following that on which the correspondence was received. Weekends and public holidays are thus disregarded.[2] It is the public holidays observed in Member States that count when the time-limit is for action by Member States.[3] A list of the public holidays that are not working days for the Commission is published each December for the following year.

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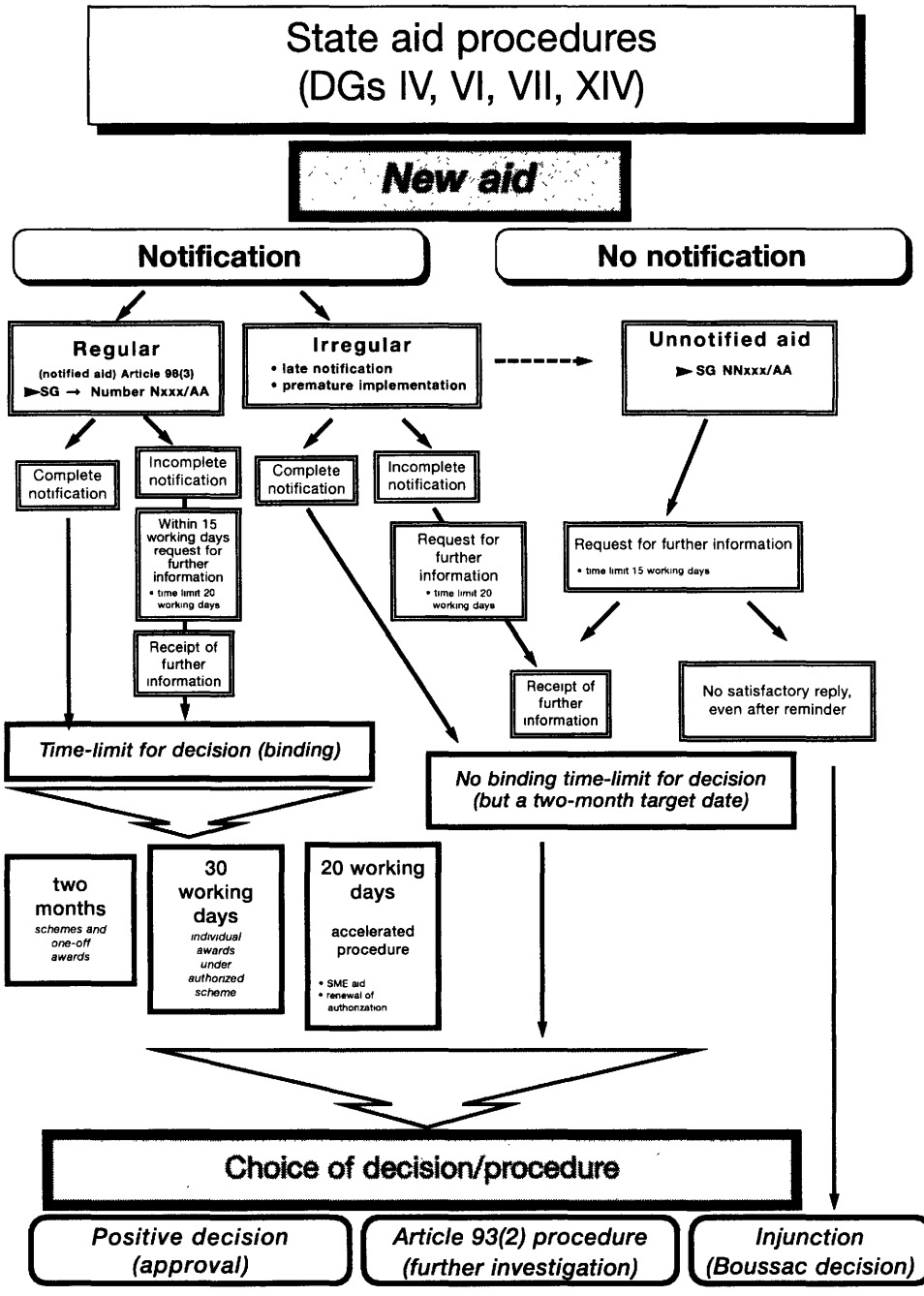
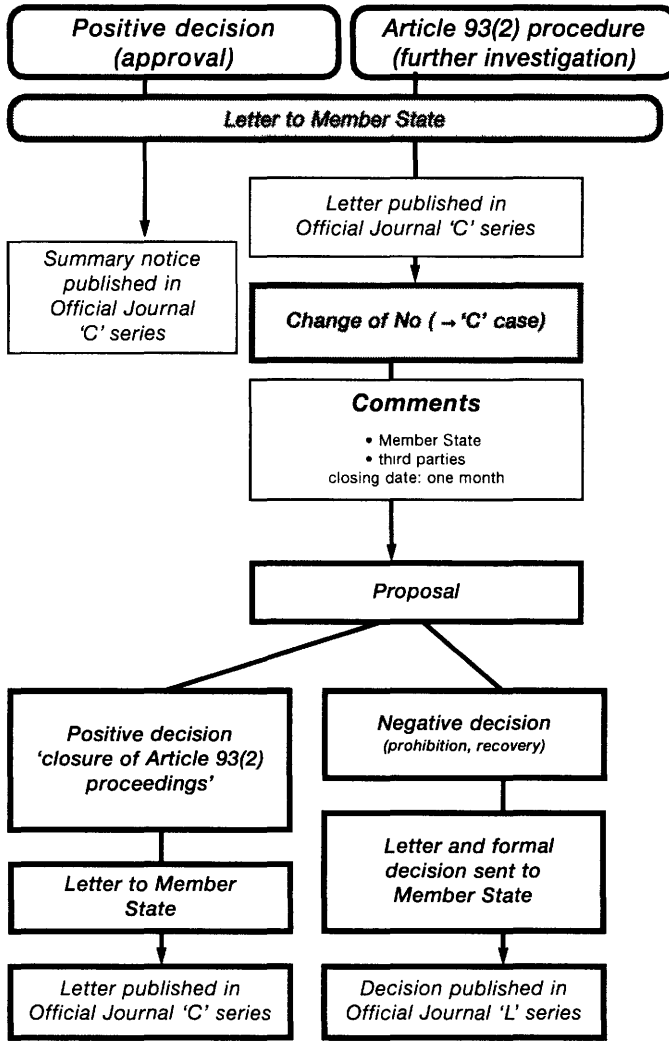
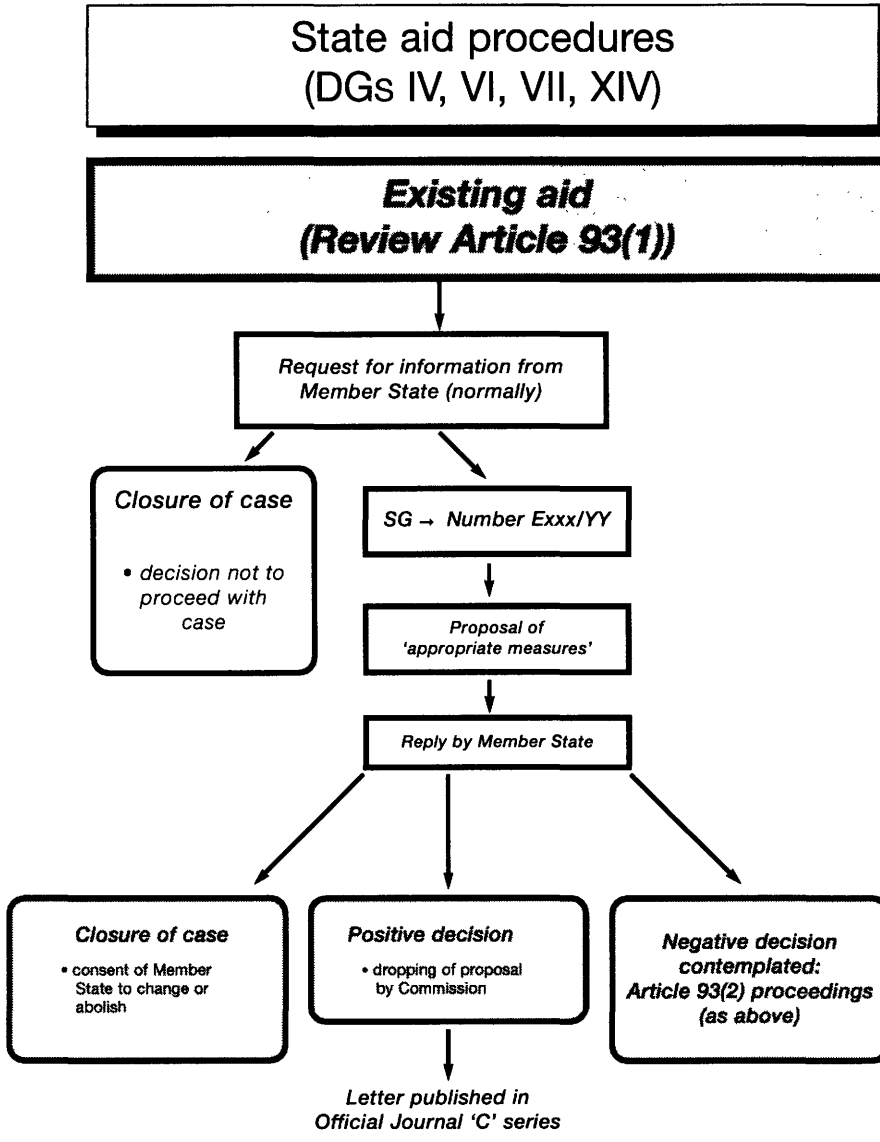
1 Or dispatch if the correspondence is faxed. The Commission faxes letters that set Member States a time-limit for action starting from the date of dispatch and sends the original afterwards.

2 See Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time-limits OJ L 124, 8.6.1971, p. 1.

3 A maximum of five working days per week should be counted even in Member States that officially have six working days per week.


State aid procedures
(DGs IV, VI, VII, XIV)
New aid
Notification
No notification
Regular
(notified aid) Article 88(3)
►SG → Number Nxxx/AA
Irregular
• late notification
• premature implementation
Unnotified aid
►SG NNxxx/AA
Complete notification
Incomplete notification
Complete notification
Incomplete notification
Within 15 working days request for further information
• time limit 20 working days
Request for further information
• time limit 20 working days
Request for further information
• time limit 15 working days
Receipt of further information
Receipt of further information
No satisfactory reply, even after reminder
Time-limit for decision (binding)
No binding time-limit for decision (but a two-month target date)
two months
schemes and one-off awards
30 working days
individual awards under authorized scheme
20 working days
accelerated procedure
• SME aid
• renewal of authorization
Choice of decision/procedure
Positive decision (approval)
Article 93(2) procedure (further investigation)
Injunction (Boussac decision)


Positive decision (approval)
Article 93(2) procedure (further investigation)
Letter to Member State
Summary notice published in Official Journal 'C' series
Letter published in Official Journal 'C' series
Change of No (→ 'C' case)
Comments
• Member State
• third parties
closing date: one month
Proposal
Positive decision 'closure of Article 93(2) proceedings'
Negative decision (prohibition, recovery)
Letter to Member State
Letter and formal decision sent to Member State
Letter published in Official Journal 'C' series
Decision published in Official Journal 'L' series


State aid procedures
(DGs IV, VI, VII, XIV)
Existing aid
(Review Article 93(1))
Request for information from Member State (normally)
Closure of case
• decision not to proceed with case
SG → Number Exxx/YY
Proposal of 'appropriate measures'
Reply by Member State
Closure of case
• consent of Member State to change or abolish
Positive decision
• dropping of proposal by Commission
Negative decision contemplated: Article 93(2) proceedings (as above)
Letter published in Official Journal 'C' series

ANNEX 2

ARRANGEMENTS FOR COOPERATION BETWEEN THE COMMISSION AND THE EFTA SURVEILLANCE AUTHORITY UNDER THE EUROPEAN ECONOMIC AREA (EEA) AGREEMENT[1]

1. Exchange of information and views on general policy issues (paragraph (a) of Protocol 27 to the EEA Agreement)

The EFTA Surveillance Authority is represented at the Commission's multilateral meetings with observer status, and vice versa. The Authority discusses Commission drafts of notices or recommendations on general policy issues with its Member States at multilateral meetings or consults them in writing. Afterwards it gives its comments and a summary of the comments of the EFTA States in a written submission to the Commission. The Commission informs the Authority how it has taken account of such comments.

In addition, general policy issues are discussed with the EFTA Surveillance Authority at the periodic meetings between it and the Commission departments at various levels.

2. Notice and publication of opening of proceedings (paragraphs (c) and (e) of Protocol 27)

Decisions to open proceedings under Article 93(2) of the EC Treaty and the corresponding provisions of the Surveillance and Court Agreement[2] are brought to the notice of the other authority and to interested parties in the EU and EFTA countries party to the EEA Agreement respectively. For this purpose the Commission's Secretariat-General sends the EFTA Surveillance Authority copies of the letter to the Member State announcing the opening of proceedings and of the press release. The EFTA Surveillance Authority correspondingly informs the Commission's Secretariat-General. For proceedings opened by the Commission a short notice referring to the full notice published in the Official Journal is published in the EEA Supplement to the Official Journal in the languages of the EFTA country members of the EEA that are not official EU languages. When the EFTA Surveillance Authority opens proceedings the notice it publishes in the EEA Supplement is reproduced in full in the EU languages in an EEA section of the Official Journal.

3. Information on and publication of final decisions (without opening proceedings or after proceedings), injunctions and proposals of appropriate measures (paragraphs (d) and (e) of Protocol 27)

Copies of the letter to the Member State concerned and the press release, if any, are sent by the Commission's Secretariat-General to the EFTA Surveillance Authority on all the types

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[1] These arrangements may be changed following the accession of three of the EFTA country members of the EEA to the European Union.

[2] Article 1(2) of Protocol 3 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice.

of decisions referred to above. The EFTA Surveillance Authority does the same for its decisions.

Interested parties in the other group of countries are informed by means of notices published in an EEA section of and the EEA Supplement to the Official Journal, as in point 2 above.

4. Provision of information and exchanges of views at the other authority's request on a case-by-case basis (paragraph (f) of Protocol 27)

Such information and views are exchanged both in writing and at the periodic meetings between Commission departments and the EFTA Surveillance Authority.

5. Complaints (Article 109(4) of the EEA Agreement)

Under Article 109(4) of the EEA Agreement, each authority must refer to the other for examination of complaints about alleged aid in the other authority's Member States. The authority responsible replies to the complainant and informs the authority that has referred the complaint of the outcome of the investigation.

II — Communications to Member States and public notices on procedural issues

1. Notification obligation and consequences of breach of obligation

The notification of State aid to the Commission pursuant to Article 93(3) of the EEC[1] Treaty: the failure of Member States to respect their obligations

Article 93(3) of the EEC Treaty requires that all plans to grant or alter aid by Member States shall be notified to the Commission before they are put into effect and in sufficient time to enable the Commission to submit its comments and, as appropriate, open the administrative procedure provided for in Article 93(2) against the measure proposed. The opening of such a procedure has a suspensive effect and the national measure in question cannot be put into operation unless and until the Commission approves it.

Increasingly in the course of the last months the Commission has become concerned about the extent to which certain Member States do not comply fully with their obligations in this respect either by failing to notify or not notifying in due time. The Court of Justice has laid down in Case 120/73 that Member States must allow the Commission a period of two months to conduct its evaluation of the measure. The Commission has therefore decided to use all measures at its disposal to ensure that Member States' obligations under Article 93(3) are respected. To this end it has written to Member States recalling to them their obligations and informing them of its intention to require due respect thereof in future. The general part of the text of the letter addressed to each Member State is set out below for general information.

On 2 October 1974, at the 306th meeting of the Council of Ministers in Luxembourg, the governments of Member States declared that 'the rules of the EEC Treaty regarding aid (Articles 92 and 93) shall be strictly observed both with respect to existing and future aid measures'. Notwithstanding this declaration, the Commission has become increasingly aware of a growing tendency, particularly marked in the case of certain Member States, not to fulfil the obligations laid down by Article 93(3) in respect of notification of aid cases and their non-implementation during the time allotted to the Commission to evaluate their compatibility with the Treaty.

Cases of non-notification or late notification (i.e. without giving the Commission the benefit of the necessary period to evaluate the aid before it is wished to implement the measure)

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[1] OJ C 252, 30.9.1980, p. 2.

have ceased to be isolated. Indeed the extent of the tendency towards non-notification or late notification would appear in some cases to indicate the possible existence of a general decision not to respect the provisions in question.

The Commission is aware that, particularly in the recent past, Governments have frequently been under extreme pressure to intervene in the normal commercial processes by means of subsidies and that the number of cases which are subject to the notification procedure has grown as a consequence. However, the Treaty established these aid procedures for a well-founded reason which, in principle, is supported by all concerned, namely that one firm's subsidy may be the unemployment of another's workforce. Repeatedly in the course of its examination of aid cases the Commission is made aware how much competitors resent the granting of subsidies to firms in other Member States. Governments are no less critical of the subsidies granted by others.

I have therefore to inform you that the Commission considers that it is absolutely necessary to apply the provisions of Article 93(3) to their full extent. Thus the Commission insists that plans to grant or alter aid shall be notified in due time, i.e. at least two months or, as the case may be, 30 days before their projected entry into force and that no payments be made in violation of the provisions of Article 93(3). Henceforth, any evidence of a tendency to systematic or flagrant violation of Member States' obligations will be systematically pursued by virtue of Article 169 of the Treaty or other measures envisaged therein.

Further, the Commission would recall that the Court of Justice has held that 'for projects introducing new aids or altering existing ones, the last sentence of Article 93(3) establishes procedural criteria which the national court can appraise' (see Case 77/72 *Capolongo* v *Maya* [1973] ECR 611 at paragraph 6).

Commission communication[1]

Article 93(3) of the EEC Treaty provides that any plans to grant or alter aid are to be notified before implementation to the Commission in sufficient time to enable it to submit its comments and, if necessary, initiate in respect of the proposed measure the administrative procedure provided for in Article 93(2). Initiation of that procedure has suspensory effect and the national measure in question may not be implemented unless and until the Commission approves it.

According to the interpretation of this provision given by the Court of Justice in its judgment of 11 December 1973,[2] the purpose is to prevent aid that is contrary to the Treaty being brought into operation by giving the Commission a period of time for reflection and investigation, which the Court put at two months and the Commission itself reduced to 30 working days where specific instances were involved (this period to be regarded as the preliminary phase of the procedure), to enable it to form an initial opinion as to the full or partial conformity of plans notified to it with the Treaty. According to the Court this means that the prohibition contained in the last sentence of Article 93(3) on putting proposed measures into effect until the procedure provided therein has resulted in a final decision is operative already throughout the preliminary phase of the procedure.

As there is no provision for any exception concerning the obligation to inform the Commission 'in sufficient time', Member States cannot evade this obligation, even if they consider that the measures they plan do not have all the characteristics described in Article 92(1) or that they are compatible with the common market within the meaning of Article 93(2). Consequently, if Member States do not inform the Commission of their plans to grant new aid or alter existing aid, or if the notification is late, i.e. outside the period regarded as adequate for an initial investigation, they infringe the rules of procedures laid down in Article 93(3). They also fail to fulfil their obligation under the last sentence of Article 93(3), as interpreted by the Court if, without notifying the Commission, they put aid into effect, or alter aid, or if, where notification has been given, they put the proposed measure into effect before expiry of the period allotted the Commission for reflection, or if, where the Commission has initiated the procedure involving the two parties provided for in Article 93(2), they put the proposed measure into effect before the final decision. In such cases the aid is illegal in relation to Community law from the time that it comes into operation. The situation produced by such failure to fulfil obligations is particularly serious where, by reason of their substance, the aid measures in question are prohibited under Article 92 of the Treaty and the illegal aid has already been paid to recipients. Here the aid has given rise to effects that are regarded as being incompatible with the common market.

The Commission has not failed to remind Member States repeatedly of their obligations under Article 93(3), most recently in the letter it sent them on 31 July 1980, the gist of which

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1 OJ C 318, 24.11.1983.

2 Court of Justice of the European Communities, 11 December 1973 *Lorenz* v *Federal Republic of Germany* Case 120/73 (1973 Court Reports, p. 1471 and following, but also Cases 121/73, 122/73 and 141/73).

was published in the *Official Journal of the European Communities*.[1] The communication published in the Official Journal states that 'the Commission has decided to use all measures at its disposal to ensure that Member States' obligations under Article 93(3) are respected'.

In spite of this formal reminder and the numerous other reminders it has had occasion to deliver in connection with aid under examination, the Commission is obliged to note that illegal aid grants are becoming increasingly common, i.e. aid incompatible with the common market granted without the obligations laid down in Article 93(3) having been fulfilled. This is why the Commission has decided to use all measures at its disposal to ensure that Member States' obligations under Article 93(3) are fulfilled; this includes requiring Member States (a possibility given to it by the Court of Justice in its judgment of 12 July 1983 in Case 70/72) to recover aid granted illegally from recipients and, in the agricultural sector, refusing to make EAGGF advance payments or to charge expenditure relating to national measures that directly affect Community measures to the EAGGF budget.

The Commission therefore wishes to inform potential recipients of State aid of the risk attaching to any aid granted to them illegally, in that any recipient of an aid granted illegally, i.e. without the Commission having reached a final decision, may have to refund the aid.

Whenever it becomes aware that aid measures have been adopted by a Member State without the obligations under Article 93(3) having been fulfilled, the Commission will publish a specific notice in the Official Journal warning potential aid recipients of the risk involved.

The Commission also wishes to point out that the Court stated in its judgment of 19 June 1973 in Case 77/72 that 'in respect of plans to grant new aids or alter existing aids, the last sentence of Article 93(3) lays down procedural criteria amenable to assessment by the national courts'.

[1] OJ C 252, 30.9.1980.

Commission communication[1]

In its communication of 21 December 1978 on regional aid schemes, the Commission announced its intention of examining with experts from the Member States the question of the cumulation of regional aid with other aid.

Having completed its examination, the Commission has reached the conclusion that significant cases of cumulation of aid should be notified to it to enable it to control the cumulative intensity of the aid and assess its effect on competition and trade between Member States. It therefore proposes to the Member States, under Article 93(1) of the EEC Treaty, that they henceforth notify significant cases of cumulation of aid in accordance with the rules set out below.

I. Notification of significant cases of cumulation of aid

1. The Member States notify in advance to the Commission significant cases of cumulation of aid, which are defined as those projects where the investment exceeds ECU 12 million or where the cumulative intensity of the aid exceeds 25% net grant equivalent.

2. Cumulation of aid is defined as the application of more than one aid scheme to a given investment project.

An investment programme undertaken by a firm is defined as all investments in fixed assets (whether or not in the same place) necessary to carry out the project.

II. Derogations

The following cases will be exempt from notification:

1. Cases where the investment does not exceed ECU 3 million, whatever the cumulative intensity of the aid.

2. Cases where the cumulative intensity of the aid does not exceed 10% net grant equivalent, whatever the scale of the investment.

3. Cases where the intensity of all the aid to be granted for the investment project remains below the ceiling for any one of the aid schemes under which aid is being awarded to the project, which ceiling has been laid down or approved by the Commission either in a Community framework or by individual decision.

This exemption is without prejudice to the obligation of Member States to remain within the ceiling for each individual scheme.

The Commission will send each Member State a particular list of the schemes concerned and the relevant ceilings.

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[1] OJ C 3, 5.1.1985.

4. The Commission may withdraw these exemptions in cases where it finds evidence of distortions of competition.

III. Legal basis

Notification is made on the basis of Article 93(3) of the EEC Treaty. The Commission is therefore informed in sufficient time to enable it to submit its comments before the proposed aid is put into effect.

The Commission will make a determination on cases notified to it within a maximum of 30 working days.

IV. Aid concerned

1. The aid to be taken into account for the purposes of the notification thresholds laid down in Sections I and II is all aid towards expenditure on fixed assets, whatever form (for example, capital grants, interest subsidies, tax concessions, relief of social security contributions) the aid may take.

The main types of aid schemes concerned are:

general aid

regional aid

sectoral aid

aid for small and medium-sized firms

aid for research, development and innovation

aid for energy conservation and environmental protection.

2. Where investment aid is supplemented by aid for staff training and the latter is prompted by and thus directly linked to the investment, the two types of aid cannot be divorced in considering the intensity of the aid. Such training aid is therefore also taken into account for the purposes of the notification thresholds laid down in Sections I and II.

3. So that the Commission is aware of the full circumstances surrounding notified cases of cumulation of aid, it is also informed of any aid granted to rescue a firm in difficulties or for creating jobs or for marketing — although this aid does not count towards the notification thresholds — and of any other financial intervention by the State or other public authorities where the intervention can be regarded as aid or there is a presumption that it is aid.

The Commission is also informed of aid granted of the types listed in subsection IV.1 above where it is not directly linked to the notified investment project.

V. Technical guidelines

To facilitate the administrative work involved and ensure consistency in the calculation methods used, the Commission will send the Member States technical guidelines explaining, among other things, how the intensity of the various aid is to be calculated.

VI. Entry into force and special rules

The notification rules came into force on 1 March 1985. They do not apply to the products listed in Annex II to the EEC Treaty. They are also without prejudice to the rule contained in point 12 of the 'Principles of coordination of regional aid schemes'[1] and to the Member States' obligations under existing or future provisions laid down by the Commission in decisions on particular general, regional or sectoral aid schemes to notify individual cases.[2]

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[1] This rule concerns cases where several different types of regional aid is awarded for a given investment project.

[2] For example, all awards of aid to the steel industry (ECSC) are already notified to the Commission.

Commission letter to Member States SG(89) D/5521 of 27 April 1989

Dear Sir

The Commission has repeatedly reminded Member States of their obligation under Article 93(3) of the EEC Treaty to notify it in sufficient time of any plans to grant aid. In particular, it expressed its concern at the growing tendency of Member States to fail to fulfil this obligation in its letters of 31 July 1980 (SG(80) D/9538) and 3 November 1983 (SG(83) D/13342). The gist of those letters was published in OJ C 252 of 30 September 1980, p. 2 and OJ C 318 of 24 November 1983, p. 3 respectively. The Commission considers that a Member State has failed to fulfil its obligation to notify it where the process of putting aid into effect has been initiated. By 'putting into effect' it means not the action of granting aid to the recipient but rather the prior action of instituting or implementing the aid at a legislative level according to the constitutional rules of the Member State concerned. Aid is therefore deemed to have been put into effect as soon as the legislative machinery enabling it to be granted without further formality has been set up.

The above provisions form an integral part of the EEC Treaty, which all Member States have undertaken to respect and which they must respect in full.

The Commission for its part is endeavouring to organize its departments in such a way as to ensure that the plans of which it is notified are examined swiftly under its responsibility. In this connection, it would remind you of its letter of 2 October 1981 on the formal notification requirements and on the time-limits which it has set itself. The Commission would also remind you of the letter which it sent to all Member States on 30 April 1987 concerning aid in respect of which the procedure laid down in Article 93(2) of the EEC Treaty had been initiated.

The Commission notes that, in 1987 and 1988 (first 11 months), the Irish Government made a special effort to fulfil this obligation, having failed to do so in only four instances during that period.

While expressing its satisfaction at this result, the Commission would be grateful if the United Kingdom Government would in future fulfil its abovementioned obligations under the Treaty in full.

Yours faithfully

Commission letter to Member States SG(91) D/4577 of 4 March 1991

(Communication to Member States concerning the procedures for the notification of aid plans and procedures applicable when aid is provided in breach of the rules of Article 93(3) of the EEC Treaty)

Dear Sir

1. The Commission has reminded the Member States of the obligations imposed on them under Article 93(3) of the EEC Treaty. With a view to speeding up the scrutiny of aid plans (general aid schemes and individual cases) the Commission has recently adopted certain internal arrangements. Accordingly, the Commission requests the Member States to notify aid plans at the draft stage in accordance with Article 93(3) by supplying all the particulars necessary for their assessment, particularly those included in the Annex to this communication. The Annex is intended to help Member States make a full notification which will in turn help the Commission to deal quickly with notifications. It is proposed without prejudice to the discussions which are under way with Member States with a view to deciding standardized notification and reporting procedures.

2. The Commission has periodically and publicly made known its concern regarding the many cases of aid granted without prior notification, in other words granted unlawfully. As guardian of the Treaty, the Commission is duty-bound to go on employing all the means at its disposal to ensure that the above provisions are respected.

Thus, in cases where aid is granted in infringement of the obligation of prior notification referred to above, the Commission will in future apply the procedures deriving from the Court of Justice judgment of 14 February 1990 in Case C-301/87 (*Boussac*). This will involve the Commission first requesting the Member State concerned to supply full details of the aid in question within 30 days.[1]

If the Member State fails to reply or provides an unsatisfactory reply, the Commission may then:

(i) adopt a provisional decision requiring the Member State to suspend forthwith the application of the aid scheme or payment of aid unlawfully authorized and to inform the Commission within 15 days that this decision has been complied with;

(ii) initiate the procedure under Article 93(2), giving the Member State concerned notice to communicate within one month its comments and all the particulars and data necessary to assess the compatibility of the aid with the common market.

Should the Member State, after receiving notice from the Commission, fail to provide the information requested within the time-limit set, the Commission may, under the Article

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[1] In urgent cases, the time-limit could be shorter.

93(2) procedure adopt a final decision finding that the aid is incompatible with the common market on the basis of the information available to the Commission. This decision would entail recovery of the amount of aid already paid unlawfully, to be effected in accordance with national law, including the provisions concerning interest due for late payment of amounts owing to the government, interest which should normally run from the date of the award of the unlawful aid in question.

If the Member State does not comply with the above decisions (provisional decision and final negative decision) the Commission may refer the matter to the Court of Justice direct, in accordance with the second subparagraph of Article 93(2), applying if necessary for an interim order.

It is the Commission's intention to make use of the abovementioned powers whenever required to put a stop to any infringement of the provisions of the Treaty concerning State aid.

Yours faithfully

ANNEX

INFORMATION TO BE SUPPLIED IN AN ARTICLE 93(3) NOTIFICATION

1. Member State: .....

2. Ministry or other administrative body with statutory responsibility for the scheme and its implementation: .....

3. Title of aid scheme: .....

4. Legal basis (attach a copy of the legal basis or the draft legal basis if available at the time of notification)

   Title: .....

   References: .....

5. Is it a new scheme: Yes/No

   If the aid scheme replaces an existing scheme, please state which one: .....
   .....

6. If an existing scheme:

   notified to the Commission on: .....

   authorized by the Commission on: .....

   specify which rules and conditions are being changed and why: .....
   .....

7. Level at which scheme is administered:

   central government: .....

   regional: .....

   other: .....

8. Aim of scheme: indicate only one category of objectives (8.1 or 8.2 or 8.3)

   8.1. Horizontal

   What is its purpose (e.g. general investment, SMEs, R&D, environment, energy-saving, etc.)? .....

   8.2. Regional

   Which regions, areas (NUTS level 3 or lower) [1] are eligible? .....

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[1] NUTS is the nomenclature of territorial units for statistical purposes.

8.3. Sectoral

Which sectors (NACE three-digit or equivalent national nomenclature (specify))[1] are eligible? .....

9. Other aid limitations or criteria:

Specify any limits (number of employees, turnover, other) on recipients of aid or any other positive conditions used to determine recipients: .....

10. What are the instruments (or forms) of aid: (delete where not applicable)

direct grant: .....

soft loan (including details of how the loan is secured): .....

interest subsidy: .....

tax relief: .....

guarantee (including details of how the guarantee is secured and any charges made for the guarantee): .....

other (specify): .....

For each instrument of aid please give a precise description of its rules and conditions of application, including in particular the rate of award, its tax treatment and whether the aid is accorded automatically once certain objective criteria are fulfilled or whether there is an element of discretion by the awarding authorities: .....
.....

11. For each aid instrument, please specify the eligible costs on which the aid is calculated (e.g. land, buildings, equipment, personnel, training, consultants' fees, etc.): .....

12. Please give details if any aid is repayable where projects are successful (especially the criteria for 'success'). Penalties (e.g. repayment) should be specified for failure by the recipient to carry out the project: .....

13. Where there is more than one aid instrument, to what extent may a recipient cumulate several instruments? .....

To what extent may the aid in question be cumulated with any other aid schemes in operation? .....

14. Duration of aid scheme:

14.1 Number of years: .....

14.2. Is an existing scheme being extended? Yes/No

For how long? .....

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[1] NACE is the general industrial classification of economic activities within the European Communities.

15. Expenditure:

15.1. If a new scheme:

Please give the budgetary provisions for the duration of the scheme, or estimated revenue losses due to tax concessions. If the scheme is open-ended, state estimated annual expenditure over the next three years.....

15.2. If changes to an existing scheme:

Please state budgetary appropriations for the duration of the scheme or an estimate of revenue losses due to a non-automatic fiscal aid .....

If the scheme is open-ended, please provide estimate of annual expenditure:

expenditure in last three years:.....

estimated loss of revenue due to tax concessions in last three years:.....

15.3. Indicate period covered by the financing of the scheme: .....

Is the budget adopted annually? Yes/No

If not, what period does it cover? .....

Other provisions:.....

16. For schemes which do not have specific sectoral objectives and for those which do not have specific regional objectives please specify any resulting sectoral or regional concentrations:.....

17. Estimated number of recipients (delete where not applicable):

under 10

from 10 to 50

from 51 to 100

from 101 to 500

from 501 to 1 000

over 1 000.

18. It would be desirable for Member States to provide a fully reasoned justification as to why the scheme could be considered as compatible with the Treaty where this is not evident from the aid objectives described in the notification owing to the nature of the scheme. This reasoned justification should include, where appropriate, the necessary statistical supporting documents (e.g. for regional aid, socioeconomic data on the recipient regions should be provided).....

19. Other relevant data:.....

Guidance note on use of the *de minimis* facility provided for in the SME aid guidelines (letter of 23 March 1993, IV/D/6878 from DG IV to the Member States)

On 20 May 1992 the Commission set out its policy on State aid for small and medium-sized enterprises (SMEs) in Community guidelines. The guidelines, which were published in the Official Journal, OJ C 213, 19.8.1992, have introduced a *de minimis* facility. This provides that in future, aid not exceeding ECU 50 000 per firm over three years for a given broad type of expenditure need not be notified to the Commission under Article 93(3) of the EEC Treaty for authorization. The Commission considers that aid in such small amounts is unlikely to have a perceptible impact on trade and competition between Member States and does not fall within Article 92(1).

However, a lack of effect on trade and competition cannot be assumed if a firm receives ECU 50 000 of aid for many different types of expenditure at once, or if it exceeds the limit for a given type of expenditure when receiving aid from different sources. The guidelines do not specify which types of expenditure are to be counted as separate categories for the purposes of the *de minimis* facility, but only give investment and training as examples. They are also silent about a number of matters of practical importance for applying the limit per type of expenditure, namely the start of the three-year period, the possibility of receiving aid under an authorized scheme as well as aid regarded as *de minimis*, and the quantification of assistance provided otherwise than as grants.

These matters and the general question of monitoring were discussed with representatives of the governments of Member States at a multilateral meeting on 8 December 1992 and it was announced that DG IV would issue interpretative guidance to clarify them. This is the purpose of the present letter to Member States.

The first matter to be clarified concerns the number and identity of categories of expenditure for each of which a firm may receive aid of ECU 50 000 over three years without notification.

Two such categories should be distinguished, namely

(i) investment of any kind and for whatever purpose except R&D;

(ii) other expenditure.

Hence, a given firm may receive a maximum of ECU 100 000 of aid under the two categories over a three-year period without notification. It should be noted that, in accordance with established practice, no aid may be given for exports.

Secondly, the three-year period to which the limit is to be applied should be regarded as beginning on the date the individual firm first receives aid under the *de minimis* facility after the SME aid guidelines were published on 19 August 1992.

On the question of cumulation between aid under the *de minimis* facility and aid under an authorized scheme, the following rule should be applied. If a firm that has received aid under the *de minimis* facility in the past three years for one of the abovementioned two categories

of expenditure wishes to accept aid under an authorized scheme for expenditure falling within the same category, the *de minimis* and authorized aid combined must not exceed the maximum award authorized by the Commission for the notified scheme if this is above ECU 50 000. This means that the latter award may have to be reduced so that the total remains within the maximum.

The limit in the *de minimis* facility is expressed as a cash grant of ECU 50 000. In cases where assistance is provided in a form other than as a grant, it must be converted into its cash grant equivalent value for the purposes of applying the *de minimis* limit. The commonest other forms in which aid with a low cash value is provided are soft loans, tax allowances and loan guarantees. The conversion of aid in these forms into its cash grant equivalent should be done as follows.

The cash grant equivalent should be calculated gross, i.e. before tax if the subsidy is taxable.[1]

All aid receivable in the future should be discounted to its present value.[2] The discount rate used should be the reference interest rate communicated to the Commission each year by the Member State concerned.

The cash grant equivalent of a soft loan in any year is the difference between the interest due at the reference interest rate and that actually paid. All the interest that will be saved until the loan has been fully repaid should be discounted to its value at the time the loan is granted and added together. An example of how to calculate the cash grant equivalent of a soft loan is given in the Annex. Two variants, with and without a grace period on principal repayments, are illustrated.

The cash grant equivalent of a tax allowance is the saving in tax payments in the year concerned. Again, tax savings to be obtained in the future should be discounted at the reference interest rate to their present value.

For loan guarantees, the cash grant equivalent in any year can be calculated as the difference between (a) the outstanding sum guaranteed, multiplied by the risk factor (probability of default) and (b) any premium paid, i.e.:

(guaranteed sum x risk) – premium.

As the risk factor, the experience of default on loans extended in similar circumstances (industry, size of firm, level of general economic activity) should be taken. Discounting to present value should be carried out as before.

Arrangements need to be made in each Member State to monitor use of the *de minimis* facility so that the above rules are complied with. This need not involve an elaborate and staff-intensive system, but certain minimum safeguards are required. It should be noted that the SME aid guidelines themselves state that it has to be an express condition of an aid award, or scheme that is not notified that any further aid the same firm may receive in respect of the same type of expenditure from other sources or under other schemes does not take the

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[1] If the subsidy is not taxable, as in the case of some tax allowances, the nominal amount of the subsidy, which is both gross and net, should be taken.

[2] Grants, however, should be counted as a single lump sum even if they are paid in instalments.

total aid the firm receives above the ECU 50 000 limit. Authorities granting aid under the *de minimis* facility should draw this condition to the attention of applicants and require them to declare any previous awards of aid to ensure that they do not exceed the limit. Similar checks should be made by authorities granting aid under authorized schemes.

Under Article 5 of the EEC Treaty, the Member States are required to assist the Commission in performing its tasks. Only the Member States are in a position to monitor the use of the *de minimis* facility to ensure that it is restricted to aid not exceeding the amounts that the Commission considers not to have a significant effect on trade and competition. Under Article 5 of the Treaty, therefore, Member States are requested to communicate to the Commission by 31 May 1993 their arrangements for monitoring compliance with the rules set out above.

ANNEX

CALCULATION OF THE CASH GRANT EQUIVALENT OF A SOFT LOAN

The following guidance note gives an example of how the grant equivalent of a soft loan can be calculated.

A public authority commits itself to paying an interest subsidy on a ECU 500 000 10-year loan to maintain the interest rate to the borrower at 6%. The official reference interest rate accepted by the Commission for the country concerned in that year is 8%. In calculating the cash grant equivalent of the subsidy throughout the term of the loan, it may be assumed that the reference interest rate will remain constant over the period. The cash equivalent of the subsidy depends on whether or not a grace period on principal repayments is granted.

1. No grace period

The loan is paid off in linear instalments starting in year one. The cash grant equivalent of the interest subsidy in the first year is the principal sum multiplied by the interest subsidy in per cent, divided by the reference interest rate, thus:

(1) ECU 500 000 x 0.02/1.08 = ECU 9 259

The subsidy in years 2 to 10 is calculated similarly, but at a compound discount rate, i.e.:

(2) ECU 450 000 x $0.02/(1.08)^2$ = ECU 7 716

(3) ECU 400 000 x $0.02/(1.08)^3$ = ECU 6 351

(4) ECU 350 000 x $0.02/(1.08)^4$ = ECU 5 145

(5) ECU 300 000 x $0.02/(1.08)^5$ = ECU 4 083

(6) ECU 250 000 x $0.02/(1.08)^6$ = ECU 3 151

(7) ECU 200 000 x $0.02/(1.08)^7$ = ECU 2 334

(8) ECU 150 000 x $0.02/(1.08)^8$ = ECU 1 621

(9) ECU 100 000 x $0.02/(1.08)^9$ = ECU 1 000

(10) ECU 50 000 x $0.02/(1.08)^{10}$ = ECU 463

The total cash grant equivalent is the sum of the discounted subsidies in each year, i.e. ECU 41 123.

2. With grace period

No principal repayments have to be made in the first two years.

The loan is repaid in linear instalments of ECU 62 500 from the third year onwards. The discounted cash grant equivalent of the interest subsidy in each year is:

(1) ECU 500 000 x 0.02/1.08 = ECU 9 259

(2) ECU 500 000 x $0.02/(1.08)^2$ = ECU 8 573

(3) ECU 500 000 x $0.02/(1.08)^3$ = ECU 7 938

(4) ECU 437 500 x $0.02/(1.08)^4$ = ECU 6 432

(5) ECU 375 000 x $0.02/(1.08)^5$ = ECU 5 104

(6) ECU 312 500 x $0.02/(1.08)^6$ = ECU 3 939

(7) ECU 250 000 x $0.02/(1.08)^7$ = ECU 2 917

(8) ECU 187 500 x $0.02/(1.08)^8$ = ECU 2 026

(9) ECU 125 000 x $0.02/(1.08)^9$ = ECU 1 251

(10) ECU 62 500 x $0.02/(1.08)^{10}$ = ECU 579

In this case the total cash grant equivalent is ECU 48 018.

2. *Notifications and standardized annual reports*

Commission letter to Member States of 22 February 1994

Dear Sir

When the Commission drew up the surveys on State aid in close cooperation with your government, its efforts to bring about greater transparency were widely supported. The first survey, however, concluded that, in order to increase transparency further and to improve the flow of information to the Commission in the field of State aid, a more standardized system of notifications and annual reports was necessary. The purpose of this letter is to inform all Member States of the arrangements the Commission has adopted following the multilateral meetings on 13 September 1989 and 24 January 1991, bilateral contacts with the Member States which requested them, and Commission letters SG(90) D/1665 of 18 June 1990 and SG(92) D/6743 of 28 February 1992 asking each Member State to make known its comments on the Commission proposals. These comments were taken into account by the Commission wherever possible.

The Commission considers that a more standardized system of notifications of aid proposals (schemes and *ad hoc* cases) will not only make it easier for Member States to decide what information to include in any notification made under Article 93(3) of the EC Treaty but will also facilitate the analysis of these notifications by the Commission. As a result, and more generally by avoiding the need to request further information, the Commission will be able to reduce the time it needs before taking a decision.

In order not to handicap the Member States required by their domestic budget laws to re-adopt a scheme's budget each year, the Commission has also decided that Member States will in general no longer have to notify an increase in the annual budget of an authorized scheme if the increase, expressed in ecus, does not exceed 20% of the initial annual amount and if the scheme is of indefinite duration or the increase takes place during the period of validity of a fixed-duration scheme. However, all extensions of schemes beyond the period originally authorized by the Commission, whether or not involving a change in the budget, must be renotified.

A system of standardized reports is also necessary because, apart from the arrangements already existing for certain sectors such as synthetic fibres, motor vehicles, shipbuilding and steel, scant information is available on the regional impact of aid which is not specifically regional in nature or on the sectoral impact of aid which is not specifically sectoral in nature. Such secondary effects (i.e. the cross-effects of aid), and the resulting distortions of competition, can be significant and could result in certain Community objectives being inadvertently thwarted by the contradictory indirect effects of other measures which, in their own right, may at first appear coherent. This risk is further accentuated by the sheer volume of

aid identified in the three surveys on State aid within the Community published to date, and especially those having horizontal objectives (i.e. aid having neither regional nor sectoral objectives). It will be particularly acute in the context of the single market, when aid will be the only remaining form of protectionism and competition will be even fiercer.

In addition, for the analysis and monitoring of aid schemes to be fully effective, more information will be needed on any concentration of expenditure on a small number of recipients and on the cumulative impact of all schemes on those recipients.

More detailed information is also needed on the application of schemes in order to ensure that they do not run counter to what is required by the progressive development or functioning of the common market. This monitoring is necessary because of changes either in the aid schemes themselves (e.g. small but cumulative increases in spending over a long period) or in the economic circumstances that initially led the Commission to grant a derogation.

Accordingly, the Commission invites your government to adopt the arrangements described in the attached Annexes.

Annex I sets out the future procedures for the notification of aid proposals (schemes and *ad hoc* cases). In the event of failure to comply with these procedures, the Commission would be obliged to decide its position on the proposals in question on the basis of the information it possesses, even if it is incomplete, to request additional information or even to initiate the procedure provided for in Article 93(2) of the EC Treaty, thereby delaying its decision.

As part of its constant review of existing aid schemes provided for in Article 93(1) of the EC Treaty, the Commission proposes, as appropriate measures required by the progressive development of the common market, that Member States should in future supply annual reports in accordance with the procedure, and for the schemes, specified in Annex II.

I would therefore request your government to give its agreement to the procedures set out in Annex II within two months of the date of this letter. Failing such agreement, the Commission reserves the right to initiate the procedure provided for in Article 93(2) of the Treaty.

Yours faithfully

ANNEX I

NOTIFICATION OF NEW AID PROPOSALS (SCHEMES AND *AD HOC* CASES) AND CHANGES TO EXISTING SCHEMES

A. General remarks

Article 93(3) of the EC Treaty requires Member States to inform the Commission of any plans to grant or alter aid so as to enable it to submit its comments in sufficient time. Member States should complete and file the notification in good time in order to cooperate with the Commission in the achievement of the Community's tasks. This procedure was explained to your government by letters of 5 January 1977 (SG(77) D/122) and 2 October 1981 (SG(81) D/12740). Your government should in particular send a notification for any new schemes or *ad hoc* cases proposed. It should also make a new notification for any changes to existing schemes.

Four situations may arise when notification of a new scheme or of changes to an existing scheme is given:

(i) The first concerns the accelerated clearance of aid schemes for SMEs and of amendments of existing schemes, the procedure for which has been communicated to the Member States (OJ C 213, 19.8.1992, p. 10). Those rules must be followed in the case of new schemes (paragraph 1) and in the case of modifications (paragraph 2, with the exception of the second indent).

(ii) The second concerns the notification of changes in budgets of approved schemes. It has been decided that, where the annual budget is increased by not more than 20%, expressed in ecus, in relation to the initial annual amount, it will no longer be necessary to notify such changes if the scheme concerned is of indefinite duration or the increase takes place during the period of validity of a fixed-duration scheme. However, all extensions of schemes beyond the period originally authorized by the Commission, whether or not involving a change in the budget, must be renotified.

The initial annual amount is defined as follows:

- in the case of a scheme which, until now, had to be notified annually: amount for the first year approved by the Commission;
- in the case of a multiannual scheme: annual average of total amount approved.

Where a budget does not relate to full years, the annual average will have to be calculated proportionally.

These new rules thus supersede the rules contained in the communication on accelerated clearance of amendments of existing aid schemes (paragraph 2, second indent).

(iii) The third concerns tax aid. Because of its nature and where it is awarded automatically, no budget needs to be submitted for such aid, only estimates (e.g. where only a certain predetermined requirement has to be met in order to qualify for non-discretionary tax

relief). In such cases, it is no longer necessary to notify changes in the estimates although Member States are requested to supply *ex post* reports at the end of each financial year in accordance with the procedures set out in Annex II.

(iv) All new schemes or changes to existing schemes not covered by the three situations described above and all *ad hoc* proposals are covered by this Annex and must be notified in accordance with the procedures described from point B onwards.

The Commission is concerned that changes in expenditure or the refinancing of existing schemes (except for those referred to above for which prior notification is no longer required) are not currently being notified. Such notifications are essential if the Commission is to be able to carry out its duties effectively under Articles 92 and 93 of the EC Treaty.

In order for it to be able to assess the compatibility of new aid schemes, *ad hoc* cases or changes to existing schemes with the EC Treaty, the Commission proposes that, from the date of receipt of this letter, any notification of aid proposals (schemes and *ad hoc* cases) submitted under Article 93(3) of the EC Treaty should normally contain the information requested in the questionnaire provided below (point B). Member States should not regard the questionnaire as binding but rather as an indication of the minimum information the Commission usually needs in order to ascertain whether a scheme or *ad hoc* case is compatible with the EC Treaty. For some schemes or *ad hoc* cases, it will clearly be difficult, if not impossible, to provide all the information requested because of the nature of the aid in question. The Commission will not therefore automatically reject any notification which does not give all the information requested on the new form.

But if, in certain cases, the Commission were not to have in its possession all the information it needed to carry out the tasks imposed on it by the Treaty, it would have to request further details, and this would delay the Commission's decision on the compatibility of the scheme and hence the date of its implementation. Member States are reminded that new aid proposals (schemes or *ad hoc* cases) or changes to existing schemes may not be put into operation until the Commission has decided on their compatibility.

This standardized information may, of course, be supplemented by any specific information your government considers essential to the Commission's assessment of the nature of an aid proposal and its compatibility with the competition rules.

As regards R&D aid proposals, the questionnaires used to date will be replaced by these new arrangements.

The new procedures apply in general to State aid measures. They do not, however, apply to aid measures implemented in breach of the rules of Article 93(3) of the EC Treaty. The procedures to be followed in such cases are still those communicated to Member States by letters SG(91) D/4571 of 4 March 1991 and SG(91) D/17956 of 27 October 1991. Nor are the new procedures applicable to aid for fisheries, transport and coal, where notifications and annual reports are governed by other Community rules, or to aid covered by the frameworks for steel (ECSC), shipbuilding and motor vehicles, or to aid subject to the special procedure adopted by the Commission for aid granted in a Treuhand context. In addition, the new procedures do not apply to *de minimis* aid as defined in the Community guidelines on State aid for small and medium-sized enterprises (OJ C 213, 19.8.1992).

Similarly, notifications of individual cases of aid under existing schemes already approved by the Commission are not affected by the new rules.

However, the new arrangements do apply to the non-ECSC steel sector and to agriculture.

B1. Information normally to be supplied in a notification under Article 93(3) of the EC Treaty (aid schemes and *ad hoc* cases)

(To be sent to the Secretariat-General of the Commission)

1. Member State: .....
2. Level at which scheme or *ad hoc* aid case is administered:

   central government.....

   regional.....

   other.....
3. Ministry or other administrative body with statutory responsibility for the scheme and its implementation: .....

   Person(s) to contact:.....
4. Title of aid scheme: .....
5. Legal basis (attach a copy of the legal basis or the draft legal basis)

   Title:.....

   References: .....
6. If a scheme:

   Is it a new scheme: Yes/No

   If the aid scheme replaces an existing scheme, please state which one:.....
7. If an existing scheme:

   notified to the Commission on: .....

   aid number: .....

   authorized by the Commission on: .....

   reference of Commission letter: .....

   specify which rules and conditions are being changed and why: .....
8. Aim of scheme or *ad hoc* case: indicate only one category of objective (8.1, 8.2 or 8.3)

   (State secondary aims, if any): .....

8.1. Horizontal

What is its purpose (e.g. general investment, SMEs, R&D, environment, energy-saving, etc.)? .....

If it is an R&D scheme, complete and return the attached questionnaire B2.

8.2. Regional

Which regions, areas (NUTS level 3 or lower)[1] are eligible? .....

Is/are the regions (areas) partly or fully eligible under Objectives 1, 2 or 5b? In the case of aid to agriculture, does it comprise areas defined in Directive 75/268/EEC?[1] .....

8.3. Sectoral

Which sectors (NACE three-digit or equivalent national nomenclature (specify)) are eligible?[2] If agriculture, which products? .....

9. Other aid limitations or criteria:

Specify any restrictions (number of employees, turnover, balance sheet totals, share of capital held by large enterprises)[3] on recipients of aid or any other positive conditions used to determine recipients. .....

10. What are the instruments (or forms) of aid: (delete where not applicable)

grant

low-interest loan (including details of how the loan is secured)

interest subsidy

tax relief

guarantee (including details of how the guarantee is secured and any charges made for the guarantee)

aid tied to an R&D contract concluded with industrial firms (specify)

other (specify): .....

For each aid instrument, a precise description of its rules and conditions of application should be given, including in particular its intensity, its tax treatment and whether the aid is granted automatically once certain objective criteria are fulfilled or whether there is an element of discretion for the competent authorities.

11. For each aid instrument, please specify the eligible costs on which the aid is calculated (e.g. land, buildings, equipment, personnel, training, consultants' fees, etc.): .....
.....

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[1] NUTS is the nomenclature of territorial units for statistical purposes in the European Communities.

[2] NACE is the general industrial classification of economic activities within the European Communities.

[3] See SME guidelines: not more than 25% may be owned by one or more companies not falling within the SME definition, except public investment corporations, venture capital companies or, provided no control is exercised, institutional investors (OJ C 213, 19.8.1992).

12. Please give details of any aid repayable where projects are successful (especially the criteria for 'success') and of repayment arrangements. Penalties (e.g. repayment) should be specified for failure by the recipient to comply with the conditions on which aid was granted .....

13. Where there is more than one aid instrument, to what extent may a recipient combine several instruments?

    To what extent may the aid in question be combined with other aid schemes in operation? .....

14. If a scheme: Duration of aid scheme: .....

    14.1. Number of years: .....

    14.2. Is an existing scheme being extended? Yes/No

    For how long? .....

15. Expenditure:

    15.1. Give budgetary appropriations for the duration of the scheme or *ad hoc* case or an estimate of revenue losses due to tax expenditure: .....

    If an existing scheme is to be altered, give for the last three years:

    (i) expenditure in the form of commitments made or, in the case of tax expenditure, ...

    (ii) estimated revenue losses. .....

    15.2. Indicate financing schedule:

    Is the budget adopted annually? Yes/No

    If not, what period does it cover? .....

    Other provisions: .....

    15.3. For schemes covered by the R&D framework, give breakdown of budget by enterprise, research centre and university: .....

16. For schemes which do not have a specific sectoral or regional objective, specify any resulting sectoral or regional concentrations: .....

17. If a scheme, give:

    Estimated number of recipients (delete as appropriate):

    fewer than 10

    from 10 to 50

    from 51 to 100

    from 101 to 500

    from 501 to 1 000

    more than 1 000.

18. Information/control measures envisaged to ensure that assisted projects comply with statutory objectives:

    Measures taken to inform the Commission of the application of the scheme: .....
    .....

19. It would be desirable for Member States to provide a fully reasoned justification as to why the aid proposal could be deemed compatible with the Treaty where this is not evident from the aid objectives described in the notification owing to the nature of the scheme or *ad hoc* case. This reasoned justification should include, where appropriate, the necessary supporting statistical documents (e.g. for regional aid, socioeconomic data on the recipient regions should be provided).

20. Other relevant information, including estimated number of jobs created or maintained:
    .....

B2. Additional information normally to be supplied in a notification of State aid for R&D under Article 93(3) of the EC Treaty (schemes and *ad hoc* cases)

(To be attached to general questionnaire B1)

1. Aims: .....

   Detailed description of the aims of the measure and the type or nature of R&D to be assisted.....
   .....

2. Description of R&D phases benefiting from aid:

   2.1. Definition phase of feasibility studies: .....

   2.2. Fundamental research: .....

   2.3. Basic industrial research: .....

   2.4. Applied research: .....

   2.5. Development: .....

   2.6. Pilot or demonstration projects: .....

3. Details of cost elements eligible for aid:

   3.1. Personnel costs: .....

   3.2. Supplies, materials (current costs), etc.: .....

   3.3. Equipment and instruments: .....

   3.4. Land and buildings: .....

   3.5. Consultancy and equivalent services, including acquisition of research results, patents and know-how, licensing rights, etc.: .....

   3.6. Overheads directly attributable to the R&D: .....

   Please specify the aid intensity levels where they vary according to cost elements.

4. Cooperative research:

   4.1. Are projects carried out in cooperation between a number of firms eligible for aid? .....

   On special terms? .....

   If so, what are the terms? .....

   4.2. Does the aid proposal provide for cooperation between enterprises and other bodies such as research institutes or universities? On special terms? If so, describe the terms and conditions. .....

5. Multinational aspects:

   Does the proposal (*ad hoc* case/scheme/programme) have any multinational aspects (e.g. Esprit, Eureka projects)? If so: .....

   5.1. Does the proposal involve cooperation with partners in other countries?

   If so, indicate:

   (a) which other Member States: .....

   (b) which other non-member countries: .....

   (c) which enterprises in other countries: .....

   5.2. Total cost of proposal (*ad hoc* case/scheme/programme): .....

   5.3. Give breakdown of total cost by partner: .....

6. Application of results:

   6.1. Who will own the R&D results in question? .....

   6.2. Are any conditions attached to the granting of licences in respect of the results?

   6.3. Are there any rules governing the general publication or dissemination of R&D results? .....

   6.4. Indicate the measures planned for the subsequent use/development of results: ... .

ANNEX II

ANNUAL REPORTS[1]

A. General remarks

The Commission has decided to use the powers conferred on it by Article 93(1) of the EC Treaty to request all Member States to furnish certain basic data in the form of annual reports on all current aid schemes in order to keep them under constant review. The data will enable the Commission to monitor more effectively whether the implementation of an aid scheme approved by it under certain socioeconomic conditions continues to fulfil the conditions necessary for exemption from the general ban on aid contained in Article 92(1) of the EC Treaty.

The Commission considers that the gathering of such data should not place an undue administrative burden on the Member States. As a result, detailed reports need be sent only for a very limited number of aid schemes, while reports on other schemes need contain only a limited amount of data.

The list of aid schemes which the Commission considers should form the subject of a detailed report is given in Section D. The structure for this type of report is set out in Section B. New schemes for which the Commission has requested a detailed report should be added to that list. The Commission reserves the right to request a detailed report on any scheme instead of a simplified one, and vice versa.

Section E of this Annex provides an outline for the simplified report to be submitted for all aid schemes for which a detailed report is not required. For aid notified under the accelerated clearance procedure and schemes with an annual budget of not more than ECU 5 million, only a very simplified report is required.

The annual reports should cover two financial years:

- the year in which the report is received (year n) and for which estimated expenditure, or revenue losses due to tax expenditure, should be indicated;
- the preceding year (year n–1) for which commitments made, expenditure actually incurred and exact figures for revenue losses should be shown.

For each scheme, the first report should reach the Commission not later than six months after the end of the financial year in which the scheme was approved by the Commission. Subsequent annual reports should reach the Commission not later than six months after the end of year–1. For schemes already in force, the first reports should be submitted during the first six months of 1994 and concern the financial years 1994 and 1993. Failure to comply with the obligation to provide the reports within the deadline may oblige the Commission to initiate the Article 93(2) procedure in respect of the aid scheme.

The Commission will remind the Member States at the end of each year of the schemes for which detailed or simplified reports should be submitted.

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[1] The new rules also apply, where appropriate, to quarterly or six-monthly reports.

It reserves the right to propose any other appropriate measure necessitated by the progressive development or functioning of the common market.

In addition to the information to be supplied in the standardized reports, your government should continue to provide any specific information requested by the Commission as a condition of its approval of the aid.

The new procedures apply in general to State aid measures. They do not, however, apply to aid for fisheries, transport and coal, where notifications and annual reports are governed by other Community rules, or to aid covered by the frameworks for steel (ECSC), shipbuilding and motor vehicles, or to aid subject to the special procedure adopted by the Commission for aid granted in a Treuhand context. Nor do they apply to *de minimis* aid as defined in the Community guidelines on State aid for small and medium-sized enterprises (OJ C 213, 19.8.1992). However, the new arrangements for annual reports apply in general to the non-ECSC steel industry and to agriculture, in so far as the Commission considers it necessary, and on a case-by-case basis.

As regards aid schemes part-financed by the Community, the Commission is aware of the administrative difficulties involved in preparing two different reports for a single scheme (one for the departments responsible for the Structural Funds and one pursuant to Article 92 and 93 of the EC Treaty). Where all the projects under a particular scheme have been part-financed by the Community, it therefore plans to use the report drawn up for the Structural Funds and not to require a standardized report as set out in this Annex.

B. Format of detailed annual report

1. Name of scheme:
2. Date of most recent approval by the Commission:
3. Expenditure under the scheme:

   Separate figures should be provided for each aid instrument in the scheme (e.g. grant, low-interest loans, guarantees). Provide figures on expenditure or commitments, revenue losses and other financial factors relevant to the granting of aid (e.g. period of loan, interest subsidies, default rates on loans net of sums recovered, default payments on guarantees net of premium income and sums recovered).

   These expenditure figures should be provided on the following basis:

   3.1. For year n, provide expenditure forecasts or estimated revenue losses due to tax expenditure.

   3.2. For year n–1, indicate:

      3.2.1. Expenditure committed, or estimated revenue losses due to tax expenditure, for new assisted projects and actual payments for new and current projects.[1]

[1] If the figures for actual tax expenditure are not yet available, estimates should be provided and the final figures sent with the next report.

3.2.2. Number of new recipients and number of new projects assisted, together with total amount of eligible investments and estimated number of jobs created or maintained.

3.2.3. Regional breakdown of amounts at 3.2.1. (NUTS level 2 or below).[1]

3.2.4. For each major project (estimated investment in excess of ECU 3 million) for which a commitment was made but which was subsequently shelved: amount of investment aid proposed, and number of jobs concerned.

3.2.5.1. Sectoral breakdown of total expenditure by recipients' sectors of activity (according to NACE two-digit classification — see Section C below — or equivalent national nomenclature, to be specified).

3.2.5.2. Complete only if schemes are covered by the framework for State aid for R&D:

- Breakdown of total expenditure by R&D stage (fundamental, basic industrial, applied, etc.);
- Specify the number of projects involving Community or international cooperation;
- Give breakdown of expenditure by enterprise, research centre and university.

3.2.6. To be completed only for schemes:

(i) not reserved exclusively for SMEs;

(ii) not involving the automatic granting of aid. Aid is granted automatically where it is necessary only to satisfy all the eligibility conditions in order to qualify for aid or where it is shown that a public authority is not exercising its statutory discretionary right to select recipients.

Provide the following information for each of those recipients, starting with the one receiving the most aid, which account for 30% of total commitments in year n–1 (with the exception of budget appropriations earmarked for fundamental research by universities and other scientific institutions not covered by Article 92 of the EC Treaty provided such research is not carried out under contract or in cooperation with the private sector):

Name:

Address:

[1] The Commission reserves the right to ask for more information at a higher level of disaggregation.

Recipient's sector of activity (following classification referred to in question 3.2.5.1.):

Amount of aid committed (or authorized where tax aid is involved):

Eligible cost of project:

Total cost of project:

The list must contain at least 10, but not more than 50 recipients. This rule takes precedence over the 30% rule. If there are fewer than 10 recipients in the report year, they must all be listed. If there are several assisted projects per recipient, the information requested should be broken down by project. The information is not required in the case of aid subject to a ceiling where more than 50 recipients reach the ceiling. Only the level of the ceiling and the number of recipients reaching it need be given.

3.2.7. Changes (administrative or other) introduced during the year:

C. Sectoral breakdown of expenditure

NACE code	*Description*
0	AGRICULTURE, HUNTING, FORESTRY AND FISHING
1.	ENERGY AND WATER
11	Extraction and briquetting of solid fuels
12	Coke ovens
13	Extraction of petroleum and natural gas
14	Mineral oil refining
15	Nuclear fuels industry
16	Production and distribution of electricity, gas, steam and hot water
17	Water supply: collection, purification and distribution of water
2.	EXTRACTION AND PROCESSING OF NON-ENERGY-PRODUCING MINERALS AND DERIVED PRODUCTS, CHEMICAL INDUSTRY
21	Extraction and preparation of metalliferous ores
22	Production and preliminary processing of metals
23	Extraction of minerals other than metalliferous and energy-producing minerals; peat extraction
24	Manufacture of non-metallic mineral products
25	Chemical industry
26	Man-made fibres industry

NACE code	*Description*
3.	METAL MANUFACTURE; MECHANICAL, ELECTRICAL AND INSTRUMENT ENGINEERING
31	Manufacture of metal articles (except for mechanical, electrical and instrument engineering and vehicles)
32	Mechanical engineering
33	Manufacture of office machinery and data-processing machinery
34	Electrical and electronic engineering
34.51	Manufacture of electronic equipment and apparatus
35	Manufacture of motor vehicles and of motor vehicle parts and accessories
35.3	Manufacture of parts and accessories for motor vehicles
36	Manufacture of other means of transport
36.41	Manufacture of aeroplanes and helicopters (including the engines)
37	Manufacture of precision, optical and similar instruments
4.	OTHER MANUFACTURING INDUSTRIES
41/42	Food, drink and tobacco industry
43	Textile industry
44	Leather and leather goods industry (except footwear and clothing)
45	Footwear and clothing industry of which:
45.1	manufacture of footwear
46	Timber and wooden furniture industries
47	Manufacture of paper and paper products, printing and publishing
48	Processing of rubber and plastics
49	Other manufacturing industries
5.	BUILDING AND CIVIL ENGINEERING
6.	DISTRIBUTIVE TRADES, HOTELS, CATERING, REPAIRS
7.	TRANSPORT AND COMMUNICATION
8.	BANK AND FINANCE, INSURANCE, BUSINESS SERVICES, RENTING
9.	OTHER SERVICES

D. List of aid schemes for which a detailed annual report is to be provided

(Specific schemes for each Member State)

E. Format of simplified annual report to be submitted for all existing schemes not listed in Section D above

For new aid schemes covered by the arrangement for aid covered by the accelerated clearance procedure or schemes with an annual budget of not more than ECU 5 million, give only the information requested in points 1, 2.1, 2.2.1 and 2.2.2 (very simplified report).

1. Name of scheme:

2. Expenditure under scheme:

   Separate figures, should be provided for each aid instrument in the scheme (e.g. grant, low-interest loans, guarantees). Provide figures on expenditure or commitments, revenue losses and other financial factors relevant to the granting of aid (e.g. period of loan, interest subsidies, default rates on loans net of sums recovered, default payments on guarantees net of premium income and sums recovered).

   These expenditure figures should be provided on the following basis:

   2.1. For year n, provide expenditure forecasts or estimated revenue losses due to tax expenditure.

   2.2. For year n–1, indicate:

      2.2.1. Expenditure committed, or estimated revenue losses due to tax expenditure, for new assisted projects and actual payments for new and current projects.[1]

      2.2.2. Number of new recipients and number of new projects assisted, together with estimated number of jobs created or maintained.

      2.2.3. Complete only if schemes are covered by the framework for State aid for R&D:

      - Breakdown of total expenditure by R&D stage (fundamental, basic industrial, applied, etc.);
      - Specify the number of projects involving Community or international cooperation;
      - Give breakdown of expenditure by enterprise, research centre and university.

      2.2.4. To be completed only for schemes:

      (i) not reserved exclusively for SMEs;

      (ii) not involving the automatic granting of aid. Aid is granted automatically where it is necessary only to satisfy all the eligibility conditions in order to qualify for aid or where it is shown that a public authority is not exercising its statutory discretionary right to select recipients.

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[1] If the figures for actual tax expenditure are not yet available, estimates should be provided and the final figures sent with the next report.

Provide the following information for each of the five recipients to which the largest amounts of aid were committed:

Name:

Address:

Recipient's sector of activity (follow classification referred to in question 3.2.5.1.):

Amount of aid committed (or authorized where tax aid is involved):

If there are fewer than five recipients in the report year, they must all be listed. If there are several assisted projects per recipient, the information requested should be broken down by project. The information is not required in the case of aid subject to a ceiling where more than five recipients reach the ceiling. Only the level of the ceiling and the number of recipients reaching it need be given.

3. Changes (administrative or other) introduced during the year:

3. Time-limits for decision

Commission letter to Member States SG(81) 12740 of 2 October 1981

Dear Sir

1. Article 93(3) of the EC Treaty requires Member States to inform the Commission of any plans to grant or alter aid, so as to enable it to submit its comments in sufficient time.

2. To carry out an initial assessment of the plan notified, the Commission must complete its investigation and consideration of the case within a period set at two months by the Court of Justice of the European Communities. The Commission has itself set a shorter time limit, of 30 working days, for individual cases of application of general schemes already approved by it. Proposed measures may not be put into effect within these periods.

3. The Commission has already set out the rules for the notification of aid plans, and the procedures it applies internally, in a letter of 5 January 1977 (SG(77) D/122, attached). I would like to remind you of these rules, and to draw your attention particularly to the fact that the periods mentioned above begin to run only from the date on which the Commission receives a notification correctly made which can be considered complete.

(a) For a notification to be correctly made it is important:

(i) that it should refer expressly to Article 93(3) (EC Treaty) or to another Community instrument requiring the notification;

(ii) that it should be sent to the Secretariat-General of the Commission, and not to the responsible Commission department; however, individual cases of application of general aid schemes already approved by the Commission should be notified direct to the Directorate-General for Competition.

The Commission calculates the time available to it from the point at which the notification is actually received by the Secretariat-General or the Directorate-General for Competition as the case may be. To inform you of the point at which time starts to run the Commission will continue to send you an acknowledgment of receipt showing the relevant date, as it has done in the past.

(b) A notification is incomplete when it does not contain all the information which the Commission departments need in order to form an initial view of the compatibility of the measure with the Treaty; the Commission then has 15 working days from the notification to request further information. Time then begins to run only from the date on which such further information is received. An acknowledgment of receipt is sent showing the relevant date.

4. In seeking strict observance of these rules, the Commission's sole concern is to facilitate the procedure for prior notification and scrutiny of planned State aid, so that it can itself observe the time limits to which it is subject, thus improving the procedural guarantees for the benefit of Member States.

Yours faithfully,

Commission letter to Member States of 30 April 1987

(Procedure under Article 93(2) of the EEC Treaty – Time-limits)

Dear Sir

Over the last few years the Commission has observed that when the procedure laid down in Article 93(2) of the EEC Treaty is initiated in respect of a State aid measure the time which elapses between initiation and the final decision on the case has for various reasons been growing longer. This is not in the interests of the Member States, of the recipient firms or of the Commission. The Commission has therefore instructed its departments to deal with State aid cases more rapidly.

Of course this will require very close cooperation on the part of the Member States, which are called upon to supply information in the course of the procedure. In particular, in order to allow the Commission to take a decision in full knowledge of the facts, Member States should submit their comments, in full, within the period of one month which is generally stated in the letter informing them that the procedure has been initiated.

If it should prove necessary to supply oral observations to the Commission, the meetings for the purpose must be held within three months, at the latest, of receipt of the letter stating that the procedure has been initiated. Written confirmation of information supplied at such meetings, and any additional information or amended plan, must be in the Commission's possession within four months of the date of receipt of that letter.

Given the mutual advantage of speeding up procedures, I am sure your Government will cooperate constructively here. For their part the Commission departments have been instructed to comply scrupulously with the time-limits I have outlined. The Commission will then be able to take a decision on the basis of the information received, even if that information is incomplete as result of any lack of diligence on the part of the Member State, the Court of Justice accepted that the Commission was entitled to act in this way in Cases 234/85 and 40/85 *Belgium* v *Commission.*

Yours faithfully

4. *Accelerated procedure*

Commission communication to the Member States[1] on the accelerated clearance of aid schemes for SMEs and of amendments of existing schemes

(adopted by the Commission on 2 July 1992)

The Commission has amended its earlier Decision[2] on the notification of aid schemes of minor importance as follows:

in principle the Commission will not object to new or modified existing aid schemes notified pursuant to Article 93(3) of the EC Treaty meeting the following criteria:

1. New aid schemes, excluding those supporting industrial sectors covered by specific Community policy statements[3] as well as aid in the agricultural, fisheries, transport and coal sectors.

   The schemes must be limited to small and medium-sized enterprises, defined as any firm which:

   (i) has no more than 250 employees, and

   either

   (a) an annual turnover not exceeding ECU 20 million, or

   (b) a balance sheet total not exceeding ECU 10 million, and

   (ii) is not more than 25% owned by one or more companies not falling within this definition, except public investment corporations, venture capital companies or, provided no control is exercised, institutional investors.

   The schemes must also satisfy one of the following criteria:

   (i) where the scheme has specific investment objectives, the aid intensity must not exceed 7.5% of the investment cost, or

   (ii) where the scheme is designed to lead to job creation, the aid must not amount to more than ECU 3 000 per job created, or

   (iii) in the absence of specific investment or job creation objectives the total volume of aid a beneficiary may receive must not be more than ECU 200 000.

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1 OJ C 213, 19.8.1992, p. 10.
2 OJ C 40, 20.2.1990, p. 2.
3 Presently steel, shipbuilding, synthetic fibres and motor vehicles.

All the above figures are before any calculation for tax effects, i.e. gross.

Member States must ensure that the beneficiary does not receive more aid than allowed by the above criteria for the same project through repeated notification of aid schemes meeting these criteria or such schemes being added to any other aid under general, regional or sectoral aid schemes.

Such aid may be paid on a national, regional, or local basis.

All aid to exports in intra-Community trade or operating aid are excluded from the procedure.

2. Modifications of existing aid schemes which the Commission has previously approved, except in specific cases where the Commission strictly limited its authorization to the period, budget and conditions then notified.

   The amendment may involve any of the following:

   (i) prolongation over time without increase in budgetary resources;

   (ii) increase in budget available up to 20% of original sum but no prolongation;

   (iii) prolongation over time with budget increases up to 20% of original sum;

   (iv) tightening the criteria of application of the scheme.

   A simplified form for notification to be used for both new and existing schemes is set out below.

   The Commission will decide on notifications within 20 working days.

ANNEX

1. Member State: .....

2. Title of scheme: .....

3. Is it a new scheme? .....

3.1. Level of government responsible for scheme:

central government: .....

region: .....

local authority: .....

other: .....

3.2. Is it:

a general scheme?

for what purpose(s)? (e.g., R&D, innovation, environment, energy conservation, etc.): .....

a regional scheme?

for which area(s)? .....

a sectoral (industry-specific) scheme?

for which sector(s)? .....

3.3. Form of aid (specify conditions):

grant: .....

soft loan: .....

interest subsidy:

tax relief: .....

loan guarantee: .....

other: .....

3.4. Budget: .....

3.5. Duration: .....

3.6. Beneficiaries of aid:

firms employing up to ..... persons (maximum 250) and having an annual turnover of up to ..... (maximum ECU 20 million) or a balance sheet total of up to ..... (maximum ECU 10 million) and not more than ..... (maximum 25%) owned by one or more companies not falling within this definition, except public investment corporations, venture capital companies or, provided no control is exercised, institutional investors.

3.7. Scale of aid:

3.7.1. If the scheme is for investment, what is the intensity of the aid? ..... (maximum 7.5% of the investment cost): .....

3.7.2. If the scheme is to stimulate employment, what is the maximum amount of aid per job created? (maximum ECU 3 000): .....

3.7.3. In other cases what is the maximum aid per firm? ..... (maximum ECU 200 000): .....

4. In the case of an existing scheme:

when was the scheme notified to the Commission? .....

when was it approved by the Commission? (date and reference of letter, aid case number): .....

how is the scheme to be amended? (duration, budget, conditions, etc.): ....

5. Remarks: .....

6. Action proposed by DG IV (to be left blank): .....

5. Publication

Commission letter to Member States of 27 June 1989

(Procedure of Article 93(2) of the EEC Treaty — Notice to Member States and other parties concerned to submit their comments)

Dear Sir

1. When opening the procedure of Article 93(2) of the EEC Treaty the Commission has, up to now, met the obligation to give notice to the parties concerned, as therein provided, in the following way:

(i) a letter incorporating the Commission's decision to open this procedure, and giving the reasons for it, is immediately dispatched to the Member State concerned;

(ii) a copy of the abovementioned letter is subsequently sent to all other Member States;

(iii) a communication summarizing the abovementioned letter appears in a C edition of the Official Journal.

2. The Commission has undertaken a review of these procedures intended to attain the objectives of overall acceleration of information to Member States and to all others concerned. It has concluded that these objectives would best be attained by streamlining existing procedures as set out below:

- following upon the decision to open the procedure of Article 93(2) the Member State is, as heretofore, immediately informed;
- the contents of the letter to that Member State, giving notice of the opening of the procedure, is subsequently rapidly published in the Official Journal (C edition).

Notice of the conclusion of the procedure of Article 93(2) EEC will moreover be given in the same way, that is, by immediate notice to the Member State concerned, followed by publication of the relevant text setting out the Commission's decision, in the Official Journal (L edition).

In all cases, the General-Secretariat of the Commission will inform the Permanent Representations, by means of a brief and standardized communication, of the foreseen date of publication in the relevant Official Journal.

3. The system set out above will be applied as from 1 July 1989.

Yours faithfully

Commission letter to the Member States of 11 October 1990

(Notice to Member States and other parties about aid cases not objected to by the Commission)

Dear Sir

1. When the Commission decides, pursuant to Article 93(3), to raise no objections in respect of a notified aid, it informs the Member State concerned of its position in a brief letter. In most cases, no information on the aid is sent to the other Member States and interested parties.

2. The Commission has decided that in future it will publish a description, varying in length according to the importance of the case concerned, of all aid awards to which it has no objection. The description will be published in the Official Journal and the monthly *Bulletin of the European Communities*.

Although it is not required to do this by any of the ECSC or EEC Treaty provisions on State aid, the Commission hopes that it will thus be responding to a general demand for information on aid requiring a decision on its part and will thus increase the transparency of its policy in this area. While the Member States have a legitimate desire to be better informed about this aspect of the Commission's activities, the same is true of a number of socioprofessional circles and especially of the competitors of firms that have received State aid. It is because of this last factor and for reasons of legal certainty that the Commission has decided to publish the decisions in question in the L series of the Official Journal. It will also see to it that the publishing deadlines are appreciably shortened.

Yours faithfully

SHORT DESCRIPTION

Member State: .....

Region: .....

Case No: ..... Title of scheme: .....

National legal basis (in original language): .....

Objective (brief summary): .....

Budget: .....

Intensity of aid: .....

Duration: .....

Conditions: .....

C — Rules on the assessment of certain financial transfers and transactions as State aid

I — Government capital injections

Application of Articles 92 and 93 of the EEC Treaty to public authorities' holdings

(Bulletin EC 9-1984)

(Public authorities' holdings in company capital)

The Commission's position

The Commission has sent Member States a paper explaining its general approach to the acquisition of shareholdings by the public authorities and setting out Member States' obligations in the field.

'Public holding' means a direct holding of central, regional or local government, or a direct holding of financial institutions or other national, regional or industrial agencies[1] which are funded from State resources within the meaning of Article 92(1) of the EC Treaty, or over which central, regional or local government exercises a dominant influence.

The Commission has already had occasion in the past to consider the question of public holdings in company capital from the angle of policy on State aid; in most cases, in view of the particular circumstances, it has regarded them as constituting State aid. This position is spelt out clearly in the steel and shipbuilding codes.

The steel code states that 'the concept of aid includes ... any aid elements contained in the financing measures taken by Member States in respect of the steel undertakings which they directly or indirectly control and which do not count as the provision of equity capital according to standard company practice in a market economy' (Commission Decision No 2320/81/ECSC of 7 April 1981 establishing Community rules for aid to the steel industry:[2] recital II, last paragraph, and Article 1). Pursuant to that Decision the Commission has usually regarded any contribution of capital to companies as State aid.

The shipbuilding code contains a formula identical to the one in the steel code (Council Directive No 81/363/EEC of 28 April 1981 on aid to shipbuilding:[3] last recital and Article 1(e)).

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[1] This includes public undertakings as defined in Article 2 of Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings (OJ L 195, 29.7.1980).

[2] OJ L 228, 13.8.1981.

[3] OJ L 137, 23.5.1981.

1. The Treaty establishes both the principle of impartiality with regard to the system of property ownership (Article 222) and the principle of equality between public and private undertakings. This means that Commission action may neither penalize nor favour public authorities which provide companies with equity capital. Nor is it for the Commission to express any opinion as to the choice companies make between methods of financing — loan or equity — whether the funds are of private or public origin.

Where, applying the guidelines laid down in this paper, it is apparent that a public authority which injects capital by acquiring a holding in a company is not merely providing equity capital under normal market economy conditions, the case has to be assessed in the light of Article 92 of the EC Treaty.

2. Four types of situation can be distinguished in which public authorities may have occasion to acquire a holding in the capital of companies:

(a) the setting up of a company,

(b) partial or total transfer of ownership from the private to the public sector,

(c) in an existing public enterprise, injection of fresh capital or conversion of endowment funds into capital,

(d) in an existing private sector company, participation in an increase in share capital.

3. On this basis four cases can be distinguished.

3.1. Straightforward partial or total acquisition of a holding in the capital of an existing company, without any injection of fresh capital, does not constitute aid to the company.

3.2. Nor is State aid involved where fresh capital is contributed in circumstances that would be acceptable to a private investor operating under normal market economy conditions. This can be taken to apply:

(i) where a new company is set up with the public authorities holding the entire capital or a majority or minority interest, provided the authorities apply the same criteria as provider of capital under normal market economy conditions;

(ii) where fresh capital is injected into a public enterprise, provided this fresh capital corresponds to new investment needs and to costs directly linked to them, that the industry in which the enterprise operates does not suffer from structural overcapacity in the common market, and that the enterprise's financial position is sound;

(iii) where the public holding in a company is to be increased, provided the capital injected is proportionate to the number of shares held by the authorities and goes together with the injection of capital by a private shareholder; the private investor's holding must have real economic significance;

(iv) where, even though the holding is acquired in the manner referred to in either of the last two indents of Section 3.3 below, it is in a small or medium-sized enterprise which because of its size is unable to provide adequate security on the private financial market, but whose prospects are such as to warrant a public holding exceeding its net assets or private investment;

(v) where the strategic nature of the investment in terms of markets or supplies is such that acquisition of a shareholding could be regarded as the normal behaviour of a provider of capital, although profitability is delayed;

(vi) where the recipient company's development potential, reflected in innovative capacity from investment of all kinds, is such that the operation may be regarded as an investment involving a special risk but likely to pay off ultimately.

3.3. On the other hand, there is State aid where fresh capital is contributed in circumstances that would not be acceptable to a private investor operating under normal market economy conditions.

This is the case:

(i) where the financial position of the company, and particularly the structure and volume of its debt, is such that a normal return (in dividends or capital gains) cannot be expected within a reasonable time from the capital invested;

(ii) where, because of its inadequate cash flow if for no other reason, the company would be unable to raise the funds needed for an investment programme on the capital market;

(iii) where the holding is a short-term one, with duration and selling price fixed in advance, so that the return to the provider of capital is considerably less than he could have expected from a capital market investment for a similar period;

(iv) where the public authorities' holding involves the taking over or the continuation of all or part of the non-viable operations[1] of an ailing company through the formation of a new legal entity;

(v) where the injection of capital into companies whose capital is divided between private and public shareholders makes the public holding reach a significantly higher level than originally and the relative disengagement of private shareholders is largely due to the companies' poor profit outlook;

(vi) where the amount of the holding exceeds the real value (net assets plus value of any goodwill or know-how) of the company, except in the case of companies of the kind referred to in the fourth indent of Section 3.2. above.

3.4. Some acquisitions may not fall within the categories indicated in Sections 3.2 and 3.3 so that it cannot be decided from the outset whether they do, or do not constitute State aid.

In certain circumstances, however, there is a presumption that there is indeed State aid.

This is the case where:

(i) the authorities' intervention takes the form of acquisition of a holding combined with other types of intervention which need to be notified pursuant to Article 93(3);

(ii) the holding is taken in an industry experiencing particular difficulties, without the circumstances being covered by Section 3.3; accordingly, where the Commission finds

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[1] Excluding the straightforward takeover of the assets of a company which has become insolvent or gone into liquidation.

that an industry is suffering from structural overcapacity and even though most such cases will be within the scope of Section 3.3, it may consider it necessary to monitor all holdings in that industry, including those coming under Section 3.2.

4. Leaving aside the fact that the Commission has at all times the right to request information from the Member States case-by-case, the obligations devolving on Member States in the light of the Commission's practice to date and the approach outlined here should be set out anew and specified in detail.

4.1. In the case referred to at 3.1, there is no need to place any particular obligations on Member States.

4.2. In the cases referred to at 3.2, the Commission would ask Member States to inform it retrospectively by means of regular, and normally annual, reports on holdings acquired by financial institutions and directly by public authorities. The information given should include the following at least, possibly as part of the financial institutions' reports:

(i) name of the institution or authority which acquired the holding,

(ii) name of the company involved,

(iii) amount of the holding,

(iv) capital of the company before the holding was acquired,

(v) industry in which the company operates,

(vi) number of employees.

4.3. As regards the cases referred to in Section 3.3, since these do constitute State aid, Member States are required to notify the Commission pursuant to Article 93(3) of the EC Treaty before they are put into effect.

4.4. With regard to the cases referred to in Section 3.4 in which it is not clear from the outset whether or not they involve State aid, Member States should inform the Commission retrospectively by means of regular and normally annual reports in the manner described in Section 4.2.

In cases of the kind described in Section 3.4 where there is a presumption of State aid, the Commission should be informed in advance. On the basis of an examination of the information received, it will decide within 15 working days whether the information should be regarded as notification for the purposes of Article 93(3) of the EC Treaty.

4.5. Without prejudice to the Commission's right to ask for information on specific cases, the obligation to supply regular retrospective information only applies to shareholdings in companies where one of the following thresholds is exceeded:

(i) balance-sheet total: ECU 4 million,

(ii) net turnover: ECU 8 million,

(iii) number of employees: 250.

The Commission may review these thresholds in the light of future experience.

5. Member States also use certain forms of intervention which, while not having all the features of a capital contribution in the form of acquisition of a public holding, resemble this sufficiently to be treated in the same way. This is the case notably with capital contributions taking the form of convertible debenture loans or of loans where the financial yield is, at least in part, dependent on the company's financial performance.

The criteria in Section 3 also apply in respect of these forms of intervention, and Member States are under the obligations set out in Section 4.

6. In certain cases the Commission has authorized aid measures which also include the acquisition of holdings in certain circumstances. The various procedural clauses in the authorization decisions are not affected by the provisions in this paper.

7. This paper also applies to holdings in agricultural undertakings. It may be adapted to take account of any new circumstances arising from the accession of new Member States.

II — Financial transfers to public enterprises

COMMISSION DIRECTIVE 80/723/EEC[1] OF 25 JUNE 1980

on the transparency of financial relations between Member States and public undertakings

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 90(3) thereof,

Whereas public undertakings play a substantial role in the national economy of the Member States;

Whereas the Treaty in no way prejudices the rules governing the system of property ownership in Member States and equal treatment of private and public undertakings must therefore be ensured;

Whereas the Treaty requires the Commission to ensure that Member States do not grant undertakings, public or private, aid incompatible with the common market;

Whereas, however, the complexity of the financial relations between national public authorities and public undertakings tends to hinder the performance of this duty;

Whereas a fair and effective application of the aid rules in the Treaty to both public and private undertakings will be possible only if these financial relations are made transparent;

Whereas such transparency applied to public undertakings should enable a clear distinction to be made between the role of the State as public authority and its role as proprietor;

Whereas Article 90(1) confers certain obligations on the Member States in respect of public undertakings; whereas Article 90(3) requires the Commission to ensure that these obligations are respected, and provides it with the requisite means to this end; whereas this entails defining the conditions for achieving transparency;

Whereas it should be made clear what is to be understood by the terms 'public authorities' and 'public undertakings';

Whereas public authorities may exercise a dominant influence on the behaviour of public undertakings not only where they are the proprietor or have a majority participation but also by virtue of powers they hold in management or supervisory bodies as a result either of the rules governing the undertaking or of the manner in which the shareholdings are distributed;

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[1] OJ L 195, 29.7.1980.

Whereas the provision of public funds to public undertakings may take place either directly or indirectly; whereas transparency must be achieved irrespective of the manner in which such provision of public funds is made; whereas it may also be necessary to ensure that adequate information is made available as regards the reasons for such provision of public funds and their actual use;

Whereas Member States may through their public undertakings seek ends other than commercial ones; whereas in some cases public undertakings are compensated by the State for financial burdens assumed by them as a result; whereas transparency should also be ensured in the case of such compensation;

Whereas certain undertakings should be excluded from the application of this Directive by virtue either of the nature of their activities or of the size of their turnover; whereas this applies to certain activities which stand outside the sphere of competition or which are already covered by specific Community measures which ensure adequate transparency, to public undertakings belonging to sectors of activity for which distinct provision should be made, and to those whose business is not conducted on such a scale as to justify the administrative burden of ensuring transparency;

Whereas this Directive is without prejudice to other provisions of the Treaty, notably Articles 90(2), 93 and 223;

Whereas, the undertakings in question being in competition with other undertakings, information acquired should be covered by the obligation of professional secrecy;

Whereas this Directive must be applied in close cooperation with the Member States, and where necessary be revised in the light of experience,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Member States shall ensure that financial relations between public authorities and public undertakings are transparent as provided in this Directive, so that the following emerge clearly:

(a) public funds made available directly by public authorities to the public undertakings concerned;

(b) public funds made available by public authorities through the intermediary of public undertakings or financial institutions;

(c) the use to which these public funds are actually put.

Article 2

For the purpose of this Directive:

'public authorities' means: the State and regional or local authorities,

'public undertakings' means: any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it.

A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly in relation to an undertaking:

(a) hold the major part of the undertaking's subscribed capital;

or

(b) control the majority of the votes attaching to shares issued by the undertakings;

or

(c) can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

Article 3

The transparency referred to in Article 1 shall apply in particular to the following aspects of financial relations between public authorities and public undertakings:

(a) the setting-off of operating losses,

(b) the provision of capital,

(c) non-refundable grants, or loans on privileged terms,

(d) the granting of financial advantages by forgoing profits or the recovery of sums due,

(e) the forgoing of a normal return on public funds used,

(f) compensation for financial burdens imposed by the public authorities.

Article 4

This Directive shall not apply to financial relations between the public authorities and

(a) public undertakings, as regards services the supply of which is not liable to affect trade between Member States to an appreciable extent;

(b) public undertakings, as regards activities carried on in any of the following areas:

water and energy, including in the case of nuclear energy the production and enrichment of uranium, the reprocessing of irradiated fuels and the preparation of materials containing plutonium,

posts and telecommunications,

transport;

(c) public credit institutions;

(d) public undertakings whose turnover excluding taxes has not reached a total of ECU 40 million during the two financial years preceding that in which the funds referred to in Article 1 are made available or used.

Article 5

1. Member States shall ensure that information concerning the financial relations referred to in Article 1 be kept at the disposal of the Commission for five years from the end of the financial year in which the public funds were made available to the public undertakings concerned. However, where the same funds are used during a later financial year, the five-year time-limit shall run from the end of that financial year.

2. Member States shall, where the Commission considers it necessary so to request, supply to it the information referred to in paragraph 1, together with any necessary background information, notably the objectives pursued.

Article 6

1. The Commission shall not disclose such information supplied to it pursuant to Article 5(2) as is of a kind covered by the obligation of professional secrecy.

2. Paragraph 1 shall not prevent publication of general information of surveys which do not contain information relating to particular public undertakings to which this Directive applies.

Article 7

The Commission shall regularly inform the Member States of the results of the operation of this Directive.

Article 8

Member States shall take the measures necessary to comply with the Directive by 31 December 1981. They shall inform the Commission thereof.

Article 9

This Directive is addressed to the Member States.

COMMISSION DIRECTIVE 85/413/EEC[1] OF 24 JULY 1985

amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 90(3) thereof,

Whereas Article 4(b) and (c) of Commission Directive 80/723/EEC[2] excludes from its scope public undertakings carrying on activities in the sectors of water and energy, posts and telecommunications, transport and public credit institutions;

Whereas public undertakings operating in these sectors play an important role in the economies of the Member States; whereas the need for transparency of financial relations between the Member States and public undertakings in certain sectors previously excluded has proved greater than before in view of developments in the competitive situation in the sectors concerned and the progress made towards closer economic integration;

Whereas equal treatment of public and private undertakings must also be ensured in these sectors; whereas in particular transparency of financial relations between the Member States and public undertakings in these sectors must be established for the same reasons and to the same extent as for the undertakings covered by Directive 80/723/EEC;

Whereas the Commission is required by the Treaty to ensure that Member States do not grant undertakings, whether public or private, in the said sectors, aid incompatible with the common market;

Whereas the Commission advised the Member States when notifying Directive 80/723/EEC to them that the exclusion of these sectors was only temporary;

Whereas by virtue of Article 232(1) of the EEC Treaty the provisions of that Treaty shall not affect those of the ECSC Treaty; whereas the ECSC Treaty contains special provisions governing the obligations of Member States as far as public undertakings and aid are concerned; whereas Article 90 of the EEC Treaty is therefore inapplicable to public undertakings carrying on activities coming under the ECSC Treaty;

Whereas by virtue of Article 232(2) of the EEC Treaty the provisions of that Treaty shall not derogate from those of the Euratom Treaty, but whereas the latter does not contain any special provisions on public undertakings or aid; whereas Article 90 of the EEC Treaty therefore applies to the nuclear energy field;

Whereas the transparency of the Member States' financial relations with public undertakings in the rail, road and inland waterway transport sectors is already regulated to a considerable

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[1] OJ L 229, 28.8.1985.
[2] OJ L 195, 29.7.1980.

extent by legislation enacted by the Council, whereas this Directive is without prejudice to that legislation;

Whereas Directive 80/723/EEC contains provisions, particularly in Articles 3 and 5, which may facilitate the Commission's task in meeting the obligations it has assumed under the said Council legislation, in particular as regards the preparation of periodical reports on the performance of those public undertakings;

Whereas the scope of Directive 80/723/EEC should therefore be extended to cover all the transport sector;

Whereas Member States' financial relations with credit institutions belonging to the public sector are also covered by this Directive; whereas, however, the Directive should not apply to Member States' relations with central banks which are responsible for the conduct of monetary policy;

Whereas public authorities often deposit short-term funds with public credit institutions on normal commercial terms; whereas such deposits do not confer special advantages on the credit institutions and should therefore not be covered by the Directive;

Whereas the economic importance of credit institutions does not depend on their turnover but on their balance-sheet total; whereas the threshold laid down in Article 4(d) of Directive 80/723/EEC should therefore be set as far as credit institutions are concerned by reference to that criterion,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 4 of Directive 80/723/EEC is hereby replaced by the following:

'Article 4

This Directive shall not apply to financial relations between the public authorities and:

(a) public undertakings, as regards services the supply of which is not liable to affect trade between Member States to an appreciable extent;

(b) central banks and the Institut monétaire luxembourgeois;

(c) public credit institutions, as regards deposits of public funds placed with them by public authorities on normal commercial terms;

(d) public undertakings whose total turnover before tax over the period of the two financial years preceding that in which the funds referred to in Article 1 are made available or used has been less than ECU 40 million. However, for public credit institutions the corresponding threshold shall be a balance-sheet total of ECU 800 million'.

Article 2

Member States shall take the necessary measures to comply with this Directive by 1 January 1986. They shall inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.

COMMISSION DIRECTIVE 93/84/EEC[1] OF 30 SEPTEMBER 1993

amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 90(3) thereof,

Whereas Commission Directive 80/723/EEC,[2] as amended by Directive 85/413/EEC,[3] introduced a system whereby Member States were placed under an obligation to ensure that financial relations between public authorities and public undertakings are transparent; whereas that Directive required certain financial information to be retained by Member States and supplied to the Commission when requested;

Whereas Directive 80/723/EEC contains provisions, particularly in Articles 3 and 5, which may facilitate the Commission's task in meeting the obligations it has assumed;

Whereas public undertakings play an important role in the economies of Member States; whereas the need for transparency of financial relations between the Member States and their public undertakings has proved greater than before, on account of developments in the competitive situation in the common market, especially as the Community is moving towards close economic integration and social cohesion;

Whereas the Member States have adopted a Single European Act which in turn has led to the creation of the single market with effect from 1 January 1993; whereas this will lead to greater competitive pressures and to a need for the Commission to be vigilant in ensuring that the full benefits of the single market are achieved; whereas the single market makes it increasingly necessary to ensure that an equality of opportunity exists between both public and private undertakings;

Whereas it has been established that a significant part of the financial flows between a State and its public undertakings pass through a variety of forms of financial transfers and do not simply take the form of capital or quasi-capital injections;

Whereas it is predominantly in the manufacturing sector that the Commission has established that a considerable amount of aid has been granted to undertakings but not notified pursuant to Article 93(3) of the Treaty; whereas the first,[4] second[5] and third[6] State aid surveys confirm that large amounts of State aid continue to be granted illegally;

Whereas a reporting system based on *ex post facto* checks of the financial flows between public authorities and public undertakings will enable the Commission to fulfil its obligations; whereas that system of control must cover specific financial information; whereas such

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1 OJ L 254, 12.10.1993, p. 16.
2 OJ L 195, 29.7.1980, p. 35.
3 OJ L 229, 28.8.1985, p. 20.
4 ISBN 92-825-9535.
5 ISBN 92-826-0386.
6 ISBN 92-826-4637.

information is not always publicly available and, as it is found in the public arena, is insufficiently detailed to allow a proper evaluation of the financial flows between the State and public undertakings;

Whereas all of the information requested can be regarded as being proportional to the objective pursued, taking account of the fact that such information is already subject to the disclosure obligations under the fourth Council Directive 78/660/EEC,[1] concerning the annual accounts of companies, as last amended by Directive 90/605/EEC;[2]

Whereas, in order to limit the administrative burden on Member States, the reporting system should make use of both publicly available data and information available to majority shareholders; whereas the presentation of consolidated reports is to be permitted; whereas incompatible aid to major undertakings operating in the manufacturing sector will have the greatest distortive effect on competition in the common market; whereas, therefore, such a reporting system may at present be limited to undertakings with a yearly turnover of more than ECU 250 million;

Whereas, although the Commission, when notifying the Directive in 1980, took the view that movements of funds within a public undertaking or group of public undertakings were not subject to the requirements of Directive 80/723/EEC, the inclusion of such information is called for, by the new requirements of economic life, which is often influenced by State intervention via public undertakings; whereas as has been underlined in the case-law of the Court of Justice since 1980,[3] infringements of the provisions of Article 93(3) by Member States have increased appreciably, thereby making the Commission's monitoring tasks in the field of competition more and more difficult; whereas the Commission's powers of vigilance must therefore be increased,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 80/723/EEC is amended as follows:

1. In Article 2, the following indent is added:

'public undertakings operating in the manufacturing sector' means:

all undertakings whose principal area of activity, defined as being at least 50% of total annual turnover, is in manufacturing. These undertakings are those whose operations fall to be included in Section D — Manufacturing (being subsection DA up to and including subsection DN) of the NACE (Rev. 1) classification.*

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* OJ L 83, 3.4.1993.'

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1 OJ L 222, 14.8.1978, p. 11.

2 OJ L 317, 16.11.1990, p. 60.

3 See, for example, the judgments in Case 290/83 *Commission* v *France* [1985] ECR, 439 (agriculture credit fund), Joined Cases 67, 68 and 70/85 *Van der Kooy* v *Commission* [1988] ECR, p. 219, Case 303/88 *Italy* v *Commission* [1991] ECR-I, p. 1433 (ENI-Lanerossi) and Case C-305/89 *Italy* / *Commission* [1991] ECR-I, p. 1603 (IRI, Finmeccanica and Alfa Romeo).

2. Article 5a is inserted as follows:

'Article 5a

1. Member States whose public undertakings operate in the manufacturing sector shall supply the financial information as set out in paragraph 2 to the Commission on an annual basis within the timetable contained in paragraph 4.

2. The financial information required for each public undertaking operating in the manufacturing sector and in accordance with paragraph 3 shall be as follows:

(i) the annual report and annual accounts, in accordance with the definition of Council Directive 78/660/EEC.* The annual accounts and annual report include the balance sheet and profit/loss account explanatory notes, together with accounting policies, statements by directors, segmental and activity reports. Moreover, notices of shareholders' meetings and any other pertinent information shall be provided.

The following details, in so far as they are not disclosed in the annual report and annual accounts of each public undertaking, shall also be provided:

(ii) the provision of any share capital or quasi-capital funds similar in nature to equity, specifying the terms of its, or their provision (whether ordinary, preference, deferred or convertible shares and interest rates; the dividend or conversion rights attaching thereto);

(iii) non-refundable grants, or grants which are only refundable in certain circumstances;

(iv) the award to the enterprise of any loans, including overdrafts and advances on capital injections, with a specification of interest rates and the terms of the loan and its security, if any, given to the lender by the enterprise receiving the loan;

(v) guarantees given to the enterprise by public authorities in respect of loan finance (specifying terms and any charges paid by enterprises for these guarantees);

(vi) dividends paid out and profits retained;

(vii) any other forms of State intervention, in particular, the forgiving of sums due to the State by a public undertaking, including *inter alia* the repayment of loans, grants, payment of corporate or social taxes or any similar charges.

3. The information required by paragraph 2 shall be provided for all public undertakings whose turnover for the most recent financial year was more than ECU 250 million.

The information required above shall be supplied separately for each public undertaking including those located in the Member States, and shall include, where appropriate, details of all intra- and inter-group transactions between different public undertakings, as well as transactions conducted direct between public undertakings and the State. The share capital referred to in paragraph 2 (ii) shall include share capital contributed by the State direct and any share capital received, contributed by a public holding company or other public under-

taking (including financial institutions), whether inside or outside the same group, to a given public undertaking. The relationship between the provider of the finance and the recipient shall always be specified. Similarly, the reports required in paragraph 2 shall be provided for each individual public undertaking separately, as well as for the (sub-)holding company which consolidates several public undertakings in so far as the consolidated sales of the (sub)holding company lead to its being classified as 'manufacturing'.

Certain public enterprises split their activities into several legally distinct undertakings. For such enterprises the Commission is willing to accept one consolidated report. The consolidation should reflect the economic reality of a group of enterprises operating in the same or closely related sectors. Consolidated reports from diverse, and purely financial, holdings shall not be sufficient.

4. The information required under paragraph 2 shall be supplied to the Commission on an annual basis. The information in respect of the financial year 1992 shall be forwarded to the Commission within two months of publication of this Directive.

For 1993 and subsequent years, the information shall be provided within 15 working days of the date of publication of the annual report of the public undertaking concerned. In any case, and specifically for undertakings which do not publish an annual report, the required information shall be submitted not later than nine months following the end of the undertaking's financial year.

In order to assess the number of companies covered by this reporting system, Member States shall supply to the Commission a list of the companies covered by this Article and their turnover, within two months of publication of this Directive. The list is to be updated by 31 March of each year.

5. This Article is applicable to companies owned or controlled by the Treuhandanstalt only from the expiry date of the special reporting system set up for Treuhandanstalt investments.

6. Member States will furnish the Commission with any additional information that it deems necessary in order to complete a thorough appraisal of the data submitted.

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* OJ L 222, 14.8.1978, p. 11.'

Article 2

Member States shall adopt the provisions necessary to comply with this Directive by 1 November 1993. They shall inform the Commission thereof immediately.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Article 3

This Directive is addressed to the Member States.

Commission communication to the Member States[1]

Following the annulment of the Commission's communication, concerning the application of Articles 92 and 93 of the EC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector, by the Court of Justice of the European Communities, in June 1993, the Commission has decided to adopt as a directive, the obligation for Member States to provide the Commission with financial data on an annual basis. This Directive has been forwarded to Member States and has been published.[2]

At the same time the Commission readopted the above communication omitting the reporting requirement that was contained in paragraphs 45 to 53, and references thereto, previously set out in paragraphs 2, 27, 29, 31 and 54.

This revised text is reproduced below.

Commission communication to the Member States

Application of Articles 92 and 93 of the EEC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector

I. INTRODUCTION

1. A reinforced application of policy towards State aid is necessary for the successful completion of the internal market. One of the areas identified as worthy of attention in this respect is public undertakings. There is need for both increased transparency and development of policy for public undertakings because they have not been sufficiently covered by State aid disciplines:

in many cases only capital injections and not other forms of public funds have been fully included in aid disciplines for public undertakings;

in addition, these disciplines in general only cover loss-making public undertakings;

finally it also appears that there is a considerable volume of aid to public undertakings given other than through approved aid schemes (which are also available to private undertakings) which have not been notified under Article 93(3).

2. This communication is designed to remedy this situation. In the first place it explains the legal background of the Treaty and outlines the aid policy and case-law of the Council, Parliament, Commission and Court of Justice for public enterprises. This will, in particular, focus, on the one hand, on Directive 80/723/EEC on the transparency of the financial relationship between public undertakings and the State, and, on the other hand, it will develop the well established principle that where the State provides finances to a company in circumstances that would not be acceptable to an investor operating under normal market

[1] OJ C 307, 13.11.1993, p. 3.
[2] OJ L 254, 12.10.1993.

economy conditions, State aid is involved. The communication then explains how the Commission intends to increase transparency by applying this principle to all forms of public funds and to companies in all situations.

3. This communication does not deal with the question of the compatibility under one of the derogations provided for in the EEC Treaty because no change is envisaged in this policy. Finally, this communication is limited to the manufacturing sector. This will not, however, preclude the Commission from using the approach described by this communication in individual cases or sectors outside manufacturing to the extent that the principles in this communication apply in these excluded sectors and where it feels that it is essential to determine if State aid is involved.

II. PUBLIC UNDERTAKINGS AND THE RULES OF COMPETITION

4. Article 222 states: 'This Treaty shall in no way prejudice the rules in Member States governing the system of property ownership'. In other words the Treaty is neutral in the choice a Member State may make between public and private ownership and does not prejudice a Member State's right to run a mixed economy. However, these rights do not absolve public undertakings from the rules of competition because the institution of a system ensuring that competition in the common market is not distorted is one of the bases on which the Treaty is built (Article 3(f)). The Treaty also provides the general rules for ensuring such a system (Articles 85 to 94). In addition the Treaty lays down that these general rules of competition shall apply to public undertakings (Article 90(1)). There is a specific derogation in Article 90(2) from the general rule of Article 90(1) in that the rules of competition apply to all public undertakings including those entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the application of such rules does not obstruct the performance in law or in fact of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community. In the context of the State aid rules (Articles 92 to 94), this means that aid granted to public undertakings must, like any other State aid to private undertakings, be notified in advance to the Commission (Article 93(3)) to ascertain whether or not it falls within the scope of Article 92(1), i.e. aid that affects trade and competition between Member States. If it falls within Article 92(1), it is for the Commission to determine whether one of the general derogations provided for in the Treaty is applicable such that the aid becomes compatible with the common market. It is the Commission's role to ensure that there is no discrimination against either public or private undertakings when it applies the rules of competition.

5. It was to ensure this principle of non-discrimination, or neutrality of treatment that, in 1980, the Commission adopted a Directive on the transparency of financial relations between Member States and public undertakings.[1] The Commission was motivated by the fact that the complexity of the financial relations between national public authorities and public undertakings tended to hinder its duty of ensuring that aid incompatible with the common market was not granted. It further considered that the State aid rules could only be applied

[1] Directive 80/723/EEC (OJ L 195, 29.7.1980, p. 35) as amended by Directive 85/413/EEC (OJ L 229, 28.8.1985, p. 20) which included previously excluded sectors.

fairly to both public and private undertakings when the financial relations between public authorities and public undertakings were made transparent.

6. The Directive obliged Member States to ensure that the flow of all public funds to public undertakings and the uses to which these funds are put are made transparent (Article 1). Member States shall, when the Commission considers it necessary so to request, supply to it the information referred to in Article 1, together with any necessary background information, notably the objectives pursued (Article 5). Although the transparence in question applied to all public funds, the following were particularly mentioned as falling within its scope:

(i) the setting-off of operating losses,

(ii) the provision of capital,

(iii) non-refundable grants or loans on privileged terms,

(iv) the granting of financial advantages by forgoing profits or the recovery of sums due,

(v) the forgoing of a normal return on public funds used,

(vi) compensation for financial burdens imposed by the public authorities.

7. The Commission further considered that transparency of public funds must be achieved irrespective of the manner in which such provision of public funds is made. Thus, not only were the flows of funds directly from public authorities to public enterprises deemed to fall within the scope of the transparency Directive but also the flows of funds indirectly from other public undertakings over which the public authority holds a dominant influence (Article 2).

8. The legality of the transparency Directive was upheld by the Court of Justice in its judgment of 6 July 1982.[1]

8.1. On the argument that there was no necessity for the Directive and that it infringed the rule of proportionality, the Court held as follows (paragraph 18): 'In view of the diverse forms of public undertakings in the various Member States and the ramifications of their activities, it is inevitable that their financial relations with public authorities should themselves be very diverse, often complex and therefore difficult to supervise, even with the assistance of the sources of published information to which the applicant governments have referred. In those circumstances there is an undeniable need for the Commission to seek additional information on those relations by establishing common criteria for all the Member States and for all the undertakings in question'.

8.2. On the argument that the Directive in question infringed the principle of neutrality of Article 222 of the Treaty, the Court held that (paragraph 21), 'it should be borne in mind that the principle of equality, to which the governments refer in connection with the relationship between public and private undertakings in general, presupposes that the two are in comparable situations. ... private undertakings determine their industrial and commercial strategy by taking into account, in particular, requirements of profitability. Decisions of public undertakings, on the other hand, may be affected by factors of a different kind within the

[1] Joined Cases 188 to 190/80 *France, Italy and the United Kingdom* v *Commission* [1982] ECR 2545.

framework of the pursuit of objectives of public interest by public authorities which may exercise an influence over those decisions. The economic and financial consequences of the impact of such factors lead to the establishment between those undertakings and public authorities of financial relations of a special kind which differ from those existing between public authorities and private undertakings. As the Directive concerns precisely those special financial relations, the submission relating to discrimination cannot be accepted.'

8.3. On the argument that the Directive's list of public funds to be made transparent (Article 3) was an attempt to define the notion of aid within the meaning of Articles 92 and 93, the Court stated as follows (paragraph 23): 'In relation to the definition contained in Article 3 of the financial relations which are subject to the rules contained in the Directive, it is sufficient to state that it is not an attempt by the Commission to define the concept of aid which appears in Articles 92 and 93 of the Treaty, but only a statement of the financial transactions of which the Commission considers that it must be informed in order to check whether a Member State has granted aids to the undertakings in question, without complying with its obligation to notify the Commission under Article 93(3)'.

8.4. On the argument that the public enterprises on which information was to be provided (Article 2) was an attempt to define the notion of public undertakings within the meaning of Article 90 of the Treaty, the Court stated that (paragraph 24), 'it should be emphasized that the object of those provisions is not to define the concept as it appears in Article 90 of the Treaty, but to establish the necessary criteria to delimit the group of undertakings whose financial relations with the public authorities are to be subject to the duty laid down by the Directive to supply information'. It continued in paragraph 25 as follows: 'According to Article 2 of the Directive, the expression "public undertakings" means any undertaking over which the public authorities may exercise directly or indirectly a dominant influence. According to the second paragraph, such influence is not to be presumed when the public authorities directly or indirectly hold the major part of the undertaking's subscribed capital, control the majority of the votes, or can appoint more than half of the members of its administrative, managerial of supervisory body'. It continued in paragraph 26 as follows: 'As the Court has already stated, the reason for the inclusion in the Treaty of the provisions of Article 90 is precisely the influence which the public authorities are able to exert over the commercial decisions of public undertakings. That influence may be exerted on the basis of financial participation or of rules governing the management of the undertaking. By choosing the same criteria to determine the financial relations on which it must be able to obtain information in order to perform its duty of surveillance under Article 90(3), the Commission has remained within the limits of the discretion conferred upon it by that provision'.

9. The principles developed by the Court of Justice with respect to the transparency Directive are now part of the established jurisprudence and of particular importance is the fact that the Court has confirmed that:

(i) making financial relations transparent and the provision, on request, of information under the Directive is necessary and respects the principle of proportionality;

(ii) the Directive respects the principle of neutrality of treatment of public and private undertakings;

(iii) for the purposes of monitoring compliance with Articles 92 and 93 the Commission has a legitimate interest to be informed of all the types of flows of public funds to public enterprises;

(iv) for the purposes of monitoring compliance with Articles 92 and 93 the Commission has a legitimate interest in the flows of public funds to public undertakings that come either directly from the public authorities or indirectly from other public undertakings.

III. PRINCIPLES TO BE USED IN DETERMINING WHETHER AID IS INVOLVED

10. Having established over which enterprises and over which funds the Commission has a legitimate interest for the purposes of Articles 90 and 92, it is necessary to examine the principles to be used in determining whether any aid is involved. Only if aid is involved is there any question of any prior notification. Where aid is involved it is necessary to then examine whether any of the derogations provided for in the Treaty are applicable.[1] This analysis of determining on the one hand whether aid is involved and on the other whether the aid is compatible under one of the derogations of the Treaty, must be kept as a two stage process if full transparency is to be assured.

11. When public undertakings, just like private ones, benefit from monies granted under transparent aid schemes approved by the Commission, then it is clear that aid is involved and under what conditions the Commission has authorized its approval. However, the situation with respect to the other forms of public funds listed in the transparency Directive is not always so clear. In certain circumstances public enterprises can derive an advantage from the nature of their relationship with public authorities through the provision of public funds when this latter provides funds in circumstances that go beyond its simple role as proprietor. To ensure respect for the principle of neutrality the aid must be assessed as the difference between the terms on which the funds were made available by the State to the public enterprise, and the terms which a private investor would find acceptable in providing funds to a comparable private undertaking when the private investor is operating under normal market economy conditions (hereinafter 'market economy investor principle'). As the Commission points out in its communication on Industrial policy in an open and competitive environment (COM (90) 556) 'competition is becoming ever more global and more intense both on the world and on Community markets'. This trend has many implications for European companies, for example with regards to R&D, investment strategies and their financing. Both public and private enterprises in similar sectors and in comparable economic and financial situations must be treated equally with respect to this financing. However, if any public funds are provided on terms more favourable (i.e. in economic terms more cheaply) than a private owner would provide them to a private undertaking in a comparable financial and competitive position, then the public undertaking is receiving an advantage not available to private undertakings from their proprietors. Unless the more favourable provision of public funds is treated as aid, and evaluated with respect to one of the derogations of the Treaty, then the principle of neutrality of treatment between public and private undertakings is infringed.

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[1] See also paragraphs 32 and 33 below.

12. This principle of using an investor operating under normal market conditions as a benchmark to determine both whether aid is involved and if so to quantify it, has been adopted by the Council and the Commission in the steel and shipbuilding sectors, and has been endorsed by the Parliament in this context. In addition the Commission has adopted and applied this principle in numerous individual cases. The principle has also been accepted by the Court in every case submitted to it as a yardstick for the determination of whether aid was involved.

13. In 1981 the Council adopted the principle of the market economy investor principle on two occasions. Firstly it approved unanimously the Commission decision establishing Community rules for aid to the steel industry,[1] and secondly it approved, by a qualified majority, the shipbuilding code.[2] In both cases the Council stated that the concept of aid includes any aid elements contained in the financing measures taken by Member States in respect of the steel/shipbuilding undertakings which they directly or indirectly control and which do not count as the provision of equity capital according to standard company practice in a market economy. Thus not only did the Council approve or adopt the market economy principle, it went along the same lines as the Commission in the abovementioned transparency Directive, which brought within its scope not only the direct provision of funds but also their indirect provision.

14. The Council has maintained this general principle, most recently in 1989 in the case of steel,[3] and in 1990 in the case of shipbuilding.[4] In fact in the 1989 steel aid code the Council agreed to prior notification of all provisions of capital or similar financing in order to allow the Commission to decide whether they constituted aid, i.e. could 'be regarded as a genuine provision of risk capital according to usual investment practice in a market economy' (Article 1(2)). The Council also reaffirmed and approved unanimously this principle in Commission Decision 89/218/ECSC concerning new aid to Finsider/ILVA.[5]

15. The Parliament has been called upon to give its opinion on the market economy investor principle contained in the shipbuilding Directives. For these Directives the Parliament agreed to the Commission drafts which included this principle.[6]

16. The Commission adopted the same market economy investor principle when it laid down its position in general on public holdings in company capital which still remains valid.[7] It stated 'where it is apparent that a public authority which injects capital ... in a company is not merely providing equity capital under normal market economy conditions, the case has to be assessed in the light of Article 92 of the EEC Treaty' (paragraph 1). It considered in particular that State aid was involved 'where the financial position of the com-

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1 Decision 81/2320/ECSC of 7 August 1981 (OJ L 228, 13.8.1981, p. 14.). See, in particular, the second recital and Article 1.

2 Council Directive 81/363/EEC of 28 April 1981 (OJ L 137, 23.5.1981, p. 39). See, in particular, the last recital and Article 1(e).

3 Commission Decision 322/89/ECSC of 1 February 1989 (OJ L 38, 10.2.1989, p. 8).

4 Council Directive 90/684/EEC of 21 December 1990, (OJ L 380, 31.12.1990, p. 27).

5 OJ L 86, 31.3.1989, p. 76.

6 See, for example, OJ C 28, 9.2.1981, p. 23, and OJ C 7, 12.1.1987, p. 320.

7 Communication to the Member States concerning public authorities holdings in company capital. (Bul. EC 9-1984).

pany and particularly the structure and volume of its debts, is such that a normal return (in dividends or capital gains) cannot be expected within a reasonable time from the capital invested'.

17. The Commission has moreover applied this market economy investor principle in many individual cases to determine whether any aid was involved. The Commission examined in each case the financial circumstances of the company which received the public funds to see if a market economy investor would have made the monies available on similar terms. In the *Leeuwarden* Decision the Commission established that the capital injections constituted aid because 'the overcapacity in the ... industry constituted handicaps indicating that the firm would probably have been unable to raise on the private capital market the funds essential to its survival. The situation on the market provides no reasonable grounds for hope that a firm urgently needing large-scale restructuring could generate sufficient cash flow to finance the replacement investment necessary ...'. [1] This policy has been applied consistently over a number of years. More recently in the *CDF* v *Orkem* decision,[2] the Commission established that the public authority 'injected capital into an undertaking in conditions that are not those of a market economy'. In fact, the company in question 'had very little chance of obtaining sufficient capital from the private market to ensure its survival and long-term stability'. In the *ENI-Lanerossi* Decision,[3] the Commission stated that 'finance was granted in circumstances that would not be acceptable to a private investor operating under normal market economy conditions, as in the present case the financial and economic position of these factories, particularly in view of the duration and volumes of their losses, was such that a normal return in dividends or capital gains could not be expected for the capital invested'.[4] There have also been a number of cases where the Commission has clearly stated that capital injections by the State have not constituted aid because a reasonable return by way of dividends or capital growth could normally be expected.[5]

18. The Commission has also applied the market economy investor principle to many individual cases under the shipbuilding Directives and steel aid codes. In shipbuilding, for example in *Bremer Vulkan*,[6] the Commission considered that a bridging loan and the purchase of new shares constituted State aid because it did 'not accept the argument put forward by the German Government that [it] ... only acted like a private investor who happened to be better

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1 OJ L 277, 29.9.1982, p. 15.
2 OJ C 198, 7.8.1990, p. 2.
3 OJ L 16, 20.1.1989, p. 52.
4 Decisions *Meura* (OJ L 276, 19.10.1984, p. 34), *Leeuwarden* (OJ L 277, 29.9.1982, p. 15), *Intermills I* (OJ L 280, 2.10.1982, p. 30), *Boch* v *Noviboch* (OJ L 59, 27.2.1985, p. 21), *Boussac* (OJ L 352, 15.12.1987, p. 42), *Alfa-Fiat* (OJ L 394, 31.5.1989, p. 9), *Pinault-Isoroy* (OJ L 119, 7.5.1988, p. 38), *Fabelta* (OJ L 62, 3.3.1984, p. 18) *Ideal Spun* (OJ L 283, 27.10.1984, p. 42), *Renault* (OJ L 220, 11.8.1988, p. 30), *Veneziana Vetro* (OJ L 166, 16.6.1989, p. 60), *Quimigal* (OJ C 188, 28.7.1990, p. 3) and *IOR* v *Finalp* (not yet published) where the same reasoning can be found.
5 Decisions *CDF* v *Orkem*, in parts, (op. cit.), *Quimigal*, in parts, (op. cit.), *Intermills II* (Bulletin EC 4-1990, point 1.1.34) and *Ernaelsteen* (Eighteenth Competition Report, points 212 and 213).
6 Not yet published.

at foreseeing future market developments than anyone else.' In steel, for example, it took decisions in several individual cases where capital injections were considered as aid.[1]

19. It is noteworthy that in many of the above described cases the capital injected into the public undertakings came not directly from the State but indirectly from State holding companies or other public undertakings.

20. The Court has been called upon to examine a number of cases decided by the Commission in its application of the market economy investor principle set out in the 1984 guidelines. In each case submitted to it, the Court accepted the principle as an appropriate one to be used to determine whether or not aid was involved. It then examined whether the Commission decision sufficiently proved its application in the specific circumstances of the case in question. For example, in its judgment in Case 40/85[2] *(Boch)*, the Court stated (paragraph 13):

'An appropriate way of establishing whether [the] measure is a State aid is to apply the criterion, which was mentioned in the Commission's decision and, moreover, was not contested by the Belgian Government, of determining to what extent the undertaking would be able to obtain the sums in question on the private capital markets. In the case of an undertaking whose capital is almost entirely held by the public authorities, the test is, in particular, whether in similar circumstances a private shareholder, having regard to the foreseeability of obtaining a return and leaving aside all social, regional policy and sectoral considerations, would have subscribed the capital in question'.

The Court has recently reaffirmed this principle in the *Boussac* judgment,[3] where it stated (paragraphs 39 and 40): 'In order to determine if the measures constitute State aid, it is necessary to apply the criterion in the Commission's decision, which was not contested by the French Government, whether it would have been possible for the undertaking to obtain the funds on the private capital market', and 'the financial situation of the company was such that it would not expect an acceptable return on the investment within a reasonable time period and that *Boussac* would not have been able to find the necessary funds on the market' (unofficial translation).[4] The Court has recently further refined the market economy investor principle by making a distinction between a private investor whose time horizon is a short-term even speculative one, and that of a private holding group with a longer-term perspective (*Alfa/Fiat* and *Lanerossi)*.[5] 'It is necessary to make clear that the behaviour of a private investor with which the intervention of the public investor ... must be compared, while not necessarily that of an ordinary investor placing his capital with a more or less short-term view of its profitability, must at least be that of a private holding or group of enterprises which pursue a structural, global or sectoral policy and which are guided by a longer-term view of profitability'. On the basis of the facts of the case 'the Commission was

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1 OJ L 227, 19.8.1983, p. 1. See also, in particular, cases relating to *Arbed, Sidmar, ALZ, Hoogovens, Irish Steel, Sacilor* v *Usinor* and *British Steel* where the same reasoning can be found. In all these steel cases the aid was held to be compatible. More recently, the Council unanimously approved this principle in the *Finsider* v *ILVA* case — see paragraph 26 below.

2 *Belgium* v *Commission* [1986] ECR 2321.

3 Case C-301/87 (not yet published).

4 See also *Intermills* Case 323/82, *Leeuwarden* Joined Cases 296/318/82, *Meura* Case 234/84 where the same reasoning can be found.

5 Cases C-305/89 and C-303/88 respectively (not yet published).

able to correctly conclude that a private investor, even if taking decisions at the level of the whole group in a wider economic context, would not, under normal market economy conditions, have been able to expect an acceptable rate of profitability (even in the long term) on the capital invested...' (unofficial translation). 'A private investor may well inject new capital to ensure the survival of a company experiencing temporary difficulties, but which after, if necessary, a restructuring will become profitable again. A parent company may also, during a limited time, carry the losses of a subsidiary in order to allow this latter to withdraw from the sector under the most favourable conditions. Such decisions can be motivated not only by the possibility to get a direct profit, but also by other concerns such as maintaining the image of the whole group or to redirect its activities. However, when the new injections of capital are divorced from all possibility of profitability, even in the long term, these injections must be considered as aid...' (unofficial translation).

21. The fact that in many of the cases decided by the Court the injections came indirectly from State holding companies or from other public undertakings and not directly from the State, did not alter the aid character of the monies in question. The Court has always examined the economic reality of the situation to determine whether State resources were involved. In the *Steinicke* and *Weinlig* judgment,[1] the Court stated that '... save for the reservation in Article 90(2) of the Treaty, Article 92 covers all private and public undertakings and all their production' and that 'in applying Article 92 regard must primarily be had to the effects of aid on the undertakings or producers favoured and not the status of the institutions entrusted with the distribution and administration of the aid'. More recently in the *Crédit Agricole* judgment,[2] the Court confirmed this and added that '... aid need not necessarily be financed from State resources to be classified as State aid ... there is no necessity to draw any distinction according to whether the aid is granted directly by the State or by public or private bodies established or appointed by it to administer aid.'

IV. INCREASED TRANSPARENCY OF POLICY

22. To date most but by no means all of the cases which have come before the Council, the Commission and the Court where the market economy investor principle has been applied have concerned capital injections in loss-making or even near-bankrupt companies. One of the aims of this communication is to increase transparency by more systematically applying aid disciplines:

(i) to public undertakings in all situations, not just those making losses as is the case at present,

(ii) to all the forms of public funds mentioned in the transparency Directive (Article 3 — see points 6 and 8.3 above), in particular, for loans, guarantees and the rate of return, not just for capital injections as is the case at present.

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[1] Case 78/76.
[2] Case 290/83.

23. This increased transparency of policy is to be brought about by clearly applying the market economy investor principle to public undertakings in all situations and all public funds covered by the transparency Directive. The market economy investor principle is used because:

(i) it is an appropriate yardstick both for measuring any financial advantage a public undertaking may enjoy over an equivalent private one and for ensuring neutrality of treatment between public and private undertakings;

(ii) it has proved itself practical to the Commission in numerous cases;

(iii) it has been confirmed by the Court (see particularly paragraphs 20 and 21 above), and

(iv) it has been approved by the Council in the steel and shipbuilding sector.

Unless this clarification is implemented there is a danger not only of lack of transparency, but also of discrimination against private undertakings which do not have the same links with the public authorities nor the same access to public funds. The current communication is a logical development of existing policy rather than any radical new departure and is necessary to explain the application of the principle to a wider number of situations and a wider range of funds. In fact the Court, the Commission and the Council have already applied the principle of the market economy investor in a limited number of cases to the forms of public funds other than equity which are also the object of this communication — i.e. guarantees, loans, return on capital.[1]

24. Guarantee. In *IOR/Finalp* (op. cit.) the Commission considered that when a State holding company became the one and only owner of an ailing company (thereby exposing it to unlimited liability under Italian commercial law) this was equivalent to taking extra risk by giving, in effect, an open-ended guarantee. The Commission using its well established principle stated that a market economy investor would normally be reluctant to become the one and only shareholder of a company if as a consequence he must assume unlimited liability for it; he will make sure that this additional risk is outweighed by additional gains.

25. Loan. In *Boch* (op. cit.) the Court stated (paragraphs 12 and 13): 'By virtue of Article 92(1) ... the provisions of the Treaty concerning State aid apply to aid granted by a Member State or through State resources in any form whatsoever. It follows ... that no distinction can be drawn between aid granted in the form of loans and aid granted in the form of a subscription of capital of an undertaking. An appropriate way of establishing whether such a measure is a State aid is to apply the criterion ... of determining to what extent the undertaking would be able to obtain the sums in question on the private capital markets.'

26. Return on capital. When it opened the Article 88 procedure of the ECSC Treaty (letter to the Italian Government of 6 May 1988) in the *Finsider/ILVA* case, the Commission considered that the loans granted by State credit institutions were not granted to the undertaking in question under conditions acceptable to a private investor operating under normal market conditions, but were dependent on an (implicit) guarantee of the State and as such consti-

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[1] It should be noted that this is not an exhaustive list of the different forms of financing which may entail aid. The Commission will act against the provision of any other advantages to public undertakings in a tangible or intangible form that may constitute aid.

tuted State aid. In fact at a later date this implicit guarantee was made explicit when the debts were honoured. The opening of the procedure led to a decision with the unanimous approval of the Council[1] which imposed conditions on the enterprise in question to ensure that its viability would be reestablished, and a minimum return on capital should be earned.

V. PRACTICALITY OF THE MARKET ECONOMY INVESTOR PRINCIPLE

27. The practical experience gained by the Commission from the application of State aid rules to public enterprises and the general support among the Community institutions for the basic themes of the market economy investor principle confirm the Commission's view that it is, as such, an appropriate yardstick to determine whether, or not aid exists. However, it is noted that the majority of cases to which the mechanism has been applied have been of a particular nature and the wider application of the mechanism may appear to cause certain difficulties. Some further explanations are therefore warranted. In addition, the fear has been expressed that the application of the market economy investor principle could lead to the Commission's judgment replacing the investor and his appreciation of investment projects. In the first place this criticism can be refuted by the fact that this principle has already shown itself to be both an appropriate and practical yardstick for determining which public funds constitute aid in numerous individual cases. Secondly it is not the aim of the Commission in the future, just as it has not been in the past, to replace the investor's judgment. Any requests for extra finance naturally call for public undertakings and public authorities, just as they do for private undertakings and the private providers of finance, to analyse the risk and the likely outcome of the project.

In turn, the Commission realizes that this analysis of risk requires public undertakings, like private undertakings, to exercise entrepreneurial skills, which by the very nature of the problem implies a wide margin of judgment on the part of the investor. Within that wide margin the exercise of judgment by the investor cannot be regarded as involving State aid. It is in evaluation of the justification for the provision of funds that the Member State has to decide if a notification is necessary in conformity with its obligation under Article 93(3). In this context, it is useful to recall the arrangements of the 1984 communication on public authorities' holdings which stated that where there is a presumption that a financial flow from the State to a public holding constitutes aid, the Commission shall be informed in advance. On the basis of an examination of the information received it will decide within 15 working days whether the information should be regarded as notification for the purposes of Article 93(3) (point 4.4.2). Only where there are no objective grounds to reasonably expect that an investment will give an adequate rate of return that would be acceptable to a private investor in a comparable private undertaking operating under normal market conditions, is State aid involved even when this is financed wholly or partially by public funds. It is not the Commission's intention to analyse investment projects on an *ex-ante* basis (unless notification is received in advance in conformity with Article 93(3)).

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[1] OJ L 86, 31.3.1989, p. 76. See also the Commission communication to the Council of 25 October 1988 — SEC(88) 1485 final, and point 207 of the Fourteenth Competition Report. In fact, the whole aim of the steel code for all Member States was to restore viability through a minimum return and self-financing according to market principles.

28. There is no question of the Commission using the benefit of hindsight to state that the provision of public funds constituted State aid on the sole basis that the out-turn rate of return was not adequate. Only projects where the Commission considers that there were no objective or bona fide grounds to reasonably expect an adequate rate of return in a comparable private undertaking at the moment the investment/financing decision is made can be treated as State aid. It is only in such cases that funds are being provided more cheaply than would be available to a private undertaking, i.e. a subsidy is involved. It is obvious that, because of the inherent risks involved in any investment, not all projects will be successful and certain investments may produce a subnormal rate of return or even be a complete failure. This is also the case for private investors whose investment can result in subnormal rates of return or failures. Moreover such an approach makes no discrimination between projects which have short or long-term pay-back periods, as long as the risk are adequately and objectively assessed and discounted at the time the decision to invest is made, in the way that a private investor would.

29. This communication, by making clearer how the Commission applies the market economy investor principle and the criteria used to determine when aid is involved, will reduce uncertainty in this field. It is not the Commission's intention to apply the principles in this communication (in what is necessarily a complex field) in a dogmatic or doctrinaire fashion. It understands that a wide margin of judgment must come into entrepreneurial investment decisions. The principles have however to be applied when it is beyond reasonable doubt that there is no other plausible explanation for the provision of public funds other than considering them as State aid. This approach will also have to be applied to any cross-subsidization by a profitable part of a public group of undertakings of an unprofitable part. This happens in private undertakings when either the undertaking in question has a strategic plan with good hopes of long-term gain, or that the cross-subsidy has a net benefit to the group as a whole. In cases where there is cross-subsidization in public holding companies the Commission will take account of similar strategic goals. Such cross-subsidization will be considered as aid only where the Commission considers that there is no other reasonable explanation to explain the flow of funds other than that they constituted aid. For fiscal or other reasons certain enterprises, be they public or private, are often split into several legally distinct subsidiaries. However, the Commission will not normally ask for information of the flow of funds between such legally distinct subsidiaries of companies for which one consolidated report is required.

30. The Commission is also aware of the differences in approach a market economy investor may have between his minority holding in a company on the one hand and full control of a large group on the other hand. The former relationship may often be characterized as more of a speculative or even short-term interest, whereas the latter usually implies a longer-term interest. Therefore, where the public authority controls an individual public undertaking or group of undertakings it will normally be less motivated by purely short-term profit considerations than if it had merely a minority/non-controlling holding and its time horizon will accordingly be longer. The Commission will take account of the nature of the public authorities' holding in comparing their behaviour with the benchmark of the equivalent market economy investor. This remark is also valid for the evaluation of calls for extra funds to financially restructure a company as opposed to calls for funds required to finance specific

projects.[1] In addition the Commission is also aware that a market economy investor's attitude is generally more favourably disposed towards calls for extra finance when the undertaking or group requiring the extra finance has a good record of providing adequate returns by way of dividends or capital accumulation on past investments. Where a company has underperformed in this respect in comparison with equivalent companies, this request for finance will normally be examined more sceptically by the private investor/owner called upon to provide the extra finance. Where this call for finance is necessary to protect the value of the whole investment the public authority like a private investor can be expected to take account of this wider context when examining whether the commitment of new funds is commercially justified. Finally where a decision is made to abandon a line of activity because of its lack of medium/long-term commercial viability, a public group, like a private group, can be expected to decide the timing and scale of its run down in the light of the impact on the overall credibility and structure of the group.

31. In evaluating any calls for extra finance a shareholder would typically have at his disposal the information necessary to judge whether he is justified in responding to these calls for additional finance. The extent and detail of the information provided by the undertaking requiring finance may vary according to the nature and volume of the funding required, to the relationship between the undertaking and the shareholder and even to the past performance of the undertaking in providing an adequate return.[2] A market economy investor would not usually provide any additional finance without the appropriate level of information. Similar considerations would normally apply to public undertakings seeking finance. This financial information in the form of the relevant documentation should be made available at the specific request of the Commission if it is considered that it would help in evaluating the investment proposals from the point of view of deciding whether or not their financing constitutes aid.[3] The Commission will not disclose, information supplied to it as it is covered by the obligation of professional secrecy. Therefore, investment projects will not be scrutinized by the Commission in advance except where aid is involved and prior notification in conformity with Article 93(3) is required. However, where it has reasonable grounds to consider that aid may be granted in the provision of finance to public undertakings, the Commission, pursuant to its responsibilities under Articles 92 and 93, may ask for the information from Member States necessary to determine whether aid is involved in the specific case in question.

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[1] This may be particularly important for public undertakings that have been deliberately under-capitalized by the public authority owner for reasons extraneous to commercial justifications (e.g. public expenditure restrictions).

[2] Minority shareholders who have no 'inside' information on the running of the company may require a more formal justification for providing funds than a controlling owner who may in fact be involved at board level in formulating strategies and is already party to detailed information on the undertaking's financial situation.

[3] The provision of this information on request falls within scope of the Commission's powers of investigation of aid under Articles 92 and 93 in combination with Article 5 of the EEC Treaty and under Article 1(c) of the transparency Directive which states that the use to which public funds are put should be made transparent.

VI. COMPATIBILITY OF AID

32. Each Member State is free to choose the size and nature of its public sector and to vary it over time. The Commission recognizes that when the State decides to exercise its right to public ownership, commercial objectives are not always the essential motivation. Public enterprises are sometimes expected to fulfil non-commercial functions alongside, or in addition to, their basic commercial activities. For example, in some Member States public companies may be used as a locomotive for the economy, as part of efforts to counter recession, to restructure troubled industries or to act as catalysts for regional development. Public companies may be expected to locate in less-developed regions where costs are higher or to maintain employment at levels beyond purely commercial levels. The Treaty enables the Commission to take account of such considerations where they are justified in the Community interest. In addition the provision of some services may entail a public service element, which may even be enforced by political or legal constraints. These non-commercial objectives/functions (i.e. social goods) have a cost which ultimately has to be financed by the State (i.e. taxpayers) either in the form of new finance (e.g. capital injections) or a reduced rate of return on capital invested. This aiding of the provision of public services can, in certain circumstances, distort competition. Unless one of the derogations of the Treaty is applicable, public undertakings are not exempted from the rules of competition by the imposition of these non-commercial objectives.

33. If the Commission is to carry out its duties under the Treaty, it must have the information available to determine whether the financial flows to public undertakings constitute aid, to quantify such aid and then to determine if one of the derogations provided for in the Treaty is applicable. This communication limits itself to the objective of increasing transparency for the financial flows in question which is an essential first step. To decide, as a second step, whether any aid that is identified is compatible, is a question which is not dealt with because such a decision will be in accordance with the well known principles used by the Commission in the area to which no change is envisaged. (It should be stressed that the Commission is concerned with aid only when it has an impact on intra-Community trade and competition. Thus, if aid is granted for a non-commercial purpose to a public undertaking which has no impact on intra-Community trade and competition, Article 92(1) is not applicable). This obligation of submitting to Community control all aid having a Community dimension is the necessary counterpart to the right of Member States being able to export freely to other Member States and is the basis of a common market.

VII. DIFFERENT FORMS OF STATE INTERVENTION

34. In deciding whether any public funds to public undertakings constitute aid, the Commission must take into account the factors discussed below for each type of intervention covered by this communication — capital injections, guarantees, loans, return on investment.[1] These factors are given as a guide to Member States of the likely Commission attitude in individual cases. In applying this policy the Commission will bear in mind the practicability of the market economy investor principle described above. This communication takes over the definition of public funds and public undertakings used in the transparency

[1] This list is not exhaustive.

Directive. This is given as guidance for Member States as to the general attitude of the Commission. However, the Commission will obviously have to prove in individual cases of application of this policy that public undertakings within the meaning of Article 90 and State resources within the meaning of Article 92(1) are involved, just as it has in individual cases in the past. As far as any provision of information under the transparency Directive is concerned, these definitions have been upheld by the Court for the purposes of the Directive and there is no further obligation on the Commission to justify them.

Capital injections

35. A capital injection is considered to be an aid when it is made in circumstances which would not be acceptable to an investor operating under normal market conditions. This is normally taken to mean a situation where the structure and future prospects for the company are such that a normal return (by way of dividend payments or capital appreciation) by reference to a comparable private enterprise cannot be expected within a reasonable time. Thus, the 1984 communication on capital injections remains valid.

A market economy investor would normally provide equity finance if the present value[1] of expected future cash flows from the intended project (accruing to the investor by way of dividend payments and/or capital gains and adjusted for risk) exceed the new outlay. The context within which this will have to be interpreted was explained above in paragraphs 27 to 31.

36. In certain Member States investors are obliged by law to contribute additional equity to firms whose capital base has been eroded by continuous losses to below a predetermined level. Member States have claimed that these capital injections cannot be considered as aid as they are merely fulfilling a legal obligation. However, this 'obligation' is more apparent than real. Commercial investors faced with such a situation must also consider all other options including the possibility of liquidating or otherwise running down their investment. If this liquidation or running down proves to be the more financially sound option taking into account the impact on the group and is not followed, then any subsequent capital injection or any other State intervention has to be considered as constituting aid.

37. When comparing the actions of the State and those of a market economy investor in particular when a company is not making a loss, the Commission will evaluate the financial position of the company at the time it is/was proposed to inject additional capital. On the basis of an evaluation of the following items the Commission will examine whether there is an element of aid contained in the amount of capital invested. This aid element consists in the cost of the investment less the value of the investment, appropriately discounted. It is stressed that the items listed below are indispensable to any analysis but not necessarily sufficient since account must also be taken of the principles set out in paragraphs 27 to 31 above and of the question whether the funds required are for investment projects or a financial restructuring.

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[1] Future cash flows discounted at the company's cost of capital (in-house discount rate).

37.1. Profit and loss situation. An analysis of the results of the company spread over several years. Relevant profitability ratios would be extracted and the underlying trends subject to evaluation.

37.2. Financial indicators. The debt/equity ratio (gearing of the company) would be compared with generally accepted norms, industry-sector averages and those of close competitors, etc. The calculation of various liquidity and solvency ratios would be undertaken to ascertain the financial standing of the company (this is particularly relevant in relation to the assessment of the loan-finance potential of a company operating under normal market conditions). The Commission is aware of the difficulties involved in making such comparisons between Member States due in particular to different accounting practices or standards. It will bear this in mind when choosing the appropriate reference points to be used as a comparison with the public undertakings receiving funds.

37.3. Financial projections. In cases where funding is sought to finance an investment programme then obviously this programme and the assumptions upon which it is based have to be studied in detail to see if the investment is justified.

37.4. Market situation. Market trends (past performance and most importantly future prospects) and the company's market share over a reasonable time period should be examined and future projections subjected to scrutiny.

Guarantees

38. The position currently adopted by the Commission in relation to loan guarantees has recently been communicated to Member States.[1] It regards all guarantees given by the State directly or by way of delegation through financial institutions as falling within the scope of Article 92(1) of the EEC Treaty. It is only if guarantees are assessed at the granting stage that all the distortions or potential distortions of competition can be detected. The fact that a firm receives a guarantee even if it is never called in may enable it to continue trading, perhaps forcing competitors who do not enjoy such facilities to go out of business. The firm in question has therefore received support which has disadvantaged its competitors i.e. it has been aided and this has had an effect on competition. An assessment of the aid element of guarantees will involve an analysis of the borrower's financial situation (see paragraph 37 above). The aid element of these guarantees would be the difference between the rate which the borrower would pay in a free market and that actually obtained with the benefit of the guarantee, net of any premium paid for the guarantee. Creditors can only safely claim against a government guarantee where this is made and given explicitly to either a public or a private undertaking. If this guarantee is deemed incompatible with the common market following evaluation with respect to the derogations under the Treaty, reimbursement of the value of any aid will be made by the undertaking to the government even if this means a declaration of bankruptcy but creditors' claims will be honoured. These provisions apply equally to public and private undertakings and no additional special arrangements are necessary for public enterprises other than the remarks made below.

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[1] Communication to all Member States dated 5 April 1989, as amended by letter of 12 October 1989.

38.1. Public enterprises whose legal status does not allow bankruptcy are in effect in receipt of permanent aid on all borrowings equivalent to a guarantee when such status allows the enterprises in question to obtain credit on terms more favourable than would otherwise be available.

38.2. Where a public authority takes a hold in a public undertaking of a nature such that it is exposed to unlimited liability instead of the normal limited liability, the Commission will treat this as a guarantee on all the funds which are subject to unlimited liability.[1] It will then apply the above described principles to this guarantee.

Loans

39. When a lender operating under normal market economy conditions provides loan facilities for a client, he is aware of the inherent risk involved in any such venture. The risk is of course that the client will be unable to repay the loan. The potential loss extends to the full amount advanced (the capital) and any interest due but unpaid at the time of default. The risk attached to any loan arrangement is usually reflected in two distinct parameters:

(a) the interest rate charged;

(b) the security sought to cover the loan.

40. Where the perceived risk attached to the loan is high then *ceteris paribus* both (a) and (b) above can be expected to reflect this fact. It is when this does not take place in practice that the Commission will consider that the firm in question has had an advantage conferred on it, i.e. has been aided. Similar considerations apply where the assets pledged by a fixed or floating charge on the company would be insufficient to repay the loan in full. The Commission will in future examine carefully the security used to cover loan finance. This evaluation process would be similar to that proposed for capital injections (see paragraph 37 above).

41. The aid element amounts to the difference between the rate which the firm should pay (which itself is dependent on its financial position and the security which it can offer on foot of the loan) and that actually paid. (This one-stage analysis of the loan is based on the presumption that in the event of default the lender will exercise his legal right to recover any monies due to him). In the extreme case, i.e. where an unsecured loan is given to a company which under normal circumstances would be unable to obtain finance (for example because its prospects of repaying the loan are poor) then the loan effectively equates a grant payment and the Commission would evaluate it as such.

42. The situation would be viewed from the point of view of the lender at the moment the loan is approved. If he chooses to lend (or is directly or indirectly forced to do so as may be the case with State-controlled banks) on conditions which could not be considered as normal in banking terms, then there is an element of aid involved which has to be quantified. These provisions would of course also apply to private undertakings obtaining loans from public financial institutions.

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[1] See paragraph 24 above.

Return on investments

43. The State, in common with any other market economy investor, should expect a normal return obtained by comparable private undertakings on its capital investments by way of dividends or capital appreciation.[1] The rate of return will be measured by the profit (after depreciation but before taxation and disposals) expressed as a percentage of assets employed. It is therefore a measure that is neutral with respect to the form of finance used in each undertaking (i.e. debt or equity) which for public undertakings may be decided for reasons extraneous to purely commercial considerations. If this normal return is neither forthcoming beyond the short term nor is likely to be forthcoming in the long term (with the uncertainty of this longer-term future gain not appropriately accounted for) and no remedial action has been taken by the public undertaking to rectify the situation, then it can be assumed that the entity is being indirectly aided as the State is foregoing the benefit which a market economy investor would expect from a similar investment. A normal rate of return will be defined with reference where possible being made to comparable private companies. The Commission is aware of the difficulties involved in making such comparisons between Member States — see particularly paragraph 37. In addition the difference in capital markets, currency fluctuations and interest rates between Member States further complicate international comparisons of such ratios. Where accounting practices even within a single Member State make accurate asset valuation hazardous, thereby undermining rate of return calculations, the Commission will examine the possibility of using either adjusted valuations or other simpler criteria such as operating cash flow (after depreciation but before disposals) as a proxy of economic performance.

When faced with an inadequate rate of return a private undertaking would either take action to remedy the situation or be obliged to do so by its shareholders. This would normally involve the preparation of a detailed plan to increase overall profitability. If a public undertaking has an inadequate rate of return, the Commission could consider that this situation contains elements of aid, which should be analysed with respect to Article 92. In these circumstances, the public undertaking is effectively getting its capital cheaper than the market rate, i.e. equivalent to a subsidy.

44. Similarly, if the State forgoes dividend income from a public undertaking and the resultant retained profits do not earn a normal rate of return as defined above then the company in question is effectively being subsidized by the State. It may well be that the State sees it as preferable for reasons not connected with commercial considerations to forgo dividends (or accept reduced dividend payments) rather than make regular capital injections into the company. The end result is the same and this regular 'funding' has to be treated in the same way as new capital injections and evaluated in accordance with the principles set out above.

Duration

45. After an initial period of five years, the Commission will review the application of the policy described in this communication. On the basis of this review, and after consulting Member States, the Commission may propose any modifications which it considers appropriate.

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[1] The foregoing of a normal return on public funds falls within the scope of the transparency Directive.

III — State guarantees

Commission letter to Member States SG(89) D/4328 of 5 April 1989

Dear Sir

The Commission has the honour to inform you of its decision to examine in future State guarantees under the following conditions.

It regards all guarantees given by the State directly or given by the State's delegation through financial institutions as falling within the scope of Article 92(1) of the EEC Treaty.

Each case of the granting of State guarantees has to be notified under Article 93(3) of the EEC Treaty whether the granting is done in application of an existing general guarantee scheme or in application of a specific measure.

The Commission will accept the guarantees only if their mobilization is contractually linked to specific conditions which may go as far as the compulsory declaration of bankruptcy of the benefiting undertaking or any similar procedure. These conditions will have to be agreed at the initial, and only, examination by the Commission of the proposed guarantee/State aid within the normal procedures of Articles 93(3), at the granting stage.

Should the occasion arise that a Member State wants to mobilize the guarantee under different conditions than those initially agreed at the granting stage, the Commission will then consider the mobilization of the guarantee as creating a new aid which has to be notified under Article 93(3) of the EEC Treaty.

From the point of view of controlling the effect of guarantees on competition and intra-Community trade, the Commission believes that the above decision will enable it to be in a position where it can prevent large amounts of State aid with possibly high intensity being granted to certain undertakings at the mobilization level of guarantees.

Yours faithfully

Commission letter to Member States SG(89) D/12772 of 12 October 1989

Dear Sir

By letter dated 5 April 1989, I sent you a Commission communication concerning State guarantees.

Several Member States have since told the Commission that the communication appears to oblige Member States to notify all cases where a guarantee is given. I should therefore like to make it clear that the Commission intends only to examine schemes establishing guarantees and not every case in which a guarantee is granted under the scheme, except where a guarantee is granted outside a scheme.

As specified in the communication, the Commission will approve the award of guarantees only if it is contractually subject to specific conditions. If the latter are correctly provided for in the schemes, the Commission will accept such awards without prior notification.

Yours faithfully

D — Rules on the assessment for approval of State aid with horizontal objectives

I — Research and development aid

Community framework for State aid for research and development[1]

1. The role of research and development in improving competitiveness and increasing innovative competition

1.1. The Commission has called for a major drive to bring about a genuine European Community in technology, with the fundamental objective of 'strengthening the technological base of European industry and developing its international competitiveness'.[2]

1.2. Encouragement of research and development in the Community is a key element in this strategy. Over the past decade, the rate of growth in the production of high technological goods in the Community has been much slower than in the US and Japan. Failure to reverse this trend through a concentrated mobilization of resources will cause the economic position of the Community to deteriorate, with increased technological dependence and a reduced capacity for innovation leading eventually to a loss of competitiveness, poorer trade performance, slower growth and a falling standard of living.

1.3. The Commission's strategy has been incorporated in Community programmes designed to exploit the potential of the European market and the synergetic effects likely to result from joint efforts by the Community, the Member States, and the firms and research centres concerned. The Esprit, RACE and BRITE programmes demonstrate this commitment to support research and development in the Community.

1.4. The aim of competition policy is to improve the international competitiveness of Community industry. The competition rules must therefore be applied constructively to encourage cooperation which helps new technology to be disseminated. In the control of State aid, regard must be had to the need for resources to be channelled to the industries contributing to improved European competitiveness.

1.4.1. With respect to cooperation, the Commission in 1984 adopted two block exemption regulations for joint exploitation of the results of research and development and patent licensing, which demonstrate its support for agreements of this nature, which can increase competition through the emergence of new products and processes and improve competitiveness. It will issue guidance on similar lines in the near future on know-how licensing.

1.4.2. As far as State aid is concerned, the Commission had traditionally taken a favourable view of aid for research and development when it has come to scrutinize individual schemes

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[1] OJ C 83, 11.4.1986, p. 2.

[2] Memorandum 'Towards a European technology Community', COM(85) 350 final.

under Article 92 of the EC Treaty. This favourable attitude is justified by several factors: the aims of such aid, the often considerable financing requirements for R&D, the risks attached and, given the distance from the market-place of such projects, the reduced likelihood of distortions of competition or trade between Member States. This Community framework is designed to continue the established policy and further clarify it in a like manner to existing frameworks such as those for environmental and regional aid.

It takes account of the Commission's position, stated in the memorandum 'Towards a European technology Community' that 'it is essential that national efforts, which will mobilize the greater part of resources available for technological R&D, should be targeted on common objectives and a clear identification of the priorities adopted by each partner'.

2. Applicability of the State aid rules to aid for R&D

2.1. Article 92(1) of the EC Treaty defines the conditions under which State aid is incompatible with the common market and the exceptions which may be made to this rule. Incompatible aid is that which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as they affect trade between Member States.

2.2. In so far as fundamental research is designed to generally increase scientific and technical knowledge and not directed to specific commercial objectives, State aid for such research, which is normally carried out in the market sector of the economy, will not fulfil the conditions of Article 92(1).

However, in exceptional cases where such research is carried out in, or for particular firms, the Commission cannot rule out the possibility that the aid does fall within Article 92(1).

2.3. Aid for R&D activities by higher education or research establishments is not covered by Article 92 unless these are conducted on a contract basis or in collaboration with the private sector.

3. Assessment of aid for R&D under Article 92 of the EC Treaty

3.1. Where aid to undertakings for R&D activities does fulfil the conditions of Article 92(1) and is therefore subject to examination by the Commission, it may be considered compatible with the common market under one of the exceptions provided for in Article 92(3).

3.2. Any aid which after examination by the Commission is shown to be designed to promote the execution of an important project of common European interest may qualify for the exception provided for in Article 92(3)(b). The Commission may consider such aid to be compatible with the common market solely on that basis.

3.3. All other aid for R&D that falls within Article 92(1) but does not qualify for the exception provided for in Article 92(3)(b) may qualify for the exception provided for in Article 92(3)(c). In such cases, as well as examining whether the aid facilitates the development of certain activities or certain regions, the Commission must also evaluate whether it is likely

to adversely affect trading conditions within the Community and whether this effect would be contrary to the common interest.

3.4. As the Court of Justice has confirmed,[1] the assessment for the applicability of Article 92(3)(c) must be made from the Community standpoint and not merely from that of the national interest.

4. Notification of proposed aid for R&D

4.1. The notification procedure provided for in Article 93(3) which applies for all aid including that for R&D covered by this framework serves in the first place to enable the Commission to establish which cases do not fulfil the conditions of Article 92(1) (and so do not pose any problem of compatibility with the common market) and which cases fail to be examined under Article 92.

4.2. In the second place, it serves to enable the Commission, where a case fulfils the conditions of Article 92(1), to establish whether it qualifies for one of the abovementioned exceptions.

4.3. The notification must satisfy the Commission as to the transparency of the proposed aid scheme.

4.3.1. The Commission aims to obtain the highest possible degree of transparency in the application of aid schemes. This means that there must be a clear statement of the objectives to be achieved, the beneficiaries, etc. All the different categories of costs the aid is designed to reduce must be specified and they must be given in such a form that their intensity in relation to these costs can be calculated.

4.3.2. This requirement, however, need not restrict the ways in which governments channel public funds to undertakings to encourage R&D. Aid may take many forms, for example, direct grants, soft loans, whether or not these are repayable in case of success, guarantees, fiscal aid, access-free or below cost to public research facilities, etc. The Commission has developed evaluation and quantification techniques to analyse the various forms of aid which are applicable for aid to R&D.

5. Intensity

In assessing whether Article 92(3)(c) is applicable, the Commission will be guided by the following principles with regard to the intensity of the proposed aid (see also Annexes I and II).

5.1. The intensity of aid that may be accepted will be assessed by the Commission on a case-by-case basis. The assessment will take into consideration the nature of the project or programme, the technical and financial risk involved, overall policy considerations related to the competitiveness of European industry, as well as the risks of distortion of competition and effect on trade between Member States.

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[1] *Philip Morris* judgment.

5.2. A general evaluation of such risks leads the Commission to consider that basic industrial research may qualify for higher levels of aid than those for applied research and development activities which are more closely related to the market introduction of R&D results and, therefore, if aided, could more easily lead to distortions of competition and trade.

5.3. Taking account of these factors, and considering that it is necessary to ensure that there is a substantial volume of own funds from the recipient firm involved in the project, the Commission considers that, as a general rule, the level of aid for basic industrial research should not be more than 50% of the gross costs of the project or programme. As the activity being aided gets nearer to the market-place, i.e. covers the areas of applied research and development, the Commission in its examination and evaluation of national proposals will look in principle for progressively lower levels of aid. It will rely on the Member State concerned to indicate clearly the type of R&D activity involved and will utilize fully its own expert services in examining these proposals.

5.4. The Commission will consider higher aid levels in cases where particular projects are recognized to be of special economic importance, linked to relevant Community projects or programmes, located in the least-favoured areas of the Community, related to specific welfare services or which imply a very high specific risk. Availability of the results of the R&D involved on the widest possible basis will also be taken into account. Special allowance can also be made for aid directed genuinely at smaller and medium-sized enterprises; in this case for example, aid may be acceptable at levels 10 percentage points higher than in other cases. However, in no case should the total value of aid be so high that the contribution of the recipient firm from its own resources is so reduced as to diminish that firm's commitment to the project in question.

5.5. In view of their intrinsic importance and the role played by larger companies in intra-Community trade and competition, the Commission will require individual prior notification pursuant to Article 93(3) of cases where aid is given to an undertaking cooperating with an academic or other public institute in an R&D project or programme involving total expenditure on the project or programme in excess of ECU 20 million. If an R&D project or programme being aided is carried out exclusively by one or more undertakings in the market sector a lower threshold may be applied.

6. Member State reports

For each aid scheme it authorizes, the Commission will as a general rule request an annual report on its application. As required by Article 93(1) the Commission will, on the basis of these reports, be in a position to monitor the application of the scheme and, if needed propose appropriate measures should the scheme in question create distortions of competition contrary to the common interest, for example, by undue concentration on specific sectors or firms.

7. Duration

After an initial period of five years, the Commission will make a full review of its policy in the context of the present framework taking particular account of the experience gained from

the examination of aid schemes and the progress made in this field. The results of this review will be communicated to Member States.

8. Implementation

8.1. As part of its programme for implementing these guidelines, the Commission will make a complete inventory of R&D aid available in each Member State. It will hold the bilateral discussions necessary to obtain the information required and examine the aid schemes in cooperation with the Member State concerned. As necessary it will propose appropriate measures to solve problems to which existing aid may give rise in view of the implementation of the guidelines. The complete inventory may if required be the subject of a multilateral meeting between the Commission and the Member States.

8.2. Aid proposals for R&D must contribute to Treaty objectives as set out in Article 92(3) and have as their effect the encouragement of additional effort in this field over and above the normal operations which firms carry out in any case in their day-to-day operations or to respond to exceptional conditions for which their own resources are too limited. The objective of the aid should be to serve as an incentive and to compensate for special risks and costs. In cases where this incentive effect is not evident, or the research and development activity is too close to the actual production and marketing stage, the general positive attitude held by the Commission towards aid to R&D may not necessarily be applicable. Special attention will be given to such aid to ensure that they do not become the equivalent of operating aid.

8.3. In line with existing Community policies, the Commission will apply the above guidelines to companies in the public sector, making full use of the policy instruments it has available.

8.4. These guidelines will be implemented consistently with other existing Community policy statements in the field of State aid and the provisions of the other European Treaties and legislation made pursuant to them. This applies in particular to the case of State aid in the nuclear field, having regard to the provisions of Article 232(2) of the EC Treaty as well as those of the Euratom Treaty and, as concerns the area of defence, the provisions of Article 223 of the EC Treaty.

9. Further policy developments

9.1. The Commission intends in due course to examine with Member States how common measures can be taken in order to ensure the implementation of the principle of full payment for the commissioning of R&D from State institutions of higher education, specific government laboratories, and semi-public or private research centres. While the Commission recognizes that the support of such institutions is an important contribution to the promotion of R&D it is also possible that the public financing of such institutions may represent aid in the form of transfer of R&D results without payment or against payment which is less than the real cost price.

9.2. One area/type of aid of particular importance in the R&D field is the extensive use of large research or development contracts placed by government departments with companies in the competitive market sector, which may include substantial effective aid elements.

It is in the common interest that the results of such contract work be widely disseminated to all interested parties. In order to obtain transparency in this field, the Commission intends to carry out an examination of the conditions under which such contracts are granted and apply fully the provisions of Article 93(3) in their regard. It will pursue a similar policy, consistent with the relevant Treaty provisions in respect of the commercial market spin-offs and aid implications of research contracts involving defence expenditure.

ANNEX I

DEFINITION OF THE STAGES OF R&D FOR THE PURPOSES OF ARTICLE 92 OF THE EC TREATY

1. This framework is intended to cover aid to R&D directly planned and linked to the ultimate production and marketing of new products, processes or services in as far as they fulfil the conditions of Article 92(1) of the EC Treaty.

The Commission considers it is possible to make the distinctions between the types of R&D activities outlined at paragraphs 3 and 4 below. These definitions are designed to help Member States to formulate their notifications. They are intended to be indicative not normative.

2. As stated at paragraph 2.2 of the framework, aid for fundamental research normally does not fulfil the conditions of Article 92(1). By fundamental research, the Commission understands an enlargement of general scientific and technical knowledge not linked to industrial or commercial objectives.

3. Basic industrial research is defined as original theoretical or experimental work whose objective is to achieve new or better understanding of the laws of science and engineering as they might apply to an industrial sector or the activities of a particular undertaking.

4. Applied research and development: The Commission considers that the former covers investigation or experimental work based on the results of basic industrial research to acquire new knowledge to facilitate the attainment of specific practical objectives such as the creation of new products, production processes or services. It could normally be said to end with the creation of a first prototype. Development is considered to cover work based on applied research aimed at establishing new or substantially improved products, production processes or services up to but not including industrial application and commercial exploitation. This stage would normally include pilot and demonstration projects and such further development work as necessary, culminating in the production information package or equivalent.

5. The Commission will use these working definitions as indicators reflecting the proximity of the activity to the market-place and therefore relate them to the aid intensities being proposed when it examines notifications from Member States. However, given the complexities involved in defining R&D activities, it will use the definitions and objectives specified by the Member States in their proposals in order to place their action at the correct point of market proximity. It will not demand or seek strict adherence to predetermined categories or definitions of R&D activities.

ANNEX II

ELIGIBLE R&D COSTS FOR THE PURPOSE OF CALCULATING THE AID INTENSITY

The following will be considered to be eligible costs for the purpose of calculating the intensity of aid for R&D activities:

(i) personnel costs (researchers, technicians, other supporting staff) calculated as a sum of the total amount needed to carry out the project;

(ii) other running costs calculated in the same way (costs of materials, supplies, etc.);

(iii) instruments and equipment, land and buildings. These costs may be taken into consideration only in so far as the assets are used exclusively for R&D. Where necessary, the costs must be assessed pro rata between these and other projects or activities for which the assets may be used;

(iv) consultancy and equivalent services including bought-in research, technical knowledge, patents, etc.;

(v) additional overhead costs incurred directly as a result of the R&D project or programme being promoted.

Commission letter to Member States of 4 November 1986 with Annex II

(Standard information to be provided when notifying aid for R&D)

Dear Sir

By letter dated 25 March 1986 (SG(86) D/3702) your government was sent the Commission's policy statement a 'Community framework on State aid for research and development'. It has also been published in the *Official Journal of the European Communities* (OJ C 83, 11.4.1986). These Commission policy guidelines were adopted following extensive multilateral consultation with Member States.

All State aid including that for research and development, whether for purely national programmes or projects or for multinational ones, is subject to the provisions of Articles 92 and following of the EEC Treaty. These provisions impose upon Member States (Article 93(3)EEC) an obligation 'that the Commission shall be informed in sufficient time to enable it to submit its comments of any plans to grant or alter aid'. In accordance with established case–law any aid granted before the Commission has taken its decision on the compatibility of the aid with the common market is granted illegally and may be subject to a demand for repayment. The Commission has to decide after detailed examination whether an aid fulfils the conditions of Article 92(1), and if so whether it can benefit from any of the derogations foreseen in Article 92(3).

The Commission conducts this examination of State aid to research and development with a favourable prejudgment on account of the contribution this aid can make to achieve the Community goals set out in Article 2 of the EEC Treaty; the risks attached to R&D; the long pay back periods which may be involved so that the activity often would not take place without aid, and finally to the consideration that the distance from the market-place of such activity means that the threat of distortions of competition contrary to the common interest may be limited. Moreover, the Commission fully recognizes the role that State aid can play in the R&D process. However, it cannot be ignored that State aid strengthens the treasuries of undertakings engaged in intra-Community trade benefiting from aid against their competitors who do not receive such aid. A distortion of competition is created thereby. The aid in question can only be considered compatible with the common market therefore if it contributes to one of the objectives set out in the derogations of Article 92(3) of the EEC Treaty.

It is of primary importance to Commission policy that all plans to grant or alter aid are notified. This process of notification by Member States is fundamental to the exercise of the Commission's role in the field of State aid. For this reason the Commission has for some time been implementing a policy that aid which is not notified, especially if a request has been made to Member States concerned to do so, has to be made subject to the procedure laid down in Article 93(2) of the EEC Treaty. The opening of this procedure in such cases underlines in particular that the aid in question is being granted illegally and may be subject to a demand for repayment irrespective of whether, or not, on examination it is found to be compatible with the common market within the meaning of Article 92(3) of the EEC Treaty. The procedure demands that the opinions of other Member States are invited and taken into account and that a notice is published in the Official Journal which invites interested third parties to intervene. Alternatively the Commission may proceed against the aid in question on the basis of Article 169 of the EEC Treaty.

Work done by and for the Commission shows that the aid at national level to the benefit of research and development listed below, a list which is not considered necessarily to be exhaustive, appears to have been implemented by your government without its having been notified to the Commission and hence without being subject to examination or a final decision. Therefore, it is being granted illegally. The Commission requests that within six weeks of the date of this letter your government notifies to it, pursuant to Article 93(3), the aid schemes in Annex I and every individual project or programme of application in which the total cost, i.e. State aid and contributions from other parties involved, exceed ECU 20 million. It suggests using for each notification the attached scheme of standard information (Annex II) designed by the services of the Commission to facilitate the work of notification by the relevant departments of your administration and rapid analysis and decision-taking by the Commission.

The Commission underlines the importance that each notification you make be as complete as possible, in order that it has all the information necessary for it to evaluate and take a final decision on the notification in question without delay. It also recalls to your attention that failure to notify the aid listed in Annex I or any being operated within the time period stated will oblige the Commission to open a procedure against any aid scheme or project not notified.

ANNEX II

This standard information has been replaced by the questionnaires listed under B1 and B2 of Annex 1 of the letter to Member States dated 22 February 1994 concerning notifications and standardized annual reports (see item B.II.2).

Commission letter to Member States of 5 February 1990

(Raising of the notification on the threshold for awards of aid in connection with Eureka from ECU 20 to 30 million)

Dear Sir

Reflecting its desire to strengthen the links between the Community and the Eureka initiative, the Commission has introduced a number of measures to ensure Eureka's success, mainly through logistic support, information transfer, and improvement in the economic and legal context and a financial contribution to certain projects.

As far as State aid is concerned, the Commission's aim is also to adopt a constructive approach in implementing Community rules, and this has been reflected in the various decisions taken in the cases notified to it. Taking this approach a step further, the Commission has decided, in the case of aid granted to Eureka projects, to make an exception to the rule on the notification of significant awards of aid, for which the threshold set in the 'Community framework for State aid for research and development' (OJ C 83, 11.4.1986, p. 2) is ECU 20 million.

In future, in the case of Eureka, individual notification under Article 93(3) of the EEC Treaty will be required only for aid granted to an undertaking participating in a project of more than ECU 30 million where the contribution of the Member State to the project is at least ECU 4 million.

The Commission would remind the Member States that it is required by the Treaty and by the case-law of the Court of Justice to carry out its economic assessments on the basis of the discretionary power it enjoys under Article 92(3) in a Community and not a national context. Consequently, the ECU 30 million threshold for significant awards to be notified individually relates to the total cost of the project, including the contribution of all the participants other than the recipient of the aid.

The Commission will examine awards notified on their merits in the light of the provisions of Articles 92 and following of the EEC Treaty and in the light of the provisions of the Community framework for R&D.

Lastly, the Commission would emphasize that this applies only to specific awards of aid granted under R&D aid schemes approved by the Commission. Any other award of aid must be notified under Article 93(3) of the EEC Treaty, whatever its amount.

Yours faithfully

II — Environmental aid

Community guidelines on State aid for environmental protection[1]

(Text with EEA relevance)

1. INTRODUCTION

1.1. In the 1970s and early 1980s, the Community's environmental policy was mainly concerned with setting and implementing standards for the main parameters of the environment. The Commission's memorandum of 6 November 1974 on State aid in environmental matters[2] reflects this approach. The framework, which was extended with certain amendments in 1980[3] and again in 1986,[4] provided that aid could be authorized mainly to help firms carry out investment necessary to achieve certain mandatory minimum standards. The use of State aid was considered to be a transitional stage, paving the way for gradual introduction of the 'polluter pays' principle, under which economic agents would bear the full cost of the pollution caused by their activities.[5]

1.2. In the Single European Act a new section on the environment was added to the EC Treaty which gives the Community express powers in the environmental field.[6] The new provisions confirm the 'polluter pays' principle but go further, calling for the requirements of environmental protection to be included in defining and implementing the Community's other policies and stressing the need for prevention. The theme of integrating the environment into other policies is taken up, along with the concept of 'sustainable development', in the Community's fifth programme on the environment.[7] This acknowledges that the traditional approach, based almost exclusively on regulation and particularly standards, has not been wholly satisfactory. It therefore argues for a broadening of the range of policy instruments. Different instruments (regulation, voluntary action and economic measures) or various combinations of these may be the best way of achieving desired environmental objectives in a given situation, depending on the legal, technical, economic and social context.

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1 OJ C 72, 10.3.1994, p. 3.

2 Letter to Member States SEC(74) 4264 of 6 November 1974; Fourth Report on Competition Policy, points 175 to 182.

3 Letter to Member States SG(80) D/8287 of 7 July 1980; Tenth Report on Competition Policy, points 222 to 226.

4 Letter to Member States SG(87) D/3795 of 23 March 1987; Sixteenth Report on Competition Policy, point 259. The 1986 version of the framework, which was due to expire at the end of 1992, was extended for a further year: see letters to Member States of 18 January and 19 July 1993.

5 See Council recommendation of 3 March 1975 (OJ L 194, 25.7.1975).

6 Articles 130r, s and t of the EC Treaty.

7 COM (92) 23 final, Volume II, 27 March 1992 and Council resolution of 1 February 1993.

Both positive financial incentives, i.e. subsidies, and disincentives, namely taxes and levies, have their place. The need to integrate environmental with other policies also means taking into account the objectives of economic and social cohesion in the Community, the requirements of maintaining the integrity of the single market, and international commitments in the environmental field.

1.3. The application of the EC Treaty rules on State aid must reflect the role economic instruments can play in environmental policy. This means taking account of a broader range of financial measures in this area. Aid control and environmental policy must also support one another in ensuring stricter application of the 'polluter pays' principle.

1.4. Subsidies may be a second-best solution in situations where the polluter pays principle — which requires all environmental costs to be 'internalized', i.e. absorbed in firms' production costs — is not yet fully applied. However, such aid, particularly in the most polluting sectors of agriculture and industry, may distort competition, create trade barriers and jeopardize the single market. The fact is that firms in all Member States have to invest to make their plant, equipment and manufacturing processes meet environmental requirements, so gradually internalizing external environmental costs. State aid is liable to give certain firms an advantage over their competitors in other Member States not receiving such aid, even though subject to the same environmental constraints.

1.5. A description is given below of the main types of State support for environmental protection that have been notified in recent years. The various types of aid are divided into the three broad categories: investment aid, horizontal support measures and operating aid.

1.5.1. Investment incentives, possibly associated with regulation or voluntary agreements

In many areas of environmental policy, firms are required to meet certain standards by law. Such mandatory standards may transpose international agreements or Community legislation into national law, or they may be set solely on the basis of national, regional or local objectives. The common feature in such situations is that there is a legal requirement.

However, to achieve or restore a satisfactory quality of the environment in heavily industrialized areas in particular, it is necessary gradually to raise levels of protection and to encourage firms to go beyond legal requirements.

The ultimate objective of investment incentives in this sphere is to facilitate a gradual raising of the quality of the environment. Support for investment typically falls into one of the following categories:

(i) aid under programmes designed to help existing firms adapt their plant to new standards or encourage them to reach such standards more rapidly (aid available for a limited period to speed up the process of implementing new standards);

(ii) aid to encourage efforts to improve significantly on mandatory standards through investment that reduces emissions to levels well below those required by current or new standards;

(iii) aid granted in the absence of mandatory standards on the basis of agreements whereby firms take major steps to combat pollution without being legally required to do so, or before they are legally required to do so;

(iv) aid for investment in fields in which environmental action is a matter of priority, but benefits the community at large more than the individual investor and is therefore undertaken collectively. This may be the case, for example, with waste disposal and recycling;

(v) aid to repair past environmental damage which the firms are not under any legal obligation to remedy.

1.5.2. Aid for horizontal support measures

Horizontal support measures are designed to help find solutions to environmental problems and to disseminate knowledge about such solutions so that they are applied more widely. The wide range of activities in this field includes:

(i) research and development of technologies that cause less pollution;

(ii) provision of technical information, consultancy services and training about new environmental technologies and practices;

(iii) environmental audits in firms;

(iv) spreading information and increasing awareness of environmental problems among the general public, general promotion of ecological quality labels and of the advantages of environmentally friendly products, etc.

1.5.3. Operating aid in the form of grants, relief from environmental taxes or charges, and aid for the purchase of environmentally friendly products

Despite the progress achieved in reducing pollution and in introducing cleaner technologies, there are many activities which damage the environment but whose environmental costs are not passed on in production costs and product prices. Conversely, the environmental benefits of products and equipment that cause less pollution are normally not fully reflected in lower prices to consumers. A clear trend is nevertheless apparent in Member States towards measures to internalize some of these external costs and benefits through taxes or through charges for environmental services, on the one hand, and through subsidies, on the other.

The introduction of environmental taxes and charges can involve State aid because some firms may not be able to stand the extra financial burden immediately and require temporary relief. Such relief is operating aid. It may take the form of:

(i) relief from environmental taxes introduced in some Member States, where it is necessary to prevent their firms being placed at a disadvantage compared with their competitors in countries that do not have such measures;

(ii) grants to cover all or part of the operating cost of waste disposal or recycling facilities, water treatment plant, or similar installations, which may be run by semi-public bodies with users being charged for the service.

Cost-related charges for environmental services are in line with the 'polluter pays' principle. However, it may be necessary to delay the introduction of full charging or to cross-subsidize

some users at the expense of others, especially during the transition from traditional waste disposal practices to new recycling or treatment techniques. The State may also cover part of the investment costs of such facilities.

Among the subsidies designed to reflect the positive environmental benefits of certain technologies are:

(i) grants or cross-subsidies to cover the extra production costs of renewable energies, and

(ii) aid that encourages consumers and firms to purchase environmentally friendly products[1] rather than cheaper conventional ones.

1.6. These guidelines aim to strike a balance between the requirements of competition and environment policy, given the widespread use of State aid in the latter policy. Such aid is normally only justified when adverse effects on competition are outweighed by the benefits for the environment. The guidelines are intended to ensure transparency and consistency in the manner in which the Treaty provisions on State aid are applied by the Commission to the wide range of instruments described above (regulation, taxes and subsidies, training and information measures) that are used by Member States for environmental protection purposes. The following section therefore states the criteria the Commission will apply in assessing whether State aid of various types for environmental protection purposes is compatible with Article 92 of the EC Treaty. The intention is not to encourage Member States to grant aid, but when Member States wish to do so to guide them as to what types and levels of aid may be acceptable.

2. SCOPE OF THE GUIDELINES

2.1. These guidelines apply to aid in all the sectors governed by the EC Treaty, including those subject to specific Community rules on State aid (steel processing, shipbuilding, motor vehicles, synthetic fibres, transport, agriculture and fisheries), in so far as such rules do not provide otherwise. In the agricultural sector[2] the guidelines do not apply to the field covered by Council Regulation (EEC) No 2078/92.[3]

2.2. The guidelines set out the approach followed by the Commission in the assessment pursuant to Article 92 of State aid for the following purposes in the environmental field:

(i) investment,

(ii) information activities, training and advisory services,

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[1] General criteria for environmentally friendly products are listed in Council Regulation (EEC) No 880/92 of 23 March 1992 on a Community eco-label award scheme (OJ L 99, 11.4.1992, p. 1).

[2] Aid relating directly or indirectly to the production and/or marketing of products, excluding fisheries products, listed in Annex II to the EC Treaty.

[3] Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside (OJ L 215, 30.7.1992, p. 85).

(iii) temporary subsidies towards operating costs in certain cases,

and

(iv) purchase or use of environmentally friendly products.

They apply to aid in all forms.[1]

2.3. Aid for energy conservation will be treated like aid for environmental purposes under the guidelines in so far as it aims at and achieves significant benefits for the environment and the aid is necessary, having regard to the cost savings obtained by the investor. Aid for renewable energy, the development of which is an especially high priority in the Community,[2] is also subject to these guidelines, in so far as aid for investment is concerned. However, higher levels of aid than provided for in paragraph 3.2 may be authorized in appropriate cases. Operating aid for production of renewable energies will be judged on its merits.

2.4. State aid for research and development in the environmental field is subject to the rules set out in the Community framework for State aid for research and development.[3]

3. APPLICABILITY OF THE STATE AID RULES

3.1. Assessment of aid for environmental protection pursuant to Article 92 of the EC Treaty

Article 92(1) of the EC Treaty prohibits, subject to possible exceptions, government financial assistance to specific enterprises or industries that distorts or threatens to distort competition and may effect trade between Member States. State aid for environmental protection often fulfils the criteria laid down in Article 92(1). It confers an advantage on particular enterprises, unlike general measures which benefit firms throughout the economy, and it can affect intra-Community trade.

However, where aid meets the conditions set out below, the Commission may consider that it is eligible for one of the exemptions provided for in Article 92 of the EC Treaty. Naturally, exemption is conditional on compliance with other provisions of Community law as well, in particular those governing the single market.

3.2. Aid for investment

3.2.1. Aid for investment in land (when strictly necessary to meet environmental objectives), buildings, plant and equipment intended to reduce or eliminate pollution and nuisances or to adapt production methods in order to protect the environment may be authorized within the limits laid down in these guidelines. The eligible costs must be strictly confined to the extra investment costs necessary to meet environmental objectives. General

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[1] The principal forms are grants, subsidized loans, guarantees, tax relief, reductions in charges and benefits in kind.

[2] See Council Decision 93/500/EEC of 13 September 1993 concerning the promotion of renewable energies in the Community (Altener programme) (OJ L 235, 18.9.1993, p. 41).

[3] OJ C 83, 11.4.1986, p. 2.

investment costs not attributable to environmental protection must be excluded. Thus, in the case of new or replacement plant, the cost of the basic investment involved merely to create or replace production capacity without improving environmental performance is not eligible. Similarly, when investment in existing plant increases its capacity as well as improving its environmental performance, the eligible costs must be proportionate to the plant's initial capacity.[1] In any case aid ostensibly intended for environmental protection measures but which is in fact for general investment is not covered by these guidelines. This is true, for example, of aid for relocating plant to new sites in the same area. Such aid is not covered by the guidelines because recent cases have shown that it may conflict with competition and cohesion policy. It will therefore continue to be considered on a case-by-case basis until sufficient experience has been built up for more general rules to be issued.

3.2.2. The rules for investment aid in general also apply to aid for investment to repair past damage to the environment, for example, by making polluted industrial sites again fit for use. In cases where the person responsible for the pollution cannot be identified or called to account, aid for rehabilitating such areas may not fall under Article 92(1) of the EC Treaty in that it does not confer a gratuitous financial benefit on particular firms or industries. Such cases will be examined on their merits.

3.2.3. As a general rule, aid for environmental investment can be authorized up to the levels set out below.[2] These provisions apply both to investment by individual firms and investment in collective facilities.

A. Aid to help firms adapt to new mandatory standards

Aid for investment to comply with new mandatory standards or other new legal obligations and involving adaptation of plant and equipment to meet the new requirements can be authorized up to the level of 15% gross[3] of the eligible costs. Aid may be granted only for a limited period and only in respect of plant which has been in operation for at least two years when the new standards or obligations enter into force.

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1 For aid concerning the disposal of animal manure, the Commission also applies by analogy the criteria set out in Annex III to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 375, 31.12.1991, p. 1).

2 The rules for investment aid laid down in these guidelines are without prejudice to those provided by other Community legislation existing or yet to be enacted, in particular in the environmental field.
For investments covered by Article 12(1) and (5) of Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures (OJ L 218, 6.8.1991, p. 1) the maximum aid level is 35 or 45% in areas referred to in Council Directive 75/268/EEC of 28 April 1975 on mountain and hill farming and farming in certain less-favoured areas (OJ L 128, 19.5.1975, p. 1). These maximum aid levels apply irrespective of the size of the enterprise. Consequently, the maximums may not be increased for SMEs as provided for below in this section. For investments in Objectives 1 and 5b regions, the Commission reserves the right, on a case-by-case basis, to accept higher aid levels than the above, where the Member State demonstrates to the satisfaction of the Commission that this is justified.

3 That is the nominal before-tax value of grants and the discounted before-tax value of interest subsidies as a proportion of the investment cost. Net figures are after tax.

For small and medium-sized enterprises[1] carrying out such investment an extra 10 percentage points gross of aid may be allowed. If the investment is carried out in assisted areas[2] aid can be granted up to the prevailing rate of regional aid authorized by the Commission for the area, plus, for SMEs, 10 percentage points gross in Article 92(3)(c) areas and 15 percentage points gross in Article 92(3)(a) areas.[3]

In keeping with the 'polluter pays' principle, no aid should normally be given towards the cost of complying with mandatory standards in new plant. However, firms that instead of simply adapting existing plant more than two years old opt to replace it by new plant meeting the new standards may receive aid in respect of that part of the investment costs that does not exceed the cost of adapting the old plant.

If both Community and national mandatory standards exist for one and the same type of nuisance or pollution the relevant standard for the purposes of this provision shall be the stricter one.

B. Aid to encourage firms to improve on mandatory environmental standards

Aid for investment that allows significantly higher levels of environmental protection to be attained than those required by mandatory standards may be authorized up to a maximum of 30% gross of the eligible costs. The level of aid actually granted for exceeding standards must be in proportion to the improvement of the environment that is achieved and to the investment necessary for achieving the improvement.

If the investment is carried out by SMEs, an extra 10 percentage points gross of aid may be allowed. In assisted areas, aid can be granted up to the prevailing rate of regional aid authorized by the Commission for the area, plus, where appropriate, the supplements for SMEs referred to above.[4]

If both Community and national mandatory standards exist for one and the same type of nuisance or pollution, the relevant standard for the purposes of applying this provision shall be the stricter one.

Where a project partly involves adaptation to standards and partly improvement on standards, the eligible costs belonging to each category are to be separated and the relevant limit applied.

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1 As defined in the Community guidelines on State aid for SMEs (OJ C 213, 19.8.1992, p. 2).

2 That is areas covered by national regional development schemes independent of the Structural Funds. In areas designated as eligible for aid from the Structural Funds pursuant to Objectives 2 or 5b but not nationally assisted areas, the level of aid will be decided in relation to each scheme.

3 See the guidelines on State aid for SMEs. If the aid available for environmental investment in a non-assisted area under these guidelines exceeds the prevailing rate of regional aid authorized for an Article 92(3)(c) assisted area in the same country, then the rate of aid in the assisted area can be raised to that available in the non-assisted area.

4 As in the case of aid for adapting to standards, if the aid available for environmental investment in a non-assisted area exceeds the prevailing rate of regional aid authorized for an Article 92(3)(c) assisted area in the same country, then the rate of aid in the assisted area can be raised to that available in the non-assisted area.

C. Aid in the absence of mandatory standards

In fields in which there are no mandatory standards or other legal obligations on firms to protect the environment, firms undertaking investment that will significantly improve on their environmental performance or match that of firms in other Member States in which mandatory standards apply may be granted aid at the same levels and subject to the same condition of proportionality as for going beyond existing standards (see above).

Where a project partly involves adaptation to standards and partly measures for which there are no standards, the eligible costs belonging to each category are to be separated and the relevant limit applied.

3.3. Aid for information activities, training and advisory services

Aid for publicity campaigns to increase general environmental awareness and provide specific information about, for example, selective waste collection, conservation of natural resources or environmentally friendly products may not fall within Article 92(1) of the EC Treaty at all where they are so general in scope and distant from the market-place as not to confer an identifiable financial benefit on specific firms. Even when aid for such activities does fall within Article 92(1), it will normally be exemptible.

Aid may also be authorized for the provision of training and consultancy help to firms on environmental matters. As provided under the SME aid guidelines, for SMEs such aid may be granted at rates of up to 50% of the eligible costs.[1] In assisted areas aid of at least the authorized rate of investment aid may be authorized for training and consultancy services for both SMEs and larger firms.

3.4. Operating aid

In accordance with long-standing policy the Commission does not normally approve operating aid which relieves firms of costs resulting from the pollution or nuisance they cause. However, the Commission may make an exception to this principle in certain well-defined circumstances. It has done so, so far in the fields of waste management and relief from environmental taxes. The Commission will continue to assess such cases on their merits and in the light of the strict criteria it has developed in the two fields just mentioned. These are that the aid must only compensate for extra production costs by comparison with traditional costs, and should be temporary and in principle degressive, so as to provide an incentive for reducing pollution or introducing more efficient uses of resources more quickly. Furthermore, the aid must not conflict with other provisions of the EC Treaty, and in particular those relating to the free movement of goods and services.

In the field of waste management, the public financing of the additional costs of selective collection, recovery and treatment of municipal waste for the benefit of businesses as well as consumers may involve State aid but can in that case be authorized provided that businesses are charged in proportion to their use of the system or to the amount of waste they

[1] See footnote 1 on p. 159.

produce in their enterprise. Aid for the collection, recovery and treatment of industrial and agricultural waste will be considered on a case-by-case basis.

Temporary relief from new environmental taxes may be authorized where it is necessary to offset losses in competitiveness, particularly at international level. A further factor to be taken into account is what the firms concerned have to do in return, to reduce their pollution. This provision also applies to reliefs from taxes introduced pursuant to EC legislation in which the Member States have discretion as to the relief or its amount.

3.5. Aid for the purchase of environmentally friendly products

Measures to encourage final consumers (firms and individuals) to purchase environmentally friendly products may not fall within Article 92(1) of the EC Treaty because they do not confer a tangible financial benefit on particular firms. Where such measures do fall within Article 92(1), they will be assessed on their merits and may be authorized provided that they are applied without discrimination as to the origin of the products, do not exceed 100% of the extra environmental costs,[1] and do not conflict with other provisions of the Treaty or legislation made under it[2] with particular reference to the free movement of goods.

3.6. Basis of the exemption

Within the limits and on the conditions set out in paragraphs 3.2 to 3.5, aid for the above purposes will be authorized by the Commission under the exemption provided for in Article 92(3)(c) of the EC Treaty for 'aid to facilitate the development of certain activities ... where such aid does not adversely affect trading conditions to an extent contrary to the common interest.' However, aid for environmental purposes in assisted areas pursuant to Article 92(3)(a) of the EC Treaty may be authorized under that provision.

3.7. Important projects of common European interest

Aid to promote the execution of important projects of common European interest which are an environmental priority and will often have beneficial effects beyond the frontiers of the Member State or States concerned can be authorized under the exemption provided for in Article 92(3)(b) of the EC Treaty. However, the aid must be necessary for the project to proceed and the project must be specific and well-defined, qualitatively important, and must make an exemplary and clearly identifiable contribution to the common European interest. When this exemption is applied, the Commission may authorize aid at higher rates than the limits laid down for aid authorized pursuant to Article 92(3)(c).

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[1] Unless Community legislation does not allow as much as 100% (see, for example, Council Directive 91/441/EEC of 26 June 1991 amending Directive 70/220/EEC on the approximation of the laws of the Member States relating to measures to be taken against air pollution by emissions from motor vehicles (OJ L 242, 30.8.1991, p. 1)).

[2] For example, the car emissions Directive (which also contains notification requirements) and Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 109, 26.4.1983, p. 8).

3.8. Cumulation of aid from different sources

The limits set above on the level of aid that may be granted for various environmental purposes apply to aid from all sources, including Community aid when this is combined with national aid.

4. NOTIFICATION, EXISTING AUTHORIZATIONS, DURATION AND REVIEW OF GUIDELINES AND REPORTING REQUIREMENTS

4.1. Except in so far as aid classed as *de minimis* is concerned[1] these guidelines do not affect the obligation of Member States pursuant to Article 93(3) of the EC Treaty to notify all aid schemes, all alterations of such schemes and all individual awards of aid made to firms outside of authorized schemes. In the notification, Member States must supply the Commission with all relevant information showing, *inter alia*, the environmental purpose of the aid and the calculation of eligible costs. The rules for the accelerated clearance procedure for SME aid schemes and amendments of existing schemes[2] and on the notification of cumulations of aid remain applicable.[3] When it authorizes aid schemes, the Commission may require individual notification of aid awards above a certain threshold or in certain sectors, apart from those referred to in paragraph 2.1 or in other appropriate cases.

4.2. The guidelines are without prejudice to schemes that have already been authorized when the guidelines are published. However, the Commission will review such existing schemes pursuant to Article 93(1) of the EC Treaty by 30 June 1995. Furthermore, the Commission will monitor the effects of approved aid schemes and will propose appropriate measures pursuant to Article 93(1) if it finds the aid in question to be creating distortions of competition contrary to the common interest.

4.3. The Commission will follow these guidelines in its assessment of aid for environmental purposes until the end of 1999. Before the end of 1996 it will review the operation of the guidelines. The Commission may amend the guidelines at any time should it prove appropriate to make changes for reasons connected with competition policy, environmental policy and regional policy or to take account of other Community policies and of international commitments.

4.4. The Commission will require Member States to supply it with reports on the operation of aid schemes for environmental protection in accordance with its notice of 24 March 1993 on standardized notifications and reports.

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[1] See SME aid guidelines (OJ C 213, 19.8.1992, p. 2).
[2] OJ C 213, 19.8.1992, p. 10.
[3] OJ C 3, 5.1.1985.

III — Rescue and restructuring aid — new guidelines

Community guidelines on State aid for rescuing and restructuring firms in difficulty[1]

(Text with EEA relevance)

1. INTRODUCTION

1.1. The need for comprehensive and firm control of State aid in the European Community has been widely acknowledged in recent years. The distortive effect of aid is magnified as other government-induced distortions are eliminated and markets become more open and integrated. Hence, in the single market it is more important than ever to maintain tight control of State aid.

In the medium term the single market is expected to yield significant benefits in terms of increased economic growth, although currently growth is stalled by the recession. A major part of the increase in economic growth that should ultimately result from the single market will be due to the extensive structural change that it will induce in the Member States. While structural change is easier in an expanding economy, even in a recession it is undesirable that Member States should frustrate or unduly retard the process of structural adjustment through subsidies to firms which in the new market situation ought to disappear or restructure. Such aid would shift the burden of structural change on to other, more efficient firms and encourage a subsidy race. As well as preventing the full benefits of the single market for the Community as a whole, subsidies can place severe strain on national budgets and so impede economic convergence.

1.2. On the other hand, there are circumstances in which State aid for rescuing firms in difficulty and helping them to restructure may be justified. It may be warranted, for instance, by social or regional policy considerations, by the desirability of maintaining a competitive market structure when the disappearance of firms could lead to a monopoly or tight oligopoly situation, and by the special needs and wider economic benefits of the small and medium-sized enterprise (SME) sector.

1.3. The last time the Commission set out its policy on aid for rescuing and restructuring firms in difficulty was in 1979 in the Eighth Report on Competition Policy.[2] This policy has been endorsed many times by the Court of Justice.[3]

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[1] OJ C 368, 23.12.1994.

[2] Paragraphs 177, 227 and 228.

[3] See, in particular, judgments of the Court of Justice of 14 February 1990, Case C-301/87 *France* v *Commission* [1990] ECR I, p. 307 (*Boussac*); of 21 March 1990, Case C-142/87 *Belgium* v *Commission* [1990] ECR I, p. 959 (*Tubemeuse*); of 21 March 1991, Case C-303/88 *Italy* v *Commission* [1991] ECR I, p. 1433 (*ENI-Lanerossi*); of 21 March 1991, Case C-305/89 *Italy* v *Commission* [1991] ECR I, p. 1603 (*Alfa Romeo*). See also judgments of the Court of Justice of 14 November 1984, Case 323/82 *Intermills* v *Commission* [1984] ECR 3809; of 13 March 1985, Cases 296 and 318/82 *Netherlands* and *Leeuwarder Papierwarenfabriek* v *Commission* [1985] ECR, p. 809; of 10 July 1986, Case 234/84 *Belgium* v *Commission* [1986] ECR, p. 2263 (*Meura*).

However, for the reasons given in paragraph 1.1 the advent of the single market requires the policy to be reviewed and updated. Furthermore, it must be adapted to take account of the objective of economic and social cohesion[1] and clarified in the light of developments in the policies towards government capital injections,[2] financial transfers to public enterprises,[3] and aid for SMEs.[4]

2. DEFINITIONS AND SCOPE OF THE GUIDELINES

2.1. Definition of rescue and restructuring aid

It is right to treat aid for rescues of companies and for restructuring together, because in both cases the government is faced with a firm in difficulties unable to recover through its own resources or by raising the funds it needs from shareholders or borrowing, and because the rescue and the restructuring are often two parts, albeit clearly distinguishable parts, of a single operation. The financial weakness of firms that are rescued by their governments or receive help for restructuring is generally due to poor past performance and dim future prospects. The typical symptoms are deteriorating profitability or increasing size of losses, diminishing turnover, growing inventories, excess capacity, declining cash flow, increasing debt, rising interest charges and low net asset value. In acute cases the company may already have become insolvent or gone into liquidation.

It is not possible to establish a universal and precise set of financial parameters to identify when aid to a company amounts to a rescue, or is for restructuring. Nevertheless, the two situations show basic differences.

A rescue temporarily maintains the position of a firm that is facing a substantial deterioration in its financial position reflected in an acute liquidity crisis or technical insolvency, while an analysis of the circumstances giving rise to the company's difficulties can be performed and an appropriate plan to remedy the situation devised. In other words, rescue aid provides a brief respite, generally for not more than six months, from a firm's financial problems while a long-term solution can be worked out.

Restructuring, on the other hand, is part of a feasible, coherent and far-reaching plan to restore a firm's long-term viability. Restructuring usually involves one or more of the following elements: the reorganization and rationalization of the firm's activities on to a more efficient basis typically involving the withdrawal from activities that are no longer viable or are already loss-making, the restructuring of those existing activities that can be made competitive again and, possibly, the development of, or diversification to new viable activities. Financial restructuring (capital injections, debt reduction) usually has to accompany the physical restructuring. Restructuring plans take account of, *inter alia*, the circumstances giving rise to the firm's difficulties, market supply and demand for the relevant products as well

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[1] Article 130a of the EC Treaty. Article 130b of the EC Treaty inserted by the Treaty on European Union states that other policies must contribute to this objective: 'The formulation and implementation of the Community's policies and actions and the implementation of the internal market shall take into account the objectives set out in Article 130a and shall contribute to their achievement.'

[2] Bull. EC 9-1984, paragraph 3.5.1.

[3] OJ C 307, 13.11.1993, p. 3.

[4] OJ C 213, 19.8.1992, p. 2.

as their expected development and the specific strengths and weaknesses of the firm. They allow an orderly transition of the firm to a new structure that gives it viable long-term prospects and will enable it to operate on the strength of its own resources without requiring further State assistance.

2.2. Sectoral scope

The Commission follows the general approach to rescue and restructuring aid that is set out in the guidelines in all sectors. However, in sectors currently subject to special Community rules on State aid the guidelines will apply only to the extent that they are consistent with the special rules. At present there are special aid rules in agriculture, fisheries, steel, shipbuilding, textiles and clothing, synthetic fibres, the motor industry, transport and the coal industry. In the agricultural sector, special Commission rules for rescue and restructuring aid may continue to be applied to individual beneficiaries at the discretion of the Member State concerned as an alternative to these guidelines.

2.3. Applicability of Article 92(1) of the EC Treaty

For the reasons stated in paragraph 1.1, State aid for rescuing or restructuring firms in difficulty will, by its very nature, tend to distort competition and affect trade between Member States. Therefore, as a rule, it falls within Article 92(1) of the EC Treaty and requires exemption.

The only general exception is aid that is too small in amount to have a significant effect on inter-State trade. This *de minimis* figure has been set at ECU 50 000 for each of two broad categories of expenditure (investment and other expenditure) from all sources and under any scheme over three years.[1] The *de minimis* facility is not available in sectors subject to special Community rules on State aid.[2]

Aid for restructuring can take many forms, including capital injections, debt write-offs, loans, interest subsidies, relief from taxes or social security contributions, and loan guarantees. For rescues, however, it should be limited to loans at market interest rates or loan guarantees (see paragraph 3.1). The source of the aid can be any level of government, central, regional or local, and any 'public undertaking', as defined in Article 2 of the 1980 Directive on the transparency of financial relations between Member States and public undertakings.[3] Thus, for example, rescue or restructuring aid may come from State holding companies or public investment corporations.[4]

The method used by the Commission to determine when government injections of new capital into companies that are already State-owned or become wholly or partly State-owned as

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1 See SME aid guidelines, paragraph 3.2, and guidance note on the use of the *de minimis* facility, letter of 23 March 1993, reference IV (93) D/06878.

2 See paragraph 2.2.

3 OJ L 195, 29.7.1980, as amended by OJ L 254, 12.10.1993, p. 16.

4 See judgment of the Court of Justice, of 22 March 1977, Case 78/76 *Steinike und Weinlig* v *Germany*, [1977] ECR, p. 595; *Crédit Lyonnais* v *Usinor-Sacilor* Commission press release IP(91) 1045.

a result of the operation involve aid was set out in a 1984 communication[1] and has been refined and extended to aid in other forms in the public enterprises communication of 1993.[2] The criterion is based on the 'private investor' principle. This provides that in circumstances where a rational private investor operating in a market economy would have made the finance available the provision or guarantee of funding to a company does not involve aid.

Where funding is provided or guaranteed by the State to an enterprise that is in financial difficulties, however, there is a presumption that the financial transfers involve State aid. Therefore, such financial transactions must be communicated to the Commission in advance, in accordance with Article 93(3).[3] The presumption of aid is compelling where the industry, as a whole, is in difficulties or suffering from structural overcapacity.

The assessment of rescue or restructuring aid is not affected by changes in the ownership of the business aided. Thus, it will not be possible to evade control by transferring the business to another legal entity or owner.

2.4. Basis of exemption

Article 92(2) and (3) of the EC Treaty provide for the possibility of exemption of aid falling within Article 92(1). The only basis for exempting aid for rescuing or restructuring firms in difficulty — apart from cases of national disasters and exceptional occurrences which are exempted by Article 92(2)(b) and are not covered here, and, to the extent that Article 92(2)(c) is still applicable, aid in Germany that might be covered by this provision — is Article 92(3)(c). Under this provision the Commission has the power to authorize 'aid to facilitate the development of certain economic activities ... where such aid does not adversely affect trading conditions to an extent contrary to the common interest'.

The Commission considers that aid for rescues and restructuring may contribute to the development of economic activities without adversely affecting trade against the Community interest if the conditions set out in Section 3 are met, and will therefore authorize such aid under those conditions. Where the firms to be rescued or restructured are located in assisted areas, the Commission will take regional considerations under subparagraphs (a) and (c) of Article 92(3) into account as described in paragraph 3.2.3.

2.5. Existing aid schemes

These guidelines are without prejudice to aid schemes for rescuing or restructuring firms in difficulty that have already been authorized when the guidelines are published. However, the Commission will review such existing schemes pursuant to Article 93(1) of the EC Treaty by 31 December 1995.

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[1] See footnote 2, on p. 164.
[2] See footnote 3, on p. 164.
[3] See paragraph 27 of the public enterprises paper.

The guidelines are also without prejudice to the application of aid schemes authorized for other purposes than rescues or restructuring, such as regional development or the development of SMEs, provided that aid for rescues or restructuring granted under such schemes fulfils the conditions the Commission has approved for the schemes.

3. GENERAL CONDITIONS FOR THE AUTHORIZATION OF RESCUE AND RESTRUCTURING AID

3.1. Rescue aid

In order to be approved by the Commission rescue aid, as defined above, must continue to satisfy the conditions laid down by the Commission in 1979.[1] That is, rescue aid must:

(i) consist of liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates;

(ii) be restricted to the amount needed to keep a firm in business (for example, covering wage and salary costs and routine supplies);

(iii) be paid only for the time needed (generally not exceeding six months)[2] to devise the necessary and feasible recovery plan;

(iv) be warranted on the grounds of serious social difficulties and have no undue adverse effects on the industrial situation in other Member States.

A further condition is that, in principle, the rescue should be a one-off operation. A series of rescues that effectively merely maintain the status quo, postpone the inevitable and in the meantime transfer the attendant industrial and social problems to other, more efficient producers and other Member States is clearly unacceptable. Rescue aid should therefore normally be a one-off holding operation mounted over a limited period during which the company's future can be assessed.

Rescue aid need not be granted in a single payment. Indeed, it may be desirable to spread payment of the aid over several or more instalments subject to separate assessment in order to take account of external conditions which may be rapidly fluctuating or in order to stimulate the ailing company into taking the necessary corrective action.

In applying the above conditions to SMEs the Commission will take account of the special features of businesses in this size category.

The approval of rescue aid is without any presumption regarding the subsequent approval of aid under a restructuring plan, which will fall to be assessed on its own merits.

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[1] Eighth Report on Competition Policy, paragraph 228.

[2] If the Commission is still investigating the restructuring plan when the period for which rescue aid has been authorized runs out, it will consider favourably an extension of the rescue aid until the investigation is completed (see 23rd Competition Report, point 527).

3.2. Restructuring aid

3.2.1. Basic approach

Aid for restructuring raises particular competition concerns as it can shift an unfair share of the burden of structural adjustment and the attendant social and industrial problems on to other producers who are managing without aid and to other Member States. The general principle should therefore be to allow restructuring aid only in circumstances in which it can be demonstrated that the approval of restructuring aid is in the Community interest. This will only be possible when strict criteria are fulfilled and full account is taken of the possible distortive effects of the aid.

3.2.2. General conditions

Subject to the special provisions for assisted areas and SMEs set out below, for the Commission to approve aid a restructuring plan will need to satisfy all the following general conditions:

(i) Restoration of viability

The *sine qua non* of all restructuring plans is that they must restore the long-term viability and health of the firm within a reasonable time-scale and on the basis of realistic assumptions as to its future operating conditions. Consequently, restructuring aid must be linked to a viable restructuring/recovery programme submitted in all relevant detail to the Commission. The plan must restore the firm to competitiveness within a reasonable period. The improvement in viability must mainly result from internal measures contained in the restructuring plan and may only be based on external factors such as price and demand increases over which the company has no great influence, if the market assumptions made are generally acknowledged. Successful restructuring should involve the abandonment of structurally loss-making activities.

To fulfil the viability criterion, the restructuring plan must be considered capable of putting the company into a position of covering all its costs including depreciation and financial charges and generating a minimum return on capital such that, after completing its restructuring, the firm will not require further injections of State aid and will be able to compete in the market place on its own merits. Like rescue aid, aid for restructuring should therefore normally only need to be granted once.

(ii) Avoidance of undue distortions of competition through the aid

A further condition of aid for restructuring is that measures are taken to offset, as far as possible, adverse effects on competitors. Otherwise aid would be 'contrary to the common interest' and ineligible for exemption pursuant to Article 92(3)(c).

Where on an objective assessment of the demand and supply situation there is a structural excess of production capacity in a relevant market in the European Community served by the recipient, the restructuring plan must make a contribution, proportionate to the amount

of aid received, to the restructuring of the industry serving the relevant market in the European Community by irreversibly reducing or closing capacity. A reduction or closure is irreversible when the relevant assets are scrapped, rendered permanently incapable of producing at the previous rate, or permanently converted to another use. The sale of capacity to competitors is not sufficient in this case, except if the plant is sold for use in a part of the world from which the continued operation of the facilities is unlikely to have significant effects on the competitive situation in the Community.

A relaxation of the principle of requiring a proportionate capacity reduction may be allowed if such a reduction is likely to cause a manifest deterioration in the structure of the market, for example, by creating a monopoly or a tight oligopoly situation.

Where, on the other hand, there is no structural excess of production capacity in a relevant market in the Community served by the recipient, the Commission will normally not require a reduction of capacity in return for the aid. However, it must be satisfied that the aid will be used only for the purpose of restoring the firm's viability and that it will not enable the recipient during the implementation of the restructuring plan to expand production capacity, except in so far as is essential for restoring viability without thereby unduly distorting competition. To ensure that the aid does not distort competition to an extent contrary to the common interest, the Commission may impose any conditions and obligations as may be necessary.

(iii) Aid in proportion to the restructuring costs and benefits

The amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken and must be related to the benefits anticipated from the Community's point of view. Therefore, aid beneficiaries will normally be expected to make a significant contribution to the restructuring plan from their own resources, or from external commercial financing. To limit the distortive effect, the form in which the aid is granted must be such as to avoid providing the company with surplus cash which could be used for aggressive, market-distorting activities not linked to the restructuring process. Nor should any of the aid go to finance new investment not required for the restructuring. Aid for financial restructuring should not unduly reduce the firm's financial charges.

If aid is used to write off debt resulting from past losses, any tax credits attaching to the losses must be extinguished, not retained to offset against future profits or sold or transferred to third parties, as in that case the firm would be receiving the aid twice.

(iv) Full implementation of restructuring plan and observance of conditions

The company must fully implement the restructuring plan that was submitted to and accepted by the Commission and must discharge any other obligations laid down by the Commission decision. Otherwise, unless the original decision is amended following a new notification from the Member State, the Commission will take steps to require the recovery of the aid.

(v) Monitoring and annual report

The implementation, progress and success of the restructuring plan will be monitored by requiring the submission of detailed annual reports to the Commission. The annual report

will have to contain all relevant information to enable the Commission to monitor the implementation of the agreed restructuring programme, the receipt of aid by the company and its financial position and the observance of any conditions or obligations laid down in the Commission decision approving the aid. Where there is a particular need for timely confirmation of certain key information, such as closures, capacity reductions, etc., the Commission may request more frequent reports.

3.2.3. Conditions for restructuring aid in assisted areas

Economic and social cohesion being a priority objective of the Community pursuant to Article 130a of the EC Treaty and other policies being required to contribute to this objective pursuant to Article 130b,[1] the Commission must take the needs of regional development into account when assessing restructuring aid in assisted areas. The fact that an ailing firm is located in an assisted area does not, however, justify a wholly permissive approach to aid for restructuring. In the medium to long term it does not help a region to prop up artificially companies, which for structural or other reasons are ultimately doomed to failure.

Furthermore, given the limited Community and national resources available to promote regional development it is in the regions' own best interest to apply these scarce resources to develop, as soon as possible, alternative activities that are viable and durable. Finally, distortions of competition must be minimized even in the case of aid to firms in assisted areas.

Thus, the criteria listed in paragraph 3.2.2 are equally applicable to assisted areas, even when the needs of regional development are considered. In particular, the result of the restructuring operation must be an economically viable business that will contribute to the real development of the region without requiring continual aid. Recurrent injections of aid will thus not be viewed any more leniently that in non-assisted areas. Likewise, restructuring plans must be followed through and monitored. To avoid undue distortions of competition the aid must also be in proportion to restructuring costs and benefits. Somewhat more flexibility can be shown in assisted areas, however, with regard to the requirement for a reduction in capacity in the case of markets in structural overcapacity. If regional development needs justify it, the Commission will require a smaller capacity reduction for this purpose in assisted areas than in non-assisted areas and will differentiate between areas eligible for regional aid pursuant to Article 92(3)(a) of the Treaty and those eligible pursuant to Article 92(3)(c) to take account of the greater severity of the regional problems in the former areas.

Any aid for new investment not required for the restructuring must be within the limits for regional aid authorized by the Commission.

3.2.4. Aid for restructuring small and medium-sized enterprises

Provided certain acceptable intensities of aid are not exceeded, aid to firms in the small to medium-sized category tends to affect trading conditions less than that to large firms and

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[1] See footnote 1, on p. 164.

any harm to competition is more likely to be offset by economic benefits.[1] This also applies to aid to help restructuring. Consequently, the Commission is justified in taking a less restrictive attitude towards such aid when it is granted to SMEs.

In the Community guidelines on State aid for small and medium-sized enterprises (SMEs),[2] the Commission has established a uniform definition of SME for State aid control purposes.

'SME' is defined as an enterprise which: has no more than 250 employees, and either an annual turnover not exceeding ECU 20 million, or a balance sheet total not exceeding ECU 10 million, and is not more than 25% owned by one or more companies not falling within this definition, except public investment corporations, venture capital companies or, provided no control is exercised, institutional investors.

In relation to SMEs, the Commission will not require aid for restructuring to meet the same strict conditions as aid for restructuring large firms, particularly as regards capacity reductions and reporting obligations.

3.2.5. Aid to cover the social costs of restructuring

Restructuring plans normally entail reductions in, or abandonment of the affected activities. A scaling back of the firm's activities is often necessary for the purposes of rationalization and efficiency, quite apart from any capacity reductions that may be required as a condition for granting aid if the industry is suffering from structural overcapacity. Whatever the reason for them, such measures will generally lead to reductions in the company's workforce.

Member States' labour legislation may comprise general social security schemes under which the redundancy benefits and early retirement pensions are paid direct to redundant employees. Such schemes are not to be regarded as State aid falling within Article 92(1) in so far as the State deals direct with employees and the company is not involved.

Besides direct redundancy benefit and early retirement provision for employees, general social support schemes are widespread under which the government covers the cost of benefits that the company provides to redundant workers and which go beyond its statutory or contractual obligations. Where such schemes are available generally without sectoral limitations to any worker meeting predefined and automatic eligibility conditions, they are not considered to involve aid pursuant to Article 92(1) for firms undertaking restructuring. On the other hand, if the schemes are used to support restructuring in particular industries, they may well involve aid because of the selective way in which they are used.

The obligations a company itself has under employment legislation or collective agreements with trade unions to provide redundancy benefits and/or early retirement pensions are part of the normal costs of a business which a firm has to meet from its own resources. This being so, any contribution by the State to these costs must be counted as aid. This is true regardless of whether the payments are made direct to the firm or are administered through a government agency to the employees.

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1 Community guidelines for State aid to SMEs (OJ C 213, 19.8.1992, p. 2).
2 Ibid., paragraph 2.2.

The Commission has a positive approach to such aid, for it brings economic benefits above and beyond the interests of the firm concerned, facilitating structural change and reducing hardship, and often only evens out differences in the obligations placed on companies by national legislation.

As well as to meet the cost of redundancy payments and early retirement, aid is commonly provided in connection with a particular restructuring case for training, counselling and practical help with finding alternative employment, assistance with relocation, and professional training and assistance for employees wishing to start new businesses. The Commission consistently takes a favourable view of such aid.

Aid for social measures exclusively for the benefit of employees who are displaced by restructuring is disregarded for the purposes of determining the size of the capacity reduction under paragraph 3.2.2. (ii).

4. NOTIFICATION REQUIREMENTS AND DURATION AND REVIEW OF THE GUIDELINES

4.1. Schemes for rescuing or restructuring SMEs

For SMEs within the definition given above in paragraph 3.2.4 the Commission will be prepared to authorize schemes of assistance for rescue or restructuring purposes. It will do so within the usual period of two months from the receipt of complete information, unless the scheme qualifies for the accelerated clearance procedure, in which case the Commission is allowed 20 working days.[1] Such schemes must clearly identify the firms eligible, the circumstances under which rescue or restructuring aid may be granted and the maximum amount of aid available. A condition of approval will be that an annual report is provided on the scheme's operation containing the information specified in the Commission's instructions on standardized reports.[2] The reports must also include an individual list of all beneficiary firms giving: company name, sectoral code — in accordance with the NACE[3] 2-digit sectoral classification codes — number of employees, annual turnover, amount of aid granted in year, confirmation of whether rescue or restructuring aid was received in the previous two years and, if so, the total amount previously granted.

Awards of aid for rescuing or restructuring SMEs outside an approved scheme will require to be notified individually to the Commission, as in the case of such aid for large firms.

Aid awards or aid schemes for rescuing or restructuring firms which meet the conditions of the *de minimis* facility (see paragraph 2.3) need not be notified.

4.2. Aid for rescuing or restructuring large enterprises

For aid to rescue or help restructuring large firms, i.e. those not falling within the definition of SME, individual notification of all awards is required.

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1 OJ C 213, 19.8.1992, p. 10.

2 See letter to the Member States of 22 February 1994.

3 General industrial classification of economic activities in the European Community, published by the Statistical Office of the European Communities.

As time is usually not on the side of the firms concerned, particularly in rescue cases, the Commission will make every effort to make its decision quickly. The time-limit for deciding on notifications of individual aid awards outside of authorized schemes is two months from the receipt of full information.

Member States themselves can do much to avoid unnecessary delays by:

(i) notifying their intentions to grant aid early. Even if, because of internal administrative procedures, the Member State is unable to notify immediately all details of a proposed rescue or restructuring aid, it will be advantageous to let the Commission know of the matters that have already been decided, in order to familiarize the Commission with the case and to reduce or avoid possible requests for further information subsequent to a later incomplete notification;

(ii) sending complete notifications. In particular, notifications should distinguish clearly between aid which falls under the heading of rescue aid and that to be categorized as restructuring aid and should directly and distinctly address all the general approval conditions indicated above for the approval of rescue or restructuring aid under the guidelines. Failure to do so will mean that the notification is incomplete and delay clearance. In notifications Member States should also inform the Commission of all other aid granted to the firm that is not directly related to the operation so that the Commission is aware of the full circumstances surrounding the case.

4.3. Unnotified aid

The notification and prior authorization of aid before it is granted are strict requirements. Member States are reminded of the risk of granting aid illegally, as the Commission has the power to order the recovery of such aid.[1]

4.4. Duration and review of the guidelines

The Commission will follow these guidelines in its assessment of aid for rescuing or restructuring firms in difficulty for three years from the date of their publication. Before the end of that period it will review the operation of the guidelines.

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[1] Commission communication on aid granted illegally (OJ C 318, 24.11.1983). The Commission would also refer to the ruling of the Court of Justice in Case 301/87 (*Boussac*), and the conclusions it has drawn from this ruling for the handling of such cases as set out in its letter to Member States of 4 March 1991.

IV — SMEs

Community guidelines on State aid for small and medium-sized enterprises (SMEs)[1]

(adopted by the Commission on 20 May 1992)

1. INTRODUCTION

1.1. The importance of the small and medium-sized enterprise (SME) sector in the economy has come to be increasingly recognized in recent years. The important role of SMEs is clear not only from a static, 'snapshot' view of the economy at any one time, in terms of the proportions of output and employment SMEs account for.[2] It is also apparent, at several levels, from a dynamic picture of the economy over time. First, SMEs play a disproportionate role in employment creation, especially at times when large firms are shedding labour. Secondly, being more exposed to competition but at the same time more flexible and adaptable than large firms, SMEs tend to be in the forefront of innovation. Thirdly and as a consequence, SMEs are a major source of competition in markets — they keep markets 'contestable' — and act as the main motor of structural change and regeneration in the economy as a whole: they facilitate the shifts of economic resources from declining to expanding sectors. This is not to deny the importance of large firms. SMEs and big business are complementary. But SMEs are the lifeblood of any economy. They help to make the economy dynamic, whereas a lack of SME development leads to stagnation.

1.2. In some parts of the economy the SME sector is of particular importance. This is true, for instance, of the manufacturing industry in which subcontracting is playing an increasing role. Here, many large manufacturers are relying on subcontractors for a growing proportion of the value-added in their products and the SMEs concerned are increasingly assuming responsibility for R&D in their particular specialization.[3] SMEs are also of fundamental importance for regional development.

1.3. While the vital importance of an 'enterprise culture' favourable to SME growth is generally accepted, so is the fact that, in the modern State, SMEs can face certain handicaps

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[1] OJ C 213, 19.8.1992, p. 2.

[2] Firms employing less than 200 people, including sole proprietors, account for 62.7% of total employment in the Community (European Commission: compilation of data collected in joint Statistical Office/DG XXIII project on SME statistics, December 1989; see also Commission: *Enterprises in the European Community*, Brussels, Luxembourg 1990).

[3] See Commission communications to the Council COM(89) 402, 'The development of subcontracting in the Community', and SEC(91) 1286, 'Towards a European market in subcontracting'.

when compared to established large firms. For example, they have greater difficulty in raising finance. SMEs also suffer to a greater extent from burdens imposed by government. The compliance costs of small businesses with respect to government regulations on health and safety, financial accounting, etc., may be higher and the tax burden on them may be heavier, both in terms of the rates of tax they pay[1] and the compliance costs of the tax system (e.g., collection of social security contributions and VAT).

1.4. The specific problems faced by SMEs and the external benefits they produce in the form of a more dynamic, innovative economy able to absorb structural change and to replace lost jobs both call for a degree of positive action by government to level the playing-field and perhaps tip it slightly in their favour. This positive action must not aim to remove all risk, for risk is the essential spur to efficiency and competitiveness. It should mainly seek to establish an environment conducive to small business, an 'enterprise culture', through education and training and the simplification of regulatory requirements. The positive action to promote SMEs may also include financial incentives for start-ups and investment.

1.5. The Community is encouraging SMEs through its action programme[2] and the various constituent measures under this programme, such as the Euro-Info centres, BC-Net, the simplification and codification of Community legislation applicable to SMEs, seed capital funds,[3] and action to promote innovation and technology transfer under the Sprint-programme.[4] National governments, too, are taking action to improve the business environment for SMEs, including some direct financial assistance. The general policy of the Commission towards State aid to promote SMEs has always been positive.[5] It has authorized aid schemes for small business in the majority of the Member States. Such schemes are now increasing with the growing recognition of the importance of SMEs. At the same time, the increased risk of State aid distorting competition in the single European market and the need for greater economic and social cohesion, which has been re-emphasized in the Treaty on European Union, call for a reduction in some types of general aid schemes that are not restricted to SMEs, in particular general investment incentives outside of regional development areas. This raises the question of the definition of SME. There is therefore an urgent need at the present time for the Commission to set out clearly its policy towards State aid for SMEs. This is the purpose of the present guidelines. They begin with the crucial question of definition and then deal with the various types and intensities of aid which the Commission will normally be prepared to authorize for this sector.

1.6. The guidelines apply to aid for SMEs in all sectors except those subject to special Community rules on State aid under the EC or ECSC Treaties. For any aid to SMEs in such

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1 Especially for unincorporated businesses, which are generally liable to income tax and may be taxed at the top marginal rate. In most Member States, this is higher than the corporate tax rate usually faced by incorporated businesses, whatever their size.

2 Council resolution of 3 November 1986 (OJ C 287, 14.11.1986, p. 1).

3 Council Resolutions of 30 June 1988 (OJ C 197, 27.7.1988, p. 6) and of 27 May 1991 (OJ C 146, 5.6.1991, p. 3) and Council Decision 89/490/EEC of 28 July 1989 (OJ L 239, 16.8.1989, p. 33) as amended by Council Decision 91/319/EEC of 18 June 1991 (OJ L 175, 4.7.1991, p. 32) on improving the business environment and promoting the development of enterprises, especially SMEs.

4 Council Decision of 17 April 1989 (OJ L 112, 25.4.1989, p. 2).

5 See, in particular, the policy statement in the *Sixth report on Competition Policy* (1976), points 253-255.

industries the relevant sectoral rules are applicable. Special rules are currently applicable in steel, shipbuilding, synthetic fibres, the motor industry, agriculture, fisheries, transport and the coal industry.

2. DEFINITION

2.1. There is no single generally accepted definition of small to medium-sized firm. Different countries and different institutions within them use differing definitions. They sometimes distinguish small from medium-sized and sometimes not. This variation is often legitimate for it reflects widely varying situations and purposes (for example, VAT exemption, relaxation of regulatory requirements, eligibility for finance, or targeting of information campaigns).[1] This variety of definitions is mirrored in the various policies of the European Community towards SMEs, such as EIB and Structural Fund financing, simplification, information and competition policy.[2] For the purposes of control of State aid, the definition of SME used by the Commission must meet a number of requirements. It must delimit the SME sector so that the bulk of the firms with the beneficial external effects and the handicaps described in paragraphs 1.1 to 1.3 above are included. It must not be so wide as to include many larger firms that do not necessarily have the beneficial external effects or the handicaps that are characteristic of the SME sector. Aid granted to larger firms on the basis of considerations mainly applicable to smaller enterprises would be more likely to distort competition and trade between Member States. Finally, if transparency is to be improved by the guidelines the definition of SME must be simple and straightforward to apply.

For most purposes there is no need for the guidelines to distinguish between small and medium-sized enterprises. However, such a distinction is necessary in the case of aid for near-market activities, such as investment. Here, aid to small companies can normally be expected to have a limited impact on intra-Community trade, whereas aid to medium-sized companies may well have a significant trade-distorting effect.

2.2. In view of the foregoing requirements, 'SME' is defined for the purposes of these guidelines as an enterprise which: has no more than 250 employees and either an annual turnover not exceeding ECU 20 million, or a balance sheet total not exceeding ECU 10 million, and is not more than 25% owned by one or more companies not falling within this definition, except public investment corporations, venture capital companies, or, provided no control is exercised, institutional investors.

Where it is necessary to distinguish between small and medium-sized companies, 'small' is defined as an enterprise which: has no more than 50 employees and either an annual turnover not exceeding ECU 5 million, or a balance sheet total not exceeding ECU 2 million, and is not more than 25% owned by one or more companies not falling within this definition, except public investment corporations, venture capital companies or, provided no control is exercised, institutional investors.

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[1] See report to the Council on the definition of SMEs, SEC(92) 351 final of 29 April 1992, p. 2: 'There can be no absolute definition of SMEs. The question of the appropriate definition of SMEs is meaningful only in the context of a specific measure for which it is considered necessary to separate one category of enterprises from others for reasons of their "size". The criteria adopted for making this distinction necessarily depend on the aim pursued.'

[2] See report to the Council on SME definitions.

The three criteria are cumulative, i.e., a firm is only considered to be an 'SME' or a 'small' enterprise, as the case may be, if it fulfils the independence condition, does not exceed the workforce limit and does not exceed at least one of the other limits for either turnover or balance sheet total. The workforce limits are the same as in the fourth company law Directive on annual accounts.[1] The turnover limits of ECU 20 and 5 million and the balance sheet total limit for SMEs of ECU 10 million are 25% higher than in the fourth Directive, currently ECU 16, 4 and 8 million respectively. However, this rounding-up is necessary to compensate for the fact that the workforce limit is always applicable along with one of the two financial limits, whereas under the fourth Directive observance of the two financial limits alone is sufficient for the firm to qualify for the favourable treatment provided for by the Directive. The independence criterion of not more than 25% ownership by a larger firm is based on the practice in many Member States where 25% is taken as the threshold level for possible control. While clearly not so precise as the criteria for a parent-subsidiary relationship in the seventh Directive on consolidated accounts[2] which determine whether certain legal obligations apply, the criterion is sufficient, for present purposes, for indicating the approximate degree of independence required from beneficiaries of SME aid, and the Member States are free to apply more stringent and, in any event, more detailed criteria. Stakes held by public investment corporations or venture capital companies do not normally change the character of a firm from that of an SME, and so can be disregarded. The same applies to stakes held by institutional investors such as pension funds and insurance companies, which usually maintain an 'arms-length' relationship with the company invested in.

3. APPLICABILITY OF THE STATE AID RULES

3.1. Article 92(1) of the Treaty prohibits, subject to possible exceptions, government financial assistance to specific enterprises or industries that distort or threaten to distort competition and affect trade between Member States. State aid to SMEs normally fulfils the criteria of Article 92(1). It confers an advantage on particular enterprises, unlike general measures which benefit firms throughout the economy, and it can affect intra-Community trade as many SMEs export part of their output to other Member States and in most industries, domestic production by SMEs reduces the potential for imports from elsewhere in the Community.

3.2. *De minimis*

However, it is also clear that while all financial assistance to enterprises alters competitive conditions to some extent, not all aid has a perceptible impact on trade and competition between Member States. This is so especially of aid provided in very small amounts, mainly though not exclusively to SMEs, and often under schemes run by local or regional authorities.

In the interests of administrative simplification for the benefit of SMEs, it is desirable that aid up to a certain absolute amount, below which Article 92(1) can be said not to apply,

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[1] OJ L 222, 14.8.1978, p. 11 as last amended in OJ L 317, 16.11.1990, p. 57.
[2] OJ L 193, 18.7.1983, p. 1.

should no longer be subject to prior notification to the Commission under Article 93(3). On past experience, this *de minimis* figure can be set at payments of ECU 50 000 to any one firm in respect of a given broad type of expenditure (e.g., investment, training) over a three-year period. In future, therefore, one-off payments of aid of up to ECU 50 000, in respect of a given type of expenditure and schemes under which the amount of aid a given firm may receive in respect of a given type of expenditure over a three-year period is limited to that figure, will no longer be considered notifiable under Article 93(3), provided that it is an express condition of the award or scheme that any further aid the same firm may receive in respect of the same type of expenditure from other sources or under other schemes does not take the total aid the firm receives above the ECU 50 000 limit. While there will be no limit on the size of company which can benefit from such a *de minimis* facility, it will obviously be primarily of interest to smaller companies. It should be noted that the facility is not available in the sectors subject to special rules listed in paragraph 1.6 above.

3.3. SME aid falling within Article 92(1)

In cases where State aid for SMEs falls under Article 92(1) because it can have a perceptible impact on inter-State trade and competition, it may be eligible for exemption. The broadest exemption clause is Article 92(3)(c), under which the Commission has discretion to allow aid that facilitates the development of certain economic activities or of certain economic areas in so far as trading conditions are not adversely affected to an extent contrary to the common interest.

In view of the positive externalities associated with SMEs, their importance for particular sectors of industry and for regional development, and the specific problems they face, there can be no doubt that State aid for SMEs 'facilitates the development of certain economic activities or of certain economic areas'.

The question remains whether State aid for SMEs affects trading conditions to an extent contrary to the common interest. This depends on the type and intensity of the aid. Aid for activities that are relatively distant from the market-place, such as assistance for obtaining consultancy help to improve general management, affects trade only indirectly and to a comparatively small degree. Aid for near-market activities such as investment arguably affects trade less when it is granted to SMEs than when the beneficiaries are large firms. This is because the sales of individual SMEs are less than those of large firms, a factor accentuated by the often lower turnover per employee in the case of SMEs, and because SMEs are particularly numerous in industries in which there is relatively little intra-Community trade (e.g., construction, certain food manufacturing, retailing, many services). Even so, the effect of investment aid on trade may rise significantly at the 'medium-sized' end of the SME range. Subject to the above, and provided certain acceptable intensities of aid are not exceeded, the effect of SME aid on trading conditions will generally not be so great as to be against the interests of the Community, especially if the positive externalities of SME activity are taken into account.

3.4. Conclusion

It can be concluded that, besides aid that can safely be regarded as falling outside Article 92(1) (*de minimis*), aid for SMEs up to certain intensities according to the type of aid involved is generally eligible for exemption under Article 92(3)(c) and that the Commission is therefore justified in expressing a general presumption in favour of the compatibility of such aid with the common market.

4. GENERALLY ACCEPTABLE INTENSITIES OF AID FOR SMES

It is the practice of the Commission to regard State aid for the following purposes and at the following intensities as eligible for exemption under Article 92(3)(c) where SMEs, as defined above, are concerned.

4.1. Aid for general investment

The Commission now takes the view that general investment aid schemes, i.e., schemes offering aid for investment regardless of size of company and location, are incompatible with the common market and can no longer be allowed. The reasons for this approach are twofold. First, investment is a normal business expense that is in a firm's own interest and therefore in normal circumstances should not require government assistance. If incentives are given for such a near-market activity in an increasingly integrated market such as we now have in the Community, this aid will tend to distort competition and lead to misallocations of resources.

Secondly, generally available investment aid will operate against the objective of increasing economic and social cohesion in the Community. When investment aid is available in non-assisted areas in the more prosperous parts of the Community, it reduces the attractiveness of the incentives offered in assisted areas, especially in the less-developed regions.

The same arguments apply to some extent to generally available aid for investment by SMEs, at least at the 'medium-sized' end of the SME range. For medium-sized companies, the anti-competitive and anti-cohesion arguments against investment and in non-assisted areas probably outweigh the SME development arguments in favour of such aid. If investment aid is available in non-assisted areas even for the largest SMEs, this not only involves a danger of distortion of competition, but also reduces the incentive for SMEs to invest in disadvantaged areas, as the gap between the levels of aid available for SMEs in non-assisted areas of the centrally located, more prosperous Member States and in the assisted areas of both the central Member States and the less prosperous peripheral Member States (which often cannot afford to offer the maximum level of aid theoretically available) may be quite small. While the risk of such a perverse effect may be low for very small companies, it obviously rises as the company gets larger.

The Commission is required to combat such side-effects. The new Article 130b of the EEC Treaty on which the Community Heads of State or Government have agreed in the Treaty on European Union states: 'The formulation and implementation of the Community's poli-

cies and actions and the implementation of the internal market shall take into account the objectives set out in Article 130a (economic and social cohesion) and shall contribute to their achievement'.

Therefore, subject to the exception indicated below for areas designated for assistance under Objective 2 or 5b of the Structural Funds, the Commission has decided to allow investment aid outside of national assisted areas (i.e., areas designated under national regional development schemes independent of the Structural Funds) only up to the levels of 15% gross[1] for small companies, as defined above, and 7.5% gross for other SMEs, i.e. those in the 'medium-sized' category.

In national assisted areas the Commission will allow SMEs (whether small or medium-sized) to receive, on top of the prevailing rate of regional aid authorized by the Commission, an extra 10 percentage points gross of investment aid in Article 92(3)(c) areas and an extra 15 percentage points gross in Article 92(3)(a) areas.[2] However, in Article 92(3)(c) areas the combination of regional and SME aid will be subject to an overall ceiling of 30% net and in Article 92(3)(a) areas 75% net. The resulting matrix of rates (see appended table) is designed to allow the highest aid levels in the areas of greatest need and to preserve a differential between aided and unaided regions for all but the smallest companies.

The aid ceiling resulting from the combination of regional aid and SME aid in assisted areas will apply regardless of whether the aid is entirely provided from national sources or is co-financed by the Community from the Structural Funds, especially ERDF.

Some parts of the Community are designated as eligible for aid from the Structural Funds under Objective 2 or 5b[3] but are not nationally assisted areas. In such areas, too, the Commission has agreed that up to the end of 1993 SMEs (whether small or medium-sized) may receive aid for investment up to a certain level to be decided in relation to each scheme.

The permissible maximum intensities apply to aid in all forms.

4.2. Aid for environmental protection investment

Under the framework for environmental aid[4] investment for environmental protection purposes such as pollution control, CO_2 reduction, protection of the ozone layer, etc., is accorded more favourable treatment than general investment. This applies regardless of the location and size of company, but SMEs in assisted areas can of course claim the rate of aid available (regional and SME supplement) for general investment, which in most cases will be higher than the 15% net currently allowed under the environmental aid framework and will not be subject to the same strict conditions.

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1 That is the nominal (before-tax) value of grants and the discounted before-tax value of interest subsidies as a proportion of the investment cost. Net figures are after tax.

2 See Commission's notice on the method of applying Article 92(3)(a) and (c) to regional aid schemes (OJ C 212, 12.8.1988, p. 2). It should be noted that the lists of (a) and (c) areas appended to the notice are no longer up to date.

3 See Commission's Decisions of 21 March 1989 (as extended) and 10 May 1989 (OJ L 112, 25.4.1989, p. 19 and OJ L 198, 12.7.1989, p. 1).

4 Communication to the Member States, annexed to letter SG(87) D/3795 of 23 March 1987.

4.3. Aid for consultancy help, training and dissemination of knowledge

For help and advice by outside consultants or for training provided to new or established small or medium-sized businesses and their staff, in management, financial matters, new technology (especially information technology), pollution control, protection of intellectual property rights or similar fields, or in assessing the feasibility of new ventures, aid of up to 50% gross is generally accepted. However, each scheme will be judged on its merits, with particular reference to the distance of the activity from the market-place, any cash-limits on the aid per firm, possibilities of cumulation, and other relevant factors. In certain exceptional circumstances the Commission may allow aid of more than 50%. Aid for general information campaigns in particular can be assisted up to a higher intensity as the financial benefit to the individual firm is relatively small.

4.4. Aid for R&D

For R&D, aid of up to 10 percentage points higher than that allowed for large firms may be authorized for SMEs under national R&D aid schemes, as provided in the guidelines for R&D aid.[1]

4.5. Aid for other purposes

The majority of the aid schemes notified to the Commission for SMEs fall into the above categories. The Commission may, however, be prepared to authorize aid for other justified means of SME promotion, such as encouraging cooperation.

5. ACCELERATED CLEARANCE PROCEDURE FOR SME AID SCHEMES

The Commission has stated that it will normally not object to aid schemes for SMEs as defined in paragraph 2.2 above when the aid is low in intensity or amount, namely either:

(i) not more than 7.5% gross of the investment cost if the scheme is for investment; or

(ii) not more than ECU 3 000 per job created if the scheme is for job creation; or

(iii) not more than ECU 200 000 in total if the scheme is not for investment or job creation,

and when aid under the scheme cannot be combined with other aid so as to exceed these limits.

For aid schemes falling within one of the above three categories, the Commission has introduced a special rapid clearance procedure. This procedure and the favourable presumption in favour of such aid will continue to apply for new SME aid schemes. The accelerated procedure will also continue to be applied to modifications[2] of authorized existing schemes, for

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[1] OJ C 83, 11.4.1986, p. 2.

[2] Namely, extension in time, increase in the budget by up to 20%, a combination of these two, or tightening up of eligibility conditions.

SMEs or otherwise. Unlike *de minimis* aid (see paragraph 3.2 above), aid eligible for accelerated clearance will continue to be subject to notification.

6. NOTIFICATION, EXISTING AUTHORIZATIONS, DURATION AND REVIEW OF GUIDELINES

6.1. Except in so far as aid schemes classed as *de minimis* are concerned, these guidelines do not affect the obligation of Member States under Article 93(3) of the EC Treaty to notify all aid schemes for SMEs and all alterations of such schemes.

6.2. The guidelines are without prejudice to schemes that have already been authorized when the guidelines are published, subject, however, to the possibility of review under Article 93(1).

6.3. The Commission will follow these guidelines in its assessment of aid schemes for SMEs for three years from the date of their publication. Before the end of that period it will review the operation of the guidelines.

AUTHORIZABLE RANGE OF AID FOR SMEs, BY SIZE OF COMPANY AND LOCATION

(not applicable to sectors subject to special Community rules on State aid)

Category/purpose of aid	Company size			Aid allowed		Notes
	Employees	Turnover (ECU million)	Balance sheet total (ECU million)	Non-assisted areas	Assisted areas	
De minimis	No limit	No limit	No limit	ECU 50 000 in total per type of expenditure over three-year period		No notification required
Accelerated procedure	≤ 250	≤20	≤10	7.5% gross investment aid or ECU 3 000 per job or ECU 200 000 in total		Notification required
Investment aid other than *de minimis* and that qualifying for accelerated procedure and environmental aid	≤50	≤5	≤2	15% gross (except in non-assisted Objective 2 or 5b areas, where until end 1993 intensities to be set on a case-by-case basis)	Authorized regional aid ceiling + — 10% gross (Article 92(3)(c)) absolute ceiling: 30% net) — 15% gross (Article 92(3)(a)) (absolute ceiling: 75% net)	Normal procedure
	≤250	≤20	≤10	7.5% gross (except in non-assisted Objective 2 or 5b areas, where until end 1993 intensities to be set on a case-by case basis)		
Aid for consultancy help, training, etc. ('soft' aids)	≤250	≤20	≤10	50% of cost of consultancy, etc.		Normal procedure except if *de minimis* or qualifying for accelerated procedure

E — Rules on the assessment for approval of regional aid

Council Resolution of 20 October 1971[1]

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING IN THE COUNCIL:

Considering that regional aid, when it is adequate and judiciously applied, forms one of the essential instruments of regional development and enables the Member States to follow regional policies aimed at a more balanced growth between the various regions of the same country and of the Community;

Aware that the risks of outbidding which exist in respect of regional aid require that a first series of coordinating measures intended to limit those risks be evolved without delay;

Having noted the communication of 23 June 1971 from the Commission on the coordination of general systems of regional aid;

Undertake in consequence to comply with the following principles in respect of systems of regional aid, according to the procedure for application annexed to this resolution:

1. Coordination shall be carried out gradually.

It shall be implemented first of all in the most highly industrialized regions of the Community (the 'central regions'); appropriate solutions, which will be based on the principles set out in this resolution and which will take account of the specific problems occurring in each of the peripheral regions will be prepared for these regions without delay.

Furthermore, in the central regions, implementation of all the required conditions shall take place gradually over a one-year transitional period beginning 1 January 1972.

2. Coordination is constituted by four principal aspects forming a whole: a single ceiling for aid intensity; transparency; regional specificity; and the sectorial repercussions of regional aid.

3. The single ceiling for aid intensity shall be fixed as a net subsidy-equivalent calculated according to the common method of aid assessment (described in point 5 of the procedure of application); the tendency should be, as far as possible, to lower the level of aid in the central regions.

This ceiling, initially fixed at 20 as a net subsidy-equivalent, shall enter into force on 1 January 1972. It shall apply to all regional aid granted for a particular investment project. At the end of 1973, the level of this ceiling will be reviewed, taking account of experience gained and of adaptations of existing systems of aid to make them more transparent, and in relation to the problem of cumulation of regional aid and sectorial aid; the Member States record the importance they attach to the examination, between now and then, of the relationship between the level of aid granted and the number of jobs created.

Derogations from this ceiling may be permitted on prior communication of the relevant grounds according to the procedure laid down in Article 93 of the Treaty establishing the European Economic Community. The Commission shall inform the Council periodically of these derogations from the ceiling.

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[1] OJ C 111, 4.11.1971, p. 1.

4. An essential condition for ensuring the coordination and assessment of general systems of aid is the transparency of the aid and the systems.

This involves the Member States in the following obligations:

(a) achievement of transparency of aid and systems during the transitional period:

ceasing to introduce further opaque aid;

adapting the existing systems towards real transparency when amending or renewing these systems;

elimination of aid the opacity of which cannot be to some extent remedied before the end of the transitional period;

(b) actual application, from 1 January 1972, of the ceiling to all aid granted to an investor for a given investment.

5. As far as regional specificity is concerned, the following principles must effectively be observed:

(i) regional aid must not cover the whole of the national territory (with the exception of the Grand Duchy of Luxembourg, which is considered as a single region), that is to say, general aid shall not be granted under the heading of aid for regional development;

(ii) the general systems of aid must clearly define either geographically or by quantitative criteria, the boundaries of the regions or, within the latter, the boundaries of the areas benefiting from aid;

(iii) except in the case of poles of development, regional aid must not be granted in a pin-point manner, i.e. to isolated geographical points having practically no influence on the development of a region;

(iv) where problems of varying nature, intensity and urgency occur, the intensity of aid must be varied accordingly;

(v) the graduation and variation of rates of aid according to the different areas and regions must be clearly shown.

6. The lack of sectorial specificity in general systems of regional aid makes it difficult to assess them because of the problems that the sectorial repercussions of this aid may raise at Community level. Consequently, the Member States together with the Commission will evolve a procedure to enable assessment of the sectorial effects of regional aid.

Independently of the development of this procedure, the double cumulation of aid, i.e. applying simultaneously to a sectorial or regional problem regional aid and sectorial aid which overlap, is forbidden.

7. The Commission shall supervise the application of the principles of coordination of general systems of regional aid by means of the *post facto* notification which it will receive of significant cases of application, according to a procedure ensuring business secrecy.

8. The results of application will be examined periodically with the senior national officials responsible for aid. The Commission will make an annual report to the Council and to the other Community authorities concerned.

ANNEX

PROCEDURE FOR APPLICATION OF THE PRINCIPLES OF COORDINATION OF GENERAL SYSTEMS OF REGIONAL AID

1. Gradual implementation

Gradual implementation concerns in the first place the territorial field of application. Since one of the objectives of the coordination and adaptation of general systems of regional aid is to put an end to the outbidding between Member States in order to attract investments to their respective territories, the solution advocated will first of all have to be applied in the regions where the effects of this outbidding are most felt, in particular on competition and trade, that is to say in the industrialized regions and in the regions on either side of the frontiers of the Member States. These regions are hereinafter referred to as 'central regions' of the Community.

For the other regions, referred to as 'peripheral regions', an appropriate solution based on the same principles will be worked out in the very near future, taking account of the specific problems arising in each of these peripheral regions.

Moreover, even in the central regions, the implementation of all the necessary conditions can only be gradual. Provision has therefore been made for a transitional period. This period shall run for one year from the date of implementation of the coordination, that is to say, from 1 January 1972.

2. Demarcation of the central regions

The central regions comprise the whole of the Community excluding Berlin and the Zonenrandgebiet, the part of the French territory at present receiving development subsidies and the Mezzogiorno.

The Zonenrandgebiet is defined by the Annex to paragraph 9 of the German law on the development of the Zonenrandgebiet (Gesetz zur Förderung des Zonenrandgebiets of 5 August 1971, Bundesgesetzblatt I, p. 1237).

The industrial development subsidy (PDI) area in France is defined by Decree No 69-285 of 21 March 1969 and the Order of 21 March 1969 (*Journal officiel de la République française* (JORF) of 30 March 1969), supplemented by Decree No 70-386 of 27 April 1970 (JORF of 10 May 1970).

The territories referred to as the Mezzogiorno are those named in Article 1 of the consolidated laws on the Mezzogiorno (Decree of the President of the Republic No 1523 of 30 June 1967, Italian Official Gazette No 159 of 24 June 1968).

3. Aspects covered by coordination

Coordination and adaptation of the general systems of aid shall have four basic aspects: a single ceiling for the intensity of aid; the transparency of aid; regional specificity; and sectorial repercussions.

These four aspects are so closely related that they form a whole. An agreement in principle has been reached on all these aspects, although the implementation of all the necessary conditions can take place only gradually.

As regards some of these conditions — reducing the opacity of certain forms of aid and the sectorial repercussions of aid — technical work is still in progress. Nevertheless, the results obtained so far make it possible to begin to apply the principles of coordination from 1 January 1972; the remaining conditions will have to be fulfilled as soon as possible thereafter and at the latest by the end of the one-year transitional period.

4. The single ceiling for aid intensity

The aim of the single ceiling for the intensity of aid which Member States agree to respect when giving regional aid benefiting a single investor in respect of any given investment in the central regions defined in paragraph 2 is to put an end to outbidding in the matter of aid.

This single ceiling which, during the first stage, does not necessarily involve any changes in the general systems of aid, shall take account of all regional aid received. Similarly, it must not lead those Member States whose present aid systems do not reach this ceiling to increase present aid.

In view of the results of the application of the common assessment method to the principal systems of aid in force in the central regions, the level of the ceiling shall be fixed initially at 20% in net subsidy-equivalent, calculated according to the common method of assessing aid.

This level cannot be fixed once and for all. The tendency should be as far as possible to reduce the level of aid in the central regions. Moreover, care must be taken to ensure that the ceiling chosen effectively corresponds to the needs and problems of the areas receiving aid in those central regions. Thus, while the introduction of a single ceiling for the intensity of aid constitutes a principle, the choice of the level of that ceiling must remain a procedural detail for the application of that principle. This will provide the necessary flexibility with which to work.

The fixing of a single ceiling does not, however, mean that the granting of aid is justified in all areas of the central regions. Aid may only be granted to regions — or, within the regions, to clearly defined areas — where the socioeconomic situation justifies it. Below this ceiling, which constitutes an upper limit, the Member States will continue to vary the intensity of their regional aid in line with the socioeconomic features of the regions concerned (see 'Regional specificity' under paragraph 7) and, where appropriate, with the situation in the various sectors. Derogation from this ceiling may be permitted on prior communication of the relevant grounds to the Commission. On the basis of that communication, which may deal either with individual cases or with particular or urgent problems arising in an area, the Commission shall take a decision. The Commission shall periodically inform the Council of these derogations from the ceiling.

5. The common method of assessing aid

The work done has made it possible to draw up a common method for assessing and comparing aid.

It should be stressed, however, that this is a method of comparison and not of accounting. It facilitates the comparison of aid within the same system and between the different systems of aid of the Member States, taking into consideration the theoretical maximum which may be granted. The theoretical maximum may be very different from the actual amount of aid granted in a given case.

The method is based on a single measurement criterion, namely the relative size of the aid in relation to the amount of the investment, this size being expressed as a percentage. This method makes it possible to classify the principal forms and methods of aid into three categories: transparent or measurable aid; aid which is semi-transparent or assessable (here the assessment involves assumptions which sometimes introduce into the calculations a very wide margin of uncertainty); and opaque aid to which the method is not applicable. In the last category a further distinction must be made between opaque aid which can to some extent be made transparent and that which cannot be.

These calculations are based on aid after tax, that is to say, the beneficiary's net subsidy-equivalent after payment of taxes on profits, assuming that in its first year of operation the undertaking makes such profits that the maximum tax is chargeable. This means that the levels of intensity of aid resulting from the application of this method fall below the figures hitherto usually quoted in the context of regional aid.

The application of the common assessment method to the principal general systems of regional aid granted in the central regions of the common market gives the following theoretical maximum intensities for transparent and semi-transparent aid alone:

	(%)
Germany:	18.1
Belgium:	16.5
France:	24.7
Italy:	26.7
Luxembourg:	17.3
Netherlands:	19.8

The outline presentation of the method of assessing State aid, worked out in the course of several mutilateral meetings with national experts and approved on 18 December 1970 by the heads of the national authorities, does no more than indicate the basic definitions and the simplification conventions decided upon at a technical level, without considering in detail the problems which have had to be analysed in order to arrive at these results.

The basic definitions and the conventions are as follows:

(a) The single measurement criterion is the relationship between the amount of aid and the amount of investment, expressed as a percentage.

(b) Transparent or 'measurable' aid is aid which is based on investment and for which the relationship to the amount of that investment may be expressed as a percentage.

(c) The standard basis for granting aid involves three categories of capital expenditure: land, buildings and plant.[1] The application of this method thus involves adjustments of the standard basis depending on whether aid is granted only for a part of these categories or for additional expenditure. In the latter case, the transparency of the aid depends on knowing its size in relation to the standard basis.

(d) Breakdown of the standard basis for aid: the national experts have adopted the following breakdown:[2]

(%)

	Land	Buildings	Plant
Germany:	5	30	65
Belgium:	5	40	55
France:	5	50	45
Italy:	5	30	65
Luxembourg:	5	50	45
Netherlands:	5	40	55

(e) The date of payment is the same for all kinds of aid.[3] No account is taken of the difference between the date or dates of payment and the date when the decision to grant it was taken. Loans at reduced rates or with rebates of interest are aligned on the date of subsidies by means of a calculation adjusting them to current values.

(f) The rate of adjustment to current values used for the calculations has been fixed at 8%.

(g) The problem of different tax arrangements applied to aid within the same general system, according to the different forms of aid, and between different general systems of regional aid of the Member States, for the same form of aid, shall be solved by adopting the formula of the net result after tax, expressed as subsidy-equivalent, of aid actually remaining to the beneficiary. This assumes[4] that the undertaking makes a profit from the outset and that at the end of the first financial year the profits are sufficient to pay the maximum taxes levied on the aid.

(h) Factors in the calculation as applied to loans at reduced rates or with rebates of interest are as follows:

(i) the proportion: percentage of the capital expenditure, taking account of the standard basis, covered by the loan;

(ii) the term of the loan;

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[1] This convention involves a greater or lesser margin of approximation according to which items are included in the three categories of expenditure.

[2] These breakdowns are only very rough averages. On this point therefore the method departs from the principle of considering only the theoretical maximum aid.

[3] This simplification also introduces a margin of approximation, but with a tendency to increase the intensity.

[4] This assumption reduces the intensity of aid in real terms since in practice it would hardly ever be true. An undertaking making a loss or breaking even during the initial years would retain a considerably larger proportion of the aid.

(iii) the term of the repayment-free period;

(iv) the extent of the interest rate rebate.

The texts of laws, regulations or administrative provisions submitted to the Commission must contain this information for the system of aid to be transparent.

(i) The reference rate is the reference rate used by the public authorities for the payment of subsidies to the credit institutions. If there is no such rate, the average rate of interest in the market concerned is taken into consideration. When aid of this type is increased under depressed economic conditions, a rate which corresponds to such conditions is chosen.

(j) Transparent fiscal aid is that which fulfils the following conditions:

(i) The tax levied according to a standard or a maximum rate must be based on an amount invested in the region.

(ii) In addition, the aid must be determinable by a proportion of the rate of tax and be granted for a specified term.

However, all fiscal aid may be made transparent by fixing a ceiling expressed as a percentage of the investment.

6. The transparency of aid

The requirement that aid be transparent constitutes an essential condition for the coordination and assessment of the systems of aid. In relation to the common method of assessment, the concept of transparency is defined as follows:

(i) Aid is transparent or 'measurable' when the common method of assessment of aid can be applied to it.

(ii) A system of aid is transparent when, for every form of aid which it provides for, it contains all the information needed to apply the common method of assessment to each form of aid; and when the criteria for varying the amount of aid and the conditions concerning cumulation of aid are clearly specified.

The general systems of aid at present in force do not yet fulfil these conditions. A certain period of time will be required for this. Experts are at present working on the problem of opaque aid.

It is however recognized that aid can be gradually coordinated without waiting for the outcome of this work, on condition that the Member States undertake the obligations set out in point 4 of the 'Principles of coordination'.

7. Regional specificity

This is the variation of aid intensity according to the nature, intensity and urgency of the problems of regional development which the public authorities intend to solve.

Since the concept of regional specificity is directly linked with the establishment of a Community regional policy, no rule more specific than the provisions of the Treaty can, in the present circumstances, determine those Community regions where the granting of aid is justified in varying degrees and those where it is not.

The work to be carried out on the particular aspects of each region by the Regional Development Committee will facilitate this assessment.

Pursuant to the Treaty, the Commission shall ensure that the principles set out in point 5 of the 'Principles of coordination' are effectively and gradually observed.

8. Repercussions on different sectors

The lack of sectorial specificity is a basic feature of most of the general systems of regional aid, due to the fact that regional aid is often granted to all industrial sectors without distinction. Nevertheless, it is in the goods and services sectors that the effects of aid on competition and trade are felt. It is however difficult to assess these effects in the absence of any sectorial specificity in regional aid.

Because of the problems they might cause at Community level and to solve this difficulty, a procedure must be worked out to enable these effects on various sectors to be grasped.

Experts are at present working on this matter and various solutions are being examined. It is, however, recognized that coordination of regional aid can begin to be applied without waiting for the results of this work, on condition that the ban on double cumulation (see point 6 of the 'Principles of coordination') is observed, since the Commission can use the procedure laid down in Article 93(2) of the Treaty establishing the European Economic Community should the need arise, particularly where the application of general systems of aid gives rise to well-founded complaints from a Member State.

Independently of this work, maximum attention should be devoted to the sectorial aspects of the information on aid to be supplied to the Commission by the Member States. In this respect, it should be recalled that:

(i) Provisions or measures to direct regional aid towards certain sectors must, since they are constituent elements of the systems of aid, be the subject, in the same way as the other provisions, of the prior notification which, in accordance with Article 93(3) of the Treaty, must be made in good time to the Commission: it is immaterial whether the necessary information is taken directly from the general system of aid or whether reference is made only to national or regional development plans; the legal form (statutory provisions or administrative circulars) and the legal character (binding provisions or merely guidelines) of such provisions are also irrelevant.

(ii) Where a system of regional aid has mixed objectives, both regional and sectorial, it is essential that the system be notified as such to the Commission, pursuant to Article 93(3) of the Treaty, so that it may be assessed from both the regional and the sectorial angles.

(iii) 'Sectorized' statistical information on the application of general systems of regional aid shall, like any other information on these systems, form part of the information to be

communicated regularly by the Member States to the Commission in order that it may, together with those States, keep under constant review the systems of aid as provided in Article 93(1) of the Treaty.

A technique is currently being worked out to deal with the *post facto* statistical examination of the repercussions of regional aid on the various sectors (homogeneity of data, intervals at which it is to be collected).

9. Since the implementation of the coordination and adaptation of systems of regional aid is gradual, some supervision is required not only to ensure that it is gradual but also to be able to assess the effective results of this coordination and, if appropriate, to round off or supplement the procedure of application.

This supervision shall be exercised by the Commission by means of the *post facto* notification which it will receive of significant cases of application, under a procedure ensuring business secrecy, which will be drawn up with the cooperation of experts from the Member States.

The results of the application of the principles of coordination will be examined periodically with the senior national officials responsible for aid. The Commission will make an annual report to the Council.

Commission communication of 1971[1]

(Communication from the Commission to the Council)

On many occasions, most recently in the third medium-term economic policy programme for 1971-75,[2] the Member States and the Community institutions have laid stress on the need to end the competition for investment by means of regional aid and to coordinate such aid schemes at Community level. This need has become more acute since the adoption by the Council and the representatives of the governments of the Member States of the resolution on the progressive establishment of economic and monetary union, for the realization of such a union implies coordination of State aid.

The last few years, and especially the period since completion of the customs union, have seen a sharp increase in the volume and impact of State aid, and general regional aid schemes in particular. Not only are the Member States stepping up their use of such instruments in the conduct of their economic development policies, but the effects of such intervention on competition and trade are being felt more strongly as customs barriers disappear.

However, because the legislation governing general aid schemes tends to be couched in broad terms and insufficiently transparent, the Commission has found itself unable to determine, particularly in advance, whether such schemes are compatible with the common market.

Regional aid, provided it is appropriate and judiciously used, is one of the essential instruments of regional development and enables Member States to pursue regional policies aimed at a more balanced growth of the various regions of their countries.

For this reason, the Commission, anxious to ensure the required level of effective competition and orderly regional development, proposed to the Member States in 1968 a pragmatic method, namely, advance notification of significant awards under general aid schemes, which would enable the Commission, in accordance with Articles 92 and following of the EEC Treaty, to assess the effects of such schemes on competition and trade and determine their compatibility with the common market. When this proposal ran into problems, the Commission looked for an alternative solution, involving coordination and amendment of the schemes themselves.

Four Member States (Germany, Belgium, Luxembourg and the Netherlands) at the time supported the abovementioned pragmatic method, while two (France and Italy) were opposed and advocated a more comprehensive approach.

In spite of this divergence of opinion, all the Member States have since cooperated in fleshing out the coordination solution and a consensus has been reached on the principles that should govern such coordination.

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1 OJ C 111, 4.11.1971, p. 7.

2 Adopted by the Council and the governments of the Member States at the 141st meeting of the Council on 8 and 9 February 1971 (see Doc. R/2179/70 (ECO 214 REV. I)) of 11 December 1970, p. 66).

These principles are the subject of this communication to the Council.

The Commission is thereby fulfilling the undertaking it gave during the Council's deliberation on the memorandum on Community industrial policy at its meeting on 8 and 9 June 1970, and on the draft Council decision on organization of the Community's means of action in the regional development field at its meeting on 26 and 27 October 1970, to report to the Council on the results of its talks with national officials under Articles 92 and following of the EEC Treaty on ways of ending the competition for investment through regional aid and of introducing greater transparency into regional aid schemes.

This communication includes a statement by the Commission.

Statement by the Commission

The Commission hereby gives the Council notice that as from 1 January 1972 it shall, in exercise of the powers vested in it by Articles 92 and following of the EEC Treaty, apply these principles to general regional aid schemes already in force or to be established in the central regions of the Community.

The Commission considers it desirable that the governments of the Member States, for their part, should undertake to abide by the principles set out above, and in the manner herein provided, in the application of their regional aid schemes.

Commission communication of 1973

(Communication from the Commission to the Council)[1]

1. Under the powers vested in it by Article 92 and following of the EEC Treaty, the Commission has since 1 January 1972 been applying to the general regional aid systems in the central regions of the Community the principles of coordination defined in its communication to the Council of 23 June 1971[2] and the subject of the Resolution by the Member States of 20 October 1971.[3]

By virtue of the same powers, and in accordance with Article 154 of the Act of Accession, the Commission is required to supplement that communication, in particular by determining the geographical limits of the central regions in the new Member States of the Community.

2. Under this power of decision, and in order to place all Member States in the same situation with regard to the principles of coordination, the Commission will by 31 December 1974 at the latest, define the principles of coordination based thereon which will be valid for all regions of the enlarged Community as regards the application of the rules of the EEC Treaty concerning aid.

Such coordination thus extended to cover the entire territory of the Community could provide for different categories of region where different ceilings for aid intensity could be applied to take account of the problems to be solved.

3. By 31 December 1974 at the latest the Commission will invite the Member States to undertake in a joint resolution to respect the principles of coordination applicable to the whole Community which are to replace the existing principles.

4. In view of the foregoing, the Commission has decided to make the following amendment and additions to its communication of 23 June 1971:

I. Point 1 of the principles of coordination is to be replaced by the following text:

'1. Coordination is to be carried out progressively. It is first of all to be set in motion in the Community's most industrialized regions (the 'central regions'); an appropriate solution inspired by the principles hereby defined, valid in all the regions of the Community, and which will take account of the specific problems arising in each of the peripheral regions will be established before 31 December 1974.'

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1 COM(73) 1110 of 27 June 1973.
2 OJ C 111, 4.11.1971, pp. 7-13.
3 OJ C 111, 4.11.1971, pp. 1-6.

II. The text of the Annex on methods for implementing the principle of coordination is amended and supplemented as follows:

Point 1 — Gradual implementation

The last two paragraphs are to be replaced by the following:

'A coordination valid for all the regions of the Community will be established by 31 December 1974 at the latest.'

Point 2 — Determining the geographical limits of the central regions

The first paragraph is replaced by the following:

'In the original Member States the central regions comprise the whole of their territory excluding Berlin, the Zonenrandgebiet, the part of French territory which has received industrial development grants and the Mezzogiorno.

The territories not included in the central regions as defined above are designated "peripheral regions".

In Denmark the central regions comprise the whole of Danish territory except Greenland,[1] the islands of Bornholm, Arø, Samsø and Langeland and the special development area in northern Denmark.

The territories not included in the central regions as defined above are designated "peripheral regions".

The entire territory of Ireland is designated a "peripheral region".

In the United Kingdom the central regions comprise those parts of its territory which, at 1 July 1973, are not "assisted areas" as defined in Section 7(7) of the Industry Act 1972, as well as the areas which on that date are "intermediate areas".

The territories not included in the central regions as defined above will be classified later in the framework of the coordination valid for all the regions of the Community'.

The other paragraphs of point 2 remain unchanged.

The following paragraph is added:

'The special development area in northern Denmark comprises the whole county of North Jutland and the north-western parts of the counties of Viborg and Ringkøbing'.

Point 5 — The common method for evaluating aid

The table relating to the theoretical maximum rates for transparent and semi-transparent aid granted in the central regions of the common market is amended as follows:

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[1] Subsequently, the Faeroes will also be regarded as peripheral regions.

	(%)
Germany:	18.1
Belgium:	16.5
Denmark:	22.2
France:	26.3
Ireland:	—
Italy:	26.7
Luxembourg:	17.3
Netherlands:	19.8
United Kingdom:	4

The table concerning the distribution keys within the standard basis for aid is expanded as follows:

	Land	Buildings	Plant
Germany:	5	30	65
Belgium:	5	40	55
Denmark:	5	45	50
France:	5	50	45
Ireland:	5	50	45
Italy:	5	30	65
Luxembourg:	5	50	45
Netherlands:	5	40	55
United Kingdom:	10	20	70

III. Commission statement

The first paragraph of this statement is to be replaced by the following:

'The Commission informs the Council that from 1 July 1973 and under the powers vested in it by Articles 92 *et seq* of the EEC Treaty it will apply these principles in the enlarged Community to general regional aid system in force or to be instituted in the central regions'.

Commission communication of 1975

(Communication of the Commission to the Council of 1975)[1]

In its communication to the Council of 27 June 1973,[2] the Commission – in application of the provisions of Article 154 of the Treaty of Accession – amended and supplemented the principles of coordination defined in its communication of 23 June 1971 and contained in the first resolution of the Member States of 20 October 1971.[3]

The Commission undertook, at that time, in application of its powers of decision on State aid and in order to place all the Member States in the same situation in relation to the principles of coordination, to define on the basis of these same principles, the principles of coordination valid for all regions of the enlarged Community.

When the principles of coordination were defined in 1971 and when they were subsequently completed when the Community was enlarged in 1973, the need to put an end to outbidding in State aid was felt to be most urgent in the most developed regions of the Community. Nevertheless it was, even then, specified that an appropriate solution would be defined to take account of the specific problems posed in each of the other regions.

It is well understood that aid is not the invariable and principal determinant of investment location decisions. A complex set of factors, and particularly socioeconomic factors, is involved, and this explains why even a high level of aid intensity is, in certain regions, insufficient to attract a great number of new investors. Firms which actually have a choice of location base their decision equally on the location of their suppliers and customers, the availability and quality of manpower, social legislation, company law, the level of pay and taxation, etc., of the different States, all of which influence, in a permanent way, the operation of establishments.

The risks of outbidding must therefore be appraised in a manner which varies in accordance with the various factors which favour or impede the development of the Community's different regions. This is, moreover, why the Commission, in exercising its powers under Articles 92 and following of the EEC Treaty, takes account of the fact that the Member States have the best knowledge at national level of all the significant facts required to assess the needs of their regions. The Commission is always prepared, taking account of the general interest, to consider changes to aid systems compatible with the common market, when such changes are justified for example, by problems of employment, unemployment, migration, other valid requirements of regional development policy which may require, as essential national problems, an urgent response.

This cannot prevent a recognition of the fact that outbidding could, particularly in different social and economic circumstances, be damaging not only for the regions concerned but for the Community as a whole. On the other hand, the observance of a discipline on aid granted in the most developed regions will certainly have favourable effects on the other regions. It

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1 COM(75) 77 final of 26 February 1975.
2 COM(73) 1110, 27.6.1973.
3 OJ C 111, 4.11.1971.

is therefore essential to define principles of coordination valid for all regions of the Community, while taking account of the specific problems of each of the regions to which this discipline has not until now been applied.

I. Principles of coordination of general regional aid systems

1. The coordination is valid for all regions of the Community namely:

(i) Greenland, Ireland, Northern Ireland and the Mezzogiorno;

(ii) West Berlin and the Zonenrandgebiet;

(iii) the part of French territory which received industrial development grants (primes de développement industriel), the aided areas in the Italian regions of Friuli-Venezia Giulia, Trentino-Alto Adige, Valle d'Aosta, Lazio, Marche, Tuscany, Umbria and Veneto in so far as these regions are not included in the Mezzogiorno, and for the United Kingdom, the other parts of the country which were defined as assisted areas on 1 January 1975 at Section 7(7) of the Industry Act, 1972, with the exception of areas classified as intermediate areas at that date;

(iv) the special development area in the north of Denmark, and the islands of Bornholm, Ærø, Samso and Langeland;

(v) the other regions of the Community;

and takes account of their specific and important problems.

It comes into force on 1 January 1975 and is valid for a first period of three years.

2. The coordination has five principal aspects which form one whole: ceilings of aid intensity differentiated according to the nature and gravity of regional problems, transparency (see however point 4 below), regional specificity, the sectoral repercussions of regional aid and a system of supervision.

3. The differentiated ceilings for aid intensity are fixed in net grant equivalent for all the regions listed at 1 above with the exception of Greenland.

For Ireland, the Mezzogiorno, Northern Ireland and for West Berlin: the ceilings are fixed at the level of the maximum intensity attainable by measurable aid available under regional aid systems in force in these regions on 1 January 1975.

Moreover, for Ireland, the Mezzogiorno and Northern Ireland, the Commission may ask for the examination in advance of individual cases if particular sectoral problems or the functioning of the common market necessitate such an examination; to this end, the Commission will be informed of projects with an investment exceeding 25 million units of account and for which the envisaged aid exceeds 35% in net grant equivalent.

For the French, Italian and British aided areas listed at 1(iii) above: a ceiling of 30% in net grant equivalent for the total of aid granted to a single investment will be observed as rapidly as possible and at the latest before the end of the first period of three years.

For the Zonenrandgebiet, referred to at 1(ii), and the Danish aided areas listed at 1(iv) above: the ceiling in net grant equivalent is fixed at 25%.

For the other regions of the Community: the ceiling remains at 20% in net grant equivalent, but the trend should as far as possible be for a reduction in the level of aid.

Except in the case of the regions listed at 1(i) above the intensity ceilings are applicable to the total of regional aid accorded to a given investment. The level of the ceilings will be re-examined at the end of the period of three years taking account of experience gained, the evolution of regional situations, especially the trends of unemployment, and of changes in aid systems and in relation to the problems of the combination of regional and sectoral aid. In addition, it will be necessary to examine during the period of three years the relationship between the level of aid granted and the number of jobs created or maintained.

Derogations from the intensity ceilings may be accepted by the Commission provided that the necessary justification is communicated in advance in accordance with the procedure provided for at Article 93 of the Treaty establishing the European Economic Community. The Commission will periodically supply the Council with a list of any such derogations.

4. An essential condition for the coordination and for the appreciation of general aid systems is the transparency of aid and aid systems.

There exist, however, certain forms of aid which hitherto have not been considered as transparent, but which nevertheless can be considered as indispensable to development activity in certain regions. It is understood that the presence or lack of transparency does not prejudge the compatibility of this aid with the common market. The Commission will pursue with experts from Member States the technical studies already begun with a view to finding standards of measurement capable of making comparable all forms of regional aid in force in the Community. In the light of these studies the Commission will establish in consultation with the Member States a list of this aid and the conditions for its use. Any new types of aid or changes in existing aid will be considered by the Commission in the light of the stage reached on the studies mentioned in the previous subparagraph.

5. Regional specificity will be implemented in the light of the following principles:

(i) that regional aid does not cover the whole national territory, i.e. general aid may not be granted under the heading of regional aid;[1]

(ii) that general aid regimes clearly specify, either in geographical terms or by quantitative criteria, the limits of aided regions or, within these, the limits of aided areas;

(iii) that, except in the case of growth points, regional aid is not granted in a pinpoint manner, i.e. to isolated geographical points having virtually no influence on the development of a region;

(iv) that, where problems which are different in kind, intensity or urgency occur, the aid intensity needs to be adapted accordingly;

(v) that the graduation and variation of rates of aid across different areas and regions is clearly indicated.

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[1] With the exception of Ireland and the Grand Duchy of Luxembourg which are each considered as one region.

6. The lack of sectoral specificity in general regional aid systems makes their assessment difficult because of the problems that the sectoral repercussion of this aid may pose at the Community level. Consequently, the Member States and the Commission will examine how account should be taken of this sectoral repercussion when such problems are posed.

When an investment benefits from a sectoral aid on a regionally differentiated basis, a regional aid may not be given in respect of the same investment.

7. The Commission shall supervise the application of the coordination principles by means of the a posteriori notification which it will receive, of significant cases of application, according to a procedure ensuring business secrecy.

8. The results of this application will be examined periodically with the senior national officials responsible for aid. The Commission will make an annual report to the Council and the other Community bodies concerned.

9. The methods for implementing the principles of coordination defined in the Annex to the Commission communication of 23 June 1971 and supplemented by the Commission communication of 27 June 1973 will apply to the extent necessary for the implementation of the principles of coordination set out above.

II. Commission statement

The Commission informs the Council that, in accordance with the powers vested in it by Articles 92 and following of the EEC Treaty, it will from 1 January 1975 apply these principles to general regional aid systems already in force or to be established in the regions of the Community.

The Commission considers it desirable that the governments of the Member States modify their first resolution of 20 October 1971, concerning general regional aid systems, to take account of the principles defined above.

Commission communication of 1979[1]

On 21 December 1978 the Commission informed the Member States of the principles which, in accordance with the powers vested in the Commission by Articles 92 and following of the EEC Treaty, it will apply to regional aid systems already in force or to be established in the regions of the Community. The principles were set out in the form of a communication the text of which is published hereunder.

The Commission has proposed to the Member States under Article 93(1) of that Treaty that their governments take the measures necessary to give effect to these principles within the time-limits provided for in the communication.

In its communication of 26 February 1975 the Commission informed the Council of the principles of coordination, valid for all regions of the Community, which it would apply from 1 January 1975.

The Commission undertook at that time to pursue with experts from the Member States technical studies with a view to finding standards of measurement capable of making comparable all forms of regional aid in force in the Community. The common method of evaluation had hitherto fixed investment as the sole denominator in considering the transparency of aid and aid systems. The employment situation in the various regions of the Community and the emphasis which some Member States wish to give to the creation of jobs in their regional aid scheme were, however, borne in mind in carrying out the studies on measurability. In view of this, an alternative denominator expressed in European units of account per job created by the investment is being introduced into the principles of coordination. The standard of measurement will thus be broadened. In addition, the methods for measuring aid are being supplemented as a result of the studies on measurability. All aid which has maximum intensity which can be expressed in terms of investment or jobs created can now be coordinated.

Some existing regional aid is not, however, conditional on investment, in the sense envisaged in the principles of coordination, or on job creation, and has the character of operating aid. The Commission has reservations in principle as to the compatibility of operating aid with the common market. The Commission will specify the circumstances, if any, in which it might consider operating aid to be compatible. Until then there should be no increase in the level of the existing aid and no further aid of this type should be introduced.

Finally, a method of coordinating aid given on the transfer of an establishment is introduced.

These principles of coordination, as set out in this communication, do not apply to the products mentioned in Annex II to the EEC Treaty.

To give effect to the above and, having regard to the views expressed in previous communications, including in particular the preambles to the communications of 23 June 1971 and 26 February 1975, the principles of coordination have been partly redefined and the methods for their implementation, including the common method of evaluation, have been amended and supplemented.

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[1] OJ C 31, 3.2.1979.

The Commission, in accordance with the powers vested in it by Articles 92 and following of the EEC Treaty, will from 1 January 1979, apply the principles set out hereunder to regional aid systems already in force or to be established in the regions of the Community.

Principles of coordination of regional aid systems

1. The coordination has five principal aspects which form one whole: ceilings of aid intensity differentiated according to the nature and gravity of the regional problems, transparency, regional specificity, the sectoral repercussions of regional aid and a system of supervision.

The differentiated ceilings of aid intensity

2. The differentiated ceilings are fixed in net grant equivalents expressed either as a percentage of initial investment or in European units of accounts (ecu)[1] per job created by the initial investment. No ceilings are fixed for Greenland. The alternative ceilings for the various categories of region are set out hereunder:

(i) For Ireland, the Mezzogiorno, Northern Ireland, Berlin (West) and the French overseas departments a ceiling of 75% net grant equivalent of initial investment will apply to aid linked and fixed directly in relation to initial investment or jobs created, the alternative ceiling being a net grant equivalent of ECU 13 000 per job created by the initial investment. In addition, as from 1 January 1981, for projects with an initial investment exceeding ECU 3 million not more than a further 25% net grant equivalent of initial investment or a net grant equivalent of ECU 4 500 per job created by the initial investment can be paid in other aid and must be spread over a minimum of five years;

(ii) For the part of French territory which receives the regional development premium (as listed in Annex 1 of Decree No 76/325 of 14 April 1976, JORF No 98 of 14 April 1976), the aided areas in the Italian regions of Friuli-Venezia Giulia, Trentino-Alto Adige, Val d'Aosta, Lazio, Marche, Tuscany, Umbria and Veneto in so far as these regions are not included in the Mezzogiorno, and the parts of the United Kingdom other than Northern Ireland which were defined as assisted areas on 1 January 1978 under Section 7(7) of the Industry Act 1972, with the exception of areas classified as intermediate areas at that date, the alternative ceilings will be 30% net grant equivalent of initial investment or a net grant equivalent of ECU 5 500 per job created by the initial investment, but the latter may not exceed 40% net grant equivalent of initial investment;

(iii) For the Zonenrandgebiet and the special development area in the north of Denmark and the islands of Bornholm, Ærø, Samsø and Langeland the alternative ceilings will be 25% net grant equivalent of initial investment or ECU 4 500 per job created by the initial investment, but the latter may not exceed 30% net grant equivalent of initial investment;

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[1] As defined by Council Decision 76/250/EEC of 21 April 1975 (OJ L 104, 24.4.1975).

(iv) For the other regions of the Community the alternative ceilings will be 20% net grant equivalent of initial investment or a net grant equivalent of ECU 3 500 per job created by the initial investment, but the latter may not exceed 25% net grant equivalent of initial investment; for these regions the trend must be towards a reduction in the level of aid as far as possible.

3. One of the appropriate alternative ceilings must be respected by the total regional aid accorded to a given initial investment or on the creation of jobs. The absolute ceilings fixed above the ceilings expressed in ecus per job created by the initial investment do not apply in the case of the tertiary sector.

Aid not conditional on initial investment or job creation

4. There is some regional aid in use in the Community at present which is not conditional on initial investment or job creation and which has the character of operating aid. The Commission has reservations in principle as to the compatibility of operating aid with the common market.

Application of this aid may however continue until final decisions on its compatibility have been taken in the course of the Commission's review of existing aid systems under Article 93(1) of the EEC Treaty. Before the end of a three-year period, the Commission will, in the light of these decisions, specify the circumstances, if any, in which the Commission, notwithstanding its reservations in principle, might consider operating aid to be compatible with the common market. Until then the level, duration and geographic scope of application of the existing aid should not be increased and further aid of this type should not be introduced unless a derogation from this principle has been granted under point 7 hereunder.

5. In order to place all Member States in the same position with regard to the ceilings, particularly in the context of outbidding, the Member States concerned will have to ensure that the ceilings fixed at points 2 and 3 above are not exceeded when the above aid is awarded.

Aid to the transfer of an establishment

6. In the case of transfer of an establishment to an aided region, the ceilings will be 100% of the cost of transfer of capital equipment or the appropriate ceiling from point 2 above applied to the value of the capital equipment, or to the number of workers transferred. The absolute ceilings fixed above the ceilings expressed in ecu per job created by the initial investment at point 2 will not apply in the case of transfers.

Derogations

7. Derogations from the intensity ceilings or from the principle at point 4 above regarding increases in, or the introduction of, certain aid may be granted by the Commission provided that the necessary justification is communicated in advance, in accordance with the procedure provided for at Article 93 of the EEC Treaty. The Commission will periodically supply the Member States with a list of any such derogations.

Review of ceilings

8. The level of all ceilings will be revised at the end of a three-year period having regard in particular to experience gained, the evolution of the regional situation in the Community (especially with regard to the evolution of unemployment), the number of jobs created or maintained and changes in aid systems. Before 31 December 1979, however, the Commission will examine with experts from the Member States the problems of the cumulation of regional and other aid beyond that discussed in point 12. Before the same date it will also examine how absolute ceilings expressed in ecus per job created by the initial investment, above the percentage of initial investment ceiling, might be introduced and the levels at which such ceilings might be fixed. The question as to whether an absolute ceiling expressed as a percentage of initial investment should be introduced above the ceiling expressed in ecus per job created by the initial investment for the regions listed at point 2(i) of these principles will also be examined.

Regional specificity

9. Regional specificity will be implemented in the light of the following principles:

(i) that regional aid does not cover the whole national territory, i.e. general aid may not be granted under the heading of regional aid;[1]

(ii) that aid regimes clearly specify, either in geographical terms or by quantitative criteria, the limits of aided regions or, within these, the limits of aided areas;

(iii) that, except in the case of growth points, regional aid is not granted in a pinpoint manner, i.e. to isolated geographical points having virtually no influence on the development of a region;

(iv) that, where problems which are different in kind, intensity or urgency occur, the aid intensity must be adapted accordingly;

(v) that the graduation and variation of rates of aid across different areas and regions are clearly indicated;

(vi) that the regional aid awarded in the regions benefiting from the European Regional Development Fund should in principle form part of a regional development programme within the meaning of Article 6 of Regulation (EEC) No 724/75 establishing that Fund.

Sectoral repercussions

10. The lack of sectoral specificity in regional aid systems makes their assessment difficult because of the problems that the sectoral repercussions of this aid may pose at Community level.

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[1] With the exception of Ireland and the Grand Duchy of Luxembourg which are each considered as one region.

11. In the absence of a general solution for dealing with these sectoral repercussions, the Commission, following consultation with the Member States, will examine to what extent appropriate restrictions should be applied when awarding regional aid where such restrictions are justified by the situation in a sector.

12. When an investment benefits both from regional aid and from other types of aid on a regionally differentiated basis, the regional aid may be given only in so far as when the regional aid and the regional component of the other types of aid are cumulated, the ceilings mentioned in points 2 and 3 above are not exceeded.

System of supervision

13. The Commission shall supervise the application of the coordination principles by means of a notification system which will ensure business secrecy.

Methods for implementation

14. The methods for implementing the principles of coordination, which include the common method of evaluation, defined in the Annex to the communication of the Commission of 23 June 1971 supplemented by the communication of the Commission of 27 June 1973, will continue to apply. They are, however, amended and supplemented in accordance with the Annex to this communication.

Date of effect

15. The principles of coordination set out in this communication will be applied by the Commission from 1 January 1979 in all regions of the Community for an initial period of three years. In so far as a transitional period for changes in aid systems required by this coordination is deemed necessary by a Member State, the Commission may fix such a period.

ANNEX

METHODS FOR IMPLEMENTING THE PRINCIPLES OF COORDINATION OF REGIONAL AID SYSTEMS

The alternative ceilings of aid intensity

1. The technical studies pursued with the Member States have shown that it is possible to assess, on the basis of certain assumptions and conventions, the extent to which the aid systems of the Member States do not exceed the appropriate ceilings. Notwithstanding the result of such an assessment, the Member States must still ensure that these ceilings are in fact not exceeded in the individual cases of application of the aid systems.

2. The technical studies have also led to the adoption of an *ex post* system of measurement in situations where the regional aid systems of a Member State include both aid which can and which cannot be measured in advance. The Member States concerned must incorporate in their aid systems a rule to the effect that in the individual case the net grant equivalent of aid which can be calculated in advance is subtracted from the appropriate ceiling to establish the balance of aid which could still be paid. The aid which cannot be measured in advance will then be paid to the extent of this balance expressed as a net grant equivalent. If the aid is to be paid over a period of years any balance remaining at the end of a particular year may be carried forward to the next year and increased by the discount/reference year. This process continues until the aid terminates in accordance with its own particular rules of payment or until the balance to the ceiling is exhausted. It should be remembered here that the ceilings are not necessarily those fixed at points 2 and 3 of the principles of coordination but rather the maximums fixed by the Member State and accepted by the Commission under Article 93 of the EEC Treaty.

Aid conditional on initial investment or job creation

3. Labour aid will be considered measurable when the aid awarded for each job created can be expressed as a net grant equivalent in ecus. Labour aid which cannot be so expressed can, however, always be measured by the *ex post* system described at point 2 above.

4. Aid towards the rental of buildings will be considered measurable when they are limited in time and the percentage of the rent given by way of aid in each year is fixed. The rent on the actual building excluding the land is assumed to be equivalent to a rate of return on the value of the building when the rate of return is deemed to be equal to the reference rate. The rent on the land element is assumed to be equal to a real rate of return, i.e. the difference between the reference rate and the rate of inflation. The capital value of the building and land shall be included in the standard basis for the purposes of defining the investment against which aid is to be measured.

5. Aid in the form of loan guarantees will be measured by equating the guarantee to an interest subsidy on a loan equivalent to the value of the amount guaranteed. The value of the equivalent interest subsidy is taken as the difference between the reference rate applicable in a particular Member State and the rate at which that Member State's government

can borrow, taken over the same period as that to which the reference rate relates. Any charge made by a Member State for granting a guarantee will be deducted from the value of the guarantee thus calculated. The ratio of the total amount paid out on behalf of defaulters each year to the total amount of guarantees still outstanding will be communicated annually by the Member State to the Commission. This information on the default ratio may be used to adjust the value of a guarantee. Should a Member State prefer not to use this method for evaluating guarantees, it will notify the Commission of all individual cases involving investment of over ECU 1.5 million in which guarantees are given.

6. Tax concessions will be measured by the *ex post* system outlined at point 2 above.

Aid not conditional on initial investment or job creation

7. Aid related to replacement investment will be measured by means of a method which is introduced with considerable reservations as it involves a wide degree of approximation. It is however considered necessary to place all Member States in the same position with regard to the ceilings. The method described hereunder will therefore be used to ensure observance of the ceilings at least until the Commission specifies the circumstances, if any, in which it might consider aid of this type to be compatible.

Aid to replacement investment will be measured by first expressing the aid awarded as a net grant equivalent of replacement investment using the common method of evaluation. This net grant equivalent will then be related to the initial investment by using an appropriate discount rate. The timing of replacement investment will be based on the average life of capital equipment.

8. Tax aid which has the character of operating aid will be measured by the *ex post* system outlined at point 2 above.

9. Labour aid which has the character of operating aid and which is expressed as a fixed amount per specified period for each person employed will be measured, by means of the reference rate, as the net grant equivalent of the sum necessary to generate the cash flow of the aid. The use of this method of measurement will be based on the understanding that the amount paid for each person employed cannot be increased. Where the amount paid is not fixed the *ex post* system outlined at point 2 above will be applied.

Aid given on the transfer of an establishment

10. Aid given on the transfer of capital equipment will be considered measurable when it is either expressed as a percentage of the costs of moving capital equipment (including costs of dismantling and remounting) or expressed as a percentage of the value of the capital equipment moved. The value of the capital equipment moved and receiving aid in either of the two ways above shall not be included as capital expenditure eligible for further aid, and shall therefore be excluded from the standard basis.

11. Aid awarded on the basis of the number of workers transferred will be coordinated against the appropriate ceilings in ecus per job created.

The ecu ceilings in national currencies

12. The ceilings expressed in ecus per job created by the initial investment will be expressed throughout each year for each Member State in its own currency at the exchange rate of the first day of the year on which exchange values for ecus into all currencies of the Community are available. The ceilings thus expressed may be revised during the year by agreement between the Commission and a Member State if necessitated by a significant change in exchange rates. The Commission will communicate to each Member State the value of the ceilings in its own currency.

Reference rates and discount rates

13. The communication of 23 June 1971 provided for a unique updating or discount rate throughout the Community in applying the common method of evaluation. Because of the difference in interest rates in the different Member States, discounting will now be carried out at reference rates reflecting the average rate of interest on the market concerned.

14. These reference/discount rates for each Member State have for the present been fixed as follows:

Belgium: The rate for Société nationale du crédit pour l'industrie loans of more than 10 years,

Denmark: The European Investment Bank lending rate plus 1.5 percentage points,

France: The rate used for plant and equipment loans from the Crédit National,

Germany: The rate for medium-term loans from the Kreditanstalt für Wiederaufbau (programmes M1 and M2),

Ireland: 'AA' rate for loans in excess of seven years as fixed by the Standing Committee of Commercial or Merchant Banks,

Italy: Average reference rate applicable to payments by central government of interest subsidies to credit institutions,

Luxembourg: The average yield on a representative selection of bonds issued in Luxembourg francs on the primary market in Luxembourg as published by the Luxembourg stock exchange,

Netherlands: The rate of yield on debt certificates,

United Kingdom: The broadly commercial rate at which medium-term loans are made under the Industry Act 1972.

15. The reference rate is fixed at the beginning of each year on the basis of the average annual rate for the preceding year. However, should there be a significant change in the relevant rate, it will be adjusted by agreement between the Commission and the Member State concerned. Such an adjustment would only be made if there was an appreciable discrepancy — at least two percentage points — between the current reference rate and the average of the rates recorded over a three-month period.

The common method of evaluation when applied to individual cases

16. The common method of evaluation applies, in general, to the examination and calculation of aid intensities, both for regional aid systems and for their application to individual cases. However, many of the assumptions and conventions used at the level of the systems are not necessary and should not be applied in the individual case. As a result of the experience gained since the introduction of the common method of evaluation and the contacts between the Commission and the Member States in its implementation the following refinements, which are to be applied in the individual case, are confirmed:

(i) the actual costs of land, buildings and plant will be used rather than the hypothetical standard basis;

(ii) the reference/discount rate will be the rate ruling at the beginning of the project;

(iii) where the aid and/or investment are not given or undertaken all in one year, the actual timing of the aid and investment will be taken into account. This is done by discounting both the investment and aid, on the basis of calender years, back to the year the investment was initially undertaken;

(iv) in the calculation of aid towards the rental of buildings or periods of reduced rents in State-owned buildings, the actual rent grant or reduction and the actual capital value of the buildings will be used.

Alternative methods of evaluation

17. The common method of evaluation describes a method of evaluation to be used for each type or category of aid. However, where for administrative, or other reasons the Commission considers that the method that would normally be used would be difficult or inappropriate to use for a particular aid, it will devise an alternative, equivalent method to overcome these difficulties. The Commission will periodically supply the Member States with details of such alternative methods.

Interpretation

18. (i) Initial investment will be interpreted as investment in fixed assets in the creation of a new establishment, the extension of an existing establishment or in engaging in an activity involving a fundamental change in the product or production process of an existing establishment (by means of rationalization, restructuring or modernization). Investment in fixed assets by way of takeover of an establishment which has closed or which would have closed had such takeover not taken place, may also be deemed to be initial investment. The manner in which initial investment so defined is identified in the regional aid systems of the Member States will be examined by the Commission in the course of its review of existing aid systems under Article 93(1) of the EEC Treaty.

(ii) For the purposes of point 2(i) of the principles the 'aid linked and fixed directly in relation to initial investment or jobs created' will be interpreted as including grants,

loans or preferential terms or interest relief grants and guarantees linked to the initial investment or lump-sum grants fixed directly in relation to the number of jobs created. Where, in the case of projects with an investment exceeding ECU 3 million, the ceiling specified for such aid is not reached, the balance to the ceiling may be added to the ceiling specified for other aid which must be spread over a minimum of five years.

(iii) For the purposes of point 3 of the principles, the tertiary sector will be interpreted as being made up of the activities listed in divisions: 6 (distributive trades, hotels, catering and repairs), 7 (transport and communication) – with the exception of classes 71 (railways), 72 (other land transport), 73 (inland water transport), 74 (sea transport and coastal shipping), 75 (air transport) and 76 (supporting services to transport) – 8 (banking and finance, insurance, business services, renting) and 9 (other services) of the general industrial classification of economic activities within the European Communities (NACE-1970).

Commission communication of 1990 on the reference and discount rates applicable in France, Ireland and Portugal[1]

State aid

In its communication of 21 December 1978,[2] the Commission described the principles it would apply to regional aid systems already in force or to be established in the regions of the Community.

The communication comprised an Annex describing the methods for implementing these principles and, in particular, fixing (points 13 to 15) the reference rates and discount rates to be used for the calculation of the net grant equivalent of the various types of aid in each Member State.

The definition of the reference and discount rates applicable in France and Ireland was modified with effect from 1 January 1989 and that applicable in Portugal was adopted with effect from 1 January 1986.

As a result, the fourth indent of paragraph 14: 'France — The rate used for plant and equipment loans from the Crédit National' should be replaced by 'France — The average rate taken from the quarterly survey of the Banque de France on the cost of medium- and long-term credit to enterprises'.

Similarly, under the sixth indent of the same paragraph: 'Ireland — "AA" rate for loans in excess of seven years as fixed by the Standing Committee of Commercial or Merchant Banks' should be replaced by: 'Ireland — average "AA" rate for loan accounts as set by the Associated Banks'.

An 11th indent should also be added: 'Portugal — The Bank of Portugal discount plus two points'.

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1 OJ C 10, 16.1.1990, p. 8.
2 OJ C 31, 3.2.1979, p. 9.

Commission communication of 1988[1] on the method for the application of Article 92(3)(a) and (c) to regional aid

On 21 December 1978 the Commission informed the Member States of the principles which, in accordance with the powers vested in the Commission by Article 92 and following of the EEC Treaty, it would apply to regional aid systems in force or to be established in the regions of the Community. These principles were set out in the form of a communication which was published in the *Official Journal of the European Communities*.[2] This communication partly redefined the principles of coordination already established[3] and amended and supplemented the methods for their implementation, including the common method of evaluation of the intensity of aid.

In its 1979 communication the Commission established a number of differentiated ceilings of aid intensity for various categories of region in order to avoid the bidding up of aid levels in the wake of the removal of customs and trade barriers inside the common market. The very nature of regional aid requires that it be awarded selectively. Many regions in the Community do not need regional aid. Regions that are shown to need assistance should receive aid in proportion to the gravity of the regional imbalances they face. The ceilings set out in the communication are intended to act as maximum limits reflecting the nature and gravity of regional problems across the Community. Within these parameters the Member States notify proposed levels of regional aid to the Commission, often at lower levels, which subsequently approves or amends them in its decisions under Articles 92 and 93.

Article 92(3) provides two distinct possibilities where the Commission may consider regional aid compatible with the common market — Articles 92(3)(a) and (c) which apply to different degrees of regional disadvantage. The Commission adopted a method for the application of Article 92(3)(c) in 1983 and this method has been used for all the decisions which the Commission has taken since then.

Only occasional use has been made of Article 92(3)(a) when approving national regional aid in the past. However, successive enlargements of the Community have broadened the range of its regional diversity and confirmed the need to develop new policy instruments for the control of regional aid. At the same time Article 130 of the Single European Act gives a new impetus to greater economic and social cohesion and provides that in particular the Community shall aim at reducing disparities between various regions and the backwardness of the least-favoured regions. In response to these needs the Commission has in 1987 adopted a method for the application of Article 92(3)(a) to national regional aid.

In order to promote a greater understanding and transparency of the decisions taken by the Commission under Articles 92 and 93 with respect to national regional aid systems, the Commission, with the support of the European Parliament, has decided to publish its methods of assessment which are described below.

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1 OJ C 212, 12.8.1988.
2 OJ C 31, 3.2.1979.
3 Communications of 26 February 1975 and 23 June 1971.

I — Method for the application of Article 92(3)(a) to national regional aid

Article 92(3)(a) provides that aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment may be considered compatible with the common market.

1. Principles of method

In applying Article 92(3)(a) the Commission bases its decisions on a method of assessing the relative level of development of different regions compared to the Community average. The method is based on the following principles:

(i) the socioeconomic situation of Article 92(3)(a) regions is assessed primarily by reference to per capita GDP/PPS using the Community index for the region;

(ii) regions are assessed on the basis of NUTS[1] level-III geographical units;

(iii) the relative level of regional development is compared to the Community average;

(iv) regions to be classified as Article 92(3)(a) regions are those regions where a majority of the level-III regions located in a level-II region have a GDP/PPS threshold of 75 or lower thus indicating an abnormally low standard of living and serious underemployment.

2. Choice of indicators

The method uses GDP per capita measured in purchasing power standards (PPS), a measure based on a comparison of the prices in the Member States for the same sample of production and services. This provides a method of measuring living standards which allows for differences in the cost of living between the regions of different Member States.

Underemployment concerns all those who are not fully employed in some way. In general, where underemployment is great, productive output will tend to be low and as such will also be reflected in GDP data. For the areas concerned — predominantly rural areas with an underdeveloped industrial base or a limited level of service activities — unemployment statistics are not a satisfactory measure of underemployment. The general low level of technology in the industrial infrastructure and the unsophisticated range of service activities lead to a relative emphasis on labour in the productive process. This can mask a significant level of underemployment which remains unrevealed by unemployment data.

3. Geographical unit

The basic geographical unit used in the analysis is the level-III region. However, for the purposes of determining eligibility as an Article 92(3)(a) region, reference is made to the

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[1] Nomenclature of territorial units for statistics. There are 822 NUTS level-III regions in the Community of Twelve.

situation of the majority of level-III regions in the larger (level II) region. This allows the situation of an individual level-III region which differs sharply from the surrounding regions to be taken into account. If a relatively favourable region is located in an otherwise backward area, it can be included under Article 92(3)(a) provided a majority of the level-III regions in the corresponding level-II region satisfy the GDP/PPS threshold requirement. On the other hand, however, a more disadvantaged region will be excluded if this requirement is not satisfied.

A list of the regions selected by this method is attached in Annex I. It can be seen that these regions lie mainly on the southern and western periphery of the Community.

4. Exceptional regions

In addition to the regions selected by the above method, two further regions have been added to the list in order to take account of their exceptional situations. One is Northern Ireland because of its particularly difficult situation. The other is Teruel which, although adjacent to other more-developed regions, is one of the most underdeveloped regions in Spain, is very sparsely populated, has a high level of dependence on agriculture and neighbours other Article 92(3)(a) regions.

5. Aid ceilings

The 1979 principles of coordination set 75% net grant equivalent of initial investment as the highest permissible aid intensity. It has therefore been decided to fix 75% net grant equivalent as the ceiling on aid intensity which will apply in Article 92(3)(a) areas.

The principles of coordination[1] provide that ceilings of aid intensity must be adapted according to the kind, intensity or urgency of the regional problems. While all Article 92(3)(a) regions have severe regional problems relative to a Community standard, significant disparities in living standards and underemployment may exist between regions inside the same Member State.

Consequently, the Commission will use its discretionary power to require a regional differentiation in aid intensity below 75% NGE. As such the relevant ceiling of aid intensity for a regional aid system will be the maximum notified by the Member State to the Commission in accordance with Article 93(3) and approved by the Commission when making its subsequent decision under Articles 92 and 93.

6. The range of aid instruments required to promote regional development in Article 92(3)(a) areas

Regional aid in the Community can be broadly divided into two categories: aid linked to initial investment or job creation and that of a continuing character, designed to overcome particular or permanent disadvantages (operating aid).

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[1] OJ C 31, 3.2.1979.

Given the severe disadvantages of Article 92(3)(a) regions, aid linked to initial investment may not always be suitable or sufficient to attract investment into the region or to allow indigenous economic activity to develop. Companies located in these regions typically face additional cost burdens because of location and infrastructure deficiencies which can permanently hamper their competitiveness. Under certain conditions, some operating aid can bring a positive benefit to the poorest parts of the Community. Firstly, some regions may experience such serious cost and infrastructural disadvantages that even the maintenance of existing investment is extremely difficult. In the early stages of development, maintenance of existing investment, perhaps on a short to medium-term basis, can form a *sine qua non* for the attraction of new investment which will help in turn to develop the region. In many Article 92(3)(a) regions, a broadly-based industrial structure does not yet exist. Most of the companies are very small, they operate in traditional sectors and will not expand without an outside stimulus. In such difficult environments, it may be justified to permit certain types of assistance such as marketing aid in order to enable companies in these regions to participate effectively in the Community's internal market, both as producers and consumers. Without them, the opportunities offered by the internal market may remain out of reach. Secondly, some regions may suffer from such severe structural disadvantages, for example, those caused by remote location, that they are almost insuperable. As a practical example, island regions in peripheral locations can suffer a permanent cost disadvantage with respect to trade because of the burden of additional transportation expenses. The same holds true for communication costs. Operating aid of this type can foster closer links between the least-developed regions and the central regions, thereby promoting overall economic integration in the Community. In recognition of the special difficulties of these regions, the Commission may, by way of derogation, authorize certain operating aid in Article 92(3)(a) regions under the following conditions:

(i) that the aid is limited in time and designed to overcome the structural handicaps of enterprises located in Article 92(3)(a) regions;

(ii) that aid be designed to promote a durable and balanced development of economic activity and not give rise to a sectoral overcapacity at the Community level such that the resulting Community sectoral problem produced is more serious than the original regional problem; in this context a sectoral approach is required and in particular the Community rules, directives and guidelines applicable to certain industrial (steel, shipbuilding, synthetic fibres, textiles and clothing) and agricultural sectors, and those concerning certain industrial enterprises involving the transformation of agricultural products are to be observed;

(iii) that such aid is not granted in violation of the specific rules on aid granted to companies in difficulty;

(iv) that an annual report on their application is sent to the Commission, indicating total expenditure (or loss of revenue in the case of tax concessions and social security reductions) by type of aid and an indication of the sectors concerned;

(v) that aid designed to promote exports to other Member States is excluded.

II — Method for the application of Article 92(3)(c) to national regional aid

Article 92(3)(c) provides that aid to facilitate the development of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest may be considered compatible with the common market.

1. Principles of method

In applying Article 92(3)(c), the Commission bases its decisions on a method which allows the socioeconomic situation of a region to be examined, both in its national and its Community context. This enables the Commission, in the Community interest, to verify that a significant regional disparity exists and, if so, to authorize the Member State concerned, irrespective of its level of economic development, to pursue a national regional policy. The Commission's decisions are based on the following principles:

(i) regions are assessed on the basis of the NUTS level-III geographical unit (in justified exceptional circumstances a smaller unit may be used);

(ii) in the first stage of analysis, the socioeconomic situation of a region is assessed on the basis of two alternative criteria: per capita gross domestic product (GDP) or gross value-added at factor cost (GVA) and structural unemployment;

(iii) a second stage of analysis considering other relevant indicators completes the first stage.

2. First stage of analysis

The socioeconomic situation of a region is considered in relation to certain thresholds which are calculated in two steps. The first step relates to a minimum regional disparity in a national context while in the second step this minimum required disparity is adjusted to take account of the situation of those Member States which have a more favourable level of development in a Community context.

Since aid can only be accepted when it facilitates the development of certain economic areas, this requires a certain backwardness of the region within the Member State, that is to say a minimum negative regional disparity in the national context notwithstanding the relative situation of the Member State within the Community. This minimum regional disparity in the national context is considered to be satisfied for the region, if:

(i) income as measured by per capita GDP/GVA (gross domestic product/gross value-added) is at least 15% below the Member State average;

and/or

(ii) structural unemployment is at least 10% above the Member State average.

This is achieved if the GDP/GVA index for the region is not above a basic threshold of 85 and/or if the structural unemployment index is not below a basic threshold of 10. In each case the index for the Member State equals 100.

A relatively more flexible threshold for structural unemployment has been fixed to take into account the important need to reduce unemployment.

At the same time aid can only be accepted when it does not adversely affect trading conditions to an extent contrary to the common interest. Since it is against the common interest to increase the existing differences between regions and the backwardness of less-favoured areas, the Commission has determined that for aid to be granted to regions in Member States for which the indicator shows a more favourable situation than the Community average, the national regional disparities of such regions must be correspondingly greater.

It is therefore necessary to establish the relative position of the Member States within the Community. In measuring this position, two European indices are calculated for each Member State. They express the Member State's position with respect to income and to structural unemployment as a percentage of the corresponding Community average. These indices are calculated as average values over a five-year period and are updated annually. In the second step the European index is used to adjust the respective basic threshold for each Member State which is better off than the Community average, according to its relative position within the Community, by applying the following formula:

$$\left(\text{basic threshold} + \frac{\text{basic threshold} \times 100}{\text{European index}} \right) : 2 = \text{modified threshold}$$

Since the situation of each region is examined in the first place in the national context, the construction of the formula attenuates the impact of the European index. The better the situation of a Member State compared with the Community average, the more important must be the disparity of a region within the national context in order to justify the award of aid.

The thresholds in force on 1 November 1987 are shown in Annex II. Annex III contains a list of regions currently approved for regional aid under Article 92(3)(c) together with the maximum intensities approved by the Commission for those regions.

In order to avoid the situation where the structural unemployment threshold becomes too rigorous, a maximum required disparity corresponding to an index of 145 is fixed. This facilitates the award of aid in regions with a very difficult unemployment situation in a national context even though the same situation may not be so unfavourable in a Community context. Given the smaller variation in the threshold for GDP/GVA it has not been necessary to establish a maximum required disparity.

3. Second stage of analysis

The first stage of analysis outlined above permits a basic examination of the socioeconomic situation of a region in its national and Community context in terms of unemployment and income levels. However, many other economic indicators can also be used to bring into more precise focus the socioeconomic situation of a particular region. Therefore, meeting the relevant threshold in the first stage does not automatically qualify a region to receive State aid. The first basic stage of analysis must be complemented by a second stage which allows other relevant indicators based on available Community and national statistical data to be taken into account. These other relevant indicators may include the trend and structure

of unemployment, the development of employment, net migration, demographic pressure, population density, activity rates, productivity, the structure of economic activity (in particular the importance of declining sectors), investment, geographic situation and topography and infrastructure. In some circumstances, and especially for regions which are at the margin of the thresholds applied in the first stage of analysis, it is possible that the second stage may reveal an adequate justification for regional aid even in regions which do not fully satisfy the thresholds established in the course of the first stage.

4. Ceilings of aid intensity

Differentiated ceilings of aid intensity are established in accordance with the principle fixed at point 9(iv) of the coordination principles.[1] This provides that aid intensity must be adapted according to the kind, intensity or urgency of regional problems, as has been envisaged by the different ceilings fixed under point 2 of the coordination principles (20, 25 and 30%).

In practice the ceilings approved by the Commission when taking Article 92 and 93 decisions are often lower, and frequently significantly lower, than the above maximums.

[1] OJ C 31, 3.2.1979.

Commission communication of 1990 on the method of application of Article 92(3)(a) to regional aid[1]

(90/C 163/05)

Change in application of method

In a previous communication[2] the Commission has already described its method for the application of Article 92(3)(a) to national regional aid. The basic geographical unit used in the analysis is the (NUTS) level-III region. However, for the purposes of determining eligibility as an Article 92(3)(a) region, reference is made to the situation of the majority of level-III regions in the larger, level-II region. The reasons for this approach are explained under point I (3) of the communication.

The Commission has decided to maintain the level-III region as the appropriate geographical unit for aid assessment purposes. However, for determining eligibility under Article 92(3)(a), reference will now be made to the situation of the level-II region as a whole in which the level-III region is located. Furthermore, when regions are assessed by using the per capita GDP/PPS indicator, the corresponding index will be averaged over a minimum period of three years based on the last three years, where possible.

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[1] OJ C 163, 4.7.1990, p. 6.
[2] OJ C 212, 12.8.1988, p. 2.

Commission letter to Member States of 17 January 1994

(Reference rates for the assessment of regional aid — amendment to the mechanism for setting and revising the rates)

Dear Sir

1. Under the 'principles of coordination of regional aid systems' (OJ C 31, 3.2.1979, Annex, points 13 to 15), a reference or discount rate is applied in order to determine the grant equivalent of any form of assistance, whether an entire scheme or an individual measure; the Commission fixes the rate at the beginning of each year on the basis of the annual average in the preceding year of a specified indicative rate. During the course of a year, the reference rate may be revised only if there is an appreciable discrepancy — at least two percentage points — between the current reference rate and the average of the indicative rates recorded over a three-month period.

2. I hereby inform you that, following discussion of the matter at the multilateral meetings on State aid held on 24 and 25 June 1993 and 15 December 1993, and in agreement with the Member States, the Commission has decided to amend the mechanism for setting and revising the reference rates as follows:

(i) the reference rate will continue to be adjusted at the beginning of each year, with effect from 1 January, on the basis of the average of the relevant indicative rate during the previous quarter (for technical reasons: September, October and November);

(ii) the reference rate will be adjusted again in the course of the year if the difference between the current reference rate and the average of the indicative rate recorded over the previous three months exceeds 15% of the current reference rate.

It should be noted that this amendment differs from current practice on only two points:

(i) the reference rate will be set annually on the basis of the average for the previous three months (September to November) instead of the average for the previous year;

(ii) the absolute two-percentage-point revision threshold will be replaced by a relative revision threshold amounting to 15% of the value of the reference rate.

This amendment will enter into force on 1 January 1994.

Yours faithfully

Changes to the method for the application of Article 92(3)(c) of the EC Treaty to regional aid

(Articles 92 to 94 of the Treaty establishing the European Community)

(Commission notice, addressed to Member States and other interested parties, concerning an amendment to Part II of the communication on the method for the application of Article 92(3)(a) and (c) to regional aid)

On 1 June 1994, the Commission amended the method referred to above. This decision is set out in full below.

1. Introduction

1. When the Commission examines whether a region qualifies for regional aid, it does so on the basis of the Commission communication on the method for application of Article 92(3)(a) and (c) to regional aid.[1] The amendment now made affects only that part of the method which concerns the application of Article 92(3)(c).[2] The part of the method which deals with the application of Article 92(3)(a) remains unchanged.

2. The Article 92(3)(c) method for evaluating the socioeconomic situation in a region and thus for deciding whether the region qualifies for regional aid is a two-stage process. The first stage of analysis is carried out on the basis of per capita gross domestic product (GDP) or gross value-added at factor cost (GVA), on the one hand, and structural unemployment, on the other. Figures are calculated for the NUTS (nomenclature of territorial units for statistics) level-III geographical unit, or for a smaller geographical unit in exceptional circumstances duly established. The purpose of the second stage is to supplement and make fine adjustments to the results of the first, and not to replace it; other indicators are here used to bring the socioeconomic situation of the region into more precise focus. This second stage, therefore, is concerned primarily with regions whose socioeconomic indicators place them at the margins of eligibility at the first stage. The other indicators considered may include the trend and structure of unemployment, the development of employment, net migration, the structure of economic activity, and topography.

2. Grounds

1. The Article 92(3)(c) method has been applied by the Commission since 1983 to determine which forms of regional aid can be granted in the Member States. The indicators it uses and the corrections made in some cases on the basis of the second-stage indicators, have provided a fair picture of the regional development problems experienced in certain Community regions.

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[1] OJ C 212, 12.8.1988.

[2] Referred to here as 'the method' or 'the Article 92(3)(c) method'.

2. The Commission has been carrying out studies and projections with a view to the forthcoming accessions and to the smooth functioning of the European Economic Area; it has found that the indicators used in the first stage of the present method do not properly reflect the regional problems specific to certain applicant countries, particularly the three Scandinavian countries (Norway, Sweden and Finland). In these countries there are important aspects of the regional situation which the indicators are supposed to describe and which fall outside the scope of the present method of analysis of eligibility. But a large proportion falls outside the scope of analysis and eligibility.

3. The shortcomings now observed in the *acquis communautaire* in this regard are due in large part to a number of special features shared by Norway, Sweden and Finland: they derive from geography — the remote northern location of some areas, harsh weather conditions and very long distances — and from the very low population density in some parts. These are specific factors new to the European Community. They are not to be found in any other Member State and were not regarded as fundamental problems when the method was devised. The result is that although they form obstacles to regional development and impose handicaps on businesses, they are not reflected in the statistical indicators applied in the first stage of the method.

4. A test of eligibility has therefore to be found which reflects these problems. Such a test should be of general application, i.e. potentially applicable to any country; and it should not disrupt the organization of the Community and particularly the system of regional aid currently in force. If it is to be an objective test which is valid *erga omnes*, it must be an alternative to the unemployment and GDP tests used in the first stage of the method. This would mean that any NUTS level-III region presenting the required level of unemployment, or GDP, or satisfying the new test could be accepted as qualifying for regional aid in the appropriate circumstances and subject to Commission approval.

5. As was suggested by way of example in the joint declaration on Article 61(3)(c) of the Agreement on the European Economic Areas,[1] the Commission can take very low population density as the new basic test of eligibility. The threshold should be a population density of less than 12.5 per km^2. All NUTS level-III regions with a population density below that figure will then qualify for the exemption for regional aid laid down in Article 92(3)(c) of the EC Treaty, subject to assessment and decision by the Commission.

6. This population density test may provide a satisfactory response to the problem of underpopulation in certain regions, but it does not address another regional handicap specific to the Scandinavian countries, namely the extra costs to firms occasioned by very long distances and harsh weather conditions. These factors affect regional development in two ways: they may induce firms in such regions to relocate to less remote areas which hold out better prospects for economic activity and they might dissuade firms from locating in such outlying areas. The Commission could therefore decide to authorize aid to firms aimed at providing partial compensation for the additional cost of transport, on a limited basis and at its

[1] OJ L 1, 3.1.1994, p. 538.

discretion, in order to safeguard the common interest. Such compensation must however comply with the following conditions:

(a) It must serve only to compensate for the additional cost of transport. The Member State concerned will have to show that compensation is needed on objective grounds. There must never be over-compensation. Account will have to be taken here of other schemes of assistance to transport, notably under Articles 77 and 80 of the EC Treaty.

(b) Aid may be given only in respect of the extra cost of transport of goods inside the national borders of the country concerned. It must not be allowed to become export aid.

(c) Aid must be objectively quantifiable in advance, on the basis of an aid-per-kilometre ratio or on the basis of an aid-per-kilometre and an aid-per-unit-weight ratio, and there must be an annual report drawn up which, among other things, shows the operation of the ratio or ratios.

(d) The estimate of additional cost must be based on the most economical form of transport and the shortest route between the place of production or processing and commercial outlets.

(e) Aid may be given only to firms located in areas qualifying for regional aid on the basis of the new population-density test.

(f) No aid may be given towards the transport or transmission of the products of businesses without an alternative location (products of the extractive industries, hydroelectric power stations, etc.).

(g) Transport aid given to firms in industries which the Commission considers sensitive (motor vehicles, textiles, synthetic fibres, shipbuilding, ECSC products and non-ECSC steel) must always be notified in advance and will be subject to the industry guidelines in force.

(h) Agricultural produce within the scope of Annex II to the EC Treaty, other than fish, is not covered by this measure and will be the subject of a separate proposal that will take account of the arrangements agreed for the agricultural sector in the accession negotiations.

In the two years after accession the existing schemes of assistance to transport will be examined on the basis of these criteria. Future schemes of assistance to transport will have to be limited in time and should never be more favourable than those already existing in the relevant Member State.

3. Decision

On the basis of these considerations, the Commission has decided under Articles 92 and 93 of the EC Treaty and Articles 61 and 62 of the EEA Agreement:

1. To amend the method for the application of Article 92(3)(c) to regional aid by inserting a point 2a, reading as follows:

   '2(a) Addition to the first stage of analysis

   In order to take account of special regional development problems arising out of demography, NUTS level-III regions with a population density of less than 12.5 per km^2 may also be considered eligible for regional aid under the exemption set out in Article 92(3)(c).'

2. To give sympathetic consideration to aid intended to compensate for the additional cost of transport, provided it complies with the conditions set out in point 2.6 above.

F — Rules on the assessment for approval of aid to particular industries

I — Textile and clothing industry

Community framework for aid to the textile industry

(Communication to Member States SEC(71) 363 final, July 1971)

I. Necessity and scope of this measure

1. The Commission notes that the Member States are feeling increasing concern as to the state and prospects of the textile industry. There is a tendency for this industry to be given special consideration in industrial policy, in particular as regards aid.

Aid to the textile industry, unknown a few years ago, has become numerous. Substantial aid programmes are at present contemplated in some Member States. It is not impossible that this trend will become more marked in the next few years.

By reason of the fact that there is no coordination, steps can tend to reduce the effectiveness of the aid measures haphazardly throughout the Community, while at the same time they are likely to affect the conditions of trade and competition to an extent which would be contrary to the common interest. Moreover, at an appropriate time the Commission hopes to prevent any escalation of aid to the textile industry.

2. This being so, the Commission considers it necessary to specify a number of conditions which aid to the textile industry must meet. The intention in formulating these conditions is certainly not to invite Member States to intervene on behalf of the textile industry in their country, but solely where Member States consider the grant of aid to be essential:

(a) to guide Member States in formulating such measures; and

(b) to supply the Commission with information enabling it to assess similar aid projects.

The notification of these criteria is obviously without prejudice to the provisions of the EEC Treaty, in particular those of Article 93(3). In no case does it supersede the positions which the Commission may adopt with regard to aid in virtue of the powers conferred on it by the EEC Treaty. The criteria in question were formulated by the Commission, which bears the sole responsibility therefore. They were, however, prepared with the help of national experts.

3. The Commission decided to issue this notification because of the special features of the textile industry. This special character explains the *ad hoc* nature of the solution adopted, which is entirely without prejudice to the Commission's attitude in respect of aid to other sectors of industry. These special features are:

(a) This sector is experiencing difficulties of adjustment: there are two reasons for the structural difficulties facing the textile industry; the growth of certain categories of pro-

duction in developing countries, linked with an underlying trend towards the gradual opening-up of textile markets on a worldwide scale; technological developments which could in the future transform the textile industry's production and marketing conditions.

(b) This is a sector to which there is a tendency within the Community to grant aid: most Member States consider the part played by the textile industry — particularly in the fields of employment and exports — to be important. Existing or planned aid is intended to help this industry adjust to new market and technical requirements.

This tendency could grow still further as a result of the repercussions of the textile field of the Community's commercial policy.

(c) This is a sector where such aid often has very marked repercussions on competition and trade within the Community: intra-Community competition in respect of textile products is very keen. Trade in these products within the Community is at a high and a constantly increasing level. Although the problems of adjustment are basically the same throughout the Community, the situation may differ appreciably from one country to another according to the degree of adjustment already achieved in each; in spite of the close interdependence of the various branches of the textile industry, these problems do not have the same urgency everywhere.

4. The Commission considers it highly desirable that, where a Member State believes it necessary to give more or less specific aid to the textile sector, it should do so by means of special arrangements for this sector.

However, if the Member State also considers it necessary, in fixing such aid, to take into consideration extra-sectoral problems, in particular regional problems, the conditions it lays down for granting the aid must make it possible both to guide each decision to grant aid to the textile industry or to one of the undertakings therein (sectoral and extra-sectoral reasons) and to make a Community assessment of such aid possible.

The guidelines laid down in this notification concern only the sectoral aspect of the aid referred to in the preceding subparagraph, but it is obvious that to the extent that this aid also meets extra-sectoral requirements, in particular those of regional origin, they call for assessment from a regional standpoint. The regional aspect must be visualized and assessed simultaneously in the light of the problems of regional development and of their effects on the sector from the viewpoint of competition and intra-Community trade.

II. Sectoral conditions for aid to the textile industry

In its note 'Sectoral policy for the textile industry', forwarded together with this notification, the Commission assures that aid by Member States may be justified in certain cases, in particular to solve pressing social problems. However, the Commission recalls that aid in this sector of industry, which is marked by a very keen degree of competition at Community level, involves a risk of causing distortion of competition which is unacceptable to competitors who do not benefit from such measures. This applies in particular to aid for moderni-

zation and rationalization. Such aid cannot therefore be authorized unless it meets certain conditions, in particular:

(i) it must not lead to increases in capacity,

(ii) it must take account not only of the national state of the industry, but also of the situation within the Community. In the Commission's opinion, aid which may be granted to the textile industry should be planned and implemented in accordance with the following categories and conditions. At all events, such aid will be assessed by the Commission at the proper time by reference to these categories and conditions.

1. Aid to joint measures in the textile field

This first category covers aid to joint measures taken by public, scientific or trade organizations and intended either:

(i) to develop research, both basic and applied, into new fibres, into the improvement of the treatment of existing fibres and into processing methods; or

(ii) to improve the short-term forecasts aimed at moderating the cyclical variations in activity which are particularly pronounced on the textile market.

The industrial sector benefiting from the grant of such aid should make a substantial contribution to the cost of the subsidized operations. Such aid may not affect competition and trade more than is absolutely essential.

The Commission stresses the importance of collaboration on the Community level in the joint measures in question.

2. Aid for improving the structure of the textile industry

This term must be understood to refer to aid to textile undertakings, intended:

(i) to facilitate the elimination of surplus capacity in the branches or sub-branches where it exists;

(ii) to encourage the conversion of marginal activities to activities other than those of the textile sector;

(iii) to improve the industrial and commercial structure of the textile industry by encouraging horizontal concentration or vertical integration, in so far as such aid does not lead to increases in production capacity.

The application of this aid should meet the following conditions:

(i) it must apply for a short period only;

(ii) it must be associated with a substantial contribution from the beneficiaries towards the cost and risks of the subsidized operations;

(iii) there must be a direct connection between the grant of the aid and the operations benefiting from the aid;

(iv) it must be possible to make an easy appraisal of the impact of the aid on the benefiting operations and to compare this impact throughout the Community;

(v) and, in any case, they must not affect competition and trade more than is absolutely essential.

3. Aid to investment in the textile industry

This category includes aid for the modernization of the textile industry and for conversion within this sector.

Since such aid has particularly marked repercussions on competitiveness, it must be granted very sparingly.

In addition to the conditions set out in the first subparagraph of Chapter II (namely, the obligation to increase production capacity and to take into consideration the Community situation in the branch of industry which receives the benefit), such aid should find its justification in particularly pressing social problems.

Such aid should moreover meet the general conditions already set out in respect of the improvement of the structures of the textile industry (II, 2), and also the following requirements:

(i) it must be strictly limited to those textile activities faced both with particularly pressing social problems and serious problems of adjustment;

(ii) the aim of this aid must be to provide the beneficiaries in the short term, with a level of competitiveness sufficient to ensure success on the international textile market, taking into account the basic trend towards a progressive opening-up of the markets on a worldwide scale;

(iii) it must go beyond the limited criteria of appraisal on a sectoral basis, in that it also takes into consideration the conditions imposed by a dynamic development of the market structure within the Community.

The abovementioned conditions will be specified in more detail, at the proper time and as may be required, with the help of government experts in the fields of general economic policy and of the textile industry. The conditions may, if necessary, be the subject of supplementary notifications.

Commission letter to Member States SG(77) D/1190 of 4 February 1977 and Annex (Doc. SEC(77) 317, 25 January 1977)

(Examination of the present situation with regard to aid to the textile and clothing industries)

Dear Sir

In view of the present situation with regard to the textile/clothing industry competition and aid to that industry, the Commission has deemed it necessary to clarify and supplement a number of points in the 'Approach to aid to the textile industry', which was sent to the original Member States on 30 July 1971, and to the new Member States on 19 December 1973.

In recent years, this approach, which sets out the guidelines followed by the Commission in assessing State aid to the textile/clothing industry, has proved necessary, in difficult economic circumstances, to prevent the terms, or the operation, of State aid from affecting competition between Member States to a degree harmful to the common interest.

The purpose of the attached document is to clarify and supplement the Commission's guidelines on aid to the textile/clothing industry, in the light of the industry's continuing difficulties.

These guidelines relate in particular to:

(i) the need to prevent the creation of further excess production capacity in the industry, which already has persistent structural surplus capacity;

(ii) the importance of encouraging the conversion of branches or industries with excess capacity, and of promoting the development of production technology by means of research;

(iii) the need for continuous coordination of the decisions taken by the Commission, after examining the various aid — State or Community — to any one firm or branch of activity in the textile/clothing industry.

The supplement to the approach adopted by the Commission was examined by the Member States' representatives at multilateral meetings, and takes account of the main points raised by the Member States.

I should be obliged, Sir, if you would take the necessary steps to transmit the document concerned to the relevant authorities of your Government.

Yours faithfully

ANNEX

EXAMINATION OF THE PRESENT SITUATION WITH REGARD TO AID TO THE TEXTILE AND CLOTHING INDUSTRIES (ANNEX TO THE LETTER OF 4 FEBRUARY 1977)

1. The economic recession in the Community has had a particularly acute effect on the textile and clothing industries

By early 1973 the level of activity in the textile industry, with the exception of only a few sectors, was already stagnating. The difficulties can in general be ascribed not only to the economic situation but also to unsuitable structures, excess capacity, rapid change in the use of raw materials, difficulties experienced by certain sectors in remaining competitive after a limited period of initial development, the policy of accelerating the transfer of textile production to the developing countries, the conflicting interests of textile importers and manufacturers and, finally, massive imports from State-trading countries and South-East Asia.

The role played by outward processing traffic is also an important factor contributing to the difficulties facing the industry in some Member States. Producers in certain Community countries have some of the work of processing textile articles of clothing done outside the Community at the expense of certain Community producers.

The consequence of these problems has been seriously to increase tension and unemployment in the Community and it is unlikely that these can be reduced in the short term. In an attempt to remedy the situation the authorities in various Member States have felt obliged to introduce aid schemes to maintain employment and to promote the restructuring of firms. The Commission has, as a general policy, asked Member States to inform it of the results and effects of any new aid schemes they have introduced.

2. Situation with regard to aid

Since 1973 numerous aid schemes have been introduced, in addition to those already in operation, to assist the textile and clothing industries: aid schemes for the wool and clothing industries and for individual companies in difficulties in the United Kingdom, for individual firms in the cotton, wool and clothing industries in the Netherlands, aid to firms facing difficulties in Italy, and decisions to grant assistance to the clothing industry in Belgium.

Several of these schemes, which were introduced rapidly because of the pressure of the economic situation and employment considerations, were found to conflict with the Community interest in a number of respects when notified to the Commission. They were likely to increase production capacity at a time when this was already excessive, and they made no provision for a sufficiently selective and specific restructuring to improve the industry's situation.

At the request of the Commission, which cited in particular the guidelines set out in its 'Approach to aid to the textile industry' of July 1971, Member States amended several of the aid schemes to make them compatible with Community rules.

3. Consequences of granting aid

In view of the number and importance of the aid schemes already in operation, the Commission now considers that it is in the interest of the industry itself that the risk of competitive increase in aid in the Member States be avoided.

A proliferation of uncoordinated national schemes of differing intensities cannot bring about lasting improvement in the industry either at national, or at Community level, but instead affects conditions of competition in the common market without facilitating an improvement in the industry's position or the introduction of new technology, which are prerequisites for the industry's recovery. Aid of this kind would have a deleterious effect on trade and would cancel one another out by counteracting the efforts made by the authorities and reducing the expected results.

4. Cooperation between Member States on aid to the textile and clothing industries

In the 'Approach to aid to the textile industry' sent to the Member States on 30 July 1971, the Commission stressed that the conditions governing the grant of assistance could be determined later with the help of the Member States as developments in the industry required.

The Commission considers that the present situation requires that certain aspects of the framework be given greater precision with a view to ensuring that the proposed solutions for overcoming the problems regarding structures, surplus capacity and imports from non-member countries are not rendered ineffective by ruinous outbidding.

5. Common guidelines based on the 'Approach to aid to the textile industry'

The 1971 'Approach to aid to the textile industry' set out the Commission's position with regard to the various types of assistance and their objectives.

On the basis of this position, which takes account of the industry's prospects (confirmed by subsequent developments), there is now a need, given the increased difficulties in the industry and the number of national aid schemes recently introduced, to specify in terms of the framework, guidelines to be followed by the Member States and the Commission with regard to aid in general and, more particularly, assistance in respect of investment.

The Commission notes that guidelines for aid to the textile and clothing industries must take account of the special characteristics of this industry, notably the range and development of its products, of its technologies as of its markets and the fact that its structure is liable to undergo rapid change.

The term 'excess capacity' therefore implies that account is taken of a sufficiently varied range of sectors. It must also be considered in relation to the expected development of competitive conditions.

The Commission therefore feels that:

(a) specific national aid to create additional capacity in those sectors of the textile and clothing industry where there is structural excess capacity or persistent stagnation of the market must be avoided;

(b) in sectors of the textile and clothing industries where excess capacity and a shrinking market have caused prices to collapse throughout the Community, assistance granted to firms converting to activities outside the industry or sector may, a priori, be given favourable consideration;

(c) at a time when the industry is seeking new technologies as a means of improving its productivity and differentiating its products from those of non-member countries, aid to improve production processes and techniques may be given favourable consideration as may aid for applied research, undertaken by specialist organizations, provided the results are made available to the Community as a whole on commercial terms and without discrimination;

(d) the Commission will also take account of the points set out at (a), (b) and (c) above where firms in the textile and clothing industries apply either directly or through their governments for the various forms of Community assistance available under, for instance, the Regional Development Fund and the Social Fund or for loans from the European Investment Bank, so that any decision it takes in this connection will reflect the required consistency of approach to this industry.

II — Synthetic fibres[1]

Code on aid to the synthetic fibres[2] industry

The Commission has just carried out, with the help of the Member States and the companies concerned, a detailed examination of the synthetic fibres industry, which has been covered by a code since 1977. Experience has shown overcapacity to be so persistent that, in this industry especially, the Commission must ensure that the conditions of competition are determined by market forces. The Commission considers, moreover, that a high rate of capacity utilization by synthetic fibre producers is an effective means of enhancing their international competitiveness.

The rate of capacity utilization in synthetic fibres in general has declined from 86% in 1985 to 77% in 1991. While the situation varies from fibre to fibre (e.g. for polyamide industrial filament yarn the rate of capacity utilization has fallen from 92% in 1985 to 68% in 1991, while for acrylic staple the figures are 89 and 82% respectively) it is clear that for the four fibres covered by the code, the level of capacity utilization needs to be improved.

The Commission accordingly concludes that the existing code must for the most part be prolonged. However, in the interests of efficacy, clarity and legal certainty, a number of provisions of the code currently in force must be amended.

Against this background, the Commission would inform the Member States and interested parties of its resolve to oppose any public financial support which would result in the installation of new capacity or even in the maintenance of existing capacity in the synthetic fibres industry. It intends to do this by making its authorization of the grant of aid conditional on a significant reduction in the production capacity of the assisted company. It is up to companies if they so wish to finance from internal resources any investments in expanding or maintaining capacity, which they consider necessary to adapt their production to market trends and technological developments. As a logical consequence of its analysis, the Commission would ask the Member States to transmit to it the information it needs to assess the sectoral consequences of any aid to a synthetic fibre producer. This is a general obligation which must be met even where the aid in question is granted under a scheme previously approved by the Commission. The Commission will therefore continue to require, as it has since 1977, notification pursuant to Article 93(3) of the EC Treaty of any plan to grant aid, in whatever form, to synthetic fibre producers by way of support for such activities. The Commission would stress the suspensive nature of such notification. In the case of aid com-

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[1] OJ C 346, 30.12.1992, p. 2.

[2] The term is used in its generic sense, covering both fibres and yarns.

ing under the frameworks on State aid for research and development and in environmental matters, the substantive examination of the aid schemes notified will be carried out applying the provisions of those frameworks.

The Commission would inform the Member States and interested parties that the substantive field in which it exercises its specific monitoring powers in accordance with Articles 92 and 93 of the EC Treaty comprises the four fibres that have been subject to the code for a number of years (i.e. polyester, polyamide, acrylic and polypropylene), irrespective of the end-use, whether textile or industrial, of the fibre concerned. Taking the industrial process, the code relates to the production and texturization of such fibres and to their polymerization in so far as this operation is integrated into fibre production in terms of the machinery used.

The Commission will henceforth apply the following criteria when it scrutinizes proposals to grant aid for investments by enterprises falling within the scope of the abovementioned code.

Each proposal will be assessed in the light of the common interest, which, in the case of the synthetic fibres industry, is largely determined by the need for restructuring. The Commission is generally sympathetic to investment aid granted to overcome the structural handicaps of the Community's less-favoured regions. When it assesses regional aid for the synthetic fibres industry, the Commission will take account of the essential contribution such aid makes to the cohesion of the Community and of its impact on the restructuring of the industry.

When it assesses whether a significant reduction is made in the production capacity of a prospective recipient of investment aid (bearing in mind that, should a company increase or maintain its capacity, the Commission will take an unfavourable view of the proposed aid), the Commission will consider the specifics of each proposal, including:

(i) the intensity of the planned aid;

(ii) the volume and location of the aided investments (for example, if a project is eligible for regional aid pursuant to Article 92(3)(a) and (c) of the EC Treaty, the reduction in capacity might be assessed in the light of the severity of the region's structural handicap);

(iii) the trend of the average rate of capacity utilization both of the industry[1] and of the aid recipient and any industrial group to which it belongs.

By applying the latter criterion relating to the average rate of utilization of the production capacity, the Commission wishes to ensure that the restructuring of the company receiving the aid has not been necessitated by the recent acquisition of unused capacity which has rapidly become obsolete. On a more general plane, this will facilitate checks on the recipient company's viability.

When it comes to quantifying capacity, the Member States are asked to express it in tonnes and, in the case of yarn, also in decitex. The Commission is introducing the latter variable

[1] By industry, the Commission means the four fibres taken as a whole and the fibre concerned by the investment in question.

in order that it might take into account in its assessment the average decitex in existence when the aid is granted and the decitex which will be produced once the aided investments have been carried out.

The term of validity of this code is fixed at two years, from 1 January 1993 to 31 December 1994. However, since the main reason for the code is the situation in the synthetic fibres market, the Commission may, before 31 December 1994, abolish the code or review it with a view to adapting it to changes in that market.

The new code thus profoundly alters the one which, with successive adjustments, has been applicable since 1977. In the Commission's view, it is an appropriate measure within the meaning of Article 93(1) of the EC Treaty which is required by the functioning of the common market and by the implementation of the competition policy prescribed in the Treaty.

Consequently, the Commission would ask the Member States to signify their agreement to the code as a whole in as much as it relates both to the notification procedure laid down in Article 93(2) of the Treaty and to the powers of assessment conferred on the Commission by Article 92.

The Member States' agreement should reach the Commission within 14 days of the dispatch of the letter accompanying the text of the code.

Commission notice on the extension of the period of validity of the code on aid to the synthetic fibres industry[1]

(Text with EEA relevance)

The period of validity of the code on aid to the synthetic fibres industry[2] is extended until 30 June 1995.

The Member States have been informed.

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1 OJ C 224, 12.8.1994, p. 4.
2 OJ C 346, 30.12.1992, p. 2.

III — Motor vehicle industry

Community framework on State aid to the motor vehicle industry[1]

1. Necessity and scope of the measure

The motor vehicle industry is of strategic industrial and employment importance to the Community. Its well-being has a vital impact on a whole range of upstream and downstream industries and services and estimates suggest that 10% of the Community's employment is dependent on it. Furthermore, many areas of Community policy such as the internal market, competition and commercial policy have a direct bearing on the sector.

The motor vehicle industry is now, to a large extent, a world industry. In order to survive, manufacturers must compete and sell on world markets. The future viability of the European industry will be determined firstly by its competitiveness and dynamism in the internal market. The Commission can contribute to the healthy development of the sector and ensure that the companies adapt and adjust in time to changing market circumstances.

The Commission's future aid policy must be geared to the process of creating a single market without internal frontiers by 1992. As market integration progresses, distortions of competition caused by the granting of aid are felt more and more keenly by competitors not receiving any aid. All manufacturers are entitled to a consistent approach compatible with the Treaty. At the same time, the market integration process may provoke a growing tendency for Member States to provide aid to firms that are no longer able to stand up to fair competition in this more efficient market, so as to ensure their survival. Furthermore, over-reliance on State aid to solve problems of industrial adjustment *vis-à-vis* third country producers undermines the competitiveness of Community car manufacturing by hindering the economically healthy influence of market forces.

In view of the growing sensitivity of competition in the motor vehicle sector as described above, the Commission decided to introduce a framework for State aid in the motor vehicle industry in the form of appropriate measures on the basis of Article 93(1) of the EC Treaty. These measures were examined by the Member States' representatives at a multilateral meeting. The objective of the framework is to establish full transparency of aid flows to the industry and impose at the same time a stricter discipline to the granting of aid in order to assure that the competitiveness of the Community industry is not distorted by unfair competition. The Commission can operate an effective policy only if it is able to take a position on individual cases before the aid is paid.

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[1] OJ C 123, 18.5.1989, p. 3.

Therefore, the framework foresees the prior notification of all significant aid cases irrespective of their objective as well as an annual report of all aid payments.

Having completed its examination, the Commission decided to propose to the Member States under Article 93(3) of the EC Treaty that they notify in advance from 1 January 1989, in accordance with the rules set out below, significant cases of aid to the motor vehicle sector.

2. Rules of notification

2.1. Definition of sector

Under 'motor vehicle sector' is understood the manufacture and assembly of motor vehicles and manufacture of motor vehicle engines.

Under 'motor vehicles' is understood passenger cars (volume, specialist and sports cars), vans, trucks, road tractors, buses, coaches and other commercial vehicles.

Excluded hereof are racing cars, non-traffic cars (e.g. snow and golf cars), motorcycles, trailers, agricultural and forestry tractors, caravans, special purpose lorries and vans (e.g. fire-engines, mobile workshops), dumpers, work-trucks (e.g. fork-lifts, travel carriers, platform trucks) and military vehicles.

Under 'motor vehicle engines' is understood compression and spark engines for the above defined 'motor vehicles'.

Excluded are all parts and accessories for both motor vehicles and motor vehicle engines.

However, if a motor vehicle manufacturer or its subsidiary obtains aid for the manufacture of parts or accessories, or if any aid is granted for the manufacture of parts or accessories under licence or patents of a vehicle manufacturer, or of its subsidiary, such aid should be notified a priori.

2.2. Aid to be notified

All aid measures to be granted by public authorities within the scope of an approved aid scheme to (an) undertaking(s) operating in the motor vehicle sector as defined above, where the cost of the project to be aided exceeds ECU 12 million are subject to prior notification on the basis of Article 93(3) of the EC Treaty. As regards aid to be granted outside the scope of an approved aid scheme, any such project, whatever its cost and aid intensity, is of course subject without exception to the obligation of notification pursuant to Article 93(3) of the EC Treaty. Where aid is not directly linked to a particular project, all proposed aid must be notified, even if paid under schemes already approved by the Commission. Member States shall inform the Commission, in sufficient time to enable it to submit its comments, of any plan to grant or alter aid.

The Member States are requested to provide the Commission with an annual report which shall contain all aid payments under whatever form granted to all motor vehicle and motor vehicle engine producers during the year of reference. Aid payments which do not fulfil the

threshold of prior notification should also be included in the annual report. The report should reach the Commission at the end of the first quarter which follows the year of reference. For details on the various categories of aid to be notified or reported, see Annex II.

2.3. Format of notification and of annual report

The standard forms of notification and of annual reporting are presented in Annexes I and II. These forms should be addressed directly to the Directorate-General for Competition.

2.4. Community instruments

In view of the need to ensure that measures financed by the Structural Funds or receiving assistance from the European Investment Bank (EIB) or from another existing financial instrument are in keeping with the provisions of the Treaty on State aid, the Commission will monitor all applications and approvals for assistance under Community instruments and ensure coherence with the present guidelines.

2.5. Date of introduction and validity

The appropriate measures shall enter into force on 1 January 1989. All aid projects, which have not yet received final approval by the competent public authority by 31 December 1988, shall be subject to prior notification from 1 January 1989 onwards. The appropriate measures shall be valid for two years. The Commission shall at the end of this period review the utility and the scope of the framework.

3. Guidelines for appreciation of aid cases

The purpose of having prior notification of all aid to the motor vehicle sector is to allow the Commission to verify more directly the compatibility of the aid in this sector with the competition rules of the Treaty.

Evaluation of aid has to take account of general economic and industrial factors as well as sector and company-specific considerations together with regional and social factors. However, the Commission is not seeking to impose an industrial policy strategy on the sector; such decisions are best left to the industry and the market itself. In view both of the important volume of aid granted in the past and the improved overall situation of Community producers, the aim of the Commission in the sector is to ensure that Community motor vehicle manufacturers operate in the future in a climate of fair competition, thus removing the trade distortions resulting from aid within the internal market and creating a generally competitive environment which will promote the industry's productivity and competitiveness.

The criteria which will guide the Commission in its future assessment of aid cases will vary according to the objectives pursued by the aid in question. However, in all cases, it will be necessary to ensure that aid granted is in proportion to the problems it seeks to solve. For the various aid objectives the main assessment criteria of the Commission shall be as follows.

Rescue and restructuring aid

In principle, rescue and restructuring aid should only be approved in exceptional circumstances. The aid must be linked to a satisfactory restructuring plan, and only granted where it can be demonstrated that the Community interest is best served by keeping a manufacturer in business and by re-establishing its viability. It will be necessary to ensure that the aid will not allow a beneficiary to increase its market share at the expense of its unaided competitors. In cases where certain companies still have excess capacity, for example, in the commercial vehicle sector, the Commission may require reductions in capacity in order to contribute to the overall recovery of the sector.

Regional aid

One of the main types of aid benefiting this sector is regional aid for new implantations and capacity extensions as well as for an engagement in an activity involving a fundamental change in the product or production process of an existing establishment (by means of rationalization, restructuring or modernization). The Commission acknowledges the valuable contribution to regional developments which can be made by the implantation of new motor vehicle and component production facilities and/or the expansion of such existing activities in disadvantaged regions. For this reason the Commission has a generally positive attitude towards investment aid granted in order to help overcome structural handicaps in disadvantaged parts of the Community. This aid is usually granted automatically in accordance with modalities previously approved by the Commission. By requiring prior notification of such aid in future, the Commission should give itself an opportunity to assess the regional development benefits (i.e. the promotion of a lasting development of the region by creating viable jobs, linkages into local and Community economy) against possible adverse effects on the sector as a whole (such as the creation of important overcapacity). Such an evaluation does not seek to deny the central importance of regional aid for the achievement of cohesion within the Community but rather to ensure that other aspects of Community interest such as the development of the Community's industry are also taken into account.

Investment aid for innovation, modernization or rationalization

In the context of a genuine internal market for motor vehicles, competition between producers will become even more intense and the distortive impact of aid will be greater. Therefore, the Commission will take a strict attitude towards aid for modernization and innovation. These are activities to be undertaken by the companies themselves and normally financed from their own resources or by commercial loans as part of their normal company operation in a competitive market environment. Aid for fundamental rationalization will have to be carefully examined in order to verify that it brings about a necessary, radical change in the structure and organization of the company's activities and that the financing required goes beyond that which companies should normally be expected to finance from their own resources. Similarly, proposed aid for innovation will be examined in order to determine whether it really relates to the introduction of genuinely innovative products or processes at Community level.

Aid for research and development

The Commission will continue to have a positive attitude towards aid for pre-competitive R&D. However, the Commission will ensure, in keeping with its 'Framework on State aid for R&D',[1] at the same time that a clear distinction is established between genuine research and development and the introduction of new technologies inherent to production investment (modernization).

Aid for environmental and energy saving

The development of less polluting and energy-saving vehicles is a standard requirement for the industry, partly imposed by Community legislation, and should thus be financed from the company's own resources. Aid for general pollution control, for example, granted under the terms of the environmental aid framework, may still be acceptable under the existing aid schemes. Such cases will have to be examined individually.

Aid for vocational training linked to investments

The Commission has a generally positive attitude towards training, retraining and reconversion programmes. Aid proposed for such purposes will have to be examined in order to ensure that it does not simply alleviate the cost burden which companies would normally have to bear, in particular that they do not undermine the present guidelines.

Therefore, within the scope of the framework, the Commission intends to examine carefully aid for company-specific vocational training measures which are prompted by, and thus directly linked to, investments. The Commission will ensure that:

(i) such aid does not exceed a reasonable intensity, whenever linked with production investments;

(ii) the vocational training measures involved in the project correspond to genuinely qualitative changes in the required qualifications of the labour force and relate to a significant proportion of the workers, so that it can be assumed that these measures are intended to safeguard employment and develop new employment possibilities for persons at risk of unemployment.

Vocational training measures specific to one or all companies prompted by investments which do not fulfil these abovementioned criteria are to be considered as part of the investment, and submitted to the criteria regarding the different forms of investment aid as set out above.

Vocational training measures which are related to workers being retrained for continued employment in the company, which are not linked to investment and which are intended to safeguard employment and develop new employment possibilities for persons at risk of unemployment in the framework of restructuring can be considered compatible.

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[1] OJ C 83, 11.4.1986.

Operating aid

As operating aid has a direct and ongoing distortive effect in a sensitive sector such as motor vehicles, it should not be authorized, even in disadvantaged regions. No new operating aid will be authorized in this sector and the Commission will propose, on the basis of Article 93(1) of the EC Treaty, the progressive disappearance of existing operating aid to those Member States which currently grant such aid.

ANNEX I

STANDARD FORMAT FOR NOTIFICATION TO THE COMMISSION OF A PUBLICLY ASSISTED PROJECT IN THE MOTOR VEHICLE SECTOR

I. Member State

II. Recipient

Company name:			
Location:			
Structure of ownership:[1]			
Main fields of activities:[2]			
Manpower:[3]			
Financial results:	*Turnover*	*Net result*	*Cash flow*
last year:			
year before:			
Market breakdown of sales:	national	%	
	other EC	%	
	non-EC	%	

[1] Identity and participation of major shareholders.
[2] Indicate main products and the number of units produced last year.
[3] If operating in different Member States, indicate number of employees in each country.

III. Public assistance

Scheme title:
Legal basis:
Public entity: National government / Regional government / Local government / Other:.....

(a) Form and amount of proposed assistance measure(s):[1]

	Amount		*Amount*
Grant		Soft loan	
Interest subsidy		Participatory loan	
Tax credits, allowances of rate reliefs		Repayable advances	
Reduction in social security contributions		Deferred tax provisions	
Equity participation		Amounts covered under guarantee scheme	
Debt conversion or write-off		Losses arising from guarantee schemes	
		Other:.....	

Conditions of assistance measure(s):
Estimated grant equivalent:[2]
before taxation:
after taxation:

(b) Objective of assistance measure(s):

Restructuring or rescue	Environmental protection
General investments	Energy saving
Regional development	Company-specific training aid
Innovation	
Research and development	
Trade/export	Other:.....

(c) Justification of assistance measure(s):

(d) Cumulation with other public assistance measure(s):[3]

(e) Financing from Community sources

EIB	ECSC instruments	NCI
Social Fund	Regional Fund	Other:.....

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1 The 13 categories are identical as in the annual report.
2 Indicate whether gross or net grant equivalent and the reason for absence of an estimate.
3 Indicate date and numbers of other notifications.

IV. Assisted project

Location:
Duration of project:
Cost of project:
Other companies involved:[1]

(a) Type of project:

New implantation	Research and development
Extension capacities	Environmental protection
Basic rationalization	Energy saving
Introduction of innovations	Training of personnel (company-specific)
Restructuring of activities	Plant closure
Transfer of activity	Rescue operation
	Other: .....

(b) Description of project:

(c) Breakdown of project cost:[2]

Item	Amount

(d) Financing of project cost:

Own resources
Capital contributions
External borrowing
Public assistance
Community assistance

(e) Effect of project:

On capacities:[3]
On production:[3]
On employment:
On distribution of sales:
  domestic in %
  other EC in %:
  non-EC in %:
On level of qualifications:
On outsourcing:
On cost structure (cost per unit):

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[1] If the project is connected with other companies within the framework of joint venture, mergers, takeovers, acquisitions of shares or assets, indicate other companies concerned.

[2] If investment project, detailed breakdown specifying all asset items. If restructuring project, detailed expenditures of the company as provided in the annual report (sources and applications), however with specification of social costs and other extraordinary restructuring costs. If R&D project, detailed breakdown according to the Commission's communication (OJ C 83, 11.4.1986, p. 7).

[3] Indicate capacity and production in units for every main product which is affected by the project.

V. Other observations

VI. Project identification

Date of notification:

Number of notification:[1] ..../19....

VII. Public assistance coordination

Authority in charge of the file:

Person to contact for further inquiries:

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[1] Chronological order.

ANNEX II

ANNUAL REPORT

The annual report should contain all aid flows to the undertakings operating in the sector awarded by public authorities (national, regional and local authorities) during the year of observation.

1. Recipient

Name of company receiving the aid. If the company is a subsidiary indicate the ultimate parent company.

2. Categories of aid[1]

All public assistance measures provided for each recipient during the year should be classified according to the following categories:

(1) grants

(2) interest subsidies

(3) tax credits, allowances, exemptions and rate reliefs

(4) reduction in social security contributions

(5) equity participation

(6) debt conversion or write-offs

(7) soft loans

(8) participatory loans

(9) repayable advances linked to performance

(10) deferred tax provisions (reserves, free or accelerated depreciation)

(11) amounts covered under guarantee schemes

(12) loses arising from guarantee schemes

(13) others.

3. Explanation on aid terms

For assistance measures Nos 7 to 11 and 13 an additional explanation is requested on the terms of each measure in order to permit the calculation of the aid element in the form of grant equivalent (e.g. duration, interest bonification, impact of taxation on the grant equivalent, etc.).

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[1] The description of the categories of aid corresponds to the technical annex of the White Paper or inventory of State aid.

Annual report

(amounts in national currency)

Member State:

Year:

Company name	Parent company	Public assistance measures												
		1	2	3	4	5	6	7	8	9	10	11	12	13
1														
2														
3														
4														
5														
6														
7														
8														
9														
10														
11														
12														

Community framework on State aid to the motor vehicle industry[1]

The Commission has carried out a review of the utility and scope of the framework on State aid to the motor vehicle industry which it introduced with effect from 1 January 1989 on the basis of Article 93(1) EC.[2] The objective of the framework was to establish full transparency of aid flows to the industry and to apply a stricter discipline to the granting of aid in order to ensure that the competitiveness of the industry is not distorted by unfair competition. The limited experience to date in the implementation of the framework[3] confirms the strategic importance which many Member States attach to their motor industry and in particular, to attracting new projects to, or promoting existing projects in their development regions. The risk of an ultimately self-defeating outbidding exercise to attract investment remains as strong as ever.

With the ending in 1990 of the sustained strong growth in demand for private cars of recent years, during which period many producers initiated projects to expand capacity in the Community, the risk of overcapacity is likely to become more acute. Demand in the Community in 1990 and 1991 is expected to decline modestly before returning to a longer-term growth trend of some 1% per annum according to some industry forecasts. The problems in the commercial vehicle sector could be more deeply rooted. This uncertain outlook for the industry as a whole adds to the case for vigilance in the control of State aid.

The Community motor vehicle industry faces major challenges in the years ahead on both the domestic and world markets. The Commission has already identified the framework as one of the key elements in its policy for achieving the single Community market for motor vehicles.[4] It is crucial to ensure that a climate of normal and fair competition prevails. This, in turn, is the best guarantee that the industry will be able to improve its competitiveness on world markets.

In view of these considerations the Commission believes it necessary to renew the framework on State aid to the motor vehicle industry in its present form. The only modification which the Commission has decided extends the prior notification obligation for the Federal Republic of Germany to Berlin (West) and the territory of the former GDR.[5]

After two years the framework shall be reviewed by the Commission. If modifications appear necessary (or the possible repeal of the framework) these shall be decided upon by the Commission following consultation with the Member States.

The Commission also wishes to inform third parties that it requires the prior notification pursuant to Article 93(3) of the EC Treaty of all aid measures to the industry coming within

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1 OJ C 81, 26.3.1991, p. 4.

2 OJ C 123, 18.5.1989.

3 Implementation was delayed during the first six months of 1989 pending its acceptance by 10 of the Member States, until January 1990 for Spain and May 1990 for Germany; the latter two States initially opposed its implementation.

4 See communication from the Commission: 'A single Community motor vehicle market' (SEC(89) 2118 of 18 January 1990).

5 Article 1(3) of the Commission's Decision of 21 February 1990, as published in OJ L 188 of 20 July 1990, is no longer valid as from 1 January 1991.

the scope of approved aid schemes where the cost of the project aided exceeds ECU 12 million; all aid proposals falling outside approved schemes would be notifiable in advance regardless of cost and intensity. No such aid measure may be implemented unless and until the Commission approves it.

Community framework for State aid to the motor vehicle industry[1]

The framework was first introduced with effect from 1 January 1989 on the basis of Article 93(1) of the EC Treaty for a period of two years, at the end of which its utility and scope would be reviewed.[2] In December 1990, the Commission decided to renew the framework without setting a time-limit for its application. But the Commission undertook to review it after two years and decide on possible modifications, or its repeal, following consultations with the Member States.[3]

As promised in December 1990, the Commission has now reviewed the framework with the Member States during a multilateral meeting which took place on 8 December 1992. During this meeting a large majority of Member States expressed their satisfaction with the present application of the framework and would like to see it continuing over the coming years.

Therefore, the Commission decided on 23 December 1992 that the framework will not be modified. It will remain valid until a next review is organized by the Commission.

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1 OJ C 36, 10.2.1993, p. 17.
2 OJ C 123, 18.5.1989, p. 3.
3 OJ C 81, 26.3.1991, p. 4.

IV — Shipbuilding

COUNCIL DIRECTIVE 90/684/EEC[1] OF 21 DECEMBER 1990

on aid to shipbuilding

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 92(3)(d) and 113 thereof,

Having regard to the proposal from the Commission,[2]

Having regard to the opinion of the European Parliament,[3]

Having regard to the opinion of the Economic and Social Committee,[4]

Whereas Council Directive 87/167/EEC of 26 January 1987 on aid to shipbuilding[5] will expire on 31 December 1990;

Whereas the aid policy laid down in that Directive has in general met the objectives set out at its introduction;

Whereas although since 1989 there have been significant improvements in the world market for shipbuilding, a satisfactory equilibrium between supply and demand has still not been established and the price improvements which have taken place are still insufficient in the overall context to restore a normal market situation within the sector, allowing prices to reflect full production costs and a reasonable return on invested capital;

Whereas the positive international trend is likely to lead to a normalization of the market, provided the consequences of the Gulf crisis are faced properly and the reasons behind the symptoms of crisis in the world economy are understood;

Whereas, parallel to this market amelioration, international efforts are being deployed within the Organization for Economic Cooperation and Development (OECD) framework to reach a multilateral agreement between the world's most important shipbuilding nations on a rapid phasing-out of all direct and indirect public support measures to shipbuilding, ship conver-

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1 OJ L 380, 31.12.1990, p. 27.
2 OJ C 223, 7.9.1990, p. 4.
3 Opinion deliverd on 23 November 1990.
4 OJ C 332, 31.12.1990.
5 OJ L 69, 12.3.1987, p. 55.

sion and ship repair and of other obstacles to re-establishing normal and fair competition conditions in the sector;

Whereas this agreement must ensure fair competition at an international level among shipyards through a balanced and equitable elimination of all existing impediments to normal competition conditions and must provide a suitable instrument for counteracting all illegal practices and forms of assistance inconsistent with the agreement;

Whereas the provisions of this Directive are without prejudice to the amendments necessary to comply with international obligations entered into by the Community;

Whereas a competitive shipbuilding industry is of vital interest to the Community and contributes to its economic and social development by providing a substantial market for a range of industries, including those using advanced technology; whereas it contributes also to the maintenance of employment in a number of regions, including some which are already suffering a high rate of unemployment; whereas this is also true of ship conversion and ship repair;

Whereas a complete abolition of aid to the sector is still not possible in view of the present market situation and in view of the need to encourage restructuring in many yards; whereas a tight and selective aid policy should be continued in order to support the present trend in production towards more technologically-advanced ships and in order to ensure fair and uniform conditions for infra-Community competition; whereas such a policy constitutes the most appropriate approach in terms of ensuring the maintenance of a sufficient level of activity in European shipyards and, thereby, the survival of an efficient and competitive European shipbuilding industry;

Whereas the basic aid policy laid down in Directive 87/167/EEC, differentiating between, on the one hand, production aid based on a common ceiling and, on the other, restructuring aid supporting desirable structural changes, remains the most appropriate way of ensuring that the industry is competitive in the long term;

Whereas, although it is proposed to treat ship conversion in the same way as shipbuilding to a certain extent, aid to the ship-repair sector should not be permitted, in view of the continuing overcapacity in this sector, except for investments, closure and research and development aid;

Whereas there is every reason, for the sake of transparency and equity, to continue to include in the present aid policy indirect aid granted to shipbuilding through investment aid to shipowners for the building and conversion of ships;

Whereas the reduced level of aid acceptable for ship conversion and for small specialized vessels, for which the competition is mainly intra-European, should be applied, based on experience, to the largest possible section of this market;

Whereas every effort should be made to encourage the introduction of high-technology vessels in Community yards;

Whereas, since increased efficiency is a principal objective pursued by this Directive, the yearly review of the production aid ceiling should always aim at its progressive reduction;

Whereas it should be ensured that investment aid is granted only under certain limited conditions;

Whereas it is of vital importance for the restoration of a healthy shipbuilding industry in the long term that the Community, together with the main shipbuilding nations effectively ensures that structural contractions obtained inside its territory through the application of its aid policy remain irreversible as long as an adequate balance between supply and demand has not been achieved;

Whereas the transitional period accorded to Spain and Portugal and to the territory of the former German Democratic Republic will expire on 31 December 1990;

Whereas, however, as the stage of restructuring of the Spanish shipbuilding industry has still not reached a level where it is competitive with the other Member States of the Community, a specific further two-year restructuring programme should be carried out while exemption from the production aid ceiling should be allowed for 1991;

Whereas a short-term financial restructuring of the shipbuilding industry in Greece is necessary in order to enable its public owners to restore its competitiveness by selling it off to new owners;

Whereas the efficiency of the present aid policy and confidence in it can only be obtained by close and timely monitoring by the Commission of Member States' implementation of the aid rules; whereas, therefore, compliance by Member States with their reporting obligations, on which such a monitoring system is based, should be secured by providing for the suspension of all outstanding payments of aid already approved until all due reports have been received by the Commission; whereas this provision must also apply to the non-transmission of reports relating to aid schemes which have already been authorized,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I — GENERAL

Article 1

For the purpose of this Directive the following definitions shall apply:

(a) 'shipbuilding':

means the building in the Community of the following metal-hulled sea-going vessels:

(i) merchant ships for the carriage of passengers and/or cargo, of not less than 100 GRT,

(ii) fishing vessels of not less than 100 GRT,

(iii) dredgers or ships for other work at sea of not less than 100 GRT excluding drilling platforms,

(iv) tugs of not less than 365 kW;

(b) 'ship conversion':

means the conversion in the Community of metal-hulled sea-going vessels, as defined in (a), of not less than 1 000 GRT, on condition that conversion operations entail radical alterations to the cargo plan, the hull or the propulsion system or the passenger accommodation;

(c) 'ship repair':

means the repair of the vessels referred to in (a):

(d) 'aid':

means State aid within the meaning of Articles 92 and 93 of the Treaty, including not only aid granted by the State itself but also that granted by regional or local authorities and any aid elements contained in the financing measures taken by Member States in respect of the shipbuilding or ship repair undertakings which they directly or indirectly control and which do not count as the provision of risk capital according to standard company practice in a market economy.

Such aid may be considered compatible with the common market provided that it complies with the criteria for derogation contained in this Directive;

(e) 'contract value before aid':

means the price laid down in the contract plus any aid granted directly to the shipyard.

Article 2

No aid granted pursuant to this Directive may be conditional upon discriminatory practices as to products originating in other Member States.

Article 3

Aid to shipowners

1. All forms of aid to shipowners or to third parties which are available as aid for the building or conversion of ships shall be subject to the notification rules in Article 11.

This aid shall include credit facilities, guarantees and tax concessions granted to shipowners or third parties for the purposes referred to in the first subparagraph.

2. The grant equivalent of the aid shall be subject in full to the rules set out in Article 4 and the monitoring procedures laid down in Article 12, where the aid is actually used for the building or conversion of ships in Community shipyards.

3. Aid granted by a Member State to its shipowners or to third parties in that State for the building or conversion of ships may not lead to distortions of competition between national shipyards and shipyards in other Member States in the placing of orders.

4. These provisions shall be without prejudice to changes in the Community rules on aid to shipowners provided that observance of the principle of transparency of aid for shipbuilding and ship conversion is ensured.

CHAPTER II — OPERATING AID

Article 4

Contract-related production aid

1. Production aid in favour of shipbuilding and ship conversion may be considered compatible with the common market provided that the total amount of aid granted in support of any individual contract does not exceed, in grant equivalent, a common maximum ceiling expressed as a percentage of the contract value before aid, hereinafter referred to as the ceiling.

2. The ceiling shall be fixed by the Commission with reference to the prevailing difference between the cost structures of the most competitive Community yards and the prices charged by their main international competitors with particular regard to the market segments in which the Community yards remain relatively most competitive.

However, the Commission shall pay particular attention to ensuring that the aid for the building of small specialized vessels, a market segment normally served by small yards, in particular small ships of a contract value of less than ECU 10 million and for which the competition is mainly inter-European, is kept at the lowest possible level, nevertheless allowing for the particular situation in Greece.

This provision shall also apply to all types of ship conversion, irrespective of the value of the contract.

3. The ceiling shall be reviewed every 12 months, or sooner if warranted by exceptional circumstances, with the aim of progressively reducing the ceiling. In its review of the ceiling, the Commission shall also ensure that there are no undue concentrations of shipbuilding activities in specific market segments to an extent contrary to Community interests. The aid ceiling applicable to a contract shall be that in force at the date of signature of the final contract. However, this rule shall not apply in respect of any ship delivered more than three years from the date of signing of the final contract. In such cases, the ceiling applicable to that contract shall be that in force three years before the date of delivery of the ship.

The Commission may grant an extension of the three-year delivery limit laid down in the first subparagraph when this is found justified by the technical complexity of the individual shipbuilding project concerned or by delays resulting from unexpected disruptions of a substantial and defensible nature in the working programme of a yard.

4. The ceiling shall apply not only to all forms of production aid — whether under sectoral, general or regional aid schemes — granted directly to the yards but also to the aid covered by Article 3(2).

5. The combined effect of aid under the various aid schemes applied shall in no case exceed the ceiling fixed according to paragraph 2; the grant of aid in individual cases shall not necessitate prior notification to, or authorization from, the Commission.

However, where there is competition between yards in different Member States for a particular contract, the Commission shall require prior notification of the relevant aid proposals

at the request of any Member State. In such cases, the Commission shall adopt a position within 30 days of notification; such proposals may not be implemented before the Commission has given its authorization. By its decision in such cases the Commission shall ensure that the planned aid does not affect trading conditions to an extent contrary to the common interest.

6. Aid in the form of credit facilities for the building or conversion of vessels complying with the Organization for Economic Cooperation and Development (OECD) Council resolution of 3 August 1981 (understanding on export credits for ships) or with any agreement replacing the resolution shall not be counted within the ceiling. Such aid may be considered compatible with the common market provided that it complies with the abovementioned resolution or any agreements which replace it.

7. Aid related to shipbuilding and ship conversion granted as development assistance to a developing country shall not be subject to the ceiling. It may be deemed compatible with the common market if it complies with the terms laid down for that purpose by OECD Working Party No 6 in its Agreement concerning the interpretation of Articles 6 to 8 of the understanding referred to in paragraph 6 of this Article or with any latter addendum or corrigendum to the said Agreement.

The Commission must be given prior notification of any such individual aid proposal. It shall verify the particular development content of the proposed aid and satisfy itself that it falls within the scope of the Agreement referred to in the first subparagraph.

Article 5

Other operating aid

1. Aid to facilitate the continued operation of shipbuilding and ship conversion companies, including loss compensation, rescue aid and all other types of operating aid not directly supporting particular restructuring measures covered in Chapter III, may be deemed compatible with the common market provided that such aid together with production aid allocated directly to individual shipbuilding and ship conversion contracts in accordance with Article 4(4) does not exceed the ceiling expressed as a percentage of the aid recipient's annual turnover in shipbuilding and ship conversion.

2. It shall be incumbent on the Member States to furnish evidence of the extent to which the turnover and losses of the recipient of the aid result, on the one hand, from shipbuilding and ship conversion and, on the other, from its other activities, if any, and, if some of the aid is intended to offset losses or expenditure arising from the restructuring measures referred to in Chapter III, to identify and specify those measures.

CHAPTER III — RESTRUCTURING AID

Article 6

Investment aid

1. Investment aid, whether specific or non-specific, may not be granted for the creation of new shipyards or for investment in existing yards unless it is linked to a restructuring plan which does not involve any increase in the shipbuilding capacity of the yard or unless it is directly linked to a corresponding irreversible reduction in the capacity of other yards in the same Member State over the same period.

Such aid may not be granted to ship-repair yards unless linked to a restructuring plan which results in a reduction in the overall ship repair capacity of the Member State concerned. In this context the Commission may take into account capacity reductions carried out in the immediately preceding years.

2. Paragraph 1 shall not apply to the opening of a new shipyard in a Member State which otherwise would have no shipbuilding facilities or to investments in a Member State's only existing yard, provided that the effect of the yard in question on the Community market is minimal.

3. In accordance with paragraph 1, investment aid may be deemed compatible with the common market provided that:

(i) the amount and intensity of such aid are justified by the extent of the restructuring involved;

(ii) it is limited to supporting expenditure directly related to the investment.

4. In examining the aid referred to in paragraphs 1 and 3, the Commission shall take account of the extent of the contribution of the investment programme concerned to such Community objectives for the sector as innovation, specialization, working conditions, health, safety and the environment.

Article 7

Aid for closures

1. Aid to defray the normal costs resulting from the partial or total closure of shipbuilding or ship-repair yards may be considered compatible with the common market provided that the capacity reduction resulting from such aid is of a genuine and irreversible nature.

In order to establish the irreversible nature of aided closures, the Member State concerned shall ensure that the closed shipbuilding and ship repair facilities remain closed for a period of not less than five years.

Within this five-year period, the closed site may not be used for activities in anticipation of a return to shipbuilding after the expiry of the five-year period.

If, after a period of five years but before the 10th anniversary of the closure, a Member State wishes to reopen a closed shipbuilding or ship repair facility, it must obtain the Commission's prior approval.

The Commission's decision will be taken with reference both to the currently existing world-wide balance between supply and demand and to whether it is envisaged that aid is to be granted for reopening the facilities.

2. The costs eligible for such aid are, in particular:

(i) payments to workers made redundant or retired before legal retirement age;

(ii) counselling services to workers made or to be made redundant or retired before legal retirement age including payments made by yards to facilitate the creation of small undertakings;

(iii) payments to workers for vocational retraining;

(iv) expenditure incurred for the redevelopment of the yard, its buildings, installations and infrastructure for use other than that specified in Article 1(a), (b) and (c);

(v) in the event of total closure of a yard, the residual book value of its installations (ignoring that portion of any revaluation since 1 January 1982 which exceeds the national inflation rate).

3. The amount and intensity of aid must be justified by the extent of the restructuring involved, account being taken of the structural problems of the region concerned and, in the case of conversion to other industrial activities, of the Community legislation and rules applicable to the new sector concerned.

Article 8

Aid for research and development

1. Aid to defray expenditure by shipbuilding and ship-repair undertakings for research and development projects may be considered compatible with the common market.

2. For the purposes of this Directive, the eligible costs shall be only those relating to fundamental research, basic industrial research and applied research and development, all as defined by the Commission in Annex I to the Community framework for State aid for research and development,[1] excluding those related to industrial application and commercial exploitation of the results.

[1] OJ C 83, 11.4.1986, p. 2.

CHAPTER IV — SPAIN AND GREECE

Article 9

1. With the exception of the second subparagraph of Article 4(5), Chapter II of this Directive shall not be applicable to Spain until 1 January 1992.

2. During 1991, operating aid for shipbuilding and ship conversion in Spain may be considered compatible with the common market provided that:

(i) Spain's shipbuilding industry carries out, in addition to the 1987 to 1990 restructuring programme and according to the timetable set, all the restructuring measures laid down in the supplementary restructuring plan for 1991 and 1992 submitted to the Commission by the Spanish Government;

(ii) the Spanish Government, jointly with the Commission, mandates an independent consultancy to monitor the implementation, according to the timetable, of the aforementioned restructuring programme; this consultancy shall supply six-monthly reports to the Commission and the Spanish authorities containing details of the progress that the sector has made, in compliance with the restructuring plan, in order to be capable of operating with the same aid level as the other Member States;

(iii) where the six-monthly reports give reason to doubt that the shipbuilding industry will attain the planned level of competitiveness, the Spanish Government will take measures to reinforce the restructuring of the sector which are accepted by the Commission as capable of rectifying the situation;

(iv) operating aid is reduced from the 1990 level.

Article 10

1. Article 5 of this Directive shall not be applicable to Greece until 1 January 1992.

2. During 1991, operating aid for shipbuilding, ship conversion and ship repair not related to new contracts may be considered compatible with the common market if granted for the financial restructuring of yards in connection with a systematic and specific restructuring programme linked to the disposal by sale of the yards.

3. Notwithstanding the obligation to dispose of the yards by sale referred to in paragraph 2, the Greek Government shall be allowed to maintain a 51% majority holding in one of the yards if justified by defence interests.

CHAPTER V — MONITORING PROCEDURE

Article 11

1. In addition to the provisions of Articles 92 and 93 of the Treaty, aid to shipbuilding, ship conversion and ship-repair undertakings covered by this Directive shall be subject to the special notification rules provided for in paragraph 2.

2. The following shall be notified to the Commission in advance by the Member States and authorized by the Commission before they are put into effect:

(a) any aid scheme — new or existing — or any amendment of an existing scheme covered by this Directive;

(b) any decision to apply any general or regional aid scheme to the undertakings covered by this Directive;

(c) any individual application of aid schemes in the cases referred to in the second subparagraph of Article 4(5) and paragraph 7 or when specifically provided for by the Commission in its approval of the aid scheme concerned.

Article 12

1. For the Commission's monitoring of the implementation of the aid rules contained in Chapters II and III, Member States shall supply the Commission for its exclusive use with:

(a) current reports on each shipbuilding and ship conversion contract by the end of the third month following the month of signing of each contract, containing details of the financial contract support in accordance with the annexed Schedule 1;

(b) completion reports on each shipbuilding or ship conversion contract by the end of the month following the month of completion in accordance with the annexed Schedule 1 including details of the financial contract support;

(c) six-monthly reports — to be provided by 1 October and 1 April in respect of the preceding half calendar years — on aid granted to shipowners and used for shipbuilding or ship conversion in a shipyard outside the Member State granting the aid in accordance with the annexed Schedule 2;

(d) yearly reports giving details of the annual results of, and total financial support granted to, each individual national shipyard which has received aid, in accordance with the annexed Schedule 3 where such information has been requested by the Commission. In such cases, the requested information shall include a copy of the yearly report and is to be provided not later than two months after the general meeting which approves the shipyard's yearly report;

(e) yearly reports — to be provided by 1 April of the year following the year subject to the report — on the attainment of the restructuring objectives as regards the undertakings which have received aid under Articles 6 and 7 in accordance with the annexed Schedule 4.

2. On the basis of the information communicated to it in accordance with Article 11 and paragraph 1 of this Article, the Commission shall draw up an annual overall report to serve as a basis for discussion with national experts. This report shall state *inter alia* the level of contract-related aid and other operating aid granted in each Member State during the period in question, and both the total volume of restructuring aid awarded and the progress made towards the attainment of the restructuring objectives in each Member State during the same period.

3. If a Member State does not fully comply with its reporting obligations as laid down in paragraph 1, the Commission may, after consultation and after having given due notice, require that that Member State suspend outstanding payments of aid already approved until such time as all due reports have been received by the Commission.

If the reporting by a Member State under paragraph 1 is punctual but incomplete and at the time of reporting that Member State specifies those yards which have not fulfilled their reporting obligations, the Commission shall limit its possible requirement for suspension of outstanding aid payments to such yards only.

Article 13

This Directive shall apply from 1 January 1991 to 31 December 1993.

Article 14

This Directive is addressed to the Member States.

ANNEX

SCHEDULE 1

EUROPEAN ECONOMIC COMMUNITY

REPORT OF MERCHANT SHIP ORDERS / COMPLETIONS (delete as appropriate)

Section 1: Contract details

1. New building/conversion		
2 Company	3 Yard	4. Yard No
5. Registered owner		
6. Holding owner		
7 Vessel's country of registration		
8 Date contract signed	9 Completion/delivery date	

Section 2: Ship details

10 Type of vessel (by OECD category)
11. Deadweight .....
12. Gross tonnage (GT) 13. Compensated gross tonnage (CGT)
.....

Section 3 Financial arrangements

	Currency	ECU (Prevailing rate)	% of contract price
14 Contract price			
15. Estimated contract loss (if any)			
16. Contract-related aid			
A Granted to yard: a) grants b) credit facilities c) specific fiscal concession d) other support			
B. Granted to customer or ultimate owners: a) grants b) credit facilities c) fiscal concession d) other support			

Contact for inquiries: ..... Date .....

Position ..... Signature. .....

NB.
The financial contract support figures referred to in Article 12(1)(a) to be supplied by the end of the third month following the month of signature of the contract must be definitive, except for those Member States whose budgetary systems do not allow the provision of final figures within this deadline (Spain and Italy). In these cases, the financial contract support information may be provisional but such provisional information must be the maximum aid level which could be granted in respect of the contracts concerned and must be supplied within the time-limit laid down in Article 12(1)(a). Where provisional figures are provided, the definitive figure of aid granted in respect of these contracts must be sent to the Commission as soon as the budget relating to the year in which the contracts were signed has been finally adopted

SCHEDULE 2

EUROPEAN ECONOMIC COMMUNITY

REPORT ON AID TO SHIPOWNERS FOR NEW BUILDING OR CONVERSION OF SHIPS

(Information not supplied in Schedule 1)

1	2	3			4	5			
Case	Name of company in receipt of aid	Aid granted			Month of aid granting	New building or conversion contract concerned			
		Form	Volume	Details		Ship type and yard No	Tonnage (GT)	Performing yard	
								Country	Name
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									

Contact for inquiries:..... Date:.....

Position: ..... Signature:.....

SCHEDULE 3

EUROPEAN ECONOMIC COMMUNITY

REPORT OF COMPANY FINANCIAL SUPPORT

Name of company: ....

Section 1: Public aid

Operating aid	1. Contract value 2 Costs/loss	Direct aid received	Indirect aid support (of schedule 1)
1. Contract support: (a) related to contracts concluded before 1 January of the year concerned (b) related to contracts concluded after 1 January of the year concerned, of which: – related to development assistance to developing countries – related to contracts subject to Article 4(5) 2. Payment of other operation costs, inclusive loss compensation and rescue aid (see Article 5)			
Restructuring aid	**Costs**		**Aid received**
3. Investments 4. Redundancy payments 5. Other cash closure costs 6. Asset disposal costs/receipts 7. Conversion costs 8. Research and development costs 9. Other restructuring costs			

Contact for inquiries: ....
. ...
Position: ....

Date: ....

Signature .. ..

Section 2: Turnover and profit/loss (to be completed by all companies in receipt of direct production aid)

	Reporting year	Previous year
10 Turnover		
11 Of which related to merchant shipbuilding and ship conversion: (a) related to contracts concluded before 1 January of the year concerned (b) related to contracts concluded after 1 January of the year concerned, of which: – related to development assistance to developing countries – related to contracts subject to Article 4(5)		
12. Losses (if any)		
13. Of which related to merchant shipbuilding and ship conversion (a) related to loss on contracts (b) related to movement in provisions (c) related to restructuring expenditure		

Section 3: Cash flow (to be filled in for all companies which have registered losses under 12 and have received funding from any public sources)

	Reporting year	Previous year
Expenditure 14. Trading losses before depreciation 15. Investment expenditure 16. Other expenditure 17. Other change in working capital		
Source of funds 18. Equity receipts: (a) from public shareholders (b) from private shareholders 19. Loans and overdrafts: (a) from public sources (a') of which contract support (b) from private sources (b') of which with State guarantee 20. Government grants: (a) of which contract support		

SCHEDULE 4

EUROPEAN ECONOMIC COMMUNITY

REPORT OF MERCHANT SHIPYARD FACILITIES AND EMPLOYMENT FOOR ALL YARDS
IN RECEIPT OF RESTRUCTURING AID DURING THE YEAR IN QUESTION

Section 1: Facilities – Date: ..... Company: . .....

1. Berth/dock/pad	2. Current use	3. Size	4. Capacity

Section 2: Merchant orderbook – Date: ....

5. Berth No	6. Ship No	7. Ship type	8. GT	9 Completion date
10. Total new orders .... 19 ..... Number .... GT				
11. Total completions .... 19 .... Number . ... GT				

Section 3: Shipbuilding employment – Date: ... .

12. *By activity* 13. Merchant 14. Offshore 15. Naval 16. Repair 17. Other 18. Total	19 *By occupation* (merchant) 20. Manual 21. Staff 22. Total merchant 23. Subcontractors 24. Net change in employment
25. Total man-hours for the shipyard	
26. Of which for merchant shipbuilding and conversion	

Contact for inquiries: .... Date: . .. .

Position: .... Signature: ....

COUNCIL DIRECTIVE 92/68/EEC[1] OF 20 JULY 1992

amending Directive 90/684/EEC on aid to shipbuilding

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 92(3)(d) and 113 thereof,

Having regard to the proposal from the Commission,[2]

Having regard to the opinion of the European Parliament,[3]

Having regard to the opinion of the Economic and Social Committee,[4]

Whereas the shipbuilding industry is important for the structural development of the coastal region of the territories of the former German Democratic Republic;

Whereas the shipbuilding industry, as it existed in those territories at the time of their incorporation into the Community, requires urgent and comprehensive restructuring in order to become competitive; whereas the direct application of the common maximum ceiling for production aid does not allow for such measures and a special transitional arrangement should therefore be introduced to enable the shipbuilding industry in those territories to operate during the period of gradual restructuring which should enable it to comply with the State aid rules applicable throughout the Community;

Whereas, moreover, competition considerations dictate that the sector of the shipbuilding industry of the territories in question should contribute significantly to the reduction of the excess capacity which, worldwide, continues to impede the restoration of normal market conditions for the shipbuilding industry;

Whereas Directive 90/684/EEC[5] should therefore be amended,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 90/684/EEC is amended as follows:

1. The title of chapter IV shall be replaced by the following:

'SPAIN, GREECE AND THE TERRITORY OF THE FORMER GERMAN DEMOCRATIC REPUBLIC';

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1 OJ L 219, 4.8.1992, p. 54.
2 OJ C 155, 20.6.1992, p. 20.
3 Opinion deliverd on 9 July 1992.
4 Opinion delivered on 1 July 1992.
5 OJ L 380, 31.12.1990, p. 27.

2. The following Article shall be inserted:

'Article 10a

1. With the exception of Article 4(6) and (7), Chapter II shall not apply to the shipbuilding and ship conversion activities of yards operating in the territories of the former German Democratic Republic on 1 July 1990.

2. Until 31 December 1993, operating aid for the shipbuilding and ship conversion activities of the yards referred to in paragraph I may be considered compatible with the common market provided that:

(a) aid to facilitate the continued operation of the yards during that period does not, for any of these yards, exceed a maximum ceiling of 36% of a reference annual turnover calculated on the basis of three years of shipbuilding and ship conversion activities after restructuring; this aid must be paid by 31 December 1993;

(b) no further production aid is granted on contracts signed between 1 July 1990 and 31 December 1993;

(c) the German Government agrees to carry out, according to a timetable approved by the Commission and in any case before 31 December 1995, a genuine and irreversible reduction of capacity of 40% net of the capacity of 545 000 cgt existing on 1 July 1990;

(d) the German Government provides evidence to the Commission, in the form of annual reports by an independent chartered accountant, that aid payments are strictly limited to the activities of yards situated in the former German Democratic Republic; the first such report must be submitted to the Commission at the latest by the end of February 1993.

3. The Commission shall ensure that the aid referred to in this Article does not affect trading conditions to an extent contrary to the common interest.'

Article 2

This Directive is addressed to the Member States.

COUNCIL DIRECTIVE 93/115/EC[1] OF 16 DECEMBER 1993

amending Directive 90/684/EEC on aid to shipbuilding

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 92(3)(d) and 113 thereof,

Having regard to the proposal from the Commission;[2]

Having regard to the opinion of the European Parliament;[3]

Having regard to the opinion of the Economic and Social Committee;[4]

Whereas Council Directive 90/684/EEC of 21 December 1990 on aid to shipbuilding[5] will expire on 31 December 1993;

Whereas the aid policy established in that Directive has generally achieved its objectives;

Whereas, however, in spite of the improvements forecast due to the expected increase in the demand for shipbuilding it is too early to speak of full normalization on the world shipbuilding market;

Whereas the Community's existing policy needs to be maintained in order to promote the long-term survival of an efficient and competitive European shipbuilding industry;

Whereas the Community is still pursuing its efforts within the Organization for Economic Cooperation and Development (OECD) framework to reach a multilateral agreement between the world's most important shipbuilding nations on a rapid phasing-out of all direct and indirect public support measures in the shipbuilding, ship conversion and ship repair sector as well as other obstacles to re-establishing normal competitive conditions in the sector;

Whereas this agreement must ensure fair competition at an international level among shipyards through a balanced and equitable elimination of all existing impediments or obstacles to normal competitive conditions; whereas it must provide an effective instrument for counteracting injurious pricing practices inconsistent with the agreement;

Whereas this Directive and Directive 90/684/EEC are without prejudice to any amendments that may be necessary in order to comply with international obligations entered into by the Community,

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1 OJ L 326, 28.12.1993, p. 62.
2 OJ C 126, 7.5.1993, p. 24.
3 Opinion delivered on 16 November 1993.
4 OJ C 249, 13.9.1993, p. 10.
5 OJ L 380, 31.12.1990, p. 27. Directive as last amended by Directive 92/68/EEC (OJ L 219, 4.8.1992, p. 54).

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 13 of Directive 90/684/EEC shall be amended to read as follows:

'This Directive shall apply from 1 January 1991 to 31 December 1994.'

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 3

This Directive shall enter into force on 1 January 1994.

Article 4

This Directive is addressed to the Member States.

Commission communication[1]

The Commission states that pursuant to Article 4(3) of the seventh Council Directive on aid to shipbuilding[2] and after consultation with Member States, it has decided for the period from 1 January 1992 to set the common maximum ceiling for operating aid referred to in Articles 4(1) and 5(1) of the abovementioned Council Directive at 9%.

The maximum level of aid permissible for the building of small ships of a contract price of less than ECU 10 million and for ship conversion was, in accordance with Article 4(2) of the Directive, set at 4.5%.

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[1] OJ C 10, 16.1.1992, p. 3.
[2] OJ L 380, 31.12.1990.

Commission letter to Member States SG(88) D/6181 of 26 May 1988

Dear Sir

Council Regulation (EEC) No 4028/86 of 18 December 1986 on fisheries structures establishes a structural objective for the Community fishing sector. This is accompanied by an aid policy which, on the one hand provides for the possibility of co-financing the construction of new fishing vessels for the Community fleet, complying with certain conditions laid down in a multiannual guidance programme, through support from Community and national resources, the latter normally allowable up to a level of 30% with the possibility of increasing to a level of 65% in the case of insufficient Community funds and, on the other hand, does not envisage any aid support for such vessels which do not comply with the guidance programme.

Council Directive 87/167/EEC of 26 January 1987 on aid to shipbuilding establishes a structural objective for the Community's shipbuilding sector within the prevailing world crisis in this area in which a certain level of shipbuilding activities is maintained inside the Community through a selective aid policy allowing production aid, irrespective of whether it is granted directly to yards or indirectly through shipowners, up to a total accumulated ceiling of 28%. The Directive includes construction and conversion of fishing vessels of not less than 100 grt. For small vessels costing less than ECU 6 million it prescribes a lower level of aid and the Commission has declared in the minutes of the Council that it will not allow aid exceeding 20% for such vessels.

As the structural policies expressed in the two legal acts are not immediately compatible, the Commission finds it necessary to advise Member States on how it intends to apply the acts.

In the specific and exclusive framework for constructing new vessels intended exclusively for the Community fishing fleet, Community legislation provides that vessels built outside the guidance programme should not benefit from any aid support, either from national or Community sources, whilst on the other hand it provides for the promotion of the construction of vessels falling inside this programme with a particularly high level of aid. In such a situation the aid-intensity ceilings of the fisheries Regulation should prevail over the more restrictive ceiling laid down in the shipbuilding Directive since the former is to be seen as a *lex specialis* in relation to the Directive, a *lex generalis*. In other cases Article 49 of the fisheries Regulation operates to apply Articles 92 to 94 of the EEC Treaty. In its assessment of the common interest under the terms of Article 92(3)(c) of the EEC Treaty, the Commission hereby informs you that it will consider it as incompatible with the common market aid under the rules of the sixth Council Directive for the construction of fishing vessels for the Community fleet.

This implies that the construction of fishing vessels for the Community fleet comes under the aid policy of Council Regulation No 4028/86 on fisheries structures. Thus aid levels permitted under this Regulation for vessels approved under the multiannual guidance programme prevail whilst vessels not complying with this programme cannot receive any aid support.

On the other hand, fishing vessels of not less than 100 grt constructed for third countries are subject to the rules of Council Directive 87/167 on aid to shipbuilding. Such rules will be interpreted in the light of the Commission's international obligations.

Furthermore it is emphasized that the general principle expressed in Article 3(3) of the Directive that the granting of aid must not lead to distortion of competition between national shipyards and shipyards in other Member States in the choice of placing orders continues to prevail in all cases.

The Commission may review aforementioned rules of application of the two legal acts in the light of their established impact on both the fisheries and shipbuilding policy of the Community.

Yours faithfully

Commission letter to Member States SG(89) D/311 of 3 January 1989

Dear Sir

Article 4(7) of the sixth Council Directive of 26 January 1987 on aid to shipbuilding establishes that aid to shipbuilding and ship conversion granted as development assistance to a developing country shall not be subject to the prevailing maximum production aid ceiling, set by the Commission in accordance with Article 4(2) of the Directive.

Such aid may be deemed compatible with the common market provided that it complies with the terms laid down for that purpose by OECD Working Party No 6 in its agreement concerning the interpretation of Articles 6 to 8 of the OECD Council resolution of 3 August 1981 (understanding on export credits for ships).

Any such individual proposal is subject to prior notification to the Commission. On the basis of the notification, the Commission shall verify the particular development content of the proposed aid and satisfy itself that it falls within the scope of the understanding.

As regards the latter point, the Commission ensures that the proposed aid complies with the criteria laid down in OECD document C/WP6(84)3 of 18 January 1984 concerning the interpretation of Article 6 of the understanding on export credits for ships.

Accordingly, the following criteria must be adhered to by Member States granting development aid:

1. The aid may not be granted for construction of ships which will be operated under a flag of convenience.

2. In the event that the aid cannot be classified as public development aid in the framework of OECD the donor must confirm that the aid is part of an intergovernmental agreement.

3. The donor must give appropriate assurances that the real owner is resident in the beneficiary country and that the beneficiary company is not a non-operational subsidiary of a foreign company.

4. The beneficiary must give undertakings not to sell the ship without prior government approval.

Furthermore the aid granted must contain a grant element of at least 25% in accordance with the OECD method of calculation, see OECD document C/WP6(85)62 of 21 October 1985.

On the other hand, the understanding does not provide for any criteria applicable to the classification of countries eligible for development aid. For this purpose the Commission has hitherto relied upon the OECD DAC-list of developing countries. This list is a compilation of countries to whom donors do, or are prepared to, give aid.

Having regard to competition considerations and the aid policy laid down in the sixth Directive, the application of this list has proved insufficient. In its interpretation of the development content of aid notified under Article 4(7) of the Directive, the Commission has therefore decided to establish its own list of countries eligible for development aid under Article (4)7 of the Directive.

Thus the Commission will consider compatible with the common market the granting of development aid to the following countries under the terms of Article 4(7) of the sixth Directive.

(a) All ACP countries, see decision of the Council and the Commission of 24 March 1986 on the conclusion of the third ACP-EEC Convention (OJ L 86, 31.3.1986).

(b) All overseas countries and territories, see Council Decision 86/283/EEC of 30 June 1986 on the association of the overseas countries and territories with the European Economic Community (OJ L 175, 1.7.1986, p. 46).

(c) All countries not included in (a) or (b) above which are classified on the OECD DAC-list as least-developed countries (LLDC), low-income countries (LIC) or lower middle-income countries (LMIC). These countries are listed in Annex I.

Countries appearing in the upper middle-income countries (UMIC) classification will not be considered eligible.

The Commission will in any future revision of countries eligible for development aid apply the same criteria as mentioned above.

In order to safeguard Community shipbuilding interests the Commission would, however, allow Member States to grant development aid to countries not falling under the above categories provided it can be sustained by Member States that a third country participant to the OECD understanding is planning to grant development aid for a particular contract. In this event the Commission may deem compatible with the common market development aid to be granted for this contract up to the same level as that planned by a third country participant to the OECD understanding in terms of the OECD grant element.

In order to tighten up the application of Article 4(7) of the Directive and ensure compliance with the criteria referred to under points 1 to 4 above, Member States are required to formally engage in each individual notification of development projects under Article 4(7) of the Directive that these criteria are adhered to.

In this context Member States are advised that as regards the criterion of flag of convenience (point 1) the Commission will consider the countries listed in Annex II as having a flag of convenience.

The provisions contained in this letter enter into force on the date of notification.

Yours faithfully

ANNEX I

LIST OF COUNTRIES ELIGIBLE FOR AID UNDER ARTICLE 4(7) OF COUNCIL DIRECTIVE 87/167/EEC OF 26 JANUARY 1987 ON AID TO SHIPBUILDING

- ACP States[1]
- Overseas countries and territories[2]
- Afghanistan (LLDC)
- Bangladesh (LLDC)
- Bhutan (LLDC)
- Bolivia (LIC)
- Burma (LLDC)
- China (LIC)
- Cook Island (LMIC)
- Costa Rica (LMIC)
- Cuba (LMIC)
- Dominican Republic (LMIC)
- Ecuador (LMIC)
- Egypt (LIC)
- El Salvador (LMIC)
- Guatemala (LMIC)
- Haiti (LLDC)
- Honduras (LIC)
- India (LIC)
- Indonesia (LIC)
- Kampuchea, Democratic (LIC)
- Korea, Democratic People's Republic of (LMIC)
- Laos (LLDC)
- Lebanon (LMIC)

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[1] See decision of the council and the Commission of 24 March on the conclusion of the third ACP-EEC Convention (OJ L 86, 31.3.1986).

[2] See Council Decision 86/283/EEC of 30 June 1986 on the association of the overseas countries and territories with the European Economic Community (OJ L 175, 1.7.1986, p. 46).

- Maldives (LLDC)
- Mongolia (LIC)
- Morocco (LMIC)
- Nepal (LLDC)
- Nicaragua (LIC)
- Pakistan (LIC)
- Paraguay (LMIC)
- Peru (LMIC)
- Philippines (LMIC)
- Sri Lanka (LIC)
- Thailand (LMIC)
- Tunisia (LMIC)
- Turkey (LMIC)
- Viet Nam (LIC)
- Yemen (LLDC)
- Yemen, Democratic (LLDC)

ANNEX II

FLAGS OF CONVENIENCE

- Antigua
- Bahamas
- Bermuda
- Cayman Islands
- Cyprus
- Gibraltar
- Lebanon
- Liberia
- Malta
- Panama
- St Vincent
- Vanuatu

These countries appear on the OECD list of countries maintaining an open register.

Information from the Commission[1]

The Commission has decided pursuant to Article 4(2) of the Council Directive on aid to shipbuilding (OJ L 69, 12.3.1987, p. 55), and having regard to the opinions expressed by Member States, to fix the common maximum aid ceiling for operating aid referred to in Articles 4 and 5 of the abovementioned Council Directive at 26% with effect from 1 January 1989.

[1] OJ C 32, 8.2.1989.

Commission letter to Member States SG(92) D/06981 of 19 March 1992

Your Excellency

By letter of 26 May 1988 (SG(88)D/6181) the Commission informed Member States of its decision of 29 March 1988 as regards the interpretation of the coexistence of the sixth Council Directive of 26 January 1987 on aid to shipbuilding[1] and Council Regulation (EEC) No 4028/86 on Community measures to improve and adapt structures in the fisheries and aquaculture sector.[2]

In a multilateral meeting of 27 September 1991 the Danish delegation requested the Commission to clarify in writing how the decision of 29 March 1988 is implemented by the Commission.

Council Regulation (EEC) No 4028/86 has been amended by Council Regulation (EEC) No 3944/90 of 20 December 1990[3] in order to take into account the European Parliament's resolution on a reasonable standard of living for small-scale fishermen (OJ C 47, 27.2.1989) and to bring within the scope of the resolution fishing vessels previously excluded from support under the guidelines. Under the Regulation support can, *inter alia*, be given for modernization of the fisheries fleet if conforming to the objectives of the multiannual guidance programmes and/or zonal programmes, The levels of support, which are laid down in Annex 2 of Council Regulation (EEC) No 3944/90 and depend on the availability of sufficient Community funds, are as follows:

Area	Community support	Member State support
Vessels under 9 m length:		
— designated areas*	35%	between 5 and 25%
— other areas	20%	between 5 and 25%
Vessels over 9 m length and under 33 m:		
— designated areas*	30%	between 5 and 25%
— other areas	15%	between 5 and 25%
Vessels over 33 m length:		
— designated areas*	20%	between 5 and 25%
— other areas	5%	between 5 and 25%

* Designated areas are Greece, Andalusia, the Canary Islands, Ceuta-Melilla, Galicia, west Scotland, the departments of Quimper and Lorient, Ireland, Northern Ireland, Mezzogiorno, Portugal, the French overseas departments, Veneto and Mecklenburg-Western Pomerania.

[1] OJ L 69, 13.3.1987.
[2] OJ L 376, 31.12.1986.
[3] OJ L 380, 31.12.1990.

In the case of insufficient Community funds, Member States can make up the shortfall only if the level of such aid does not result in exceeding, in subsidy equivalent, the overall level of State and Community support permitted under the rules of Regulation (EEC) No 4028/86.

The seventh Council Directive of 21 December on aid to shipbuilding[1] *inter alia* contains provisions as regards the maximum allowable level of contract-related operating aid granted to shipowners and shipyards, the prevention of unfair competition, notification of aid schemes and monitoring of the implementation of approved aid schemes. This Directive, as a matter of course, also contains a provision stating that aid granted by a Member State to its shipowners or third parties in that Member State for shipbuilding or ship conversion shall not result in distortion of competition in the placing of orders between national yards and yards from other Member States. The Directive includes within its scope the construction and conversion of fishing vessels of not less than 100 grt.

Since the structural policies expressed in the fisheries Regulation and the shipbuilding Directive were not immediately compatible, the Commission in its letter SG(88)D/6181 of 26 May 1988 informed the Member States of how it intended to apply these acts. In this letter it was stated that for the promotion of the construction, or conversion of fishing vessels inside the multiannual guidance programmes the aid intensity ceilings of the fisheries Regulation would prevail over the more restrictive ceiling prescribed under the shipbuilding Directive. On the other hand, State aid under the provisions of the shipbuilding Directive for the construction, or conversion of fishing vessels for the Community fleet, which were not part of an approved multiannual guidance programme, were considered incompatible with the common market and therefore excluded. In all other respects, fishing vessels of more than 100 grt constructed for third country owners would remain subject to the rules of the shipbuilding Directive. It was emphasized in the letter that the general principle expressed in Article 3 of the shipbuilding Directive that the granting of aid must not lead to distortion of competition between national shipyards and shipyards in other Member States in the choice of placing orders would continue to prevail in all cases.

The amendment of the fisheries Regulation and the replacement of the sixth by the seventh shipbuilding Directive (both in 1990) do not affect the Commission's interpretations of these two legal acts as set out in its letter of 26 May 1988. In the minutes of the Council meeting of 21 December 1990 the Council stated that aid for the construction or conversion of fishing vessels granted to Community shipowners under the structural policy for fisheries will be governed by the relevant Community provisions, for as long as this proves a suitable means of furthering the structural policy in the fishery sector. In all Commission decisions to approve aid schemes notified under the seventh Directive on aid to shipbuilding in 1991, reference has been made to the framework laid down in the Commission's letter of 26 May 1988.

In practice the Commission's way of implementing these two legal acts comes down to the following. National aid schemes to support national fishermen's efforts to modernize their fleet have to be notified to the Commission to enable it to assess the compatibility of such schemes with the general principles laid down in Article 2 and Article 3(3) of the seventh Directive as well as compliance with the provisions of the fisheries Regulation as regards

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[1] 90/689/EEC, OJ L 380, 31.12.1990.

the objectives of the multiannual guidance programmes and/or zonal programmes. In order to enable the Commission to monitor the implementation of such approved aid schemes Member States are obliged to provide the necessary information both under Article 12(1) of the seventh Directive and the requirements of the fisheries Regulation.

While aid levels permitted under Council Regulation (EEC) No 4028/86 for fishing vessels approved under the multiannual guidance programmes prevail and vessels not complying with this programme cannot receive any aid support, subsidies under the shipbuilding Directive can be granted for the benefit of contracts to build or convert a fishing vessel for a shipowner outside the territory of the Community.

As regards aid for building fishing vessels for the Community fleet the availability of aid at all and the intensity of such aid is ruled by the fisheries Regulation, while all other competition provisions of the shipbuilding Directive apply for such vessels beyond 100 grt. This implies, for example, that if Member States in individual cases of competition for a contract to build or convert a fishing vessel feel that competition is distorted, due to the application of the various national aid schemes in support of the shipbuilding industry of the Community, their governments can request the Commission, pursuant to Article 4(5) of the seventh Directive, to investigate the different aid intentions in order to ensure that the planned aid does not affect trading conditions to such an extent that the common interest would be damaged. The way in which the Commission will implement this general principle under the shipbuilding Directive has been laid down in a Commission declaration to the minutes of the Council meeting of 26 January 1987. In practice this means that the Commission will ensure that shipowners are free in their choice of a building yard within the territory of the Community and that different aid levels available to yards in various Member States are not used to distort competition by the topping-up of the aid granted to the shipowner.

In the case of extra-Community competition for a contract for building a fishing vessel for the Community fleet for which Community yards are also competing, Article 4(5) of the shipbuilding Directive allows for accepting the highest of the proposed aid supports to the competing yards — but within the overall maximum aid support ceiling laid down in the fisheries Regulation — if this is judged necessary to avoid the contract being placed outside the Community.

If on the other hand, extra-Community competition exists for a building contract which does not qualify for aid under the Community fisheries Regulation most Member States have provisions to exclude such foreign built vessels from access to Community waters.

Yours faithfully

V — Steel

COMMISSION DECISION NO 3855/91/ECSC[1] OF 27 NOVEMBER 1991

establishing Community rules for aid to the steel industry

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular the first and second paragraphs of Article 95 thereof,

Having regard to the consensus concluded with the United States of America concerning trade in certain steel products,[2]

Having consulted the Consultative Committee and with the unanimous assent of the Council,

WHEREAS:

I

Any aid in any form whatsoever and whether specific or non-specific which Member States might grant to their steel industries is prohibited pursuant to Article 4(c) of the Treaty.

As from 1 January 1986, Commission Decision No 3484/85/ECSC,[3] replaced from 1 January 1989 by Decision No 322/89/ECSC,[4] established rules authorizing the grant of aid to the steel industry in certain cases expressly provided for.

The rules cover aid, whether specific or non-specific, financed by Member States in any form whatsoever.

Their aim is firstly not to deprive the steel industry of aid for research and development or for bringing plants into line with new environmental standards. The rules also authorize social aid to encourage the partial closure of plants or finance the permanent cessation of all ECSC activities by the least-competitive enterprises. Finally, they prohibit the grant of any other operating or investment aid to steel firms in the Community, albeit with an exemption regarding regional investment aid in certain Member States.

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1 OJ L 362, 31.12.1991, p. 57.
2 OJ L 368, 18.12.1989, p. 185.
3 OJ L 340, 18.12.1985, P. 1.
4 OJ L 38, 10.2.1989, p. 8.

The strict regime thus established, which now applies to the entire territory of the 12 Member States, has ensured fair competition in this industry in recent years. It is consistent with the objective pursued through the completion of the single market. It also conforms to the rules on State aid laid down in the consensus on the steel industry concluded between the Community and the United States in November 1989, which is valid until 31 March 1992. It should therefore continue to be applied, albeit with a number of technical modifications.

Decision No 322/89/ECSC will expire on 31 December 1991.

The Community thus finds itself faced with a situation not specifically provided for in the ECSC Treaty and yet requiring action. In these circumstances, recourse must be had to the first paragraph of Article 95 of the EEC Treaty, so as to enable the Community to pursue the objectives set out in Articles 2 to 4 thereof.

II

In order to cover a significant part of the period remaining before the expiry of the ECSC Treaty in 2002, this Decision will apply until 31 December 1996.

In order to ensure that the steel industry and other industries have equal access to aid for research and development, in so far as this is permitted by the Treaties, the compatibility of these aid schemes with the common market will be assessed in the light of the Community framework on State aid for research and development. As the provisions on aid for environmental protection are identical to those contained in the framework on State aid in environmental matters, they have not been changed. If the rules laid down by these two general frameworks were changed substantially during the term of validity of this Decision, a proposal for an amendment would be presented.

Where a firm ceases all ECSC activity, aid for closure may be paid without restriction as to the nature of that firm's steel production.

As regional investment aid is exceptional in nature, there would be no justification in maintaining it beyond the appropriate period for the modernization of the steel plants concerned, which is set at three years. This possibility is hereby extended, under the same conditions as for Greece, to existing small and medium-sized enterprises in Portugal in order to take account of the fact that Protocol 20 to the Act of Accession prevented them from receiving aid for restructuring for a period of five years following accession. In the case of Germany, it must be accompanied by an overall reduction in capacity in the five new *Länder*. In order to permit effective monitoring of the application of these provisions, each specific case must be notified. Where the investments for which aid is to be granted reach a certain threshold, Member States will be consulted beforehand.

To avoid discrimination due to the variety of forms which State aid may take, transfers of State resources to public or private steel firms, in the form of acquisitions of shareholdings or provisions of capital or similar financing, must be subject to the same procedures as aid so that the Commission can determine whether such operations involve an aid element. This will be the case where the financial transfer is not a genuine provision of risk capital according to usual investment practice in a market economy. The compatibility of any such aid

elements with the Treaty must be assessed by the Commission in the light of the criteria laid down in this Decision. For this purpose, all such financial transfers must be notified to the Commission and may not be implemented if before the end of the standstill period laid down in Article 6(5) the Commission determines that they contain aid elements and initiates the procedure provided for in Article 6(4).

This Decision will be applied in accordance with current, or future international commitments of the Community concerning State aid to the steel industry.

In order to improve transparency with regard to aid, the Commission will draw up an annual report on the implementation of this Decision,

HAS ADOPTED THIS DECISION:

Article 1

1. Aid to the steel industry, whether specific or non-specific, financed by Member States or their regional or local authorities or through State resources in any form whatsoever may be deemed Community aid and therefore compatible with the orderly functioning of the common market only if it satisfies the provisions of Articles 2 to 5.

2. The term 'aid' also covers the aid elements contained in transfers of State resources by Member States, regional or local authorities or other bodies to steel undertakings in the form of acquisitions of shareholdings or provisions of capital or similar financing (such as bonds convertible into shares, or loans, the interest on which is at least partly dependent on the undertaking's financial performance) which cannot be regarded as a genuine provision of risk capital according to usual investment practice in a market economy.

3. Aid coming within the terms of this Decision may be granted only after the procedures laid down in Article 6 have been followed and shall not be payable after 31 December 1996.

The deadline for payments of aid falling under Article 5 is 31 December 1994 with the exception of the special fiscal concessions (Investitionszulage) in the five new *Länder* as provided for in the German 'Tax amendment law 1991', which may be payable up to 31 December 1995.

Article 2

Aid for research and development

Aid granted to defray expenditure by steel undertakings on research and development projects may be deemed compatible with the common market if it is in compliance with the rules laid down in the Community framework for State aid for research and development.[1]

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[1] OJ C 83, 11.4.1986, p. 2.

Article 3

Aid for environmental protection

1. Aid granted to steel undertakings for bringing into line with new statutory environmental standards plants which entered into service at least two years before the introduction of the standards may be deemed compatible with the common market.

2. The total amount of aid granted for this purpose may not exceed 15% net grant equivalent of the investment costs directly related to the environmental measures concerned. Where the investment is associated with an increase in the capacity of the plant, the eligible costs shall be proportionate to the initial capacity of the plant.

Article 4

Aid for closures

1. Aid towards the costs of payments to workers made redundant or accepting early retirement may be deemed compatible with the common market provided that:

(i) the payments do not exceed those customary under the rules in force in the Member States on 1 January 1991 and actually arise from the partial or total closure of steel plants that have been in regular production up to the time of notification of the aid and whose closure has not already been taken into account for the purposes of applying Commission Decisions No 257/80/ECSC,[1] No 2320/81/ECSC[2] and No 218/89/ECSC[3] on aid to the steel industry or the Act of Accession of Spain and Portugal;

(ii) the aid does not exceed 50% of that portion of such payment which is not defrayed directly pursuant to Article 56(1)(c) or (2)(b) of the ECSC Treaty by the Member State or by the Community according to the modalities laid down by the Commission in the bilateral conventions but is payable by the undertaking concerned.

2. Aid to steel undertakings which permanently cease production of ECSC iron and steel products may be deemed compatible with the orderly functioning of the common market, provided that the undertaking:

(i) became a legal entity before 1 January 1991;

(ii) has been regularly producing ECSC iron and steel products up to the date of notification of the aid;

(iii) has not reorganized its production of plant structure since 1 January 1991; and

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1 OJ L 29, 6.2.1980, p. 5.
2 OJ L 228, 13.8.1981, p. 17.
3 OJ L 86, 31.3.1989, p. 76.

(iv) is not directly or indirectly controlled, within the meaning of Decision No 24/54 of the High Authority,[1] by, and does not itself directly or indirectly control, an undertaking that is itself a steel undertaking or controls other steel undertakings,

and that the closure of its plants has not already been taken into account for the purposes of applying the Decisions referred to in paragraph 1 or the Act of Accession of Spain and Portugal or granting a favourable opinion pursuant to Article 54 of the ECSC Treaty.

The amount of aid may not exceed the higher of the following two values, as determined by an independent consultant's report:

(i) the discounted value of the contribution to fixed costs obtainable from the plants over a three-year period, less any advantages the aided firm derives from their closure, or

(ii) the residual book value of the plants (ignoring that portion of any revaluations since 1 January 1990 which exceeded the national inflation rate).

Article 5

Aid granted to steel undertakings for investment under general regional aid schemes may until 31 December 1994 be deemed compatible with the common market, provided that the aided undertaking:

(i) is located in the territory of Greece and the aided investment does not lead to an increase in production capacity;

(ii) is a small or medium-sized undertaking according to the prevailing Community criteria for aid to such undertakings, located in the territory of Portugal, which became a legal entity before 1 July 1991 and the aided investment does not lead to an increase in production capacity;

(iii) is located in the territory of the former German Democratic Republic and the aid is accompanied by a reduction in the overall production capacity of that territory.

Article 6

1. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid of the types referred to in Articles 2 to 5. It shall likewise be informed of plans to grant aid to the steel industry, under schemes on which it has already taken a decision under the EEC Treaty. The notifications of aid plans required by the Article must be lodged with the Commission at the latest by 30 June 1994 as regards aid covered by Article 5 and 30 June 1996 as regards all other aid.

2. The Commission shall be informed, in sufficient time for it to submit its comments, and by 30 June 1996 at the latest, of any plans for transfers of State resources, by Member

[1] OJ of the ECSC No 9, 11.5.1954, p. 345/54.

States, regional or local authorities or other bodies to steel undertakings in the form of acquisition of shareholdings or provisions of capital or similar financing.

The Commission shall determine whether the financial transfers involve aid elements within the meaning of Article 1(2) and, if so, shall examine whether they are compatible with the common market under the provisions of Articles 2 to 5.

The Commission shall seek the views of the Member States on plans for closure aid, for regional investment aid when the amount of the aided investment or of the total aided investments during 12 consecutive months is in excess of ECU 10 million, and on other major aid proposals notified to it before adopting a position on them. It shall inform the Member States of the position it has adopted on all aid proposals, specifying the form and volume of the aid.

4. If, after giving notice to the interested parties concerned to submit their comments, the Commission finds that aid in a given case is incompatible with the provisions of this Decision, it shall inform the Member State concerned of its decision. The Commission shall take such a decision not later than three months after receiving the information needed to assess the proposed aid. Article 88 of the Treaty shall apply in the event of a Member State's failing to comply with that decision. The planned measures falling within paragraph 1 or 2 may be put into effect only with the approval of, and subject to any conditions laid down by the Commission.

5. If the Commission fails to initiate the procedure provided for in paragraph 4 or otherwise to make its position known within two months of receiving notification of a proposal, the planned measures may be put into effect provided that the Member State first informs the Commission of its intention to do so. Where the Commission seeks the views of Member States under the provisions of paragraph 3, the abovementioned time period shall be three months.

6. All individual awards of the types of aid referred to in Articles 4 and 5 shall be notified to the Commission in accordance with the procedure provided for in paragraph 1. The Commission also reserves the right to require that some, or all individual awards of aid of the types referred to in Articles 2 and 3 be notified in accordance with paragraph 1.

Article 7

Member States shall supply the Commission twice a year with reports on the aid disbursed over the previous six months, the uses to which the aid was put and the results obtained over the same period. The reports shall include particulars of all financial operations carried out by the Member States or local regional authorities in relation to publicly-owned steel undertakings. They must be supplied within two months following the end of each six-month period and be set out in a form to be determined by the Commission.

Article 8

The Commission shall draw up annual reports on the implementation of this Decision for the Council and, for information, for the Parliament and the Consultative Committee.

Article 9

This Decision shall enter into force on 1 January 1992.

It shall apply until 31 December 1996.

This Decision shall be binding in its entirety and directly applicable in all Member States.

Framework for certain steel sectors not covered by the ECSC Treaty[1]

1. Introduction

Although the Community iron and steel market has been improving since 1987, the long and serious crisis it experienced from the 1970s onwards, the chief features of which were a constant fall-off in demand and the collapse of prices, produced grave problems of overcapacity, low plant utilization rates and prices which did not cover production costs. Firms were no longer viable.

The crisis affected both ECSC and non-ECSC steel activities.

When the Steel Aid Code No 2320/81/ECSC[2] expired at the end of 1985, the Commission established new Community rules for aid to the ECSC steel industry (Commission Decision N° 3484/85/ECSC of 27 November 1985)[3] which prohibit aid grants other than for research and development, environmental protection and, within strict limits, for closures. No provision is made for operating aid, rescue or investment aid, although the rules cover both specific aid and aid granted under general or regional schemes.

All ECSC aid not provided for in the Decision comes under the prohibition in Article 4(1) of the ECSC Treaty.

However, there are no specific Community rules on aid to non-ECSC steel sectors; aid may be granted on the basis of Articles 92 and 93 of the EC Treaty under general, specific or regional aid schemes.

In addition to the particularly sensitive nature of competition in the non-ECSC steel sectors, the Commission considers that these sectors represent a risk to its ECSC steel aid policy, inasmuch as aid awarded to subsidiaries of steel groups for non-ECSC activities could ultimately benefit ECSC activities.

Because first-stage steel processing is closely linked technically with the iron and steel industry and because of the number of steel groups involved, it has been identified as presenting the greatest potential risk in this respect.

2. Analysis of non-ECSC steel activities

Non-ECSC iron and steel activities are made up of a number of sectors and subsectors with the following chief characteristics:

(i) the sectors are not covered by the ECSC Treaty;

(ii) in these sectors, ECSC steel undergoes preliminary processing (not covered by the ECSC Treaty) before subsequent processing into the end-product.

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[1] OJ C 320, 13.12.1988, p. 3.
[2] OJ L 228, 13.8.1981, p. 14.
[3] OJ L 340, 13.12.1985, p. 1.

The following table defines the main subsectors involved in first-stage processing of steel:

Sector	Subsector	Definition	Consumption of ECSC steel	%[1]
Pipes and tubes	Seamless Large welded	Manufacturing of seamless and welded tubes from ingots, semis and sheet	Strips; sheet; ingots for tubes, semis (tube rounds and squares)	43
	Small and medium welded	Narrow strip or coils, hot or cold-rolled, including the production of precision tubes and special purpose tubes		
Wire-drawing and rod-drawing	Wire-drawing	Manufacturing of drawn-wire from wire rod	Wire rod	22
	Rod-drawing	Production of bars and full sections by drawing and thickness reduction	Wire rod; merchant steels	
Cold-rolling and cold-forming	Cold-rolling	Manufacture of cold-rolled strip	Strip; sheet	15
	Cold-forming	Cold-forming of sections by bending hot or cold-rolled strip and sheet	Strip; sheet	
Forging	Open-die forging Stamping	Manufacture of products by heavy, medium and light forging, and stamping, including the production of hoops, bands, wheels and axles	Ingots; merchant steels	13
Other	Steel foundries	Production of items by pouring liquid steel into a mould of the appropriate shape (internal and external forming); followed by cooling and solidification	Liquid steel	7
	Deep drawing and cutting	Consumption of flat products (mainly sheet) which, after cutting or deformation by deep drawing, are supplied in the appropriate shapes and sizes	Sheet; strip	

[1] Consumption percentage for the sector in relation to total ECSC first-stage processing.

Consumption of ECSC steel by non-ECSC steel works represents 40% of total consumption, which points out the importance of this sector to the steel industry.

A breakdown of consumption by sector shows that pipe and tube manufacturers, with a 43% share, represent by far the largest outlet, followed by wire-drawing with 22%; the other sectors have a much smaller share.

According to the definitions given in the table, the sectors cover a very wide heterogeneous range of activities.

Because their structures vary so much, a further analysis of the subsectors is necessary.

The degree of technical integration of each sector with ECSC activities is also very variable. There is considerable integration in the tube, heavy open-die forging, wire-drawing and foundry sectors and less in the other subsectors.

2.1. Analyses by subsector

2.1.1. Seamless tubes

There are 14 producers in the Community, of which five represent 80% of the 5.7 million tonnes of production capacity. The seamless tube market is primarily dependent on the prospecting requirements of the oil industry, which led to a sharp drop in production in recent years. Capacity utilization rates are inadequate.

2.1.2. Large seamless pipes and tubes (diameter greater than 406.4 mm)

There are 16 Community producers, of whom six account for 90% of the 5.3 million tonnes of production capacity. Most of them have a production line that is integrated with an upstream sheet mill.

The main users are firms constructing gas and oil pipelines, which makes them heavily dependent on the energy sector.

There are considerable links with the steel groups which produce the pre-products. As the production cycle is completely integrated, it is not possible to separate pipes and tubes from the upstream steel industry. As a result, the problems of heavy plate overcapacity are closely related to activity in the heavy welded pipe and tube sector.

2.1.3. Small and medium-sized welded tubes Ø< 406.4 mm) (or diameter less than)

Structurally, these subsectors are very different from the previous two categories: some 200 producers of various sizes, either tied to steel producers or independent, have a total capacity of 12 million tonnes.

The utilization rate has for several years remained under 50% although this varies considerably from one country to another.

2.1.4. Wire-drawing

A distinction is made between mild steel drawing (wire) and drawing of hard and special steels (steel wire) with high added value.

With an installed capacity in excess of 12 million tonnes and a part of the hard steel drawing sector showing profits, the situation is fairly promising; however, the utilization rate for mild steels is very low, leading to overcapacity. The mild steel wire-drawing sector is more closely integrated with ECSC steel production.

2.1.5. Rod-drawing

There is a slight increase in the consumption of the high quality, high value-added products of this subsector. Structurally, the sector is scattered and is not dependent on exports.

2.1.6. Cold-rolling and shaping

Cold-rolling is experiencing a decline in demand due to competition from products obtained by the cold-rolling of slit sheets.

Demand for cold-forming is directly linked to demand from its largest outlets: construction and metal structures.

There are a great many firms and their links with the steel groups are minimal.

2.1.7. Open-die forging

This sector, which is mainly controlled by the major steel groups, is having to cope with the crisis caused by the decline of its two principal customers — shipbuilding and nuclear power plants.

2.1.8. Stamping

The stamping sector has a particularly fragmented structure. Firms have adjusted to market conditions, notably by increasing added value.

2.1.9. Foundries

This activity appears to be carried out chiefly by firms that are independent of the steel groups.

The sector is very fragmented, and demand has been shrinking in recent years.

Steel foundries have endeavoured to adjust capacity, but in spite of their efforts the utilization rate is still in the region of 70% owing to pessimistic demand forecasts, and further adjustments are necessary.

2.1.10. Deep drawing and cutting

The sector does not appear to be experiencing major difficulties. The firms concerned are for the most part independent or subcontractors in the consumer sectors (motor vehicles).

3. Framework for aid

The foregoing analyses of non-ECSC steel reveals that it covers an extremely varied and mixed range of activities. Therefore, the sectors and subsectors are not all equally sensitive or liable to misuse of aid. The risk must not, however, be underestimated, as any new specific EC aid to a steel group is subject to the prior notification requirement provided for in

Article 93(3) of the EC Treaty and the Commission can ensure that the impact of the aid on competition complies with the provisions of Article 92.

Only aid granted under an existing general or regional scheme and authorized by the Commission is not subject to the prior notifications requirement and would thus be more likely to avoid the abovementioned checks. Even in these cases, the Community rules in force require prior notification of individual cases of aid exceeding a certain threshold.[1]

The examination of the inherent sensitivity and degree of risk was based on four main parameters:

(i) Degree of integration of each sector with ECSC activities: only where there is a significant degree of integration is there a risk that aid will be transferred from one sector to another. Only seamless tubes, large welded pipes (Ø > 406.4 mm) and heavy open-die forging, followed by wire-drawing, are extensively technically integrated with ECSC steel activities.

(ii) Financial and economic position of the sector: in theory, the ailing sectors are more likely to benefit from substantial aid. Tubes, heavy open-die forging, mild steel drawing and foundries are experiencing problems of overcapacity and are therefore in serious economic and financial difficulties.

(iii) Structure of the sector: sectors where there is a strong concentration of activities in a few major groups merit closer attention than those with a more fragmented structure where firms respond more flexibly to situations of surplus capacity. Only pipes and tubes, heavy open-die forging and mild steel wire-drawing are in the first category, while the dominant feature of the others is their fragmentation.

(iv) Degree of economic activity in relation to ECSC steel: the volume of steel consumption is one of the parameters used to assess the economic size of a sector in relation to the non-ECSC steel industry as a whole. According to that parameter, only tube firms with 43% consumption, and wire and rod drawing with 22%, are of any significant size.

In short, therefore, the analysis shows that among the most sensitive subsectors:

(a) seamless tubes and large welded tubes and pipes (Ø > 406.4 mm) run a major risk of benefiting from considerable aid and possibly of allowing such aid to be transferred to ECSC steel activities;

(b) small and medium-sized welded tubes, heavy open-die forging, mild steel wire-drawing and foundries run a smaller risk;

(c) the other subsectors do not at present appear to be facing any great risk.

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[1] In particular the Community rules on general aid schemes (Commission letter to the Member States SG(79) D/10478 of 14 September 1979) and the rules on the cumulation of aid for different purposes (Commission communication on the cumulation of aid for different purposes (OJ C 3, 5.1.1985)).

4. Rules on notification and communication

4.1. In view of the foregoing, the Commission considers that the existing aid schemes should be modified as follows:

(a) Member States should notify the Commission in advance of all aid schemes concerning the subsectors of seamless tubes and large welded tubes (Ø > 406.4 mm), irrespective of the amount of the aid or the location of the regions or firms receiving the aid.

(b) Member States should supply the Commission twice a year with reports on the aid disbursed over the previous six months to the subsector, referred to in point (a) and the small and medium-sized welded tubes, heavy open-die forging, foundries and mild steel wire-drawing subsectors.

The reports must be supplied within the two months following the end of each six-month period.

The Commission reserves the right to change the lists of the subsectors referred to above in points (a) and (b), if necessary by adding new subsectors if it finds that aid granted to those subsectors adversely affects trading conditions to an extent contrary to the common interest. In particular, after the first year, the Commission will examine the first two six-monthly reports and decide whether to extend the prior notification requirement to other non-ECSC subsectors.

4.2. Legal basis

The rules referred to in paragraph 4 are based on Article 93(1) of the EC Treaty.

Notification of the aid in question must comply with the conditions in Article 93(3) of the EC Treaty. The Commission must thus be informed in sufficient time for it to submit its comments before the proposed aid schemes are implemented.

The Commission has 30 days in which to adopt a position on aid proposals notified to it.

4.3. Entry into force

The rules referred to in paragraph 4 enter into force on 1 January 1989. They do not affect the obligation on Member States to notify individual cases under existing provisions or decisions which the Commission may adopt concerning specific general, regional or sectoral aid schemes.

VI — Coal

COMMISSION DECISION NO 3632/93/ECSC[1] OF 28 DECEMBER 1993

establishing Community rules for State aid to the coal industry

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 95(1) thereof,

Having consulted the Consultative Committee, the European Parliament and with the unanimous assent of the Council,

I

Whereas Article 4(c) of the Treaty prohibits all State aid to the coal industry in any form whatsoever, whether specific or non-specific;

Whereas structural changes on the international and Community energy markets have been forcing the coal industry in the Community to make major modernization, rationalization and restructuring efforts since the early 1960s; whereas, added to the competition from crude oil and natural gas, there has been growing pressure from coal imported from outside the Community; whereas, as a result, many undertakings in the Community are in financial difficulties and require State aid;

Whereas since 1965 the High Authority/Commission has on a number of occasions laid down rules to reconcile State aid to the coal industry with the objectives of the Treaty; whereas each new set of aid rules has been tailored to developments in the economy in general, and in particular to developments in the energy market and the coal market in the Community;

Whereas all the Decisions in question laid down objectives and principles guaranteeing that State aid was in the common interest, was strictly necessary in terms of volume and duration, and in no way disturbed the functioning of the common market; whereas Member States also undertook to obtain prior authorization from the High Authority/Commission before granting aid;

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[1] OJ L 329, 30.12.1993, p. 12.

II

Whereas although Commission Decision No 2064/86/ECSC of 30 June 1986 establishing Community rules for State aid to the coal industry[1] has enabled varying degrees of further restructuring, modernization and rationalization to take place in the coal industry with a view to increasing competitiveness, most coal production in the Community remains uncompetitive *vis-à-vis* imports from outside the Community, despite a considerable increase in productivity and a major reduction in employee numbers in this sector;

Whereas the scope for rationalization in the coal industry in the Community is limited by unfavourable geological conditions; whereas, therefore, these rationalization measures must be backed up by restructuring measures in order to improve the competitive position of the Community coal industry;

Whereas, in order to attain this objective, more financial resources are needed than the undertakings themselves can provide; whereas the Community similarly does not have at its disposal the resources needed to finance this process; whereas continuation of a Community system of aid is proving indispensable;

Whereas the measures taken may, in accordance with the ECSC Treaty provisions, form part of a concept for the diversification of energy supply and suppliers, including national energy resources, in the context of existing energy concepts;

Whereas the world market in coal is stable with abundant supplies from a wide variety of geographical sources, with the result that even in the long term and with increased demand for coal the risk of persistent interruption of supply, although it cannot be ruled out totally, is nevertheless minimal;

Whereas most of the coal imported into the Community comes from the Community's partners in the International Energy Agency (IEA) or from States with which the Community and/or the Member States have signed trade agreements and which cannot be considered high-risk suppliers;

Whereas, despite the inevitable restructuring and closures, care must be taken to minimize the social and regional impact of these changes, when continuing the Community's policy in this sector, which must take account of the precarious social situation of mining regions, in particular in the context of the principle of economic and social cohesion;

Whereas the Community is therefore confronted with a situation for which no provision is made in the Treaty but on which action must nevertheless be taken; whereas, under these circumstances, the first paragraph of Article 95 of the Treaty must be invoked in order to allow the Community to continue to pursue the objectives set out in the opening Articles of the Treaty and, to this end, to establish new Community rules for aid to the coal industry;

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[1] OJ L 177, 1.7.1986, p. 1.

III

Whereas the Community must progressively bring about conditions which will of themselves ensure the most rational distribution of coal production;

Whereas, to this end, the Community must, *inter alia*, promote a policy of using natural resources rationally under conditions precluding all protection against competing industries;

Whereas the Community must promote the growth of international trade;

Whereas in order to perform its task the Community must ensure the establishment, maintenance and observance of normal competitive conditions;

Whereas in the light of the abovementioned provisions, State aid must cause no distortion of competition and must not discriminate between coal producers, purchasers or consumers in the Community;

Whereas State aid must therefore be granted under transparent conditions to allow better evaluation of its impact on the conditions of competition;

Whereas inclusion of the aid in the budget or in exactly equivalent mechanisms, simplification of such aid and proper indication of the amounts received in the undertakings' annual accounts are the best guarantees of transparency in the aid systems;

Whereas, moreover, the upward trend in the amount of aid paid in recent years is incompatible with the exceptional, transitional nature of the Community aid arrangements; whereas the principle of reducing the coal industry's production costs and capacity is therefore necessary in order to achieve degression of aid;

Whereas, however, a policy of rational distribution of production requires reductions of costs and of capacity to be concentrated primarily on those areas of production receiving the highest level of aid;

Whereas for undertakings or production units in the Community which have no hope of making progress towards greater economic viability in view of coal prices on the world markets, aid arrangements should make it possible to mitigate the social and regional consequences of closures; whereas in the light of redevelopment experience in certain Community coal-producing regions it has been recognized that, in cases of early closure of installations with no prospect of future viability, aid should be granted, as deemed necessary by the Member State, for regional industrial redevelopment, to the extent compatible with the Treaties;

Whereas steps must be taken not only to create the conditions for healthier competition but also to bring about a long-term improvement in the competitiveness of this industry throughout the Community in relation to the world market;

Whereas Community coal industry undertakings must be able to count on a precise medium and long-term outlook to carry out structural changes;

Whereas, as a result of the steady decline in coal production in the Community in recent decades, some undertakings may be confronted with abnormal or exceptionally high costs; whereas State aid to offset all or part of such costs may be compatible with the common

market provided that strict supervision of such aid by the Commission is guaranteed; whereas these inherited costs are not matched by hidden revenue from the past;

Whereas it is necessary to ensure equal access by the coal industry and other sectors to aid for research and development and to aid for environmental protection; whereas it is therefore desirable to evaluate the compatibility of such aid with the Community guidelines established to this end;

Whereas, in particular, the coal industry is characterized by ever-increasing recourse to advanced technology and therefore plays an important role in research, development and demonstration and the exploitation of the industrial potential of such technology;

IV

Whereas efforts to reduce production costs must form part of a restructuring, rationalization and modernization plan for the industry distinguishing between production units capable of contributing towards attainment of this objective and units which cannot attain it; whereas the latter will have to be the subject of an activity-reduction plan leading to the closure of installations when the present arrangements expire; whereas only exceptional social and regional reasons can justify any postponement of closure beyond the expiry date set;

Whereas the Commission's power of authorization must be implemented on the basis of precise and full knowledge of each measure planned by the governments and of their relationship to the objectives of this Decision; whereas, consequently, Member States should regularly provide the Commission with a consolidated report showing the full details of the direct or indirect aid which they plan to grant to the Community coal industry, specifying the reasons for, and scope of, the proposed aid and, where appropriate, its relationship with any modernization, rationalization and restructuring plan submitted;

Whereas it may be necessary, in view of the specific nature of certain existing aid arrangements, to allow a transitional period of three years so that such arrangements can be brought into line with the provisions of this Decision;

Whereas it is essential that no payment should be made, in whole or in part, before the Commission has given explicit authorization,

HAS ADOPTED THIS DECISION:

SECTION I

Framework and general objectives

Article 1

1. All aid to the coal industry, whether specific or general, granted by Member States or through State resources in any form whatsoever may be considered Community aid and hence compatible with the proper functioning of the common market only if it complies with Articles 2 to 9.

2. The term 'aid' covers any direct or indirect measure or support by public authorities linked to production, marketing and external trade which, even if it is not a burden on public budgets, gives an economic advantage to coal undertakings by reducing the costs which they would normally have to bear.

3. The term 'aid' also covers the allocation, for the direct or indirect benefit of the coal industry, of the charges rendered compulsory as a result of State intervention, without any distinction being drawn between aid granted by the State and aid granted by public or private bodies appointed by the State to administer such aid.

4. The term 'aid' also covers aid elements contained in financing measures taken by Member States in respect of coal undertakings which are not regarded as risk capital provided to a company under standard market-economy practice.

Article 2

1. Aid granted to the coal industry may be considered compatible with the proper functioning of the common market provided it helps to achieve at least one of the following objectives:

(i) to make, in the light of coal prices on international markets, further progress towards economic viability with the aim of achieving degression of aid;

(ii) to solve the social and regional problems created by total or partial reductions in the activity of production units;

(iii) to help the coal industry adjust to environmental protection standards.

2. On expiry of a transitional period not exceeding three years starting at the entry into force of this Decision, with a view to increasing transparency, aid shall be authorized only if it is entered in Member States' national, regional or local public budgets or channelled through strictly equivalent mechanisms.

3. With effect from the first coal production year covered by this Decision, all aid received by undertakings shall be shown together with their profit-and-loss accounts as a separate item of revenue, distinct from turnover.

4. For the purposes of this Decision, 'production costs' means those costs, per tonne of coal equivalent, which are linked to current production.

5. All measures involving the granting of aid as referred to in Articles 3 to 7 shall also be appraised, without prejudice to the specific conditions defined for them by those Articles, so as to assess their compatibility with the objectives set out in paragraph 1 of this Article.

SECTION II

Aid granted by the Member States

Article 3

Operating aid

1. Operating aid to cover the difference between production costs and the selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market may be considered compatible with the common market only if it satisfies all the following conditions:

(i) the aid notified per tonne shall not exceed, for each undertaking or production unit, the difference between production costs and foreseeable revenue in the following coal production year;

(ii) the aid actually paid shall be subject to annual correction, based on the actual costs and revenue, at the latest by the end of the coal production year following the year for which the aid was granted. Where the aid is granted within the framework of a multiannual financing ceiling, the final correction shall be made at the end of the year following the aforesaid multiannual financing exercise;

(iii) the amount of operating aid per tonne may not cause delivered prices for Community coal to be lower than those for coal of a similar quality from third countries;

(iv) without prejudice to Articles 8 and 9, Member States shall supply the Commission firstly with all details relevant to the calculation of the foreseeable production costs and revenue per tonne and secondly with all details relevant to the calculation of the correction based on actual production costs and revenue;

(v) aid must entail no distortion of competition between coal users.

2. Member States which intend to grant operating aid as referred to in paragraph 1 in the course of the 1994 to 2002 coal production years to coal undertakings shall submit to the Commission in advance a modernization, rationalization and restructuring plan designated to improve the economic viability of the undertakings concerned by reducing production costs.

The plan will provide for appropriate measures and sustained efforts to generate a trend towards a reduction in production costs at 1992 prices, during the period 1994 to 2002.

Implementation of this plan shall be monitored regularly and the situation reviewed by the Commission in 1997.

3. If some production units in an undertaking receive aid for the reduction of activity provided for by Article 4 while others in the same undertaking receive operating aid, the production costs of the units whose activity is reduced shall not be included in the calculation of the average production costs with a view to evaluating attainment by the undertaking of the objective set in paragraph 2 of this Article.

Article 4

Aid for the reduction of activity

Aid to cover the production costs of undertakings or production units which will be unable to attain the conditions laid down by Article 3(2) may be considered compatible with the common market provided that it satisfies the conditions laid down in Article 3(1) and is the subject of a closure plan with a deadline occurring before expiry of this Decision.

Should such closure come about after the expiry of this Decision, aid to cover production costs will be authorized only if it is justified on exceptional social and regional grounds and is the subject of a progressive and continuous activity-reduction plan entailing a significant reduction in capacity before the expiry of this Decision.

Article 5

Aid to cover exceptional costs

1. State aid to coal undertakings to cover the costs arising from, or having arisen from the modernization, rationalization or restructuring of the coal industry which are not related to current production (inherited liabilities) may be considered compatible with the common market provided that the amount paid does not exceed such costs. Such aid may be used to cover:

(i) the costs incurred only by undertakings which are carrying out or have carried out restructuring;

(ii) the costs incurred by several undertakings.

The categories of costs resulting from modernization, rationalization and restructuring of the coal industry are defined in the Annex to this Decision.

2. State aid to finance social-welfare schemes specifically for the coal industry may be considered compatible with the common market provided that it brings the ratio between the cost per mineworker in employment and the benefits per person in receipt of benefit for coal undertakings into line with the corresponding ratio in other industries. Without prejudice to Article 9, Member States' Governments shall submit to the Commission the necessary basic data and details of the calculation of the ratios between the burdens and benefits referred to above.

Article 6

Aid for research and development

Aid to cover expenditure by coal undertakings on research and development projects may be considered compatible with the common market provided that it complies with the rules laid down in the Community framework for State aid for research and development.

Article 7

Aid for environmental protection

Aid to facilitate the adjustment to new environmental protection standards of installations in operation at least two years before the entry into force of those standards may be considered compatible with the common market, provided that it complies with rules laid down in the Community framework for State aid for such purposes.

SECTION III

Notification, appraisal and authorization procedures

Article 8

1. Member States which intend to grant operating aid as referred to in Article 3(2) or aid for the reduction of activity as referred to in Article 4 for the 1994 to 2002 coal production years shall submit to the Commission, by 31 March 1994 at the latest, a modernization, rationalization and restructuring plan for the industry in accordance with Article 3(2) and/or an activity-reduction plan in accordance with Article 4.

2. The Commission shall consider whether the plan or plans are in conformity with the general objectives set by Article 2(1) and with the specific objectives and criteria set by Articles 3 and 4.

3. Within three months of notification of the plans, the Commission shall give its opinion on whether they are in conformity with the general and specific objectives, without prejudging the ability of the measures planned to attain these objectives. If the information in the plans proves insufficient, the Commission may, within one month, request further information, in which case a new three-month period will start on the date of submission of such further information.

4. If a Member State decides to make amendments to the plan which alter its general tendency in respect of the objectives pursued by this Decision, it must inform the Commission so that the latter may rule on the amendments in accordance with the procedures set out in this Article.

Article 9

1. By 30 September each year (or three months before the measures enter into force) at the latest, Member States shall send notification of all the financial support which they intend to grant to the coal industry in the following year, specifying the nature of the support with reference to the general objectives and criteria set out in Article 2 and the various forms of aid provided for in Articles 3 to 7 and its relationship to the plans submitted to the Commission in accordance with Article 8.

2. By 30 September each year at the latest, Member States shall send notification of the amount of aid actually paid in the preceding coal production year and shall declare any corrections made to the amounts originally notified.

3. When notifying aid as referred to in Articles 3 and 4 and making the annual statement of aid actually paid, Member States shall supply all the information necessary for verification of the criteria set out in the relevant Articles.

4. Member States may not put into effect planned aid until it has been approved by the Commission on the basis, in particular, of the general criteria and objectives laid down in Article 2 and of the specific criteria established by Articles 3 to 7. If the Commission has taken no decision within three months of receipt of notification of the measures planned, the measures may be implemented 15 working days after transmission to the Commission of notice of intent to implement them. Any request made by the Commission for further information shall cause that three-month period to run afresh from the date on which the Commission receives the information.

5. In the event of refusal, any payment made in anticipation of authorization from the Commission shall be repaid in full by the undertaking that received it and shall invariably be considered an unfair advantage in the form of an unjustified cash advance and, as such, shall be liable to charges at the market rate payable by the recipient.

6. In its assessment of the measures notified, the Commission shall check whether the measures proposed are in conformity with the plans submitted in accordance with Article 8 and with the objectives set out in Article 2. It may request Member States to explain any deviation from the plans originally submitted and to propose the necessary corrective measures.

7. The arrangements existing at 31 December 1993, under which aid was granted in conformity with the provisions of Decision 2064/86/ECSC and which are linked to agreements between producers and consumers, exempted under Article 85(3) of the EC Treaty and/or authorized under Article 65 of the ECSC Treaty, must be modified by 31 December 1996 to bring them into line with the provisions of this Decision.

The preceding subparagraph in no way affects either the application of Article 2 of this Decision or the Member States' notification requirement in accordance with the procedures laid down in Articles 8 and 9 of this Decision. All changes made in the aforementioned arrangements must also be notified to the Commission.

SECTION IV

General and financial provisions

Article 10

1. The Commission shall report annually to the Council, the European Parliament and the Consultative Committee on the application of this Decision.

2. The Commission shall submit to the Council, by 30 June 1997 at the latest, a report on experience and problems in applying the Decision. It may propose any appropriate amendments in accordance with the procedure laid down in the first paragraph of Article 95 of the ECSC Treaty.

Article 11

After consulting the Community, the Commission shall take all the measures necessary to implement this Decision.

Article 12

This Decision shall enter into force on 1 January 1994 and shall expire on 23 July 2002.

This Decision shall be binding in its entirety and directly applicable in all Member States.

ANNEX

DEFINITION OF THE COSTS REFERRED TO IN ARTICLE 5(1) OF DECISION NO 3632/93/ECSC

I. Costs incurred only by undertakings which are carrying out or have carried out restructuring and rationalization

Exclusively:

(a) the cost of paying social-welfare benefits resulting from the pensioning-off of workers before they reach statutory retirement age;

(b) other exceptional expenditure on workers who lose their jobs as a result of restructuring and rationalization;

(c) the payment of pensions and allowances outside the statutory system to workers who lose their jobs as a result of restructuring and rationalization and to workers entitled to such payments before the restructuring;

(d) the supply of free coal to workers who lose their jobs as a result of restructuring and rationalization and to workers entitled to such supply before the restructuring;

(e) residual costs resulting from administrative, legal or tax provisions;

(f) additional underground safety work resulting from restructuring;

(g) mining damage provided that it has been caused by pits previously in service;

(h) residual costs resulting from contributions to bodies responsible for water supplies and for the removal of waste water;

(i) other residual costs resulting from water supplies and the removal of waste water;

(j) residual costs to cover former miners' health insurance;

(k) exceptional intrinsic depreciation provided that it results from the restructuring of the industry (without taking account of any revaluation which has occurred since 1 January 1986 and which exceeds the rate of inflation);

(l) costs in connection with maintaining access to coal reserves after mining has stopped.

II. Costs incurred by several undertakings

(a) increase in the contributions, outside the statutory system, to cover social security costs as a result of the drop, following restructuring, in the number of contributors;

(b) expenditure, resulting from restructuring, on the supply of water and the removal of waste water;

(c) increase in contributions to bodies responsible for supplying water and removing waste water, provided that this increase is the result of a reduction, following restructuring, in the coal production subject to levy.

COMMISSION DECISION NO 341/94/ECSC[1] OF 8 FEBRUARY 1994

implementing Decision No 3632/93/ECSC establishing Community rules for State aid to the coal industry

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 3632/93/ECSC[2] of 28 December 1993 establishing Community rules for State aid to the coal industry,

Having consulted the Council,

Whereas pursuant to Decision No 3632/93/ECSC the Commission shall authorize, subject to the conditions set out therein, financial measures by Member States in aid of the coal industry;

Whereas Decision No 3632/93/ECSC provides for that purpose that Member States must notify the Commission by 30 September each year (or three months before the measures enter into force at the latest) of all the financial support which they intend to grant to the coal industry in the following year (and the reasons therefore, the scope thereof and its relation to the modernization, rationalization, restructuring and/or activity-reduction plan); whereas in order to ensure that the communications in question are comparable and in order to check this information, it is desirable to set up a common framework for presenting the data;

Whereas in order for the Commission to carry out its monitoring of the conditions of supply to the principal consumers in the Community, it is necessary that coal undertakings in the Community and, where appropriate, steel undertakings in the Community should submit information on the supply of coal and coke in the Community;

Whereas this Decision replaces Commission Decision No 2645/86/ECSC,[3] whereas that Decision should therefore be repealed,

HAS ADOPTED THIS DECISION:

Article 1

1. To enable the Commission to evaluate compliance with the conditions laid down by Articles 3 and 4 of Decision No 3632/93/ECSC, the coal-producing Member States shall notify the Commission by 31 March 1994 of the production costs of each coal-producing undertaking benefiting from aid on Form A in Annex I to this Decision.

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[1] OJ L 49, 19.2.1994, p. 1.
[2] OJ L 329, 30.12.1993, p. 12.
[3] OJ L 242, 27.8.1986, p. 1.

2. The notifications provided for in Article 9(1) to (3) of Decision No 3632/93/ECSC shall be given in accordance with the explanatory notes in Annex 2 and, where appropriate, on the forms provided in Annexes 3 to 5 to this Decision.

Article 2

1. To enable the Commission to determine the price of coal from third countries intended for blast furnaces, as provided for by Article 3 of Decision No 3632/93/ECSC, the Community undertakings concerned shall notify the Commission of their purchases of coal, coking coal or coke from third countries intended to supply the blast furnaces of the Community's iron and steel industry.

2. The information referred to in paragraph 1 shall be sent to the Commission every quarter as indicated on Form PT, as shown in Annex 6, and shall be protected by professional secrecy.

3. For the purposes of determining the price of coal from third countries intended to supply power stations in the Community, the Commission shall use the information communicated pursuant to Decision No 77/707/ECSC.[1]

Article 3

1. Coal undertakings within the Community shall notify the Commission of contracts or additional clauses to existing contracts relating to the delivery of coal and coke to the Community's iron and steel industry and to deliveries of coal to electricity-generating undertakings in the Community.

2. The information referred to in paragraph 1 shall be sent to the Commission not later than 30 days after the date on which the contract or additional clause was concluded, as indicated on forms M, C and E in Annex 7 and shall be protected by professional secrecy.

Article 4

At the request of one or more Member States, the Commission may authorize simplifications of the notification procedure.

Article 5

The documents obtained or compiled by the national authorities in implementing this Decision shall be centralized in the national departments and kept at the disposal of the Commission.

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[1] OJ L 292, 16.11.1977, p. 11.

Article 6

Decision No 2645/86/ECSC is hereby repealed.

Article 7

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

It shall apply with effect from 1 January 1994.

This decision shall be binding in its entirety and directly applicable in all Member States.

ANNEX 1

FORM A

Notification of data for 1992

Country: .....

Coalfield: .....

Undertaking: .....

Unit of production or production site: .....

	Production year 1992
1. Basic data	
(a) Underground production (1 000 tonnes of coal equivalent)	.....
Opencast production (1 000 tonnes of coal equivalent)	.....
(b) Output per underground shift (tonnes/man-year)	.....
(c) Gross average hourly wage underground	.....
(d) Average lower calorific value (GJ/tonne)[1]	.....
(e) Hours worked underground (x 10^6)	.....
(f) Average number of staff underground	.....
2. Production costs (in national currency/tce)[1]	
(a) Labour costs (per tce produced)	.....
(b) Materials costs (per tce produced)	.....
(c) Direct depreciation (per tce produced)	.....
(d) Service of operating capital (per tce produced)	.....
(e) Other costs (per tce produced)	.....
(f) Total (per tce produced)[2, 3] (2(a) to 2(e) inclusive)	.....
— Less costs included in the amount specified in Sections 2(a) to 2(e) but not connected with current production (restructuring costs, inherited liabilities or other exceptional costs), whether or not covered by aid:	
(g) Inherited liabilities and restructuring costs (per tce produced)	.....
(h) Financial measures concerning social security benefits (per tce produced)	.....
(i) Others (please specify) (per tce produced)	.....
— Less costs included in the amounts specified in Sections 2(a) to 2(e) but covered by aid equivalent to the aid provided for by Articles 6 and 7 of Decision No 3632/93/ECSC:	
(j) Aid for research and development (per tce produced)	.....
(k) Aid for environmental protection (per tce produced)	.....
(l) Total deductions (per tce produced) (2(g) to 2(k) inclusive)	.....
(m) Cost of current production (per tce produced) (2(f) minus 2(l))	.....

[1] One tce = 29.302 GJ/tonne.

[2] Breakdown as in quarterly cost returns made by associations of undertakings to the Commission.

[3] Allowing the necessary amortization and normal return on invested capital, in line with Article 3(c) of the ECSC Treaty.

ANNEX 2

EXPLANATORY NOTES ON THE NOTIFICATION OF AID

1. The forecasts for the operating aid provided for by Article 3 and for the aid for the reduction of activity provided for by Article 4 of Decision No 3632/93/ECSC must be notified on Form B in Annex 3. The real data must subsequently be submitted on Form C in Annex 4.

2. The State aid for financing the specific social welfare schemes provided for by Article 5(2) must be notified on the forms in Annex 5.

3. Any format may be used for notification of the aid provided for by Articles 5(1), 6 and 7.

ANNEX 3

(Reference Articles 3 and 4 of Decision No 3632/93/ECSC)

FORM B

Forecasts for 19..

Country: .....

Coalfield: .....

Undertaking: .....

Production unit or production site: .....

	Reference year (N–1)	Forecast year (N) .....
1. Basic data		
(a) Underground production (1 000 tonnes of coal equivalent)	.....	.....
Opencast production (1 000 tonnes of coal equivalent)	.....	.....
(b) Output per underground shift (tonnes/man-year)	.....	.....
(c) Gross average hourly wage underground	.....	.....
(d) Average lower calorific value (GJ/tonne)[1]	.....	.....
(e) Hours worked underground (x 10^6)	.....	.....
(f) Average number of staff underground	.....	.....
2. Production costs (in national currency/tce)[1]		
(a) Labour costs (per tce produced)	.....	
(b) Materials costs (per tce produced)	.....	
(c) Direct depreciation (per tce produced)	.....	
(d) Service of operating capital (per tce produced)	.....	
(e) Other costs (per tce produced)	.....	
(f) Total (per tce produced)[2, 3] (2(a) to 2(e) inclusive)	.....	.....
— Less costs included in the amount specified in Sections 2(a) to 2(e) but not connected with current production (restructuring costs, inherited liabilities or other exceptional costs), whether or not they are covered by the aid provided for by Article 5 of Decision No 3632/93/ECSC:		
(g) Inherited liabilities and restructuring costs (per tce produced)	.....	.....
(h) Financial measures concerning social security benefits (per tce produced)	.....	.....
(i) Others (please specify) (per tce produced)	.....	.....
— Less costs included in the amounts specified in Sections 2(a) to 2(e) compensated for by aid granted under Articles 6 and 7 of Decision No 3632/93/ECSC:		
(j) Aid for research and development (per tce produced)	.....	.....
(k) Aid for environmental protection (per tce produced)	.....	.....
(l) Total deductions (per tce produced) (2(g) to 2(k) inclusive)	.....	.....

	Reference year (N–1)	Forecast year (N) .....
(m) Cost of current production (per tce produced) (2(f) minus 2(l))	.....	.....
3. Revenue (in national currency/tce)[1]		
— Separate items:		
— sales to coking plants (1 000 tce)	.....	.....
— sales to power stations (1 000 tce)	.....	.....
— other sales (1 000 tce)	.....	.....
— variations in stock: + stockbuilding – stock drawdown (1 000 tce)	.....	.....
(a) Total (1 000 tce)	.....	.....
— Revenue[4] per tce produced from:		
— sales to coking plants	.....	.....
— sales to power stations	.....	.....
— other sales	.....	.....
(b) Net revenue per tce sold	.....	.....
(c) Value of stocks per tce	.....	.....
(d) Total revenue per tce produced[5]	.....	.....
4. Loss eligible for aid under Article 3 or 4* of Decision No 3632/93/ECSC		
Loss eligible for aid per tce of coal produced (2(m) minus 3(d))	.....	.....
5. Aid proposed pursuant to Article 3 or 4* of Decision No 3632/93/ECSC		
(a) Aid applied for per tce produced	.....	.....
(b) Total aid for the year	.....	.....

1 One tce = 29.302 GJ/tonne.
2 Breakdown as in quarterly cost returns made by associations of undertakings to the Commission.
3 Allowing the necessary amortization and normal return on invested capital, in line with Article 3(c) of the ECSC Treaty.
4 Net total of all direct or indirect aid.
5 Breakdown as in quarterly revenue returns made by associations of undertakings to the Commission.
* Delete as appropriate.

ANNEX 4

(Reference Articles 3 and 4 of Decision No 3632/93/ECSC)

FORM C

Real data for 19...

Country: .....

Coalfield: .....

Undertaking: .....

Production unit or production site: .....

	Forecast (Annex 3)	Real data .....
1. Basic data		
(a) Underground production (1 000 tonnes of coal equivalent)	.....	.....
Opencast production (1 000 tonnes of coal equivalent)	.....	.....
(b) Output per underground shift (tonnes/man-year)	.....	.....
(c) Gross average hourly wage underground	.....	.....
(d) Average lower calorific value (GJ/tonne)[1]	.....	.....
(e) Hours worked underground (x 10^6)	.....	.....
(f) Average number of staff underground	.....	.....
2. Production costs (in national currency/tce)[1]		
(a) Labour costs (per tce produced)		.....
(b) Materials costs (per tce produced)		.....
(c) Direct depreciation (per tce produced)		.....
(d) Service of operating capital (per tce produced)		.....
(e) Other costs (per tce produced)		.....
(f) Total (per tce produced)[2, 3] (2(a) to 2(e) inclusive)	.....	.....
— Less costs included in the amount specified in Sections 2(a) to 2(e) but not connected with current production (restructuring costs, inherited liabilities or other exceptional costs), whether or not they are covered by the aid provided for by Article 5 of Decision No 3632/93/ECSC:		
(g) Inherited liabilities and restructuring costs (per tce produced)	.....	.....
(h) Financial measures concerning social security benefits (per tce produced)	.....	
(i) Others (please specify) (per tce produced)	.....	.....
— Less costs included in the amounts stated in Sections 2(a) to 2(e) compensated for by aid granted under Articles 6 and 7 of Decision No 3632/93/ECSC:		
(j) Aid for research and development (per tce produced)	.....	.....
(k) Aid for environmental protection (per tce produced)	.....	.....
(l) Total deductions (per tce produced) (2(g) to 2(k) inclusive)	.....	.....

	Forecast (Annex 3)	Real data
(m) Cost of current production (per tce produced) (2(f) minus 2(l))	.....	
3. Revenue (in national currency/tce)[1]		
— Separate items:		
— sales to coking plants (1 000 tce)	.....	.....
— sales to power stations (1 000 tce)	.....	.....
— other sales (1 000 tce)	.....	.....
— variations in stock: + stockbuilding – stock drawdown (1 000 tce)	.....	.....
(a) Total (1 000 tce)	.....	.....
— Revenue[4] per tce produced from:		
— sales to coking plants	.....	.....
— sales to power stations	.....	.....
— other sales	.....	.....
(b) Revenue per tce sold	.....	.....
(c) Value of stocks per tce	.....	.....
(d) Total revenue per tce produced[5]	.....	.....
4. Loss eligible for aid under Article 3 or 4* of Decision No 3632/93/ECSC		
Loss eligible for aid per tce of coal produced (2(l) minus 3(d))	.....	.....
5. Aid granted pursuant to Article 3 or 4* of Decision No 3632/93/ECSC		
(a) Aid granted per tce produced to current production	.....	.....
(b) Total aid granted for 19..	.....	.....

1 One tce = 29.302 GJ/tonne.
2 Breakdown as in quarterly cost returns made by associations of undertakings to the Commission.
3 Allowing the necessary amortization and normal return on invested capital, in line with Article 3(c) of the ECSC Treaty.
4 Net total of all direct or indirect aid.
5 Breakdown as in quarterly revenue returns made by associations of undertakings to the Commission.
* Delete as appropriate.

ANNEX 5

(Reference Article 5(2) of Decision No 3632/93/ECSC)

FINANCING OF SOCIAL SECURITY BENEFITS IN THE COAL INDUSTRY

Country: Germany

FORM 1A

Date:.....

Production year: .....

1. Tabulation of financial measures concerning social security benefits

(DM million)

Origin of funds	Amount	Purpose
Total		

ANNEX 5 (continued)

Class of insurance: pensions[1] **FORM 1B**

Country: Germany Date: .....

	Mines scheme	General scheme
II. Pension insurance		
1. Basic data		
A. Persons covered		
1. Contributors[2]		
2. Beneficiaries		
(a) Total		
(b) Pensioners under 55[3]		
Difference		
B. Financial data (DM million)		
1. Charge to the industry (employers' and workers' contributions)[4]		
2. Total expenditure		
(a) Total benefits		
(b) Other expenditure		
Total (a + b)		
less:		
(a) Refunds to migrant workers		
(b) Benefit to pensioners under 55[3]		
(of which: other expenditure)[5]	( )	( )
Net total expenditure		
2. Calculations		
A. Charge per worker employed		
$\frac{\text{Total contributions}}{\text{Number of contributors}}$ = (DM million)		C_G =
Contributions per worker employed (DM)		
B. Benefit per beneficiary (excluding pensioners under 55)		
$\frac{\text{Net expenditure}}{\text{Number of beneficiaries}}$ = (DM million)		
Benefit per beneficiary (DM)	P_M =	P_G =
'Normal' charge to the industry per worker employed =		
$C_M = \frac{P_M}{P_G} \times C_G$ = DM		
'Normal' charge to the industry = C_M x number of contributors		(DM million)
+ pensions to pensioners under 55		(DM million)
Total 'normal charge'		(DM million)
Actual charge (deducted)		(DM million)
Difference		(DM million)

1 Invalidity, old age and survivors.
2 Compulsorily insured.
3 Excluding widows' and orphans' pensions.
4 Excluding State subsidies.
5 'Other expenditure' should be broken down in respect of pensioners under 55 as follows:

Mines scheme: $\frac{\text{benefit to pensioners under 55}}{\text{total benefits}}$ x other expenditure.

General scheme: $\frac{\text{benefit to pensioners under 55}}{\text{total benefits}}$ x other expenditure.

ANNEX 5 (continued)

Class of insurance: sickness[1] **FORM 1C**

Country: Germany Date: .....

	Mines scheme	General scheme
III. Sickness insurance[1]		
1. Basic data		
A. Total persons covered		
1. Persons insured		
(a) Members, excluding pensioners		
(b) Pensioners		
2. Persons covered		
(a) Members, excluding pensioners		
(b) Dependants of members, excluding those of pensioners		
Total (a + b)		
(c) Pensioners		
(d) Dependants of pensioners		
Total (c + d)		
B. Financial data (DM million)		
1. Revenue		
(a) Contributions of members, excluding pensioners		
(b) Contributions of pensioners		
Total		
2. Expenditure		
(a) Benefits (in cash and in kind) to members, excluding pensioners		
Other expenditure for members, excluding pensioners[2]		
Total (a)		
(b) Benefits (in cash and in kind) to pensioners		
Other expenditure for pensioners[2]		
Total (b)		
Total		

[1] Sickness, maternity.

[2] 'Other expenditure' should be broken down in respect of 'members, excluding pensioners' according to the number of persons covered in the two categories:

(a) Mines scheme (members, excluding pensioners):
$\frac{\text{number of members, excluding pensioners, + dependants}}{\text{total number of persons covered}}$ x other items of total expenditure = DM million.

(b) General scheme (members, excluding pensioners):
$\frac{\text{number of members, excluding pensioners, + dependants}}{\text{total number of persons covered}}$ x other items of total expenditure = DM million.

(c) The formulae for pensioners should be worked out in the same way as in (a) and (b).

Class of insurance: sickness[1] *(continued)* **FORM 1C** *(continued)*

Country: Germany Date: .....

2. CALCULATIONS

A. Members, excluding pensioners, and dependants

P_M = expenditure for members, excluding pensioners (M.S.) / number of members, excluding pensioners, + dependants (M.S.) (DM million) = DM

C_G = contributions of members, excluding pensioners (G.S.) / number of members, excluding pensioners (G.S.) (DM million) = DM

P_G = expenditure for members, excluding pensioners (G.S.) / number of members, excluding pensioners, + dependants (G.S.) (DM million) = DM

'Normal charge' per member, excluding pensioners:

$C_M = \frac{P_M}{P_G} \times C_G$ = DM

'Normal charge' to the industry (members, excluding pensioners)
= C_M x number of members, excluding pensioners = DM million

Actual charge to the industry (members, excluding pensioners) = DM million

Difference = DM million

B. Pensioners and their dependants

P_M = expenditure for pensioners (M.S.) / number of pensioners + dependants (M.S.) (DM million) = DM

C_G = contributions of pensioners (G.S.) / number of pensioners (G.S.) (DM million) = DM

P_G = expenditure for pensioners (G.S.) / number of pensioners + dependants (G.S.) (DM million) = DM

'Normal charge' per member, excluding pensioners:

$C_M = \frac{P_M}{P_G} \times C_G$ = DM

'Normal charge' to the industry (pensioners)
= C_M x number of pensioners = DM million

Actual charge to the industry (pensioners) = DM million

Difference = DM million

ANNEX 5 (continued)

Country: Germany

FORM 1D

Date:.....

IV. Summary

(DM million)

Class of social insurance	'Normal charge' (Article 5(2) of Decision No 3632/93/ECSC)	Actual charge	Net balance (+ or –)
Pension insurance			
Sickness insurance			
Members, excluding pensioners, + dependants			
Pensioners + dependants			
Total			

The actual charge to the mining industry overall is thus DM..... million above/below the 'normal charge' under Article 5(2) of Decision No 3632/93/ECSC;

Of this, DM..... million (=..... %) is accounted for by the coal industry.

ANNEX 5 (continued)

FORM 2A

Country: France Date:.....

Production year: .....

1. TABULATION OF FINANCIAL MEASURES CONCERNING SOCIAL SECURITY BENEFITS

(FF million)

Origin of funds	Amount	Purpose
Total		

ANNEX 5 (continued)

Class of insurance: pensioners' supplementary insurance

FORM 2B

Country: France Date:.....

II. SUPPLEMENTARY INSURANCE

1. Supplementary insurance for executives (formerly CARIM)

A. Contribution rates

	Rates on portions of salary liable to contribution	
	Between social insurance ceiling and AGIRC ceiling (T2)	Between AGIRC ceiling and double that amount (T3)
Contractual contribution	%	%
Supplementary contribution	%	%
Equalization contribution		
Total		

B. Calculation of charges

(FF million)

	Portions of salary liable to contribution (S)	Total contributions (A)	(Normal) contractual contributions (B)	Excess charge (A – B)
T2 contributions				
T3 contributions				
T2 + T3				

2. Supplementary insurance for clerical, technical and supervisory personnel

(FF million)

	Portion of income liable to contribution (S)	Actual charges[1] (A)	Normal charges (B)	Excess charge (A – B)

3. Supplementary insurance for workers (Carcom)

(FF million)

	Portion of wages liable to contribution (S)	Actual charges (A)	Normal charge .....% of S (B)	Excess charge (A – B)

ANNEX 5 (continued)

Class of insurance: invalidity/old age **FORM 2C**

Country: France Date:.....

		Mines scheme	General scheme
III. INVALIDITY AND OLD AGE INSURANCE			
1. Basic data			
A. Number of persons eligible			
1. Contributors			
2. Beneficiaries			
of which: (a) under 55			
(b) over 55			
(+ disabled persons and widows)			
B. Financial data (FF million)			
1. Charge to industry (contributions)			
2. Expenditure			
(a) Benefit (beneficiaries over 55 under mines scheme)			
of which: — pensions			
— heating			
— accommodation			
(b) Other expenditure less other revenue			
Net total expenditure (a + b)			
2. Calculations			
A. Charge per worker employed			
$\frac{\text{Total contributions}}{\text{Number of contributors}}$ = (FF million)			
Charge per worker employed	(FF)	C_M =	C_G =
B. Benefit per beneficiary			
$\frac{\text{Net expenditure}}{\text{Number of beneficiaries}}$ = (FF million)			
Benefit per beneficiary	(FF)	P_M =	P_G =
'Normal charge' on the industry per worker employed			
$C_M = \frac{P_M}{P_G} \times C_G$		=	FF
Increase per worker employed in respect of benefits to beneficiaries under 55 falling wholly to the charge of the industry			
$\frac{\text{Total net benefit (under 55)}}{\text{Number of workers employed}}$		=	FF
Charge per mineworker employed thus amounts to at least:			
— for benefit to pensioners over 55:			FF
— for benefit to pensioners under 55:			FF
$\frac{\text{Total 'normal charges' to the industry}}{C_M \times \text{number of contributors}}$	Total C_M	=	
		=	FF million

ANNEX 5 (continued)

Class of insurance: sickness/maternity/death **FORM 2D**

Country: France Date:.....

(Workers employed only: cash benefits)

	Mines scheme	General scheme
IV. SICKNESS/MATERNITY/DEATH INSURANCE		
1. Basic data		
A. Number of persons eligible		
1. Contributors		
2. Beneficiaries		
B. Financial data (FF million)		
1. Total charge to the industry (contributions)		
2. Expenditure		
(a) Benefits		
(b) Net total expenditure (benefits + other expenditure – other revenue)	–	
2. Calculations		
A. Charge per worker employed		
$\frac{\text{Total contributions}}{\text{Number of contributors}}$ = (FF million)		
Charge per worker employed (FF)		C_G =
B. Benefit per beneficiary		
$\frac{\text{Total net expenditure}}{\text{Number of beneficiaries}}$ = (FF million)		
Benefit per beneficiary (FF)	P_M =	P_G =
'Normal charge' to the industry per worker employed $C_M = \frac{P_M}{P_G} \times C_G$	=	FF
'Normal charge' to the industry 'Normal charge' per worker employed x number of workers employed: C_M x number of contributors	=	FF million

ANNEX 5 (continued)

Class of insurance: sickness/maternity/death (continued) **FORM 2E**

Country: France Date:.....

(Workers and others covered + pensioners and others covered – benefits in kind and death grant)

	Mines scheme	General scheme
IV. SICKNESS/MATERNITY/DEATH INSURANCE		
1. Basic data		
A. Number of persons eligible		
1. Contributors		
2. Beneficiaries		
B. Financial data (FF million)		
1. Total charge to the industry (contributions)		
2. Expenditure		
(a) Benefits		
(b) Net total expenditure (benefits + other expenditure – other revenue)		–
2. Calculations		
A. Charge per worker employed		
$\frac{\text{Total contributions}}{\text{Number of contributors}}$ = (FF million)		
Charge per worker employed (FF)		C_G =
B. Benefit per beneficiary		
$\frac{\text{Total net expenditure}}{\text{Number of beneficiaries}}$ = (FF million)		
Benefit per beneficiary (FF)	P_M =	P_G =
'Normal charge' to the industry per worker employed $C_M = \frac{P_M}{P_G} \times C_G$	=	FF
'Normal charge' to the industry 'Normal charge' per worker employed x number of workers employed: C_M x number of contributors	=	FF million

ANNEX 5 (continued)

Country: France

FORM 2F

Date: .....

(FF million)

V. SUMMARY	
1. Primary insurance	
A. 'Normal charge' on mines primary insurance	
Invalidity/old age	
Sickness/maternity/death	
(a) Workers employed only (cash benefit)	
(b) Workers employed and others covered (benefits in kind and death grant)	
(c) Pensioners and others covered	
Total	
B. Total charge (invalidity/old age; sickness/maternity) (see above)	
'Normal charge' to mining industry	
Remainder	
of which: ..... %[1] accounted for by coal industry (Charbonnages de France)	
'Normal charge' overall in respect of primary insurance (invalidity/old age and sickness/maternity) on Charbonnages de France	

	Actual charge	'Normal charge' (Article 5(2) of Decision No 3632/93/ECSC)	Excess charge (+)/ shortfall charge (–)
2. Supplementary insurance			
Executives (formerly CARIM)			
Clerical, technical and supervisory personnel (formerly CAREM)			
Workers (Carcom)			
Total			
3. Conclusions			
(Primary insurance + supplementary insurance + charges carried forward)			
A. 'Normal charge' to Charbonnages de France			
1. Primary insurance			
2. Supplementary insurance			
Total			
B. Actual charge (employers' and workers' contributions)			
1. Primary insurance			
2. Supplementary insurance			
Total			
C. Excess charge (B – A)			

[1] The Charbonnages de France's share of the volume of wages in the mining industry as a whole subjected to a contribution ceiling amounted in 19.. to .....%.

The actual charge to the Charbonnages de France is thus FF. million above/below the 'normal charge' under Article 5(2) of Decision No 3632/93/ECSC.

ANNEX 5 (continued)

FORM 3

Country: United Kingdom

Date:.....

Production year: .....

I. TABULATION OF FINANCIAL MEASURES CONCERNING SOCIAL SECURITY BENEFITS

(UKL million)

Origin of funds	Amount	Purpose
Total		

ANNEX 5 (continued)

FORM 4A

Country: Spain

Date:.....

Production year: .....

I. TABULATION OF FINANCIAL MEASURES CONCERNING SOCIAL SECURITY BENEFITS

(PTA million)

Origin of funds	Amount	Purpose
Total		

ANNEX 5 (continued)

Branch: social insurance **FORM 4B**

Country: Spain Date:.....

	Mines scheme	General scheme
II. SOCIAL INSURANCE		
1. Basic data		
A. Total persons covered (number)		
1. Contributors		
2. Beneficiaries		
Difference		
B. Financial data (million PTA)		
1. Charge to the industry (employers' and workers' contributions)		
2. Total expenditure		
Total benefits		
Other expenditure		
2. Calculations		
A. Charge per worker employed		
(Contributions per worker employed) (PTA)	—	C_G =
B. Benefit per beneficiary (PTA)	P_M =	P_G =
'Normal' charge to the industry per workers employed:		
$C_M = \frac{P_M}{P_G} \times C_G$ =	(PTA)	
C_M x number of contributors =	PTA	million
Actual charge to the industry (employers' and workers' contribution) =	PTA	million
Difference =	PTA	million

ANNEX 5 (continued)

FORM 5A

Country: Portugal

Date:.....

Production year: .....

I. TABULATION OF FINANCIAL MEASURES CONCERNING SOCIAL SECURITY BENEFITS

(ESC million)

Origin of funds	Amount	Purpose
Total		

ANNEX 5 (continued)

Branch: social insurance **FORM 5B**

Country: Portugal Date: .....

	Mines scheme	General scheme
II. SOCIAL INSURANCE		
1. Basic data		
A. Total persons covered (number)		
1. Contributors		
2. Beneficiaries		
Difference		
B. Financial data (million ESC)		
1. Charge to the industry (employers' and workers' contributions)		
2. Total expenditure		
Total benefits		
Other expenditure		
2. Calculations		
A. Charge per worker employed (contributions per worker employed) (ESC)	—	C_G =
B. Benefit per beneficiary (ESC)	P_M =	P_G =
'Normal' charge to the industry per worker employed:		
$C_M = \frac{P_M}{P_G} \times C_G$ =	(ESC)	
C_M x number of contributors =	ESC	million
Actual charge to the industry (employers' and workers' contribution) =	ESC	million
Difference =	ESC	million

ANNEX 5 (continued)

FORM 6A

Country: Italy

Date:.....

Production year: .....

I. TABULATION OF FINANCIAL MEASURES CONCERNING SOCIAL SECURITY BENEFITS

(LIT million)

Origin of funds	Amount	Purpose
Total		

ANNEX 5 (continued)

Branch: social insurance **FORM 6B**

Country: Italy Date:.....

	Mines scheme	General scheme
II. SOCIAL INSURANCE		
1. Basic data		
A. Total persons covered (number)		
1. Contributors		
2. Beneficiaries		
Difference		
B. Financial data (million LIT)		
1. Charge to the industry (employers' and workers' contributions)		
2. Total expenditure		
Total benefits		
Other expenditure		
2. Calculations		
A. Charge per worker employed (contributions per worker employed) (LIT)	—	C_G =
B. Benefit per beneficiary (LIT)	P_M =	P_G =

'Normal' charge to the industry per worker employed:

$C_M = \frac{P_M}{P_G} \times C_G$	=	(LIT)	
C_M x number of contributors	=	LIT	million
Actual charge to the industry (employers' and workers' contribution)	=	LIT	million
Difference	=	LIT	million

ANNEX 6

FORM PT

Undertaking making declaration
(Name of firm — address)

Details of purchasing contract for coal (or coke) from third countries to supply blast furnaces of the Community steel industry [1]

Form PT
Serial No:
Date:

A. GENERAL INFORMATION

Producing country:
Port or station of departure:
Date of contract (or rider):
Delivery period (duration):
Total tonnage covered by contract:
Tonnages to be delivered in 19..: .....; 19..: .....; 19..: .....
Variations from contract:

B. COUNTRY OF DESTINATION

Port or station of arrival:

C. FACTORS OF DELIVERED PRICE (per tonne, tax excluded in the Community, at the date of declaration)

(a) Category and size:
- fob price[2]
- cif price (port .....)[2]
- Freight[3]

(b) Characteristics and price adjustments for quality[4]
- Moisture
- Ash (dry)
- Volatile matter (clean)
- Sulphur (dry)
- Coking properties[5]
- Other characteristics[6]

Content or index	Point value

(c) Other variations from agreed price:[7]

[1] Declaration to be sent for all contracts or riders to the Director-General for Energy.
[2] State the currency used in the contract.
[3] If necessary, deal with this point separately.
[4] State price (mine, fob or cif) to which adjustments apply.
[5] State the criteria for the production of coke.
[6] State the criteria, particularly the net calorific value (GJ/tonne) for coal for PCI purposes.
[7] Indexation, for example. State main arrangements and formulae.

ANNEX 7

FORM M

Undertaking making declaration
(Name of firm — address)

Declaration of supply contract for coal produced in the Community and intended either for blast furnace coke manufacture, or for PCI * purposes, for the Community steel industry[1]

Form M
Serial No:[2]
Date:[2]

A. PRODUCER (Community undertaking)
Country:
Undertaking:
Mine or washing plant:[3]
Station/port of departure:
Date of contract:
Delivery period (duration):
Total tonnage covered by contract:
Tonnages for 19..: ..... ; 19..: ..... ; 19..: .....
Variations from contract:

B. CONSIGNEE (Community undertaking)
Country:
Undertaking:
Coking plant or blast furnace: [3]
Station/port of arrival:

C. FACTORS IN CALCULATING PRODUCER'S PRICE[4]
(per tonne, tax excluded)

(a) Category and grades:
List price
Transport costs[5]
Delivered price according to price list
Price rebate
Net invoiced price
Actual delivered price

(b) Characteristics and adjustments for quality:
– Moisture
– Ash (dry)
– Volatile matter (clean)
– Sulphur (dry)
– Coking properties[6]
– Other characteristics[7]

Content or reference index	Point value

(c) Other variations from agreed price (specify):

(d) Adjustments on standard quality:

D. PRICE FACTORS USED AS A REFERENCE TO CALCULATE REBATE
(shown under C(a) per tonne, tax excluded in the Community)[4]

(a) Country of origin of coal or coking coal
Category and size
fob price (port: .....)
cif price (port: .....)
Handling and other costs
Transport costs[5]
Price delivered at coking plant or blast furnace

(b) Basic characteristics and adjustments for quality
– Moisture
– Ash (dry)
– Volatile matter (clean)
– Sulphur (dry)
– Coking properties[6]
– Other characteristics[7]

Content or based index	Point value

(c) Adjustments on standard quality

---

* Coal injected into blast furnaces.
[1] Riders to declared contracts must also be declared to the Commission.
[2] Serial number (from 1) and date to be given by coal-producing undertaking.
[3] Name and locality.
[4] State the currency for prices and costs.
[5] State the link and method of transport.
[6] State the criteria for the manufacture of coke.
[7] State the criteria, notably the net calorific value (GJ/tonne) for coal for PCI purposes.

FORM C

Undertaking making declaration
(Name of firm — address)

Declaration of supply contract for coke produced in the Community and intended for blast furnaces of the Community steel industry[1]

Form C
Serial No:[2]
Date:[2]

E. PRODUCER
Country:
Undertaking:
Coking plant:[3]
Station/port of departure:
Date of contract:
Total tonnage covered by contract:
Delivery period (duration):
Tonnages for: 19..: .....; 19..: .....; 19..: .....
Variations from contract:

F. CONSIGNEE
Country:
Undertaking:
Blast furnace:[3]
Station/port of arrival:

G. FACTORS IN CALCULATING PRODUCER'S PRICE[4]
(per metric tonne, tax excluded)

(a) Size:
List price
Transport costs
Delivered price according to price list
Price rebate
Net invoiced price
Actual delivered price

(b) Basic characteristics and adjustments for quality:
– Moisture
– Ash (dry)
– Sulphur (dry)
– Indices (M40, M10)
– Other characteristics (to be specified)

Content or base index	Point value

(c) Adjustments on standard quality

H. PRICE FACTORS USED AS A REFERENCE TO CALCULATE REBATE
(per tonne, tax excluded in the Community)[4]

(a) Country of origin of coal from third countries:
Place of coking
Price of coal delivered at place of coking
Average cost of coke produced[5]
Price ex coking plant of blast furnace coke
Transport costs[6]
Price delivered at blast furnace

(b) Characteristics of blast furnace coke and adjustments for quality
– Size
– Moisture
– Ash (dry)
– Sulphur (dry)
– Indices (M40, M10)
– Other characteristics (to be specified)

Content or base index	Point value

(c) Adjustments on standard quality

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[1] Riders to declared contracts must also be declared to the Commission.
[2] Serial number (from 501), and date of declaration to be given by coke-producing undertaking.
[3] Name and locality.
[4] State the currency for prices and costs.
[5] State calculation factors according to following equations: P(k) = P(c) x Q + K where P(k) = coke production costs, P(c) = delivered coal price, Q = amount of coal to be charged to produce one tonne of coke, K = net costs of coking.
[6] Specify the link and method of transport.

ANNEX 7 (continued)

FORM E

Undertaking making declaration
(Name of firm — Address)

Declaration of supply contract for coal produced in the Community and intended for power stations in the Community[1]

Form E
Serial No:[2]
Date:[2]

A. PRODUCER
Country:
Undertaking:
Production unit or washing plant:[3]
Station/port of departure:
Date of contract:
Total tonnage covered by contract:
Delivery period (duration):
Tonnages for 19..: .....; 19..: .....; 19..: .....
Variations from contract:

B. CONSIGNEE
Country:
Undertaking:
Power station:[3]
Station/port of arrival:

C. FACTORS IN CALCULATING PRODUCER'S PRICE (per tonne, tax excluded)[4]

(a) Net mine price
Transport costs[5]
Price rebate
Actual delivered price to power station

(b) Basic characteristics and adjustments for quality:
– Moisture
– Ash (dry)
– Volatile matter (clean)
– Sulphur (dry)
– Lower calorific value[6]
– Other characteristics[6]

Content or reference index	Point value

[1] Riders to declared contracts must also be declared to the Commission.
[2] Serial number (from 1) and date of declaration to be given by coal-producing undertaking.
[3] Name and locality.
[4] State the currency for prices and costs.
[5] Specify the link and method of transport.
[6] List the criteria.

VII — Transport

1. Road, rail and inland waterway

COUNCIL REGULATION (EEC) NO 1191/69[1] OF 26 JUNE 1969

on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 75 and 94 thereof;

Having regard to the Council Decision of 13 May 1965[2] on the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway;

Having regard to the proposal from the Commission;

Having regard to the opinion of the European Parliament;[3]

Having regard to the opinion of the Economic and Social Committee;[4]

Whereas one of the objectives of the common transport policy is to eliminate disparities liable to cause substantial distortion in the conditions inherent in the concept of a public service which are imposed on transport undertakings by Member States;

Whereas it is therefore necessary to terminate the public service obligations defined in this Regulation; whereas, however, it is essential in certain cases to maintain such obligations in order to ensure the provision of adequate transport services; whereas the adequacy of transport services must be assessed in the light of the state of supply and demand in the transport sector and of the needs of the Community;

Whereas these termination measures are not to apply to transport rates and conditions imposed on passenger transport undertakings in the interests of one or more particular categories of person;

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1 OJ L 156, 28.6.1969, p. 1.
2 OJ 88, 24.5.1965.
3 OJ C 27, 28.3.1968.
4 OJ C 49, 17.5.1968.

Whereas, for the purpose of implementing these measures, it is necessary to define the various public service obligations covered by this Regulation; whereas such obligations include the obligation to operate, the obligation to carry, and tariff obligations;

Whereas it should be left to the Member States on their own initiative to take measures to terminate or to maintain public service obligations; whereas, however, these obligations being such as to entail financial burdens for transport undertakings, the latter must be able to apply for their termination to the competent authorities of the Member States;

Whereas it is appropriate to provide that transport undertakings may apply for the termination of public service obligations only where such obligations involve them in economic disadvantages determined in accordance with common procedures defined in this Regulation;

Whereas, in order that standards of operation may be raised, transport undertakings should be able, when making their applications, to propose the use of some other form of transport better suited to the traffic in question;

Whereas when deciding the maintenance of public service obligations the competent authorities of Member States must be able to attach to their decision, conditions likely to improve the yield of the operations in question; whereas when deciding to terminate a public service obligation the competent authorities must, however, in order to ensure the provision of adequate transport services, be able to provide for the introduction of an alternative service;

Whereas, in order to take account of the interests of all Member States, a Community procedure should be introduced for cases where the termination of an obligation to operate or to carry might interfere with the interests of another Member State;

Whereas it is desirable, in order that the study of applications by undertakings for the termination of public service obligations may be conducted in a proper manner, that time-limits both for the submission of such applications and for the study thereof by the Member States, should be laid down;

Whereas, pursuant to Article 5 of the Council Decision of 13 May 1965 on the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway, any decision by the competent authorities to maintain any public service obligation defined in this Regulation entails an obligation to pay compensation in respect of any financial burdens which may thereby devolve on transport undertakings;

Whereas the right of a transport undertaking to compensation will arise at the time of the decision by a Member State to maintain the public service obligation in question; whereas, however, because budgets are drawn up on an annual basis such right cannot arise during the initial period of operation of this Regulation before 1 January 1971; whereas this date may, in the event of the time-limit for the study of applications from transport undertakings being extended, likewise be altered to a later date;

Whereas, furthermore, Article 6 of the Council Decision of 13 May 1965 on the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway provides that Member States must make compensation in respect of financial burdens devolving upon passenger transport by reason of the application of transport rates and con-

ditions imposed in the interest of one or more particular categories of person; whereas such compensation is to operate from 1 January 1971; whereas the operative date may, by means of action at Community level, be postponed for one year should a Member State meet with special difficulties;

Whereas compensation for financial burdens devolving upon transport undertakings by reason of the maintenance of public service obligations must be made in accordance with common procedures; whereas, in order to determine the amount of such compensation, the effects with the termination of any such obligations would have on the undertaking's activities must be taken into account;

Whereas the provisions of this Regulation should be applied to any new public obligation as defined in this Regulation imposed on a transport undertaking;

Whereas, since compensation payments under this Regulation are to be granted by Member States in accordance with common procedures laid down by this Regulation, such payments should be exempted from the preliminary information procedure laid down in Article 93(3) of the Treaty establishing the European Economic Community;

Whereas the Commission must be able to obtain from Member States all relevant information concerning the operation of this Regulation;

Whereas, in order to enable the Council to study the situation in each Member State with regard to the implementation of this Regulation, the Commission is to submit a report in this respect to the Council before 31 December 1972;

Whereas it is desirable to ensure that appropriate means are made available by the Member States to transport undertakings in order to enable the latter to make representations concerning their interests with regard to individual decisions made by Member States pursuant to this Regulation;

Whereas, since this Regulation is at present to apply to rail transport operations of the six national railway undertakings of the Member States and, as regards other transport undertakings, to undertakings not mainly providing transport services of a local or regional character, the Council will have to decide within three years from the entry into force of this Regulation what measures should be taken with regard to public service obligations in respect of transport operations not coverd by this Regulation,

HAS ADOPTED THIS REGULATION:

SECTION I

General provisions

Article 1

1. Member States shall terminate all obligations inherent in the concept of a public service as defined in this Regulation imposed on transport by rail, road and inland waterway.

2. Nevertheless, such obligations may be maintained in so far as they are essential in order to ensure the provision of adequate transport services.

3. Paragraph 1 shall not apply, as regards passenger transport, to transport rates and conditions imposed by any Member State in the interests of one or more particular categories of person.

4. Financial burdens developing on transport undertakings by reason of the maintenance of the obligations referred to in paragraph 2, or of the application of the transport rates and conditions referred to in paragraph 3, shall be subject to compensation made in accordance with common procedures laid down in this Regulation.

Article 2

1. 'Public service obligations' means obligations which the transport undertaking in question, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions.

2. Public service obligations within the meaning of pagraph 1 consist of the obligation to operate, the obligation to carry, and tariff obligations.

3. For the purposes of this Regulation the 'obligation to carry' means any obligation imposed upon a transport undertaking to take, in respect of any route or installations which it is authorized to work by licence of equivalent authorization, all necessary measures to ensure the provision of a transport service satisfying fixed standards of continuity, regularity and capacity. It also includes any obligation to operate additional services and any obligations to maintain in good condition routes, equipment — in so far as this is surplus to the requirements of the network as a whole — and installations after services have been withdrawn.

4. For the purposes of this Regulation the obligation to carry means any obligation imposed upon transport undertakings to accept and carry passengers or goods at specified rates and subject to specified conditions.

5. For the purposes of this Regulation 'tariff obligations' means any obligation imposed upon transport undertakings to apply, in particular for certain categories of passenger, for certain categories of goods, or on certain routes, rates fixed or approved by any public authority which are contrary to the commercial interests of the undertaking and which result from the imposition of, or refusal to modify, special tariff provisions.

The provisions of the foregoing subparagraph shall not apply to obligations arising from general measures of price policy applying to the economy as a whole or to measures taken with a view to the organization of the transport market or of part thereof.

SECTION II

Common principles for the termination or maintenance of public service obligations

Article 3

1. Where the competent authorities of the Member States decide to maintain, in whole or in part, a public service obligation, and where this can be done in more than one way, each

capable of ensuring, while satisfying similar conditions, the provision of adequate transport services, the competent authorities shall select the way least costly to the Community.

2. The adequacy of transport services shall be assessed having regard to:

(a) the public interest;

(b) the possibility of having recourse to other forms of transport and the ability of such forms to meet the transport needs under consideration;

(c) the transport rates and conditions which can be quoted to users.

Article 4

1. It shall be for transport undertakings to apply to the competent authorities of the Member States for the termination in whole or in part of any public service obligation where such obligation entails economic disadvantages for them.

2. In their applications, transport undertakings may propose the substitution of some other form for the forms of transport being used. Undertakings shall apply the provisions of Article 5 to calculate what savings could be made as a means of improving their financial position.

Article 5

1. Any obligation to operate or to carry shall be regarded as imposing economic disadvantages where the reduction in the financial burden which would be possible as a result of the total or partial termination of the obligation in respect of an operation or a group of operations affected by that obligation exceeds the reduction in revenue resulting from that termination.

Economic disadvantages shall be determined on the basis of a statement, actualized if necessary, of the annual economic disadvantages represented by the difference between the reductions in the annual financial burden and in annual revenue that would result from termination of the obligation.

However, where the obligation to operate or to carry covers one or more categories of the passenger or goods traffic on the whole or a substantial part of a network, the financial burden which would be eliminated by terminating the obligation shall be estimated by allocating among the various categories of traffic the total costs borne by the undertaking by reason of its transport activities.

The economic disadvantage will in such case be equal to the difference between the costs allocable to that part of the undertaking's activities affected by the public service obligation and the corresponding revenue.

Economic disadvantages shall be determined taking into account the effects of the obligation on the undertaking's activities as a whole.

2. A tariff obligation shall be regarded as entailing economic disadvantages where the difference between the revenue from the traffic to which the obligation applies and the financial burden of such traffic is less than the difference between the revenue which would be produced by that traffic and the financial burden thereof if working on a commercial basis — account being taken both of the costs of those operations which are subject to the obligation and of the state of the market.

Article 6

1. Within one year of the date of the entry into force of this Regulation, transport undertakings shall lodge with the competent authorities of the Member States the applications referred to in Article 4.

Transport undertakings may lodge applications after the expiry of the aforementioned period if they find that the provisions of Article 4(1) are satisfied.

2. Decisions to maintain a public service obligation or part thereof, or to terminate it at the end of a specified period, shall provide for compensation to be granted in respect of the financial burdens resulting therefrom; the amount of such compensation shall be determined in accordance with the common procedures laid down in Articles 10 to 13.

3. The competent authorities of the Member States shall take decisions within one year of the date on which the application is lodged as regards obligations to operate or to carry, and within six months as regards traffic obligations.

The right to compensation shall arise on the date of the decision by the competent authorities but in any event not before 1 January 1971.

4. However, if the competent authorities of the Member States consider it necessary by reason of the number and importance of the applications lodged by each undertaking, they may extend the period prescribed in the first subparagraph of paragraph 3 until 1 January 1972 at the latest. In such case, the right to compensation shall arise on that date.

Where they intend to avail themselves of this power, the competent authorities of the Member States shall so inform the undertakings concerned within six months following the lodging of applications.

Should any Member State meet with special difficulties, the Council may, at the request of that State and a proposal from the Commission, authorize the State concerned to extend until 1 January 1973 the time-limit indicated in the first subparagraph of this paragraph.

5. If the competent authorities have not reached a decision within the time-limit laid down, the obligation in respect of which the application under Article 4(1) for termination was made shall stand terminated.

6. The Council shall, on the basis of a report submitted by the Commission before 31 December 1972, study the situation in each Member State with regard to the implementation of this Regulation.

Article 7

1. There may be attached to any decision to maintain an obligation, conditions designed to improve the yield of the operations affected by the obligation in question.

2. Any decision to terminate an obligation may provide for the introduction of an alternative service. In such a case termination shall not take effect until such time as the alternative service has been put into operation.

Article 8

1. The Member State concerned shall communicate to the Commission, before implementation, any measure terminating the obligation to operate or to carry which it proposes to take in respect of any route or transport service liable to affect trade or traffic between Member States. It shall inform the other Member States thereof.

2. If the Commission considers it necessary or if another Member State so requests, the Commission shall consult with the Member States concerning the proposed measure.

3. The Commission shall, within two months following receipt of the communication referred to in paragraph 1, address an opinion or a recommendation to all Member States concerned.

SECTION III

Application to passenger transport rates and conditions imposed in the interests of one or more particular categories of person

Article 9

1. The amount of compensation in respect to financial burdens devolving upon undertakings by reason of the application to passenger transport of transport rates and conditions imposed in the interests of one or more particular categories of person shall be determined in accordance with the common procedures laid down in Articles 11 to 13.

2. Compensation shall be payable from 1 January 1971.

Should any Member State meet with special difficulties, the Council may, at the request of that State and on a proposal from the Commission, authorize the State concerned to alter that date to 1 January 1972.

3. Applications for compensation shall be lodged with the competent authorities of the Member States.

SECTION IV

Common compensation procedures

Article 10

1. The amount of the compensation provided for in Article 6 shall, in the case of an obligation to operate or to carry, be equal to the difference between the reduction in financial burden and the reduction in revenue of the undertaking if the whole or the relevant part of the obligation in question were terminated for the period of time under consideration.

However, where the calculation of economic disadvantage was made by allocating among the various parts of its transport activities the total costs borne by the undertaking in respect of those transport activities, the amount of the compensation shall be equal to the difference between the costs allocable to that part of the undertaking's activities affected by the public service obligation and the corresponding revenue.

2. For the purposes of determining the financial burdens and revenue referred to in paragraph 1, the effects of the termination of the obligation in question on the undertaking's activities as a whole shall be taken into account.

Article 11

1. The amount of the compensation provided for in Article 6 and in Article 9(1) shall, in the case of a tariff obligation, be equal to the difference between the two amounts as follows:

(a) The first amount shall be equal to the difference between, on the one hand, the product of the anticipated number of units of measure of transport and:

either the most favourable existing rate which might be claimed by users if the obligation in question did not exist; or,

where there is no such rate, the rate which the undertaking, operating on a commercial basis and taking into account both the costs of the operation in question and the state of the market, would have applied;

and, on the other hand, the product of the actual number of units of measure of transport and the rate imposed for the period under consideration.

(b) The second amount shall be equal to the difference between the costs which would be incurred applying either the most favourable existing rate or the rate which the undertaking would have applied if operating on a commercial basis and the costs actually incurred under the obligatory rate.

2. Where, by reason of the state of the market, compensation calculated in accordance with the provisions of paragraph 1 is not sufficient to cover the total costs of the traffic affected by the tariff obligation in question, the amount of the compensation provided for in Article 9(1) shall be equal to the difference between such costs and the revenue from such traffic. Any compensation already made under Article 10 shall be taken into consideration when making this calculation.

3. In making the calculation of revenue and costs as provided in paragraph 1, the effects which termination of the obligation in question would have on the undertaking's activities as a whole shall be taken into account.

Article 12

Costs resulting from the maintenance of obligations shall be calculated on the basis of efficient management of the undertaking and the provision of transport services of an adequate quality.

Interest relating to own capital may be deducted from the interest taken into account in the calculation of costs.

Article 13

1. Decisions taken under Articles 6 and 9 shall fix in advance the amount of compensation for a period of at least one year. At the same time they shall determine the factors which might warrant an adjustment of that amount.

2. Adjustment of the amount referred to in paragraph 1 shall be made one year after closure of the annual accounts of the undertaking in question.

3. Payment of compensation fixed in advance shall be made by instalments. The payment of any sums due by reason of the adjustment provided for in paragraph 2 shall be made immediately after the amount of the adjustment has been determined.

SECTION V

Imposition of new public service obligations

Article 14

1. Save for cases falling within Article 1(3), after the date of entry into force of this Regulation, Member States may impose public service obligations on a transport undertaking only in so far as such obligations are essential in order to ensure the provision of adequate transport services.

2. Where obligations thus imposed entail for transport undertakings economic disadvantages within the meaning of Article 5(1) and (2) or financial burdens within the meaning of Article 9, the competent authorities of the Member States shall, when deciding to impose such obligations, provide for grants of compensation in respect of the financial burdens resulting therefrom. The provisions of Articles 10 to 13 shall apply.

SECTION VI

Final provisions

Article 15

Decisions made by the competent authorities of Member States in accordance with the provisions of this Regulation, shall state the reasons on which they are based and shall be published in the appropriate manner.

Article 16

Member States shall ensure that transport undertakings, in their capacity as transport undertakings, are given the opportunity to make representations concerning their interests, by appropriate means, with regard to decisions taken pursuant to this Regulation.

Article 17

1. The Commission may request Member States to supply all relevant information concerning the operation of this Regulation. Whenever it considers it necessary, the Commission shall consult with the Member States concerned.

2. Compensation paid pursuant to this Regulation shall be exempt from the preliminary information procedure laid down in Article 93(3) of the Treaty establishing the European Economic Community.

Member States shall promptly forward to the Commission details, classified by category of obligation, of compensation payments made in respect of financial burdens devolving upon transport undertakings by reason of the maintenance of the public service obligations set out in Article 2 or by reason of the application to passenger transport of transport rates and conditions imposed in the interests of one or more particular categories of person.

Article 18

1. Member States shall, after consulting the Commission and in good time, adopt such laws, regulations or administrative provisions as may be necessary for the implementation of this Regulation and in particular of Article 4 thereof.

2. Where a Member State so requests, or where the Commission considers it appropriate, the Commission shall consult with the Member States concerned upon the proposed terms of the measures referred to in paragraph 1.

Article 19

1. As regards railway undertakings, this Regulation shall, in respect of their rail transport operations, apply to the following undertakings:

Société nationale des chemins de fer belges (SNCB)/Nationale Maatschappij der Belgische Spoorwegen (NMBS),

Deutsche Bundesbahn (DB),

Société nationale des chemins de fer français (SNCF),

Azienda autonoma delle Ferrovie dello Stato (FS),

Société nationale des chemins de fer luxembourgeois (CFL),

Naamloze Vennootschap Nederlandse Spoorwegen (NS).

2. As regards other transport undertakings, this Regulation shall not apply to undertakings mainly providing transport services of a local or regional character.

3. Within three years of the entry into force of this Regulation the Council shall, on the basis of the principles and objectives set out in Section II of its Decision of 13 May 1965, decide on the action to be taken with regard to obligations inherent in the concept of a public service affecting transport operations which are not covered by this Regulation.

Article 20

This Regulation shall enter into force on 1 July 1969.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

COUNCIL REGULATION (EEC) NO 1192/69[1] OF 26 JUNE 1969

on common rules for the normalization of the accounts of railway undertakings

THE COUNCIL OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 75 and 94 thereof;

Having regard to the Council Decision of 13 May 1965[2] on the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway;

Having regard to the proposal from the Commission;

Having regard to the opinion of the Assembly;[3]

Having regard to the opinion of the Economic and Social Committee;[4]

Whereas one of the objectives of the common transport policy is to eliminate disparities which arise by reason of the imposition of financial burdens on, or the grant of benefits to, railway undertakings by public authorities, and which are consequently liable to cause substantial distortion in the conditions of competition;

Whereas it is appropriate for that purpose to take such action as will ensure the elimination of the effects of such financial burdens or benefits with a view to achieving equality of treatment for all modes of transport; whereas for certain classes of financial burden or benefit, such action may consist in their early termination; whereas, in respect of other classes, such action must be carried out as part of a process of normalization of the accounts of railway undertakings, a feature of such normalization being the payment of compensation in respect of the effects of such financial burdens or benefits;

Whereas a final settlement of the position as regards certain classes of financial burden or benefit to be covered by normalization will have to be made in conjunction with the progressive harmonization of the rules governing financial relations between railway undertakings and States as laid down in Article 8 of the Council Decision of 13 May 1965 on the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway; whereas, for those classes of burden or benefit, it is therefore appropriate, pending a final settlement, to leave to each State the right to decide in each individual case whether normalization should take place; whereas, if normalization is decided on, it should be carried out in accordance with the common rules laid down in this Regulation, in particular as regards the methods for calculating financial compensation;

Whereas, before any steps can be taken in pursuance of the normalization of accounts to pay any compensation due as a result of that normalization, it is necessary to determine the financial burdens borne or benefits enjoyed by railway undertakings by comparison with their position if they operated under the same conditions as other transport undertakings;

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[1] OJ L 156, 28.6.1969, p. 8.
[2] OJ 88, 24.5.1965.
[3] OJ C 135, 14.12.1968.
[4] OJ C 118, 11.11.1968.

Whereas, in order to make such determination, the cases to which normalization should be applied must be defined; whereas all existing cases in the Member States should be covered, with the exception, on the one hand, of public service obligations, within the meaning of Council Regulation (EEC) No 1191/69[1] of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway and, on the other hand, of disparities in the infrastructure and taxation burdens under the rules governing the three modes of transport — disparities which will in due course be eliminated under the measures proposed with regard to infrastructure charging and in conjunction with the adjustment of the general and specific taxation systems for transport;

Whereas, since each case of normalization has its own distinctive features, it is appropriate to define the scope of each such case and to lay down the principles of calculation to be applied for the purposes of determining the financial burdens imposed on, or benefits granted to, railway undertakings;

Whereas, in order to determine the amount of such burdens of benefits, it is necessary to compare the system applicable to railway undertakings with that applicable to private transport undertakings operating other modes of transport;

Whereas the financial burdens borne by railway undertakings are usually greater than the benefits they enjoy and, furthermore, such undertakings can easily supply the accounting data necessary to determine the amount of such burdens or benefits; whereas it is therefore appropriate to allow such undertakings the initiative in the matter, it being left to the competent authorities of the Member States to examine in accordance with the provisions of this Regulation, and before fixing the amount of compensation, the figures on which the undertakings have based their applications; whereas it is desirable to set a time-limit within which such authorities must give a decision;

Whereas, since the payment of compensation is linked to the drawing up of the budgets both of the State or the competent authorities and of railway undertakings, it is appropriate to lay down specific provisions providing for the making of payments on the basis of estimates and the settlement of the outstanding balances;

Whereas, for the sake of clarity and in order to publicize appropriately the normalization of accounts, it is desirable to lay down that amounts of compensation granted pursuant to the normalization of accounts should appear in a table annexed to the annual accounts of railway undertakings;

Whereas it is desirable to ensure that appropriate means are made available by the Member States to transport undertakings in order to enable the latter to make representations concerning their interests with regard to individual decisions made by Member States in implementation of this Regulation;

Whereas the Commission must be able to obtain from Member States all relevant information concerning the application of this Regulation;

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[1] OJ L 156, 28.6.1969, p. 8.

Whereas, since compensation paid pursuant to this Regulation is to be granted by Member States in accordance with common rules laid down by this Regulation, such compensation should be exempted from the preliminary information procedure laid down in Article 93(3) of the Treaty establishing the European Economic Community;

Whereas the implementation of the common transport policy necessitates the immediate application of the provisions of this Regulation to the six national railway undertakings; whereas, by reason of the position of other railway undertakings, with respect in particular to the conditions of competition in transport, and by reason of the need to implement the aforesaid common transport policy by stages, examination of the conditions for extending the application of this Regulation to other railway undertakings can be postponed for some years;

Whereas the process of normalization does not relieve Member States of their own responsibility for eliminating, as far as possible, existing causes of distortion; whereas, nevertheless, they must not by such action bring about a deterioration, in law or in fact, in the situation of railway staff, or impede or retard improvements in their living and working conditions;

HAS ADOPTED THIS REGULATION:

SECTION I

Definitions and scope

Article 1

1. The accounts of railway undertakings shall be normalized in accordance with the common rules set out in this Regulation.

2. Any financial compensation resulting from the normalization of accounts laid down in paragraph 1 shall be effected from 1 January 1971 and in accordance with the common procedures set out in this Regulation.

Article 2

1. Normalization of the accounts of railway undertakings shall, within the meaning of this Regulation, consist in:

(a) determination of the financial burdens borne or benefits enjoyed by railway undertakings, by reason of any provision laid down by law, regulation or administrative action, by comparison with their position if they operated under the same conditions as other transport undertakings;

(b) payment of compensation in respect of the burdens or benefits disclosed by the determination under (a).

2. Financial burdens resulting from any provision laid down by law, regulation or administrative action which embodies the results of negotiations between the two sides of industry shall not be treated as financial burdens for the purposes of this Regulation.

3. Normalization of accounts within the meaning of this Regulation shall not apply to public service obligations imposed by Member States and covered by Regulation (EEC) No 1191/69.

Article 3

1. This Regulation shall apply to the following railway undertakings:

Société nationale des chemins de fer belges (SNCB)/Nationale Maatschappij der Belgische Spoorwegen (NMBS),

Deutsche Bundesbahn (DB),

Société nationale des chemins de fer français (SNCF),

Azienda autonoma delle Ferrovie dello Stato (FS),

Société nationale des chemins de fer luxembourgeois (CFL),

Naamloze Vennootschap Nederlandse Spoorwegen (NS).

2. The Commission shall, by 1 January 1973 at the latest, submit to the Council the measures it considers to be necessary for the purpose of extending the applications of this Regulation to other undertakings effecting carriage by rail.

Article 4

1. Normalization of accounts within the meaning of this Regulation shall be applied to the following classes of financial burden or benefit:

(a) payments which railway undertakings are obliged to make but which, for the rest of the economy, including other modes of transport, are borne by the State (Class I);

(b) expenditure of a social nature incurred by railway undertakings in respect of family allowances different from that which they would bear if they had to contribute on the same terms as other transport undertakings (Class II);

(c) payments in respect of retirement and other pensions borne by railway undertakings on terms different from those applicable to other transport undertakings (Class III);

(d) the bearing by railway undertakings of the costs of crossing facilities (Class IV).

2. The following classes of financial burden or benefit in existence at the time of the entry into force of this Regulation shall be terminated by 1 January 1971 at the latest:

(a) the obligation to recruit staff surplus to the requirements of the undertaking (Class V);

(b) backdated increases in wages and salaries imposed by the government of a Member State, except where such increases are made for the sole purpose of bringing the wages

and salaries paid by railway undertakings into line with the wages and salaries paid elsewhere in the transport sector (Class VI);

(c) delay imposed by the competent authorities with regard to renewals and maintenance (Class VII).

3. The following classes of financial burden or benefit in existence at the time of the entry into force of this Regulation shall be abolished by 1 January 1973 at the latest:

(i) financial burdens in respect of reconstruction or replacement arising out of war damage which are borne by railway undertakings but which should have been assumed by the State (Class VIII);

(ii) the capital and interest burden of loans granted under this heading shall be the subject of normalization of accounts within the meaning of this Regulation until liability ceases.

4. The following classes of financial burden or benefit in existence at the time of the entry into force of this Regulation may be the subject of normalization of accounts within the meaning of this Regulation:

(a) the obligation to retain staff surplus to the requirements of the undertaking (Class IX);

(b) measures benefiting staff, in recognition of certain services rendered to their country, imposed on railway undertakings by the State on terms different from those applicable to other transport undertakings (Class X);

(c) allowances payable to staff imposed on railway undertakings and not on other transport undertakings (Class XI);

(d) expenditure of a social character incurred by railway undertakings, in respect, in particular, of medical treatment, different from that which they would bear if they had to contribute on the same basis as other transport undertakings (Class XII);

(e) financial burdens devolving upon railway undertakings in consequence of their being required by the State to keep in operation works or other establishments in circumstances inconsistent with operation on a commercial basis (Class XIII);

(f) conditions imposed in respect of the placing of public contracts for works and supplies (Class XIV).

The following class of financial burden or benefit may also be the subject of normalization of accounts within the meaning of this Regulation:

capital and interest burdens borne as a result of lack of normalization in the past (Class XV).

A final settlement of the position as regards Classes IX to XV shall be adopted by the Council not later than the time when measures are adopted for the implementation of Article 8 of the Council Decision of 13 May 1965 on the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway. In the mean time, Member States shall endeavour to remove the causes of those financial burdens or benefits.

SECTION II

Common rules for normalization and compensation

Article 5

1. Any financial burden upon, or benefit for, railway undertakings which shall or may be the subject of normalization of accounts shall be determined in accordance with the provisions of the Annexes to this Regulation. The Annexes shall form an integral part of this Regulation.

2. Where, for any class to be normalized, the conditions applicable to railway undertakings have to be compared with those applicable elsewhere in the transport sector, the comparison shall be only with private undertakings.

Article 6

1. The gross amount of compensation shall be determined for each class of normalization by applying the principles of calculation specified in the Annex for the relevant class.

The net amount shall be obtained by taking into account only once any item which appears more than once in the calculation of the gross amounts for the various classes.

2. Where the calculation made in accordance with the provisions laid down in the Annexes for each class of normalization discloses a financial burden for the railway undertaking, the latter shall be entitled to an equivalent sum by way of compensation from the public authorities.

Where such a calculation discloses a benefit for the railway undertaking, the equivalent sum by way of compensation shall be due from the railway undertaking to the public authorities.

Article 7

1. Every year railway undertakings shall submit to the competent authorities applications for normalization in accordance with the provisions of this Regulation.

2. Such applications shall consist of:

(a) data relating to the following financial year, calculated on the basis of the provisions laid down by law, regulation or administrative action in force at the time the application is made; and

(b) the data needed for adjustment of the amounts paid provisionally in respect of the financial year for which final results are known.

3. Such application, which shall be made in good time to allow the public authorities to make the necessary provision in the budget, shall contain all relevant supporting information concerning in particular:

(a) the financial burdens or benefits for each class of normalization;

(b) the method of calculation applied for each class under consideration;

(c) the gross and net amounts referred to in Article 6 paragraph 1 for each class under consideration. The estimates referred to in paragraph 2(a) shall be calculated on the basis of the figures for the last period for which final results are known, account being taken of any changes which may have occurred within each class of normalization up to the time when the application was made.

Article 8

1. The competent authorities of the Member States shall examine the data upon which the application by the railway undertaking concerned is based.

2. After giving the undertaking concerned an opportunity to submit its comments, the competent authorities of the Member States may:

(i) adjust the amounts of the compensation and alter other items in the application, if the provisions of this Regulation have not been complied with;

(ii) include in the application other financial burdens or benefits resulting from any of the classes listed in Article 4.

3. The competent authorities shall determine, in accordance with the provisions laid down in this Regulation, the estimated amount of the compensation for the following financial year, and the final amount of the compensation for the last preceding financial year for which final results are known. Their decision shall include details of the calculation of such amounts.

4. The competent authorities shall notify the railway undertaking of their decision six months at the latest after receipt of the application.

If the competent authorites fail to give a decision within that period, the undertaking's application shall be deemed to be provisionally accepted.

Article 9

Member States shall pay the estimated amount of compensation determined pursuant to Article 8 in the course of the financial year for which the estimate was made.

In the course of that financial year, Member States shall pay or collect the balance of the compensation due by reason of the difference between the final amount of the compensation for the last preceding financial year for which final results are available and the estimated amounts already paid.

Article 10

1. The amount of the compensation paid in respect of each class of normalization shall be shown in a table annexed to the annual accounts of the railway undertaking. That table shall

show separately amounts of compensation received on an estimated basis, and amounts received or paid in settlement of the outstanding balance as provided in Article 9.

The table shall also show, in respect of each public service obligation, the amounts of compensation granted under Regulation (EEC) No 1191/69.

2. The total amount of compensation received pursuant to the normalization of accounts and of compensation of accounts and of compensation received in respect of public service obligations shall, depending on the rules in force in the individual States, be entered either in the trading account or in the profit and loss account of the railway undertaking concerned.

Article 11

Decisions of the competent authorities of the Member States taken in pursuance of the provisions of this Regulation shall state the reasons on which they are based and shall receive official publication.

Article 12

Member States shall ensure that railway undertakings, in their capacity as railway undertakings, are given the opportunity to make representations concerning their interests, by appropriate means, with regard to decisions taken pursuant to this Regulation.

SECTION III

Final provisions

Article 13

1. The Commission may request Member States to supply all relevant information concerning the application of this Regulation. Whenever it considers it necessary, the Commission shall consult with the Member States concerned.

2. Compensation paid pursuant to this Regulation shall be exempted from the preliminary information procedure laid down in Article 93(3) of the Treaty establishing the European Economic Community.

Member States shall promptly forward to the Commission details of amounts actually paid as compensation in respect of each class of financial burden or benefit covered by this Regulation.

Article 14

1. Member States shall, after consulting the Commission and in good time, adopt such laws, regulations or administrative provisions as may be necessary for the implementation of this Regulation.

2. Where a Member State so requests, or where the Commission considers it appropriate, the Commission shall consult with the Member States concerned upon the proposed terms of the measures referred to in paragraph 1.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX I

Class I: payments which railway undertakings are obliged to make but which, for the rest of the economy, including other modes of transport, are borne by the State

A. Scope

This class covers cases where, pursuant to some provision laid down by law, regulation or administrative action, a railway undertaking must itself bear certain payments which for the rest of the economy, including other transport undertakings, are borne in whole or in part by the State. Such payments include compensation in respect of loss or injury resulting from accidents at work and special allowances for the children of employees.

B. Principle of calculation

Compensation shall be equal to the amount which the State would have borne had an undertaking in any other sector of the economy, including other modes of transport, been concerned.

ANNEX II

Class II: expenditure of a social nature incurred by railway undertakings in respect of family allowances different from that which they would bear if they had to contribute on the same terms as other transport undertakings

A. Scope

This class covers cases where, pursuant to some provision laid down by law, regulation or administrative action, a railway undertaking is required to make payments, either directly or through a specialized body, in respect of family allowances.

B. Principle of calculation

The financial burden to be normalized shall be equal to the difference between:

(a) the amount of the allowances provided for under the general law paid by the railway undertaking; and

(b) that same amount adjusted, by:

— the ratio between the proportion of heads of families to total active staff in the railway undertaking and such proportion in the totality of the undertakings contributing to the body taken as a basis of comparison;

— the ratio between the average number of persons dependent on each head of family for the railway undertaking and such average number for the totality of the undertakings contributing to the body taken as a basis of comparison.

ANNEX III

Class III: payments in respect of retirement and pensions borne by railway undertakings on terms different from those applicable to other transport undertakings

A. Scope

This class covers cases where, pursuant to some provision laid down by law, regulation or administrative action, a railway undertaking is required to make payments in respect of retirement and other pensions for its staff and other persons entitled on terms different from those applicable to other transport undertakings.

The difference in terms causing the difference in payments arises by reason of:

(i) the fact that the railways must pay pensions as they fall due directly and in full while other transport undertakings pay to an appropriate body a contribution proportionate to the number of their active staff and to the level of salaries and wages of that staff; or

(ii) the fact that railway staff receive the benefit of certain special provisions to which other modes of transport are not subject and which result in additional financial burdens on or in benefits for railways.

B. Principles of calculation

1. With regard to payments covered by A(i), compensation shall be equal to the difference between the financial burden which the undertaking bears and that which it would bear if, with the same number of persons actively employed and receiving the same remuneration, they were subject either to the scheme under the general law (general social security scheme or compulsory supplementary schemes) or to the scheme applicable to other modes of transport. In cases where such schemes offer no basis for comparison, the retirement and pensions scheme of a representative transport undertaking shall be taken as a basis.

The financial burden borne by the railway undertaking shall be ascertained directly from its accounts.

The financial burden which the undertaking would bear if, with the same number of persons actively employed and receiving the same remuneration, it were subject to the scheme taken as a basis of comparison, shall be determined by applying the provisions laid down by law, regulation or administrative action governing such scheme.

2. With regard to payments covered by A(ii) compensation shall be equal to either;

(a) the difference between:

(i) the financial burden borne by the undertaking as ascertained directly from its accounts, and

(ii) the direct or indirect benefits which the undertaking enjoys by comparison with other modes of transport by reason of the special provisions referred to in A(ii); or

(b) the difference between:

(i) the financial burdens which the undertaking bears or would bear in order to cover the totality of the payments in respect of the retirement and pensions scheme to which it is subject, and

(ii) the financial burden which would result if the scheme taken as a basis of comparison were applied.

3. If any rules of national law, having the same purpose but drawn in different terms, produce the same results as those obtained by applying paragraphs 1 and 2, compensation may be calculated in accordance with those rules.

4. Each Member State shall inform the Commission by 31 December 1970 of the estimated amount of the compensation it intends to pay to its railway undertaking pursuant to the foregoing principles.

The Commission shall submit a report on this subject by 31 December 1971. On the basis of that report and by not later than the time when measures are adopted for the implementation of Article 8 of the Council Decision of 13 May 1965 on the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway, the Council shall decide what action should be taken in this respect.

ANNEX IV

Class IV: the bearing by railway undertakings of the costs of crossing facilities

A. Scope

This class covers cases where, pursuant to some provision laid down by law, regulation or administrative action, a railway undertaking bears an abnormally large share of the construction and operating costs of facilities used both by railways and by other modes of transport.

An abnormally large share shall be deemed to be borne in the following cases:

(a) where a new road is built

other than at the request of the railway undertaking, and that undertaking bears the cost of modernization, less any additional cost for modifications made at the request of the railway undertaking and the value of any benefit which it derives from modernization;

(b) where an overpass or underpass is modernized or where a level crossing is replaced by an overpass or underpass

other than at the request of the railway undertaking, and that undertaking bears the cost of modernization, less any additional cost for modifications made at the request of the railway undertaking and the value of any benefit which it derives from modernization;

(c) where a level crossing is modernized

and the railway undertaking bears more than half the cost;

(d) where, in respect of the reconstruction, maintenance or operation of:

an overpass or underpass,

the railway undertaking bears a proportion of the costs involved greater than the proportion of the costs of constructing or modernizing crossing facilities which it ought to bear on the basis of (a) or (b);

a level crossing,

the railway undertaking bears more than half the cost involved.

B. Principles of calculation

Compensation shall be determined as follows:

For cases coming under (a): the amount of the compensation shall be equal to the proportion of the cost borne by the railway undertaking not having requested the new road in question, less any additional costs incurred by reason of modifications made at the request of the railway undertaking.

For cases coming under (b): the amount of the compensation shall be equal to the proportion of the cost borne by the railway undertaking not having requested the modernization of the structure in question, less any additional costs for modifications made at the request of

the railway undertaking and the value of any benefit which the railway undertaking derives from the works carried out; such benefit shall be assessed having regard, where a level crossing is replaced by an overpass or underpass, to any compensation which the railway undertaking has already received in respect of the level crossing.

For cases coming under (c): the amount of the compensation shall be equal to that part of the cost borne by the railway undertaking which is in excess of the half which it is required to bear.

For cases coming under (d): in the cases of overpasses or underpasses, the amount of the compensation shall be equal to that part of the cost borne by the railway undertaking which is in excess of the proportion of the cost of constructing or modernizing crossing facilities which it ought to bear according to the principles of calculation laid down for cases coming under (a) and (b); in the case of level crossings, the amount of the compensation shall be equal to that part of the cost borne by the railway undertaking which is in excess of the half which it is required to bear.

ANNEX V

Class V: the obligation to recruit staff surplus to the requirements of the undertaking

Scope

This class covers cases where, pursuant to some provision laid down by law, regulation or administrative action, a railway undertaking is required to recruit more staff than it actually requires.

ANNEX VI

Class VI: backdated increases in wages and salaries imposed by the government of a Member State, except where such increases are made for the sole purpose of bringing the wages and salaries paid by railway undertakings into line with the wages and salaries paid elsewhere in the transport sector

Scope

This class covers cases where, pursuant to some government measure, a railway undertaking is required to make backdated increases in the wages and salaries of its staff without being allowed to adjust rates so as to take those backdated increases into account, whilst similar financial burdens are not imposed on other transport undertakings.

ANNEX VII

Class VII: delay imposed by the competent authorities with regard to renewals and maintenance

Scope

This class covers cases where, pursuant to a decision by the public authorities, a railway undertaking is obliged to reduce its expenditure on renewals and maintenance to a level below that required to ensure the continuity of the undertaking's activities.

The effect of such intervention is that expenditure for the financial years in which the postponed work then has to be done is raised to an abnormally high level. This state of affairs results in a financial burden being imposed on the railway undertaking in cases where the latter is unable to increase the amounts allocated for those years to expenditure on maintenance and renewals.

ANNEX VIII

Class VIII: financial burdens in respect of reconstruction or replacement arising out of war damage which are borne by railway undertakings but which should have been assumed by the State

A. Scope

This class covers cases where, pursuant to some provision laid down by law, regulation or administrative action, a railway undertaking is required to bear financial burdens in respect of reconstruction or replacement arising out of war damage on a different basis from that applicable to other transport undertakings.

B. Principle of calculation

The amount shall be determined by comparing as between railway and other transport undertakings the basis on which the burdens have been borne, account being taken of any indirect expenses incurred by reason of the special nature of railway activities.

The financial burdens to be taken into consideration shall be as follows:

(a) direct expenditure on reconstruction or replacement;

(b) the capital and interest burden of loans incurred in connection with reconstruction or replacement.

The amount of the compensation shall be ascertained directly from the accounts of the railway undertaking.

Where a loan has been contracted for the purpose of also meeting other expenditure, the financial burden which it entails shall be determined on the basis of that part of the loan intended for reconstruction or replacement.

ANNEX IX

Class IX: the obligation to retain staff surplus to the requirements of the undertaking

A. Scope

This class covers cases where, pursuant to some provision laid down by the public authorities, a railway undertaking is required:

(a) to keep employed surplus staff whom, under provisions concerning its staff, it would be entitled to dismiss;

(b) under certain provisions of its staff regulations not agreed to by the railway undertaking, to retain staff released by rationalization measures who cannot reasonably be given other work in the undertaking.

B. Principles of calculation

The financial burden resulting from the retention of surplus staff will be proportionate to the number of persons affected by the measure under consideration.

For cases coming under (a): the number of persons to be dismissed shall be proposed by the undertaking. The number of persons to be retained shall be fixed by decision of the competent authorities. Compensation shall be made in respect of expenditure relating to such surplus staff for such period as that staff remains surplus to requirements.

For cases coming under (b): the number of surplus staff to be taken into consideration in the calculation shall be specified by the railway undertaking. This number shall be equal to the number of persons released by rationalization measures, account being taken of the possibility of re-employing such staff in the course of the year in which the rationalization measures are to take effect in posts made vacant by reason of retirement, or in newly created posts.

The amount of the resultant financial burden will be equal to the total of the wages or salary, allowances and social security payments for each person retained in employment or for each homogeneous group of such persons. In the latter case, the amount may be calculated on the basis of averages for each such group.

ANNEX X

Class X: measures benefiting staff, in recognition of certain services rendered to their country, imposed on railway undertakings by the State on terms different from those applicable to other transport undertakings

A. Scope

This class covers cases where, by reason of some provision laid down by law, regulation or administrative action, a railway undertaking is required to take special measures, such as granting allowances, advancements in seniority, additional promotions, or special holidays, for the benefit of staff having served in the armed forces or rendered special services to their country.

B. Principles of calculation

Compensation shall be equal to the amount of the special benefits which the undertaking is required to grant to the staff in question.

With regard to additional promotions, only promotions granted which are surplus to establishment shall be taken into account.

Compensation may be calculated in two different ways, depending on the number of persons concerned:

(a) the calculation may be made individually for each case; or

(b) by homogeneous groups of persons, the average increase in costs per person and the number of persons benefiting each year being determined for each group.

ANNEX XI

Class XI: allowances payable to staff imposed on railway undertakings and not on other transport undertakings

A. Scope

This class covers cases where, pursuant to some provision laid down by law, regulation or administrative action, a railway undertaking is required to grant to its staff or part thereof, whether actively employed or available for active employment, allowances the payment of which is not imposed on other transport undertakings. Such allowances include in particular additional family allowances and supplementary holiday bonuses.

B. Principle of calculation

Compensation shall be equal to the amount of the financial burden which the undertaking has to bear.

ANNEX XII

Class XII: expenditure of a social character incurred by railway undertakings, in respect, in particular, of medical treatment, different from that which they would bear if they had to contribute on the same basis as other transport undertakings

A. Scope

This category covers cases where, pursuant to some provision laid down by the public authorities, a railway undertaking is required to meet, either directly or acting through a specialized body, certain expenses, such as those in respect of medical treatment.

B. Principles of calculation

Compensation shall be equal to the difference between the financial burden actually borne by the undertaking and the burden it would bear if it were affiliated to the body taken as a basis of comparison, allowance being made for benefits granted voluntarily by the undertaking.

With regard to medical treatment, comparison shall be calculated as follows: the financial burden borne by the railway undertaking shall be ascertained directly from its accounts. The burden it would bear if with the same number of persons actively employed and receiving the same remuneration it were subject to the scheme taken as a basis of comparison shall be determined in accordance with the provisions laid down by law, regulation or administrative action governing such scheme. Expenditure relating to benefits granted voluntarily by the railway undertaking to its staff which are additional to those available under the scheme taken as a basis of comparison shall be deducted from the difference between the two amounts thus obtained.

ANNEX XIII

Class XIII: financial burdens devolving upon railway undertakings in consequence of their being required by the State to keep in operation works or other establishments in circumstances inconsistent with operation on a commercial basis

A. Scope

This class covers cases where, pursuant to a decision of the public authorities, a railway undertaking is required, for reasons of social or regional policy, to keep in operation works or other establishments the existence of which is no longer justified by the requirements of the undertakings.

B. Principle of calculation

Compensation shall be equal to the cost of keeping the works in question in operation as required. The figures for determining that cost shall be those given in the accounts of the railway undertaking.

ANNEX XIV

Class XIV: conditions imposed in respect of the placing of public contracts for works and supplies

A. Scope

This class covers cases where, pursuant to a provision laid down by the public authorities, a railway undertaking is required to place a proportion of its contracts for works and supplies with domestic undertakings based in certain regions of the Member State, or with specified categories of domestic contractors.

B. Principles of calculation

A comparison shall be made between the price charged by the party to whom the contract is preferentially awarded and the price quoted in the economically most favourable tender for that contract, or failing such a tender, for a similar contract.

The amount of the compensation shall be the difference between those two prices.

ANNEX XV

Class XV: capital and interest burdens borne as a result of lack of normalization in the past

A. Scope

This category covers cases where, as the result of action by the public authorities, the budget of a railway undertaking includes provision for the capital and interest burden of loans contracted with, or advances received from, the competent authorities under decisions made in the past by such authorities on grounds incompatible with the principles of normalization laid down in this Regulation.

B. Principles of calculation

The said capital and interest burden may be incorporated by the competent authorities in their own budget or may be included in normalization under this Regulation. In the latter case normalization shall apply to the total existing capital and interest burden shown in the budget of the railway undertaking in respect of loans contracted with, or repayable advances received from, the competent authorities.

The amount of the burden shall be ascertained from the accounts of the railway undertaking.

COUNCIL REGULATION (EEC) NO 1107/70[1] OF 4 JUNE 1970

on the granting of aid for transport by rail, road and inland waterway

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 75, 77 and 94 thereof;

Having regard to the Council Decision of 13 May 1965[2] on the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway, and in particular Article 9 thereof;

Having regard to the proposal from the Commission;

Having regard to the opinion of the European Parliament;[3]

Having regard to the opinion of the Economic and Social Committee;[4]

Whereas the elimination of disparities liable to distort the conditions of competition in the transport market is an essential objective of the common transport policy;

Whereas, to that end, it is appropriate to lay down certain rules on the granting of aid for transport by rail, road and inland waterway in so far as such aid relates specifically to activities within that sector;

Whereas Article 77 states that aid shall be compatible with the Treaty if it meets the needs of coordination of transport or if it represents reimbursement for the discharge of certain obligations inherent in the concept of a public service;

Whereas Council Regulations (EEC) Nos 1192/69 and 1191/69[5] of 26 June 1969 laid down common rules and procedures for, respectively, compensation payments arising from the normalization of the accounts of railway undertakings, and compensation in respect of financial burdens resulting from public service obligations in transport by rail, road and inland waterway;

Whereas it is therefore necessary to specify the cases and the circumstances in which Member States may take coordination measures or impose obligations inherent in the concept of a public service which involve the granting of aid under Article 77 of the Treaty not covered by the aforesaid Regulation;

Whereas, pursuant to Article 8 of the Council Decision of 13 May 1965, payments by States and public authorities to railway undertakings are to be made subject to Community rules; whereas payments made by reason of the fact that the harmonization referred to in the said Article 8 has not yet been carried out should be exempted from the provisions of this Regu-

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1 OJ L 130, 15.6.1970, p. 1.
2 OJ 88, 24.5.1965.
3 OJ 103, 2.6.1967.
4 OJ 178, 2.8.1967.
5 OJ L 156, 28.6.1969.

lation delimiting the powers of Member States to take coordination measures or impose obligations inherent in the concept of a public service which involve the granting of aid under Article 77 of the Treaty;

Whereas, owing to the particular nature of these payments, it seems appropriate, pursuant to Article 94 of the Treaty, to lay down a special procedure for informing the Commission of such payments;

Whereas it is desirable that certain provisions of this Regulation should not apply to measures taken by any Member State in implementation of a system of aid upon which the Commission has, pursuant to Articles 77, 92 and 93 of the Treaty, already pronounced;

Whereas it is desirable, in order to assist the Commission in its examination of aid granted for transport, to attach to the Commission an advisory committee consisting of experts appointed by Member States;

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation shall apply to aid granted for transport by rail, road and inland waterway, in so far as such aid relates specifically to activities within that sector.

Article 2

Articles 92 to 94 of the Treaty shall apply to aid granted for transport by rail, road and inland waterway.

Article 3

Without prejudice to the provisions of Council Regulation (EEC) No 1192/69 of 26 June 1969 on common rules for the normalization of the accounts of railway undertakings, and of Council Regulation (EEC) No 1191/69 of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway, Member States shall neither take coordination measures nor impose obligations inherent in the concept of a public service which involve the granting of aid pursuant to Article 77 of the Treaty except in the following cases or circumstances:

1. As regards coordination of transport:

(a) where aid granted to railway undertakings not covered by Regulation (EEC) No 1192/69 is intended as compensation for additional financial burdens which those undertakings bear by comparison with other transport undertakings and which falls under one of the headings of normalization listed in that Regulation;

(b) until the entry into force of common rules on the allocation of infrastructure costs, where aid is granted to undertakings which have to bear expenditure relating to the infrastructure used by them, while other undertakings are not subject to a like burden.

In determining the amount of aid thus granted account shall be taken of the infrastructure costs which competing modes of transport do not have to bear;

(c) where the purpose of the aid is to promote either:

research into transport systems and technologies more economic for the Community in general, or

the development of transport systems and technologies more economic for the Community in general,

such aid shall be restricted to the research and development stage and may not cover the commercial exploitation of such transport systems and technologies;

(d) until the entry into force of Community rules on access to the transport market, where aid is granted as an exceptional and temporary measure in order to eliminate, as part of a reorganization plan, excess capacity causing serious structural problems, and thus to contribute towards meeting more effectively the needs of the transport market.

2. As regards reimbursement for the discharge of obligations inherent in the concept of a public service:

until the entry into force of relevant Community rules, where payments are made to rail, road or inland waterway transport undertakings as compensation for public service obligations imposed on them by the State or public authorities and covering either:

tariff obligations not falling within the definition given in Article 2(5) of Regulation (EEC) No 1191/69; or

transport undertakings or activities to which that Regulation does not apply.

3. Without prejudice to the provisions of Article 75(3) of the Treaty, the Council, acting by a qualified majority on a proposal from the Commission, may amend the list given in paragraphs (1) and (2) of this Article.

Article 4

Until the entry into force of Community rules adopted pursuant to Article 8 of the Council Decision of 13 May 1965 and without prejudice to the provisions of Regulation (EEC) No 1191/69 and of Regulation (EEC) No 1192/69, the provisions of Article 3 shall not apply to payments by States and public authorities to railway undertakings made by reason of any failure to achieve harmonization, as laid down in the said Article 8, of the rules governing the financial relations between railway undertakings and States, the purpose of such harmonization being to make those undertakings financially autonomous.

Article 5

1. When informing the Commission, in accordance with Article 93(3) of the Treaty, of any plans to grant or alter aid, Member States shall forward to the Commission all information necessary to establish that such aid complies with the provisions of this Regulation.

2. The aid referred to in Article 4 shall be exempt from the procedure provided for in Article 93(3) of the Treaty. Details of such aid shall be communicated to the Commission in the form of estimates at the beginning of each year and subsequently, in the form of a report, after the end of the financial year.

Article 6

An advisory committee to the Commission is hereby set up; it shall assist the Commission in its examination of aid granted for transport by rail, road and inland waterway. The committee shall have as chairman a representative of the Commission and shall consist of representatives appointed by each Member State. Not less than 10 days' notice of meetings of the committee shall be given and such notice shall include details of the agenda. This period may be reduced for urgent cases. The functioning of the committee shall be subject to Article 83 of the Treaty.

The committee may examine, and give an opinion on, all questions concerning the operation of this Regulation and of all other provisions governing the granting of aid in the transport sector.

The committee shall be kept informed of the nature and amount of aid granted to transport undertakings and, generally, of all relevant details concerning such aid, as soon as the latter is notified to the Commission in accordance with the provisions of this Regulation.

Article 7

The provisions of Article 3 shall not apply to measures adopted by any Member State in implementation of a system of aid upon which the Commission has, pursuant to Articles 77, 92 and 93 of the Treaty, already pronounced.

Article 8

This Regulation shall enter into force on 1 January 1971.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

COUNCIL REGULATION (EEC) NO 1473/75[1] OF 20 MAY 1975

amending Regulation (EEC) No 1107/70

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 75 and 94 thereof;

Having regard to the proposal from the Commission;

Having regard to the opinion of the European Parliament;

Having regard to the opinion of the Economic and Social Committee;[2]

Whereas, pursuant to Article 4 of Council Regulation (EEC) No 1107/70[3] of 4 June 1970 on the granting of aid for transport by rail, road and inland waterway, and until the entry into force of Community rules adopted pursuant to Article 8 of Council Decision No 65/371/EEC[4] of 13 May 1965 on the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway, payments may be made to railway undertakings by States and public authorities by reason of any failure to achieve harmonization, as laid down in the said Article 8, of the rules governing the financial relations between railway undertakings and States, the purpose of such harmonization being to make those undertakings financially independent; whereas Article 5(2) of the abovementioned Regulation provides that the aid referred to in Article 4 shall be exempt from the procedure laid down in Article 93(3) of the Treaty and that details of such aid shall be communicated to the Commission in the form of estimates at the beginning of each year and subsequently, in the form of a report, after the end of the financial year;

Whereas, following the adoption, pursuant to Article 8 of Decision No 65/71/EEC, of Council Decision No 75/327/EEC[1] of 20 May 1975 on the improvement of the situation of railway undertakings and the harmonization of rules governing financial relations between such undertakings and States, Article 4 of Regulation (EEC) No 1107/70 is no longer applicable to national railway undertakings; whereas, on the other hand, Member States may give financial assistance to such undertakings within the framework of the business plans of the latter in accorance with Article 5(1) of Decision No 75/327/EEC, and also deficit subsidies in accordance with Article 13 of that Decision;

Whereas, in view of the special nature of these financial measures, it is advisable to retain, pursuant to Article 94 of the Treaty, the special procedure for informing the Commission provided for in Article 5(2) of Regulation (EEC) No 1107/70;

Whereas, for this purpose, Article 4 of Regulation (EEC) No 1107/70 should be amended,

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1 OJ L 152, 12.6.1975.
2 OJ C 62, 15.3.1975.
3 OJ L 130, 15.6.1970.
4 OJ 88, 24.5.1965.

HAS ADOPTED THIS REGULATION:

Sole Article

Article 4 of Regulation (EEC) No 1107/70 is replaced by the following:

'Article 4

1. Until the expiry of the period laid down for attaining financial balance in accordance with Article 15(1) of Council Decision No 75/327/EEC[1] of 20 May 1975 on the improvement of the situation of railway undertakings and the harmonization of rules governing financial relations between such undertakings and States, and without prejudice to Regulations (EEC) Nos 1191/69 and 1192/69 Article 3 shall apply neither to financial assistance given to railway undertakings within the framework of their business plans in accordance with Article 5(1) of that Decision nor to the deficit subsidies granted to them in accordance with Article 13 of that Decision.

2. In the absence of Community regulations on the harmonization of the rules governing the financial relations between States and railway undertakings other than those referred to in Article 1 of Decision No 75/327/EEC and without prejudice to Regulations (EEC) Nos 1191/69 and 1192/69, Article 3 shall not apply to payments by States and public authorities to these undertakings made by reason of any failure to achieve harmonization.'

This Regulation shall be binding in its entirety and directly applicable in all Member States.

[1] OJ L 152, 12.6.1975.

COUNCIL DECISION 75/327/EEC[1] OF 20 MAY 1975

on the improvement of the situation of railway undertakings and the harmonization of rules governing financial relations between such undertakings and States

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 thereof;

Having regard to Council Decision No 65/271/EEC[2] of 13 May 1965 on the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway, and in particular Article 8 thereof;

Having regard to the proposal from the Commission;

Having regard to the opinion of the European Parliament;[3]

Having regard to the opinion of the Economic and Social Committee;[4]

Whereas one of the objectives of the common transport policy must be to eliminate disparities liable to cause substantial distortion in competition in the transport sector;

Whereas the railways of Europe, both generally and more especially in their capacity as public undertakings, play an important part in the transport system; whereas they operate in a way relatively favourable to the environment and are economical in their use of space and of energy; whereas they are often the most effective means of carrying out many transport operations and, accordingly, in most European countries, are irreplaceable from both the economic and the sociopolitical point of view;

Whereas, in this context, it is necessary to harmonize the rules governing the relations, especially as regards finance, between railway undertakings and States;

Whereas the Council laid down guidelines to govern financial relations between national railway undertakings and Member States in its resolution of 27 June 1974;[5]

Whereas the gradual improvement of the financial situation of railway undertakings could appreciably improve the situation on the transport market; whereas this improvement should result in an improvement of the financial results of these undertakings with a view to achieving financial balance; whereas such balance may be achieved only by increasing their financial independence and commercial responsibility to the extent compatible with their role as a public service;

Whereas, however, the amount of financial assistance from the State should be kept commensurate with the services provided by the railways and with their importance; whereas

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1 OJ L 152, 12.6.1975.
2 OJ 88, 24.5.1965.
3 OJ C 70, 1.7.1972.
4 OJ C 89, 23.8.1972.
5 OJ C 111, 23.9.1974.

disclosure of how these public funds are being used and what services are being provided by the railways should, as far as possible, prevent political intervention in the commercial management not justified by socioeconomic considerations;

Whereas to this end it is important to establish the principle of the division of responsibility between the undertaking and the State; whereas the respective responsibilities of the undertaking and the State should be defined;

Whereas, therefore, provision should be made for drawing up business plans of the railway undertakings under a consultation procedure; whereas the State may give financial assistance to railway undertakings;

Whereas financial and accounting rules based as far as possible on the principles applicable to industrial and commercial undertakings should be laid down for railway undertakings; whereas provision should be made for the necessary measures to achieve comparability of the accounting systems and annual accounts of all railway undertakings; whereas uniform costing principles should also be laid down; whereas improved presentation of the accounts will also increase the responsibility and independence of the management of these undertakings;

Whereas the managerial independence of railway undertakings should mean that, within the framework of general policy on prices and taking into account both national and Community rules on transport rates and conditions, the undertakings fix their own rates with the aim of optimizing financial results and achieving financial balance;

Whereas improved cooperation between railway undertakings would assist in optimizing their financial results; whereas Member States, in conjunction with the Commission, should consequently seek to promote such cooperation;

Whereas transitional measures should be taken until the railway undertakings achieve financial balance; whereas the date by which such balance should be achieved will be fixed subsequently taking account of experience gained and of the particular conditions affecting the role and importance of the railways in each Member State; whereas provision should be made at the same time for the necessary adaptations to Council Regulation (EEC) No 1191/69[1] of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway, and to Council Regulation (EEC) No 1107/70[2] of 4 June 1970 on the granting of aid for transport by rail, road and inland waterway, taking into account the links which exist between transport and other economic and social sectors;

Whereas it is thus essential that the Commission and the Council should obtain all relevant information on the financial development of railway undertakings;

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1 OJ L 156, 28.6.1969.
2 OJ L 130, 15.6.1970.

HAS ADOPTED THIS DECISION:

Article 1

1. Member States shall take the necessary steps to ensure that this Decision is applied to the following railway undertakings:

Société nationale des chemins de fer belges (SNCB)/Nationale Maatschappij der Belgische Spoorwegen (NMBS),

De danske Statsbaner (DSB),

Deutsche Bundesbahn (DB),

Société nationale des chemins de fer français (SNCF),

Coras Iompair Éireann (CIE),

Azienda autonoma delle Ferrovie dello Stato (FS),

Société nationale des chemins de fer luxembourgeois (CFL),

Naamloze Vennootschap Nederlandse Spoorwegen (NS),

British Railways Board (BRB),

Northern Ireland Railways Company Ltd (NIR).

2. As regards the Société nationale des chemins de fer luxembourgeois (CFL), Belgium and France shall, together with Luxembourg, make such amendments to the constitutive acts as may be necessary to implement this Decision.

Article 2

1. Within the framework of the overall policies laid down by each State and the discharge of public service obligations by the undertaking, each railway undertaking shall have sufficient independence as regards management, administration and internal control over administrative, economic and accounting matters with a view to achieving financial balance, taking into particular account the application of Regulation (EEC) No 1191/69, of Council Regulation (EEC) No 1192/69[1] of 26 June 1969 on common rules for the normalization of the accounts of railway undertakings, and of Regulation (EEC) No 1107/70.

This independence shall in any event include the separation of its assets, budgets and accounts from those of the State.

2. Railway undertakings are to be managed in accordance with economic principles. This shall apply also to their public service obligations with the view, in particular, of providing

[1] OJ L 156, 28.6.1969.

efficient and appropriate services at the lowest possible cost for the quality of service required.

Article 3

In accordance with Article 2, each railway undertaking shall, in particular:

submit its business plans, possibly covering a number of years, including its investment and financing programmes within the framework of the overall policies laid down by the State and taking account of national transport planning, particularly with regard to infrastructure;

implement its part of the business plans settled pursuant to Article 4;

draw up its budget and annual accounts, having regard to Article 4(3).

Article 4

1. The business plan submitted by a railway undertaking in accordance with Article 3 shall be settled in the context of a procedure decided by the State and based on consultation between the State and the undertaking. The plan shall be drawn up with the aim of achieving financial balance of the undertaking as well as the other technical, commercial and financial management objectives. The plan shall also lay down the method of implementation. The State shall keep the performance of this plan under review.

Should the development of economic conditions jeopardize implementation of this plan or some unforeseen event occur or a government decision be made affecting a basic element thereof, the State and the railway undertaking shall by the same process, review their objectives and the means of achieving them.

2. The State shall, in accordance with the conditions and the limits laid down in Regulations (EEC) Nos 1191/69 and 1107/70, determine the public service obligations to be met by the railway undertaking.

3. The State shall, in the light of Article 8, determine the layout of the budget and of the annual accounts of the railway undertaking and shall lay down the procedure and conditions for their approval.

Article 5

1. When the business plan is being drawn up in accordance with the procedure set out in Articles 3 and 4, the State and the railway undertaking shall settle:

the procedures under which repayments, consolidations and conversion of previous loans are to be effected;

the respective proportions in which new investments may be financed from internal sources, by borrowing or by direct State grants.

The State may lay down the amounts and the terms and conditions of loans which the railway undertaking is authorized to raise.

In order to enable the above transactions to be carried out, the State may give to the railway undertaking:

(a) guarantees, with or without charge, on loans floated by the undertaking,

(b) interest-bearing or interest-free loans;

(c) direct grants.

2. The State may make to the railway undertaking capital grants consistent with the functions, the size and the financial needs of the undertaking. These grants must, however, be intended to increase the assets of the undertaking and must not constitute a deficit subsidy.

Article 6

The State may define the conditions under which the railway undertaking effects transactions involving movable or immovable property aimed at ensuring the best possible use of its assets, or disposes of railway property no longer needed for railway operations.

Article 7

Pending implementation of the provisions referred to in Article 8(2), the State shall, to the greatest extent possible, draw on the rules applicable to industrial and commercial undertakings, when defining the rules with which the railway undertaking will have to comply regarding:

amortization and depreciation of assets,

reserves.

Taking account of the provisions of Article 13, the State shall define the rules applicable to the railway undertaking with regard to:

distribution of profits, if any, and, where appropriate, any other form of return on capital,

covering of deficits.

Article 8

1. The accounting system, budget and annual accounts of the railway undertaking shall be separate from those of the State.

2. Before 1 January 1978, the Council, acting on a proposal from the Commission, shall adopt the necessary measures to achieve compatibility between the accounting systems and annual accounts of all railway undertakings and shall lay down uniform costing principles.

3. Until such time as the Community has adopted the measures provided for in paragraph 2, the railway undertaking must, in its accounting system, budget and annual accounts, show clearly and separately at least:

(a) the expenditure and revenue relating to the operation of transport services and to each of the other activities in which the undertaking engages or participates;

(b) the revenue relating to the following services, with separate entries for activities to which public service obligations apply:

(i) passenger transport:

by rail (if possible subdivided into long and short distance or into high speed and express on the one hand and other rail services on the other),

by road,

by other means of transport;

(ii) goods transport:

full trains and wagons,

packages and parcels,

by road.

4. The railway undertaking must provide the State with the necessary data to enable a detailed assessment to be made of the financial results of each of the categories of activity outlined in paragraph 3(b).

5. The table provided for in Article 10 of Regulation (EEC) No 1192/69 must be included in an annex to the annual accounts and must show, in addition, all other sums granted to the railway undertaking during the year by way of financial assistance or compensation.

Article 9

1. Within the framework of general policy on prices, and taking into account both national and Community rules on transport rates and conditions, railway undertakings shall determine their own rates with the aim of achieving optimum financial results and financial balance.

2. Pursuant to Article 3(2) of Regulation (EEC) No 1107/70, compensation may be made in respect of tariff obligations imposed upon railway undertakings and not covered by Regulation (EEC) No 1191/69. Acting on a proposal from the Commission to be submitted not later than 1 January 1978, the Council shall harmonize the procedures for granting such compensation.

Article 10

The railway undertaking shall concentrate basically on activities which are appropriate to this mode of transport.

Bearing in mind the public nature of the undertaking, the State may however, in accordance with conditions it lays down, authorize the undertaking:

(i) to participate directly or indirectly in any undertaking engaged in operations outside its normal activities or to carry out such operations;

(ii) to employ other transport techniques.

Article 11

1. Member States shall, in conjunction with the Commission, investigate measures likely to promote cooperation among railway undertakings.

2. Before 1 January 1979, the Commission will submit to the Council a report on the objectives to be pursued in the long term and the measures to be taken to promote partial or total integration of railway undertakings at Community level.

Article 12

The State shall lay down the procedures for appointing the members of the governing bodies of the railway undertaking.

Article 13

In conjunction with the railway undertaking, the State shall draw up a financial programme aimed at achieving the financial balance of the undertaking.

Under this programme the State may grant to the railway undertaking deficit subsidies which must be distinct:

(i) from compensation granted in respect of categories of public service obligations provided for by Article 2 of Regulation (EEC) No 1191/69, or of categories of normalization of accounts provided for by Article 4(1) and (4) of Regulation (EEC) No 1192/69;

(ii) from aid granted in respect of categories of aid provided for by Article 3 of Regulation (EEC) No 1107/70 and Article 9(2) of this Decision;

(iii) from the financial assistance provided for by Article 5(1) of this Decision.

Article 14

1. Every two years, the Commission shall submit to the Council a report on the implementation by Member States of this Decision and of Regulations (EEC) Nos 1191/69, 1192/69 and 1107/70.

The report must clearly indicate the results achieved, with particular regard to any changes in the financial situation of the railway undertaking.

2. In order to enable the Commission to draw up the report referred to in paragraph 1, Member States shall, at the appropriate time, forward to it the necessary information and, in particular, the programmes referred to in Articles 4 and 13, together with any major changes made to them.

Article 15

1. Before 1 January 1980, the Commission, taking account of the particular conditions affecting the role and importance of the railways in each State, shall submit to the Council such proposals as it seems necessary to fix the time-limit and conditions for achieving the financial balance of the railway undertakings.

2. By the same date, the Commission shall submit proposals to the Council concerning in particular the adaptation of Regulations (EEC) Nos 1191/69 and 1107/70 in order to take account, within the framework of the links which exist between transport and other economic and social sectors, of the obligations inherent in the concept of a public service to which railways could be subject.

Article 16

1. As soon as possible and not later than 1 January 1977, Member States shall, after consultation with the Commission, give effect, by law, regulation or administrative action, to such provisions as may be necessary for the implementation of this Decision.

2. Where a Member State so requests, or where the Commission considers it appropriate, the Commission shall consult the Member States concerned on the drafts for the provisions referred to in paragraph 1.

Article 17

This Decision is addressed to the Member States.

COUNCIL REGULATION (EEC) NO 1658/82[1] OF 10 JUNE 1982

supplementing, by provisions on combined transport, Regulation (EEC) No 1107/70

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aid for transport by rail, road and inland waterway,[2] and in particular Article 3 thereof;

Having regard to the proposal from the Commission;[3]

Having regard to the opinion of the European Parliament;[4]

Having regard to the opinion of the Economic and Social Committee;[5]

Whereas the various systems and technologies for combined transport bring benefits for the Community in general, *inter alia* by reducing congestion on certain roads, conserving energy and allowing better use to be made of railway capacity;

Whereas the investment required for the development of combined transport should accordingly be encouraged; whereas it is therefore essential that aid granted by a Member State or through State resources can be made available to the undertakings concerned;

Whereas Regulation (EEC) No 1107/70 provides that Member States may grant aid to assist the development of transport systems and technologies that are more economic for the Community but restricts such aid to the experimental phase; whereas, for the development of combined transport, allowance should also be made for an initial operating phase which is sufficiently long to enable such transport to qualify for better conditions in the haulage market;

Whereas it is therefore necessary to adjust the Community provisions relating to aid;

HAS ADOPTED THIS REGULATION:

Article 1

The following subparagraph is hereby added to Article 3(1) of Regulation (EEC) No 1107/70: '(e) Where the aid is granted as a temporary measure and designed to facilitate the development of combined transport, such aid having to relate to investment in the following fields:

— infrastructure,

— the fixed and movable facilities necessary for trans-shipment.

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1 OJ L 184, 29.6.1982.
2 OJ L 130, 15.6.1970.
3 OJ C 351, 31.12.1980.
4 OJ C 260, 12.10.1981.
5 OJ C 310, 30.11.1981.

Before 31 December 1986 the Commission shall make a progress report to the Council on the application of this provision. In the light of that report and in view of the temporary nature of the system provided for in this Regulation, the Council shall decide, on a proposal from the Commission, on the system to be applied subsequently and, if necessary, on the procedures to be adopted for terminating that system.'

Article 2

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities.*

It shall apply from 1 July 1982.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

COUNCIL REGULATION (EEC) NO 1101/89[1] OF 27 APRIL 1989

on structural improvements in inland waterway transport

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission,[2]

Having regard to the opinion of the European Parliament,[3]

Having regard to the opinion of the Economic and Social Committee,[4]

Whereas the structural overcapacity manifest for some time in the fleets operating on the linked inland waterway networks of Belgium, France, Germany, Luxembourg and the Netherlands appreciably affects, in those countries, the economics of transport services, particularly of the carriage of goods by inland waterway;

Whereas forecasts show no sign of sufficient increase in demand in this sector to absorb this overcapacity in the next few years; whereas in fact the share of the total transport market taken by inland waterway transport is continuing to decline as a result of progressive changes in the basic industries supplied mainly by inland waterway;

Whereas a scrapping scheme coordinated at Community level is the only way to bring about a substantial reduction in overcapacity in the near future and thus improve the structures of inland waterway transport;

Whereas the results of the national vessel-scrapping schemes organized by certain Member States, while positive, have been insufficient, in particular, for want of international coordination of these schemes;

Whereas a common approach, allowing Member States to take joint measures to attain the same objective, is a *sine qua non* for effectively reducing overcapacity; whereas, to this end, scrapping funds should be introduced in the Member States particularly concerned by inland waterway transport and those Member States should administer the funds; whereas undertakings established in other Member States but providing transport services on the linked inland waterways of the Member States concerned must contribute to one of these funds;

Whereas overcapacity generally affects every sector of the inland waterway transport market; whereas the measures to be adopted must, therefore, be generally applicable and cover all cargo vessels and pusher craft; whereas, however, vessels which in no way contribute to the overcapacity on the abovementioned network of linked inland waterways either because of their size or because they are operated solely on closed national markets, could be exempted from these measures; whereas, by contrast, private fleets performing carriage on

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1 OJ L 116, 28.4.1989. p. 25.
2 OJ C 297, 22.11.1988, p. 13 and OJ 31, 7.2.1989, p. 14.
3 OJ C 326, 19.12.1988, p. 54.
4 OJ C 318, 12.12.1988, p. 58.

their own account must be included in the system because of their impact on transport markets;

Whereas, in view of the worrying economic and social situation of the sector involving vessels with a dead-weight of less than 450 tonnes and in particular the boat owners' financial situation and limited scope for conversion, specific measures are called for, such as special adjustment coefficients for inland waterway vessels or specific improvement measures for the networks most affected; whereas, in the latter case, it is necessary to enable Member States to exclude these vessels from the scope of the Regulation provided that they are made subject to a national improvement plan which does not create distortions of competition and is consistent with the Treaty provisions on aid;

Whereas, in view of the fundamental differences between the dry cargo and liquid cargo markets, it is advisable to keep separate accounts in each fund for dry cargo carriers and tanker vessels;

Whereas, in the context of an economic policy compatible with the Treaty, responsibility for structural improvements in a given sector of the economy lies primarily with operators in the sector; whereas, therefore, the cost of any system introduced must be borne by the inland waterway transport undertakings; whereas, in order to launch the system on a fully operational basis from the outset, arrangements should be made, however, for the Member States concerned to pay an advance in the form of repayable loans; whereas, in view of the difficult economic situation of the said undertakings, these loans should be interest-free;

Whereas, in accordance with Article 74 of the Treaty, the objectives of the Treaty are to be pursued as regards transport within the framework of a common policy; whereas, as Article 77 makes clear, this policy may include the granting of aid, in particular if it meets the needs of coordination of transport; whereas the Community's action in this area, including aid, must however take into account the various general objectives of Article 3 of the Treaty and in particular that of Article 3(f), concerning competition; whereas, as with all aid subject to the rules of Article 92 and following of the Treaty, it is desirable to ensure that the measures provided for in this Regulation and their implementation do not distort, or threaten to distort, competition, in particular by favouring certain undertakings to an extent which is contrary to the common interest; whereas, in order to place the enterprises concerned in similar conditions of competition, the contributions to be paid to the scrapping funds and the scrapping premiums should be set at uniform rates; whereas, likewise, the scrapping programme should be started at the same time, be of the same duration and subject to the same conditions in all the Member States concerned;

Whereas steps should be taken to prevent the gains from the coordinated scrapping scheme being cancelled out by extra capacity coming into service at the same time; whereas temporary measures have to be taken to curb investment without, however, totally blocking access to the inland waterway market or imposing a quota on the national fleets;

Whereas, as part of the proposed system, social measures should be taken to help workers who wish to leave the inland waterway industry or to retrain for jobs in another sector;

Whereas, since the system is a Community one, decisions on its operation must be taken at Community level after consultation with the Member States and the organizations representing the inland waterway transport industry; whereas the requisite power for the adoption of

those decisions, as well as for ensuring their implementation and the maintenance of the conditions of competition laid down in this Regulation, must be conferred on the Commission;

Whereas, in order to prevent distortion of competition on the markets in question and to render the proposed system more effective, it is desirable for Switzerland to adopt similar measures for its fleet on the linked inland waterway network of the Member States concerned; whereas Switzerland has shown itself to be willing to adopt such measures,

HAS ADOPTED THIS REGULATION:

Article 1

1. Inland waterway vessels used to carry goods between two or more points by inland waterway in the Member States shall be subject to measures for structural improvements in inland waterway transport under the conditions laid down in this Regulation.

2. The measures referred to in paragraph 1 shall comprise:

(i) the reduction of structural overcapacity by means of scrapping schemes coordinated at Community level;

(ii) supporting measures to avoid aggravation of existing overcapacity, or the emergence of further overcapacity.

Article 2

1. This Regulation shall apply to cargo-carrying vessels and pusher craft providing transport services on their own account or for hire or reward and registered in a Member State or, if not registered, operated by an undertaking established in a Member State.

For the purposes of this Regulation, 'undertaking' shall mean any natural or legal person exercising an economic activity on a non-industrial or industrial scale.

2. The following shall be exempt from this Regulation:

(a) vessels operating exclusively on national waterways not linked to other waterways in the Community;

(b) vessels which, owing to their dimensions, cannot leave the national waterways on which they operate and cannot enter the other waterways of the Community ('prisoner vessels'), provided that such vessels are not likely to compete with vessels covered by this Regulation;

(c) pusher craft with a motive power not exceeding 300 kilowatts,

seagoing inland waterway vessels and ship-borne barges used exclusively for international or national transport operations during voyages which include a sea crossing,

ferries,

vessels providing a non-profit-making public service.

3. Each Member State may exclude its vessels with a dead-weight of less than 450 tonnes from the scope of this Regulation if the economic and social situation in the sector of those vessels so requires.

In such cases, the Member State concerned shall communicate to the Commission a national improvement plan under the aid scheme in the six months following the adoption of this Regulation. If the Commission considers the improvement plan incompatible with the common market, paragraph 1 shall apply to the vessels in question.

Article 3

1. Each of the Member States whose inland waterways are linked to those of another Member State and the tonnage of whose fleet is above 100 000 tonnes, hereinafter referred to as 'the Member States concerned', shall set up, under its national lesiglation and with its own administrative resources, a scrapping fund, hereinafter referred to as 'the fund'.

2. The competent authorities in the Member State concerned shall administer the fund. Each Member State shall involve its national organizations representing inland waterway carriers in this administration.

3. Each fund shall consist of two separate accounts, one for dry cargo carriers and pusher craft, the other for tanker vessels.

Article 4

1. For each vessel covered by this Regulation the owner shall pay into one of the funds set up under Article 3 a contribution fixed in accordance with Article 6.

2. For vessels registered in one of the Member States concerned, the contribution shall be paid into the fund of the Member State where the vessel is registered. For non-registered vessels operated by an undertaking established in one of these States, the contribution shall be paid into the fund of the Member State in which the undertaking is established.

3. The contribution for vessels registered in another Member State or for non-registered vessels operated by an undertaking established in another Member State shall be paid into one of the funds set up in the Member States concerned, at the choice of the vessel owner.

This choice shall be made once only and shall apply to all vessels belonging to the same owner or operated by the same undertaking.

Article 5

1. Any owner scrapping a vessel referred to in Article 2(1) shall receive a scrapping premium from the fund to which his vessel belongs in so far as the financial means are available, subject to the conditions set out in Article 6. This premium shall be granted only in respect of vessels which the owner proves form part of his active fleet.

Scrapping means the total breaking up of the hull of the vessel.

The active fleet shall include vessels in good working order which hold:

either a certificate of water-worthiness issued by the competent national authority or in agreement with the latter, or

an authorization to engage in national transport issued by the authority of one of the Member States concerned,

and which have made at least one voyage during the year preceding application for the scrapping premium;

or which have made at least 10 voyages during the year preceding application for the scrapping premium.

No premium shall be granted in respect of vessels which, as a result of a wreck or other damage suffered, are no longer repairable and are scrapped.

2. There shall be mutual financial support between the funds with regard to the separate accounts mentioned in Article 3(3). This shall come into play when the interest-free loans mentioned in Article 7 are repaid, in order to ensure that the time-limit for repayment of these loans is the same for all the funds.

Article 6

1. The Commission shall lay down separately for dry cargo carriers, for tankers and for pusher craft:

(i) the rate of the annual contributions to the fund for each vessel;

(ii) the rate of the scrapping premiums;

(iii) the period covered by the scrapping schemes, during which scrapping premiums will be paid, and the conditions under which the premiums may be obtained;

(iv) the adjustment coefficients for each type and category of inland waterway vessel. These coefficients shall take account of the particular socioeconomic situation regarding vessels with a dead-weight of less than 450 tonnes.

2. The contributions and scrapping premiums shall be expressed in ecus; the rates applying shall be the same for each fund.

3. Contributions and premiums shall be calculated on the basis of either the dead-weight tonnage for cargo-carrying vessels or the motive power of the vessel for pusher craft.

4. Contribution rates shall be fixed at a level allowing the funds sufficient financial resources to make an effective contribution to reducing the structural imbalance between supply and demand in the inland waterway transport sector, taking into account the difficult economic position of this sector.

Contributions shall be paid annually at the start of the year in return for a certificate of payment. The period for which they are paid shall not exceed 10 years.

From 1 March of the year concerned this certificate must be on board the vessel or, in the case of unmanned vessels, on board the pusher craft. For the first year of operation of the

system, the date from which the certificate must be on board shall be set by the Commission.

5. The Commission shall lay down the period during which scrapping premiums may be obtained and the conditions for granting these premiums on the basis of the objectives to be attained, the vessel types or categories and the financial resources of the funds.

6. The Commission shall lay down detailed rules for the mutual financial support referred to in Article 5(2).

7. After consulting the Member States and the organizations representing inland waterway carriers at Community level, the Commission shall set a target date for achieving a substantial reduction in overcapacity and shall take the decisions referred to in paragraphs 1 to 6.

The decisions reached by the Commission shall also take account of the results of observation of the transport markets in the Community and of any foreseeable changes therein, as well as of the need to avoid any distortion of competition to an extent which is contrary to the common interest.

Article 7

1. Without prejudice to the provisions of the Treaty on aid and to the rules adopted in implementation thereof, the Member States concerned shall make advance payments, in the form of loans, to the fund set up in their territory so that a coordinated scrapping scheme can start operating immediately. The sums granted in this way shall be repaid, free of interest, by the fund, according to a predetermined schedule.

The funds may also be prefinanced by loans guaranteed by the State, contracted on the capital market, provided that interest on the loan is borne by the State concerned.

2. Obligations borne by a national fund existing when this Regulation comes into force shall be assumed by the fund of the Member State concerned.

Owners of vessels who are not subject to this Regulation and who have rights resulting from existing national scrapping schemes may assert those rights *vis-à-vis* the funds referred to in Article 3(1) for a period of six months from the end of the scrapping period referred to in Article 6(5).

Article 8

1. (a) For a period of five years from the entry into force of this Regulation, vessels covered by this Regulation which are newly constructed, imported from a third country or which leave the national waterways mentioned in Article 2(2)(a) and (b) may be brought into service on inland waterways as referred to in Article 3 only where:

   (i) the owner of the vessel to be brought into service scraps a tonnage of carrying capacity equivalent to the new vessel without receiving a scrapping premium; or

   (ii) where the owner scraps no vessel, he pays into the fund covering his new vessel or into the fund chosen by him in accordance with Article 4 a special contribu-

tion equal to the scrapping premium fixed for a tonnage equal to that of the new vessel; or

(iii) where the owner scraps a tonnage smaller than that of the new vessel to be brought into service, he pays into the fund in question a special contribution equivalent to the scrapping premium corresponding at the time to the difference between the tonnage of the new vessel and the tonnage scrapped.

In the case of pusher craft, the concept of 'tonnage' shall be replaced by that of 'motive power'.

Vessels of third countries which have adopted, on the basis of an international instrument, measures similar to those in this Regulation shall be regarded as vessels of the Member States.

(b) In the case of the vessels referred to in (a) which are put into service on the inland waterways referred to in Article 3 between the entry into force of this Regulation and the setting up of the corresponding national fund, the special contribution to be paid by the owner in accordance with (a) shall be paid into a special account to be designated by the national authorities of the Member State concerned. The contribution shall be transferred to the fund as soon as it has been set up

(c) Three years after this Regulation comes into force, the Commission may, if transport markets trends so require, and after consulting the Member States and the organizations representing inland waterway transport at Community level, adjust the ratio between the new tonnage and the old tonnage as referred to in (a).

2. The conditions laid down in paragraph 1 shall also apply to increases in capacity resulting from the lengthening of a vessel or the replacement of pusher-craft engines.

3. (a) The conditions set out in paragraphs 1 and 2 shall not apply to vessels in respect of which the owner proves that:

(i) construction was under way on the date of entry into force of this Regulation, and that

(ii) work already carried out represents at least 20% of the steel weight or 50 tonnes, and that

(iii) delivery and commissioning is to take place within the six months following entry into force of this Regulation.

(b) The conditions set out in paragraphs 1 and 2 shall not apply to vessels which, at the time of entry into force of this Regulation, were exempt from this Regulation pursuant to Article 2(2)(a) and which by reason of a newly-opened navigable link are able to use the other inland waterways of the Community.

(c) The Commission may, after consulting the Member States and the organizations representing inland waterway transport at Community level, exempt specialized vessels from the scope of paragraph 1.

4. A vessel referred to in paragraphs 1 and 2 may not be put into service until the owner has fulfilled the requirements set out in paragraph 1. Where this prohibition is infringed, the

national authorities may take steps to prevent the vessel concerned from participating in the trade.

5. On the basis of a Commission proposal accompanied by a well-founded report, the Council may take a decision to extend the period referred to in paragraph 1 by a maximum of five years.

The Council shall act on this proposal in accordance with the conditions laid down in the Treaty.

Article 9

The Member States concerned may take measures:

(i) to make it easier for inland waterway carriers leaving the industry to obtain an early retirement pension or to transfer to another economic activity;

(ii) to grant early retirement pensions to workers leaving the inland waterways as a result of scrapping schemes and to organize vocational training courses or retraining courses.

Article 10

1. Member States shall adopt the measures necessary to implement this Regulation before 1 January 1990 and shall notify the Commission thereof.

These measures shall provide, *inter alia*, for permanent and effective verification of compliance with the obligations imposed on undertakings by this Regulation and the national provisions adopted in implementation thereof, and for appropriate penalties in the event of infringement.

2. Throughout the duration of the scrapping scheme, Member States shall communicate to the Commission every six months all relevant information on progress with the current scheme and, in particular, on the financial position of the fund, the number of applications to scrap vessels and the tonnage actually scrapped.

3. Before 1 May 1989 the Commission shall adopt the decisions which it is required to take under Article 6.

4. Two years after this Regulation enters into force, the Commission shall draw up a report evaluating the effect of the measures referred to in paragraph 1 and submit it to the European Parliament and the Council.

Article 11

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

It shall apply with effect from 1 May 1989.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

COMMISSION REGULATION (EEC) NO 1102/89[1] OF 27 APRIL 1989

laying down certain measures for implementing Council Regulation (EEC) No 1101/89 on structural improvements in inland waterway transport

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1101/89 of 27 April 1989 on structural improvements in inland waterway transport,[2] and in particular Article 10(3) thereof,

Having regard to the views expressed by the Member States and the organizations representing inland waterway carriers at Community level in the consultations held by the Commission on 29 March and 3 February 1989 respectively,

Whereas, under Article 6 of Regulation (EEC) No 1101/89, the Commission must adopt a number of decisions concerning the operation of the system for structural improvements in inland waterway transport laid down in that Regulation;

Whereas, in the course of the abovementioned consultations, the Member States and the organizations representing inland waterway carriers at Community level took the view that the capacity of the fleets concerned should be cut by 10% in the case of dry cargo vessels and pusher craft and by 15% in the case of tanker vessels;

Whereas, in view of the need to encourage scrapping by setting attractive premiums and considering the limited resources available to the trade associations for repaying the sums prefinanced by the Member States concerned pursuant to Article 7 of Regulation (EEC) No 1101/89, a total budget of ECU 130.5 million seems appropriate;

Whereas the Commission must determine the date on which the scrapping scheme, coordinated at Community level, is to begin; whereas that date must coincide with the date on which the Member States affected by structural overcapacity have adopted the necessary measures for implementing Council Regulation (EEC) No 1101/89;

Whereas the Commission must lay down the rate for the annual contributions to the scrapping funds payable by carriers in respect of each vessel they operate for the carriage of goods on the linked inland waterway networks of the Member States; whereas these rates must be such as to enable the scrapping funds to repay the sums prefinanced by the Member States concerned within 10 years at the most, and must be set at a level acceptable to inland waterway undertakings in a difficult economic position;

Whereas the Commission must also lay down the rates for the scrapping premiums, the period during which, and the conditions subject to which, they may be obtained; whereas, to this end, in view of the overcapacity to be shed and of a limited overall budget which would be insufficient to meet all the applications for scrapping premiums lodged with the

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[1] OJ L 116, 28.4.1989, p. 30.
[2] See page 25 of this Official Journal.

national scrapping funds, it would seem appropriate, to enable as much overcapacity as possible to be scrapped, to follow a procedure whereby priority consideration is given to applications for rates at the lower end of the 70 to 100% bracket with respect to the maximum values laid down;

Whereas, because of the particular socioeconomic situation affecting small vessels, appropriate measures should be adopted and, in particular, adjustment coefficients should be set so as to take account of the lower commercial value of these vessels; whereas it would therefore be advisable to set lower scrapping premiums and, accordingly, lower annual contribution rates for such vessels;

Whereas, in order to operate the mutual financial support arrangements between the various national scrapping funds, it would seem advisable for the Commission, with the help of the representatives of the national funds, to balance the accounts of those funds at the beginning of each year so as to ensure that the repayment period for the sums prefinanced by the Member States concerned is the same for all funds;

Whereas the various types of waterway vessel differ in value and in their effect on fleet capacity; whereas special coefficients should therefore be laid down in order to determine the equivalent tonnage where a carrier brings a new vessel into service and presents for scrapping a vessel of a different type,

HAS ADOPTED THIS REGULATION:

General provisions

Article 1

1. This Regulation fixes, *inter alia*, the annual contributions, the scrapping premiums and the conditions under which they may be obtained in respect of the vessels referred to in Article 2 of Council Regulation (EEC) No 1101/89 in view of the need to reduce fleet capacity by 10% in respect of dry cargo vessels and pusher craft and by 15% in respect of tanker vessels.

2. A total budget of ECU 130.5 million is considered necessary, ECU 81.2 million thereof for dry cargo vessels, ECU 44.3 million for tanker vessels and ECU 5 million for pusher craft.

Article 2

The system of scrapping measures coordinated at Community level, as laid down in Regulation (EEC) No 1101/89, shall become operational on 1 January 1990.

Annual contributions

Article 3

1. Owners of the vessels referred to in Article 2 of Regulation (EEC) No 1101/89 including vessels in respect of which a scrapping premium has been applied for, shall, from 1 January 1990, be required to pay the annual contributions to the relevant scrapping fund. The rates for these contributions shall be as follows for the various types and categories of inland waterway vessels:

Dry cargo vessels

Self-propelled barges: ECU 1.00 per tonne

Push barges: ECU 0.70 per tonne

Lighters: ECU 0.36 per tonne

Tanker vessels

Self-propelled barges: ECU 3.00 per tonne

Push barges: ECU 1.26 per tonne

Lighters: ECU 0.54 per tonne

Pusher craft:

ECU 0.40 per kW

2. For vessels with a dead-weight capacity of less than 450 tonnes, the annual contribution set out in paragraph 1 shall be reduced by 30%. For vessels with a dead-weight capacity of between 650 and 450 tonnes, the annual contribution shall be reduced by 0.15% for every tonne by which the dead-weight capacity of the vessel in question is less than 650 tonnes.

3. The Commission may alter the rates set out in paragraph 1 in order to ensure that the sums prefinanced by the Member States concerned pursuant to Article 7(1) of Regulation (EEC) No 1101/89 are repaid within 10 years.

Article 4

1. The certificate of payment of the annual contribution in respect of 1990 must, from 1 May, be on board the vessel or, in the case of unmanned waterway vessels, on board the pusher craft.

2. Annual contributions, expressed in ecus, shall be converted into the currencies of the relevant funds at the rate applicable on 1 January of the year in question.

Scrapping premiums

Article 5

1. The scrapping premiums for the different types and categories of vessels shall be within a bracket ranging from 70 to 100% of the following rates:

Dry cargo vessels

Self-propelled barges: ECU 120 per tonne

Push barges: ECU 60 per tonne

Lighter: ECU 43 per tonne

Tanker vessels

Self-propelled barges: ECU 216 per tonne

Push barges: ECU 91 per tonne

Lighters: ECU 39 per tonne

Pusher craft:

ECU 240 per kW

2. For vessels with a dead-weight capacity of less than 450 tonnes, the maximum rates for the scrapping premiums set out in paragraph 1 shall be reduced by 30%. For vessels with a dead-weight capacity of between 450 and 650 tonnes, the maximum rates for the premiums shall be reduced by 0.15% for every tonne by which the dead-weight capacity of the vessel in question is less than 650 tonnes.

Article 6

1. Applications for scrapping premiums submitted by vessel owners must be received by the authorities of the relevant fund before 1 May 1990. Applications received after this deadline shall not be considered.

2. Applicants for scrapping premiums shall indicate in their applications the percentage, within the 70 to 100% bracket, of the rates set out in Article 5 which they wish to receive as a premium for scrapping their vessels. This percentage is referred to hereinafter as the 'premium-rate percentage'.

3. Valid applications for scrapping premiums amounting to 70% of the rates set out in Article 5(1) and (2) shall be deemed to be accepted by the fund within the limits of the financial resources available in the various accounts, as provided for in Article 1(2). The fund authorities shall confirm their acceptance of applications within two months of receipt.

The authorities of the various funds shall send to the Commission each month a list of the applications which they have received for scrapping premiums amounting to 70% of the

abovementioned rates. The Commission shall ensure that these applications do not exceed the financial resources referred to in Article 1(2) and shall keep the fund authorities informed of the current situation.

4. The fund authorities shall, before 1 September 1990, notify in writing applicants for scrapping premiums exceeding 70% of the rates set out in Article 5(1) and (2) as to whether those applicants have been accepted or refused.

Article 7

1. If an application for a scrapping premium is accepted, the owner of the vessel must, by 1 December 1990:

scrap the vessel, or

lay it up permanently until it is scrapped.

2. Where a vessel is laid up in accordance with paragraph 1, the owner shall forward to the authority of the relevant fund all documents relating to that vessel, such as the certificate of water-worthiness and transport licence. The Member States shall ensure that vessels laid up are not used for transport or storage.

The owner of a laid-up vessel shall inform the authority of the relevant fund of the place where the vessel is laid up. A vessel laid up may be moved only with the agreement of the fund authority.

3. Each fund shall, at the end of each year, send to the other funds and to the Commission a list of the vessels in respect of which the fund has paid a scrapping premium and which have not yet been scrapped. The list shall state, in respect of each vessel:

(i) its name, type, tonnage and home port;

(ii) the name and address of the owner;

(iii) precise details of the place where the vessel is laid up for scrapping.

4. Vessels laid up must, in all cases, be scrapped before 1 December 1992. If a vessel is not scrapped by that date the authority of the relevant fund may have it scrapped on behalf, and at the expense, of its owner.

Article 8

1. If the finances required to cover valid applications for scrapping premiums exceed the financial resources available in the various accounts, as provided for in Article 1(2), the premium-rate percentage indicated by the vessel owner in his application shall serve as a selection criterion, in that applications for lower percentages shall be given priority over those for higher percentages.

2. To facilitate the operation of the selection procedure referred to in paragraph 1 the Commission, with the help of the authorities of the various funds, shall draw up a joint list of

valid applications; such applications shall be listed in order, starting with the application for the lowest premium-rate percentage. Separate lists shall be drawn up for dry cargo vessels, tanker vessels and pusher craft.

3. The different funds shall continue to grant scrapping premiums in accordance with the list, until the financial resources available in the various accounts referred to in Article 1(2) are used up. If more than one application requesting the same premium-rate percentage is submitted, priority shall be given to the first one received.

4. If the financial resources required to cover valid applications are less than the funds available in the various accounts referred to in Article 1(2) the applications for scrapping premiums shall be deemed to be accepted in respect of the premium percentages applied for. In such cases, the period of 10 years allowed for repaying the sums prefinanced by the Member States concerned to the fund shall be reduced accordingly.

Article 9

1. The scrapping premium shall not be paid until the owner of the vessel has provided proof that the vessel had been scrapped or laid up in accordance with Article 7.

2. The rates for the scrapping premiums, expressed in ecus, shall be converted into the currencies of the relevant funds at the rate applicable on the date referred to in Article 2.

Mutual financial support

Article 10

1. With a view to operating the mutual financial support arrangements between the separate accounts of the various funds as required under Article 5(2) of Regulation (EEC) No 1101/89, each fund shall, from 1 January 1991, communicate the following information to the Commission at the beginning of each year:

(i) the fund's debts on 31 December of the previous year (Dn);

(ii) the fund's receipts during the previous year (Ran), comprising receipts from annual contributions and the special contributions referred to in Article 8 of Regulation (EEC) No 1101/89.

2. The Commission, with the help of the fund authorities, shall determine, on the basis of the information referred to in paragraph 1:

(i) the total debts of all the funds on 31 December of the previous year (Dt);

(ii) the total receipts of all the funds for the previous year (Rt);

(iii) the adjusted annual receipts of each fund (Rnn) calculated as follows:

$$Rnn = \frac{Rt}{Dt} \times Dn;$$

(iv) for each fund, the difference between annual receipts (Ran) and annual adjusted receipts (Ran — Rnn);

(v) the sums which each fund whose annual receipts exceed the adjusted annual receipts (Ran > Rnn) is required to transfer to a fund whose annual receipts are less than the adjusted annual receipts (Ran < Rnn).

3. Each of the funds involved shall transfer the sums referred to in the last indent of paragraph 2 to the other funds by 1 March.

Equivalent tonnage

Article 11

1. Where a vessel owner brings into service one of the vessels referred to in Article 8 of Regulation (EEC) No 1101/89 and presents for scrapping a vessel or vessels of another type, the equivalent tonnage to be taken into consideration shall be determined, within each of the two categories of vessels indicated below, in accordance with the following adjustment coefficients:

Dry cargo vessels

Self-propelled barges over 650 tonnes: 1.00,

Push barges over 650 tonnes: 0.50,

Lighters over 650 tonnes: 0.36;

Tanker vessels

Self-propelled barges over 650 tonnes: 1.00,

Push barges over 650 tonnes: 0.42,

Lighters over 650 tonnes: 0.18.

2. For vessels with a dead-weight capacity of less than 450 tonnes, the coefficients set out in paragraph 1 shall be reduced by 30%. For vessels with a dead-weight capacity of between 450 and 650 tonnes, these coefficients shall be reduced by 0.15% for every tonne by which the dead-weight capacity of the vessel in question is less than 650 tonnes.

Consulting

Article 12

1. The Commission shall consult the Member States whenever it plans to amend this Regulation.

2. On all matters concerning the application of the system the Commission shall request the opinion of a group made up of experts from the professional organizations representing inland waterway carriers at Community level. This group shall be known as the 'Group of Experts on Structural Improvements in Inland Waterway Transport'.

Final provisions

Article 13

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

COUNCIL REGULATION (EEC) NO 3572/90[1] OF 4 DECEMBER 1990

amending, as a result of German unification, certain Directives, Decisions and Regulations relating to transport by road, rail and inland waterway

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission,[2]

Having regard to the opinion of the European Parliament,[3]

Having regard to the opinion of the Economic and Social Committee,[4]

Whereas the Community has adopted a set of rules on transport by road, rail and inland waterway;

Whereas, from the date of German unification onwards, Community law will be fully applicable to the territory of the former German Democratic Republic;

Whereas certain Community legislation on transport by road, rail and inland waterway must be amended to take account of the special situation in that territory;

Whereas a specific time-limit needs to be set for bringing the rules in force in the territory of the former German Democratic Republic in conformity with Community acts;

Whereas the derogations provided for in this connection should be temporary and cause the least possible disturbance to the functioning of the common market;

Whereas the information on the situation of transport by road, rail and inland waterway and on the rules governing such transport in the territory of the former German Democratic Republic is insufficient to permit the type of adjustment or the extent of the derogations to be definitively established; whereas, to allow for changes in the situation, a simplified procedure must be laid down, in accordance with the third indent of Article 145 of the Treaty;

Whereas the provisions of Directives 74/561/EEC[5] and 74/562/EEC,[6] as last amended in both cases by Directive 89/438/EEC,[7] should be applied in such a way as to respect both the established rights of operators already working in the territory of the former German Democratic Republic and to allow recently established transport operators time in which to meet some of the provisions concerning financial standing and professional competence;

Whereas, from the date of German unification, road vehicles registered in the territory of the former German Democratic Republic have the same legal status as road vehicles regis-

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1 OJ L 353, 17.12.1990, p. 12.
2 OJ L 263, 26.9.1990, p. 34, as amended on 25 October 1990 and 28 November 1990.
3 Opinion delivered on 21 November 1990.
4 Opinion delivered on 20 November 1990.
5 OJ L 308, 19.11.1974, p. 18.
6 OJ L 308, 19.11.1974, p. 23.
7 OJ L 212, 22.7.1989, p. 101.

tered in the other Member States; whereas Regulation (EEC) No 3821/85[1] lays down certain provisions in respect of recording equipment installed in road vehicles; whereas such equipment is installed in new vehicles at the time of manufacture and thus presents no problem, while a reasonable transitional period must be provided to enable such equipment to be fitted to vehicles registered in the territory of the former German Democratic Republic before unification, account being taken of the additional cost and the technical capacity of approved workshops;

Whereas the name 'Deutsche Reichsbahn (DR)' should be inserted into all Community legislation which expressly mentions the names of railway undertakings; whereas a date should be set on which rules in question become applicable;

Whereas Community legislation on structural improvements in inland waterway transport must be amended to take account of the special situation of inland waterway transport operators established in the territory of the former German Democratic Republic,

HAS ADOPTED THIS REGULATION:

Article 1

The following paragraph is added to Article 5 of Directive 74/561/EEC:

'5. In respect of the territory of the former German Democratic Republic, the following dates replace those given in paragraphs 1 and 2:

in paragraph 1, "3 October 1989" replaces "1 January 1978",

in paragraph 2, "2 October 1989", "1 January 1992" and "1 July 1992" replace "31 December 1974", "1 January 1978" and "1 January 1980" respectively.'

Article 2

The following paragraph is added to Article 4 of Directive 74/562/EEC:

'5. In respect of the territory of the former German Democratic Republic, the following dates replace those given in paragraphs 1 and 2:

in paragraph 1, "3 October 1989" replaces "1 January 1978",

in paragraph 2, "2 October 1989", "1 January 1992" and "1 July 1992" replace "31 December 1974", "1 January 1978" and "1 January 1980" respectively.

Article 3

The following Article is inserted in Regulation (EEC) No 3821/85:

'*Article 20a*

This Regulation shall not apply until 1 January 1991 to vehicles registered in the territory of the former German Democratic Republic before that date.

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[1] OJ L 370, 31.12.1985, p. 8.

This Regulation shall not apply until 1 January 1993 to such vehicles where they are engaged only in national transport operations in the territory of the Federal Republic of Germany. However, this Regulation shall apply as from its entry into force to vehicles engaged in the carriage of dangerous goods.'

Article 4

The following subparagraph is added at the end of Article 8(1) of Council Directive 80/1263/EEC of 4 December 1980 on the introduction of a Community driving licence:[1]

'The provisions of this paragraph apply also to the driving licences issued by the former German Democratic Republic.'

Article 5

This list of railway undertakings which appears in:

Article 19(1) of Council Regulation (EEC) No 1191/69 of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway,[2]

Article 3(1) of Council Regulation (EEC) No 1192/69 of 26 June 1969 on common rules for the normalization of the accounts of railway undertakings,[3]

Annex II point A. 1 'Rail — Main networks' to Council Regulation (EEC) No 1108/70 of 4 June 1970 introducing an accounting system for expenditure on infrastructure in respect of transport by rail, road and inland waterway,[4]

Article 2 of Council Regulation (EEC) No 2830/77 of 12 December 1977 on the measures necessary to achieve comparability between the accounting systems and annual accounts of railway undertakings,[5]

Article 2 of Council Regulation (EEC) No 2183/78 of 19 September 1978 laying down uniform costing principles for railway undertakings,[6]

Article 1(1) of Council Decision 75/327/EEC of 20 May 1975 on the improvement of the situation of railway undertakings and the harmonization of rules governing financial relations between such undertakings and States,[7]

Article 1(1) of Council Decision 82/529/EEC of 19 July 1982 on the fixing of rates for the international carriage of goods by rail,[8]

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1 OJ L 375, 31.12.1980, p. 1.
2 OJ L 156, 28.6.1969, p. 1.
3 OJ L 156, 28.6.1969, p. 8.
4 OJ L 130, 15.6.1970, p. 4.
5 OJ L 334, 24.12.1977, p. 13.
6 OJ L 258, 21.9.1978, p. 1.
7 OJ L 152, 12.6.1975, p. 3.
8 OJ L 234, 9.8.1982, p. 5.

Article 1(1) of Council Decision 84/418/EEC of 25 July 1983 on the commercial independence of the railways in the management of their international passenger and luggage traffic,[1]

is hereby replaced by the following list:

Société nationale des chemins de fer belges (SNCB)/Nationale Maatschappij der Belgische Spoorwegen (NMBS),

Danske Statsbaner (DSB),

Deutsche Bundesbahn (DB),

Deutsche Reichsbahn (DR),

Οργανισμς Σιδηροδρμων Ελλδος (ΟΣΕ),

Red Nacional de los Ferrocarriles Españoles (RENFE),

Société nationale des chemins de fer français (SNCF),

Iarnród Éireann,

Ente Ferrovie dello Stato (FS),

Société nationale des chemins de fer luxembourgeois (CFL),

Naamloze Vennootschap Nederlandse Spoorwegen (NS),

Caminhos-de-Ferro Portugueses, EP (CP),

British Rail (BR),

Northern Ireland Railways (NIR).'

Article 6

Council Regulation (EEC) No 1101/89 of 27 April 1989 on structural improvements in inland waterway transport[2] is hereby amended as follows:

1. The following paragraph is added to Article 6(4):

   'For German vessels registered in the territory of the former German Democratic Republic at the date of German unification the contribution shall be obligatory as from 1 January 1991'.

2. The following paragraph 8 is added to Article 6:

   '8. If within six months of German unification the German Government proposes that a scrapping action be organized for vessels in its fleet that were, prior to unification,

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[1] OJ L 237, 26.8.1983, p. 32.
[2] OJ L 116, 28.4.1989, p. 25.

registered in the former German Democratic Republic, it shall communicate this request to the Commission. The Commission shall lay down the rules for the scrapping action in accordance with paragraph 7 and on the basis of the same principles as those set out in Commission Regulation (EEC) No 1102/89.*

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* OJ L 116, 28.4.1989, p. 30.'

3. The following paragraph is added to Article 8(3)(a):

'The conditions set out in paragraphs 1 and 2 shall also not apply to vessels which were under construction in the former German Democratic Republic before 1 September 1990, if the date of their delivery and commissioning is no later than 31 January 1991'.

4. The following paragraph is added to Article 8(3)(b):

'The conditions set out in paragraphs 1 and 2 shall apply to vessels which became part of the German fleet upon German unification but which were not registered in the former German Democratic Republic on 1 September 1990'.

5. The following paragraph 5 is added to Article 10:

'5. The Member States shall adopt the measures necessary to ensure compliance with the provisions of the fourth subparagraph of Article 6(4), and the second paragraphs of Article 8(3) and (b) before 1 January 1991 and notify the Commission thereof'.

Article 7

1. Regulations (EEC) No 2183/78 and (EEC) No 2830/77 shall apply in the territory of the former German Democratic Republic solely from 1 January 1992.

2. Regulation (EEC) No 1192/69 shall apply in the territory of the former German Democratic Republic solely from 1 January 1993.

Article 8

Decisions 75/327/EEC, 82/529/EEC and 83/418/EEC shall apply in the territory of the former German Democratic Republic solely as from 1 January 1993.

Article 9

1. Adjusting measures to fill obvious loopholes and to make technical adjustments to the measures provided for in this Directive may be adopted in accordance with the procedure laid down in Article 10.

2. Adjusting measures must be designed to ensure the coherent application of Community rules in the sector covered by this Directive in the territory of the former German Democratic Republic, with due regard for the specific circumstances in that territory and the special difficulties involved in the application of those rules.

They must be consistent with the principles of those rules, and be closely related to one of the derogations provided for by this Directive.

3. The measures referred to in paragraph 1 may be taken until 31 December 1992. Their applicability shall be limited to the same period.

Article 10

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time-limit which the Chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 11

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

COUNCIL DIRECTIVE 91/440/EEC OF 29 JULY 1991[1]

on the development of the Community's railways

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission,[2]

Having regard to the opinion of the European Parliament,[3]

Having regard to the opinion of the Economic and Social Committee,[4]

Whereas greater integration of the Community transport sector is an essential element of the internal market, and whereas the railways are a vital part of the Community transport sector;

Whereas the efficiency of the railway system should be improved, in order to integrate it into a competitive market, while taking account of the special features of the railways;

Whereas, in order to render railway transport efficient and competitive as compared with other modes of transport, Member States must guarantee that railway undertakings are afforded a status of independent operators behaving in a commercial manner and adapting to market needs;

Whereas the future development and efficient operation of the railway system may be made easier if a distinction is made between the provision of transport services and the operation of infrastructure; whereas given this situation, it is necessary for these two activities to be separately managed and have separate accounts;

Whereas, in order to boost competition in railway service management in terms of improved comfort and the services provided to users, it is appropriate for Member States to retain general responsibility for the development of the appropriate railway infrastructure;

Whereas, in the absence of common rules on allocation of infrastructure costs, Member States shall, after consulting the infrastructure management, lay down rules providing for the payment by railway undertakings and their groupings for the use of railway infrastructure; whereas such payments must comply with the principle of non-discrimination between railway undertakings;

Whereas Member States should ensure in particular that existing publicy owned or controlled railway transport undertakings are given a sound financial structure, while taking care that any financial rearrangement as may be necessary shall be made in accordance with the relevant rules laid down in the Treaty;

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1 OJ L 237, 24.8.1991, p. 25.
2 OJ C 34, 14.2.1990, p. 8 and OJ C 87, 4.4.1991, p. 7.
3 OJ C 19, 28.1.1991, p. 254.
4 OJ C 225, 10.9.1990, p. 27.

Whereas, in order to facilitate transport between Member States, railway undertakings should be free to form groupings with railway undertakings established in other Member States;

Whereas, such international groupings should be granted rights of access and transit in the Member States of establishment of their constituent undertakings, as well as transit rights in other Member States as required for the international service concerned;

Whereas, with a view to encouraging combined transport, it is appropriate that access to the railway infrastructure of the other Member States should be granted to railway undertakings engaged in the international combined transport of goods;

Whereas it is necessary to establish an advisory committee to monitor and assist the Commission with the implementation of this Directive;

Whereas, as a result, Council Directive 75/327/EEC of 20 May 1975 on the improvement of the situation of railway undertakings and the harmonization of rules governing financial relations between such undertakings and States[1] should be repealed,

HAS ADOPTED THIS DIRECTIVE:

SECTION 1

Objective and scope

Article 1

The aim of this Directive is to facilitate the adoption of the Community railways to the needs of the single market and to increase their efficiency;

by ensuring the management independence of railway undertakings;

by separating the management of railway operation and infrastructure from the provision of railway transport services, separation of accounts being compulsory and organizational or institutional separation being optional;

by improving the financial structure of undertakings;

by ensuring access to the networks of Member States for international groupings of railway undertakings and for railway undertakings engaged in the international combined transport of goods.

Article 2

1. This Directive shall apply to the management of railway infrastructure and to rail transport activities of the railway undertakings established or to be established in a Member State.

[1] OJ L 152, 12.6.1975, p. 3.

2. Member States may exclude from the scope of this Directive railway undertakings whose activity is limited to the provision of solely urban, suburban or regional services.

Article 3

For the purpose of this Directive:

'railway undertaking' shall mean any private or public undertaking whose main business is to provide rail transport services for goods and/or passengers with a requirement that the undertaking should ensure traction;

'infrastructure manager' shall mean any public body or undertaking responsible in particular for establishing and maintaining railway infrastructure, as well as for operating the control and safety systems;

'railway infrastructure' shall mean all the items listed in Annex I.A to Commission Regulation (EEC) No 2598/70 of 18 December 1970 specifying the items to be included under the various headings in the forms of accounts shown in Annex I to Regulation (EEC) No 1108/70,[1] with the exception of the final indent which, for the purposes of this Directive only, shall read as follows: 'Buildings used by the infrastructure department';

'international grouping' shall mean any association of at least two railway undertakings established in different Member States for the purpose of providing international transport services between Member States;

'urban and suburban services' shall mean transport services operated to meet the transport needs of an urban centre or conurbation, as well as the transport needs between such centre or conurbation and surrounding areas;

'regional services' shall mean transport services operated to meet the transport needs of a region.

SECTION II

Management independence of railway undertakings

Article 4

Member States shall take the measures necessary to ensure that as regards management, administration and internal control over administrative, economic and accounting matters railway undertakings have independent status in accordance with which they will hold, in particular, assets, budgets and accounts which are separate from those of the State.

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[1] OJ L 278, 23.12.1970, p. 1; Regulation amended by Regulation (EEC) No 2116/78 (OJ L 246, 8.9.1978, p. 7).

Article 5

1. Member States shall take the measures necessary to enable railway undertakings to adjust their activities to the market and to manage those activities under the responsibility of their management bodies, in the interests of providing efficient and appropriate services at the lowest possible cost for the quality of service required.

Railway undertakings shall be managed according to the principles which apply to commercial companies; this shall also apply to their public services obligations imposed by the State and to public services contracts which they conclude with the competent authorities of the Member State.

2. Railway undertakings shall determine their business plans, including their investment and financing programmes. Such plans shall be designed to achieve the undertakings' financial equilibrium and the other technical, commercial and financial management objectives; they shall also lay down the method of implementation.

3. In the context of the general policy guidelines determined by the State and taking into account national plans and contracts (which may be multiannual) including investment and financing plans, railway undertakings shall, in particular, be free to:

(i) establish with one or more other railway undertakings an international grouping;

(ii) establish their internal organization, without prejudice to the provisions of Section III;

(iii) control the supply and marketing of services and fix the pricing thereof, without prejudice to Council Regulation (EEC) No 1191/69 of 26 June 1969 on action by Member States concerning the obligation inherent in the concept of a public service in transport by rail, road and inland waterway;[1]

(iv) take decisions on staff, assets and own procurement;

(v) expand their market share, develop new technologies and new services and adopt any innovative management techniques;

(vi) establish new activities in fields associated with railway business.

SECTION III

Separation between infrastructure management and transport operations

Article 6

1. Member States shall take the measures necessary to ensure that the accounts for business relating to the provision of transport services and those for business relating to the management of railway infrastructure are kept separate. Aid paid to one of these two areas of activity may not be transferred to the other.

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[1] OJ L 156, 28.6.1969, p. 1; Regulation last amended by Regulation (EEC) No 1893/91 (OJ L 169, 29.6.1991, p. 1).

The accounts for the two areas of activity shall be kept in a way which reflects this prohibition.

2. Member States may also provide that this separation shall require the organization of distinct divisions within a single undertaking or that the infrastructure shall be managed by a separate entity.

Article 7

1. Member States shall take the necessary measures for the development of their national railway infrastructure taking into account, where necessary, the general needs of the Community.

They shall ensure that safety standards and rules are laid down and that their application is monitored.

2. Member States may assign to railway undertakings or any other manager the responsibility for managing the railway infrastructure and in particular for the investment, maintenance and funding required by the technical, commercial and financial aspects of that management.

3. Member States may also accord the infrastructure manager, having due regard to Articles 77, 92 and 93 of the Treaty, financing consistent with the tasks, size and financial requirements, in particular, in order to cover new investments.

Article 8

The manager of the infrastructure shall charge a fee for the use of the railway infrastructure for which he is responsible, payable by railway undertakings and international groupings using that infrastructure. After consulting the manager, Member States shall lay down the rules for determining this fee.

The user fee, which shall be calculated in such a way as to avoid any discrimination between railway undertakings, may in particular take into account the mileage, the composition of the train and any specific requirements in terms of such factors as speed, axle load and the degree or period of utilization of the infrastructure.

SECTION IV

Improvement of the financial situation

Article 9

1. In conjunction with the existing publicly owned or controlled railway undertakings, Member States shall set up appropriate mechanisms to help reduce the indebtedness of such undertakings to a level which does not impede sound financial management and to improve their financial situation.

2. To that end, Member States may take the necessary measures requiring a separate debt amortization unit to be set up within the accounting departments of such undertakings.

The balance sheet of the unit may be charged, until they are extinguished, with all the loans raised by the undertaking both to finance investment and to cover excess operating expenditure resulting from the business of rail transport or from railway infrastructure management. Debts arising from subsidiaries' operations may not be taken into account.

3. Aid accorded by Member States to cancel the debts referred to in this Article shall be granted in accordance with Articles 77, 92 and 93 of the EEC Treaty.

SECTION V

Access to railway infrastructure

Article 10

1. International groupings shall be granted access and transit rights in the Member States of establishment of their constituent railway undertakings, as well as transit rights in other Member States, for international services between the Member States where the undertakings constituting the said groupings are established.

2. Railway undertakings within the scope of Article 2 shall be granted access on equitable conditions to the infrastructure in the other Member States for the purpose of operating international combined transport goods services.

3. Railway undertakings engaged in international combined transport of goods and international groupings shall conclude the necessary administrative, technical and financial agreements with the managers of the railway infrastructure used with a view to regulating traffic control and safety issues concerning the international transport services referred to in paragraphs 1 and 2. The conditions governing such agreements shall be non-discriminatory.

SECTION VI

Final provisions

Article 11

1. Member States may bring any question concerning the implementation of this Directive to the attention of the Commission. After consulting the committee provided for in paragraph 2 on these questions, the Commission shall take the appropriate decisions.

2. The Commission shall be assisted by an advisory committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time-limit which the chairman may lay down according to the urgency of the matter, if necessary be taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 12

The provisions of this Directive shall be without prejudice to Council Directive 90/531/EEC of 17 September 1990 on the procurement procedure of entities operating in the water, energy, transport and telecommunications sectors.[1]

Article 13

Decision 75/327/EEC is hereby repealed as from 1 January 1993.

Reference to the repealed Decision shall be understood to refer to this Directive.

Article 14

Before 1 January 1995, the Commission shall submit to the Council a report on the implementation of this Directive accompanied, if necessary, by suitable proposals on continuing Community action to develop railways, in particular in the field of the international transport of goods.

Article 15

Member States shall, after consultation with the Commission, adopt the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1993. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 16

This Directive is addressed to the Member States.

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[1] OJ L 297, 29.10.1990, p. 1.

COUNCIL REGULATION (EEC) NO 1893/91 OF 20 JUNE 1991[1]

amending Regulation (EEC) No 1191/69 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, in particular Article 75 thereof,

Having regard to the proposal from the Commission,[2]

Having regard to the opinion of the European Parliament,[3]

Having regard to the opinion of the Economic and Social Committee,[4]

Whereas, while maintaining the principle of the termination of public service obligations, the specific public interest of transport services may warrant the application of the concept of public service in this area;

Whereas in compliance with the principle of the commercial independence of transport undertakings, the arrangements for providing transport services should be established in a contract concluded between the competent authorities of Member States and the undertaking concerned;

Whereas, for the purposes of supply of certain services or in the interests of certain social categories of passenger, the Member States should retain an option to maintain or impose certain public service obligations;

Whereas it is therefore necessary to amend Regulation (EEC) No 1191/69,[5] as last amended by Regulation (EEC) No 3572/90,[6] to adapt its scope and to lay down the general rules applicable to public service contracts,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1191/69 is hereby amended as follows:

1. Article 1 shall be replaced by the following:

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[1] OJ L 169, 29.6.1991, p. 1.
[2] OJ C 34, 12.2.1990, p. 8.
[3] OJ C 19, 28.1.1991, p. 254.
[4] OJ C 225, 10.9.1990, p. 27.
[5] OJ L 156, 28.6.1969, p. 1.
[6] OJ L 353, 17.12.1990, p. 12.

'*Article 1*

1. This Regulation shall apply to transport undertakings which operate services in transport by rail, road and inland waterway.

Member States may exclude from the scope of this Regulation any undertakings whose activities are confined exclusively to the operation of urban, suburban or regional services.

2. For the purposes of this Regulation:

"urban and suburban services" means transport services meeting the needs of an urban centre or conurbation, and transport needs between it and surrounding areas,

"regional services" means transport services operated to meet the transport needs of a region.

3. The competent authorities of the Member States shall terminate all obligations inherent in the concept of a public service as defined in this Regulation imposed on transport by rail, road and inland waterway.

4. In order to ensure adequate transport services which in particular take into account social and environmental factors and town and country planning, or with a view to offering particular fares to certain categories of passenger, the competent authorities of the Member States may conclude public service contracts with a transport undertaking. The conditions and details of operation of such contracts are laid down in Section V.

5. However, the competent authorities of the Member States may maintain or impose the public service obligations referred to in Article 2 for urban, suburban and regional passenger transport services. The conditions and details of operation, including methods of compensation, are laid down in Sections II, III and IV.

Where a transport undertaking not only operates services subject to public service obligations but also engages in other activities, the public services must be operated as separate disivions meeting at least the following conditions:

(a) the operating accounts corresponding to each of these activities shall be separate and the proportion of the assets pertaining to each shall be used in accordance with the accounting rules in force;

(b) expenditure shall be balanced by operating revenue and payments from public authorities, without any possibility of transfer from, or to another sector of the undertaking's activity.

6. Furthermore, the competent authorities of a Member State may decide not to apply paragraphs 3 and 4 in the field of passenger transport to the transport rates and conditions imposed in the interests of one or more particular categories of person.'

2. Article 10(2) shall be deleted.

3. Article 11(3) shall be deleted.

4. Section V shall be replaced by the following:

'SECTION V

Public service contracts

Article 14

1. "A public service contract" shall mean a contract concluded between the competent authorities of a Member State and a transport undertaking in order to provide the public with adequate transport services.

A public service contract may cover notably:

(i) transport services satisfying fixed standards of continuity, regularity, capacity and quality;

(ii) additional transport services;

(iii) transport services at specified rates and subject to specified conditions, in particular for certain categories of passenger or on certain routes;

(iv) adjustments of services to actual requirements.

2. A public service contract shall cover, *inter alia*, the following points:

(a) the nature of the service to be provided, notably the standards of continuity, regularity, capacity and quality;

(b) the price of the services covered by the contract, which shall either be added to tariff revenue or shall include the revenue, and details of financial relations between the two parties;

(c) the rules concerning amendment and modification of the contract, in particular to take account of unforeseeable changes;

(d) the period of validity of the contract;

(e) the penalties in the event of failure to comply with the contract.

3. Those assets involved in the provision of transport services which are the subject of a public service contract may belong to the undertaking or be placed at its disposal.

4. Any undertaking which intends to discontinue or make substantial modifications to a transport service which it provides to the public on a continuous and regular basis and which is not covered by the contract system or the public service obligation shall notify the competent authorities of the Member State thereof at least three months in advance.

The competent authorities may decide to waive such notification.

This provision shall not affect other national procedures applicable as regards entitlement to terminate or modify transport services.

5. After receiving the information referred to in paragraph 4 the competent authorities may insist on the maintenance of the service concerned for up to one year from the date of notification and they shall inform the undertaking at least one month before the expiry of the notification.

They may also take the initiative of negotiating the establishment or modification of such a transport service.

6. Expenditure arising for transport undertakings from the obligations referred to in paragraph 5 shall be compensated in accordance with the common procedures laid down in Sections II, III and IV.'

5. Article 19 shall be deleted.

Article 2

This Regulation shall enter into force on 1 July 1992.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

COUNCIL REGULATION (EEC) NO 3578/92[1] OF 7 DECEMBER 1992

amending Regulation (EEC) No 1107/70 on the granting of aid for transport by rail, road and inland waterway

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission,[2]

Having regard to the opinion of the European Parliament,[3]

Having regard to the opinion of the Economic and Social Committee,[4]

Whereas Regulation (EEC) No 1107/70[5] provides that Member States may promote the development of combined transport by granting aid relating to investment in infrastructure and in the fixed and movable facilities necessary for trans-shipment or to the running costs of an intra-Community combined transport service in transit across the territory of non-member countries;

Whereas the evolution of combined transport shows that for the Community as a whole the starting-up phase of this technology has not been completed yet, and whereas the aid arrangements should therefore be maintained for a further period;

Whereas the possibility of granting such aid for the running costs of combined transport services crossing the territory of a non-member country is warranted only in the specific cases of Austria, Switzerland and the States of the former Yugoslavia;

Whereas the need to achieve economic and social cohesion rapidly in the Community entails putting the emphasis on investment in rail and road facilities specific to combined transport, in particular where they present an alternative to infrastructure work that cannot be completed in the short term;

Whereas, in addition, providing aid for road facilities specific to combined transport would be an effective way of encouraging small and medium-sized undertakings to avail themselves of combined transport services;

Whereas aid for equipment specific to combined transport would foster the development of new bimodal and trans-shipment technology;

Whereas during a limited start-up phase the possibility of granting aid should therefore be extended to investment in transport facilities specifically designed for combined transport, provided that they are used exclusively for that purpose;

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1 OJ L 364, 12.12.1992, p. 11.
2 OJ C 282, 30.10.1992, p. 10.
3 Opinion delivered on 20 November 1992.
4 Opinion delivered on 24 November 1992.
5 OJ L 130, 15.6.1970, p. 1. Last amended by Regulation (EEC) No 1100/89 (OJ L 116, 28.4.1989, p. 24).

Whereas the present aid arrangements should be maintained in force until 31 December 1995 and the Council should decide, under the conditions laid down in the Treaty, on the arrangements to be applied subsequently or, if necessary, on the conditions for terminating such aid;

Whereas Regulation (EEC) No 1107/70 should therefore be amended,

HAS ADOPTED THIS REGULATION:

Article 1

Item 1(e) of Article 3 of Regulation (EEC) No 1107/70 is hereby replaced by the following:

'(e) until 31 December 1995, where the aid is granted as a temporary measure and is designed to facilitate the development of combined transport, such aid must relate to:

(i) investment in infrastructure,

or

(ii) investment in fixed and movable facilities necessary for trans-shipment,

or

(iii) investment in transport equipment specifically designed for combined transport and used exclusively in combined transport,

or

(iv) costs of running combined transport services in transit across Austria, Switzerland or the States of the former Yugoslavia.

The Commission shall submit a progress report on the above measures to the Council every two years giving details, *inter alia,* of the destination of the aid, its amount and its impact on combined transport. Member States shall supply the Commission with the information needed to compile the report.

By 31 December 1995 the Council, acting on a proposal from the Commission, shall decide under the conditions laid down in the Treaty, on the arrangements to be applied subsequently or, if necessary, on the conditions for terminating them.'

Article 2

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities.*

It shall apply from 1 January 1993.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

2. *Sea*

Guidelines for aid to shipping companies of 3.8.1989 (SEC(89) 921 final)

FINANCIAL AND FISCAL MEASURES CONCERNING SHIPPING OPERATIONS WITH SHIPS REGISTERED IN THE COMMUNITY

I. Introduction

1. Financial and fiscal measures are used in several Member States to assist the national fleet. In most cases they are intended specifically to compensate for the cost-handicap national fleets meet on the world market. If taken in an uncoordinated way, they present the risk that competition between Member States is being distorted. This may worsen the conditions under which competitiveness has to be restored. By applying the rules of the Treaty to State aid, the Commission intends to diminish such negative effects. Therefore, the Commission has defined the conditions under which State aid to shipping companies may be considered compatible with the common market. The Commission's aim is to increase the efficiency of action already undertaken on a national level by providing a general framework. It also wants to take account of the introduction of a European Community register. Indeed, fiscal and financial measures should be used in a way which would make them appropriate to reach the objectives of the common shipping policy, i.e. the maintenance of ships under Community flags and the employment, to the highest possible proportion, of Community seafarers on board such ships. These objectives are also embodied in the establishment of such a register. This means that in terms of competition rules their justification largely depends on the effective pursuit by Member States of these objectives. The measures discussed in paragraphs 4 to 28 are not mentioned with a view to harmonization of national legislation, but rather as illustrations of the types of measures available to Member States to increase the competitiveness of the Community fleets.

2. Such measures have been increasingly taken also by other OECD countries whose shipping industry is faced with similar problems in respect of effectively competing in the world market with vessels under their flag.

In the United States, for example, operating subsidies are available, which, according to OECD, are 'intended to equalize the disparity in operating costs between US flagships and their foreign competitors, principally with respect to wages and enable operators to provide services which would otherwise be uneconomic due to significantly higher US operating costs'. Japan gives special government loans for the construction of modern vessels which, according to the OECD, 'are deemed to make substantial contributions to the stable trans-

portation of Japan's international trade.' Incentives are given, too, for ship-scrapping to aid the modernization of the fleet. Australia gives grants to shipowners who acquire modern technologically advanced ships which meet specific manning requirements. The Norwegian International Register offers taxation and operating advantages although there is a restriction on the types of vessels which can be entered on it. In Sweden, a package of measures was approved in June 1988 which includes a refund to shipowners of social security contributions and the abolition of income tax for seafarers in deepsea trades. In Finland, the government announced in July 1987 a subsidy to shipowners equivalent to 75% of their social security contribution. Finally, landlocked Switzerland guarantees loans of up to 70% of the construction or purchase price for cargo vessels to ensure continuity of supply in time of war or blockade.

3. The multilateral negotiations on trade in services in the Uruguay Round offer the possibility, in the future, to seek wider agreement so as to avoid an escalation of State aid between the Community and third countries.

II. The use of financial and fiscal measures

(a) Company taxation

4. An important element in encouraging ship modernization would be fiscal advantage. It is recognized that any proposal for appropriate fiscal treatment raises complex problems because of the different tax systems in Member States and the consideration of tax neutrality. Nevertheless, Member States do make exceptions for sectors with special needs, including already in some cases maritime transport. The sector is unusually mobile, with not only its assets in ships but also its administrative headquarters readily moved, while trade to and from the Community or entirely outside Community waters continues as previously. This is already a vulnerable source of revenue for national treasuries and the advantages of retaining a Community fleet with Community seafarers must be weighed against the costs and other considerations of appropriate tax treatment for the maritime sector. The Commission has identified two areas where adjustment of the tax treatment of shipping companies could be feasible and effective. The measures which are referred to are already in force in one or more Member States and their wider application would contribute towards the harmonization of conditions of competition in the sector.

5. Corporate taxation affects the operating conditions of shipping companies through its effect on the net profitability of shipping operations. This, in turn, has an effect on the level of resources which the company applies to maintaining and strengthening its competitive position through, for example, fleet modernization.

6. There are a number of principal elements of the tax system which are relevant in this context. In addition to the definition of the tax basis and, in particular, the degree to which income earned abroad is exempted, there is the level of tax rates, the degree to which tax-loss carry-over is applied, the application of additional taxes not based on profits, and the depreciation system.

7. The tax regimes in the Member States differ greatly and the effect of these differences on shipping in situations of high, medium and low profit have been analysed by the Commission (Annex 2). It is evident that the Greek system whereby shipping companies are subject only to a tonnage tax is advantageous at times of medium and high profit.

8. There are other possibilities, for example, the identification in the tax assessment of those revenues arising from maritime activities and the application to those revenues of a rate of tax not above the level applied to revenues by the principal competitors on non-Community ship registers.

9. Tax-loss carry-over treatment could be allowed for losses related to shipping activities adjusted to their special kind of sea trade, including unlimited loss carry forward for depreciation charges. An unlimited loss carry forward period and a loss carry back period of at least three years, as already proposed by the Commission for all sectors,[1] would be appropriate. All additional taxes levied, but not based, on profits could be abolished[2] and an exemption of tax could be allowed on profits derived from the sale of merchant ships which are reinvested in the purchase, modernization or restructuring of another merchant ship. An appropriate tax depreciation regime for seagoing vessels could be devised, with the limitation of useful life for tax purposes to 10 to 12 years at a maximum and application of the declining balance or double-declining balance methods of depreciation, using favourable rates. The chartering-in and -out of a ship used in international trade could be treated on the same basis as if the ship had been purchased and is operated by the same person or company. Finally, modern forms of container traffic, such as door-to-door services and investments in container and handling equipment, could be included in the definition of 'international shipping activities' for tax purposes.

(b) Reducing employment-related operating costs

10. Through the measures referred to above, shipowners would be able to lower their operating costs. However, as mentioned earlier, employment-related costs have a direct impact on the competitiveness of a vessel. These costs can be reduced in the following ways. As with company taxation, the measures which are referred to are already in force in one or more Member States and their wider application would contribute towards the harmonization of conditions of competition in the sector.

Tax treatment for seafarers

11. The level of seafarers' taxation can have an important impact on operating conditions, since the higher crew costs of the Community fleet *vis à vis* certain of its competitors derive not only from the net wage received by the seafarer but also the amount paid in personal taxation (Annex 2). In some cases the net pay of Community seafarers may be the same as that of non-Community seafarers, but there is a significant difference in gross pay.

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[1] OJ C 253, 20.9.1984, amended in OJ C 170, 9.7.1985.
[2] COM(83) 218 final, 28.4.1983.

12. The tax treatment of Community seafarers varies between Member States, reflecting not only differences between personal tax systems but also in some cases the different tax treatment within a Member State of seafarers compared with other employees. In four Member States, seafarers already benefit from special tax arrangements. Some of these arrangements apply more generally to national taxpayers working overseas under certain conditions.

13. In its 1985 communication to the Council on shipping policy,[1] the Commission said that it regarded 'a favourable direct tax regime for Community seafarers as a reasonable way of helping to maintain the employment of EC nationals on Community ships'. In pursuit of this objective the Commission believes that the tax treatment of seafarers serving on such ships could be based, as far as national legislation allows, on either tax exemption for Community seafarers for the time spent on board a vessel outside the territorial waters of the Community, or tax deductions for every day spent on such a vessel. These qualifications are important because it is recognized that the principle of tax neutrality makes it essential that significant differences in occupational conditions are established compared with nationally-based taxpayers in order to justify this specific treatment.

14. There are three other areas where assistance with employment-related costs can have a significant impact on the competitiveness of ships in the Community-registered fleet.

Contributions to social security

15. The first area concerns the social security contributions paid by seafarers and their employers. These can be an important element in crew costs but, as in the case of personal taxation, there are considerable differences between Member States.

16. In most Member States, employers pay a higher share of the total contribution than employees. The highest employers' contribution is in France, where it is equivalent to 60% of the gross wage. In Italy, the Netherlands, Portugal and Spain, the payment is in the range 35 to 40% and for Ireland and the UK 20 and 15%. In Denmark, social security is mainly covered in wage taxes and the employer pays the equivalent of about 5% of gross wages for this purpose.

17. The impact of these variations has been analysed in a recent report for the Commission 'A social survey in maritime transport'.[2] In certain circumstances, for example, a Belgian seafarer may pay 28% of annual gross income in income tax and the French seafarer 3%. By contrast, the French seafarer can pay 20% of annual gross income as a social security contribution compared with the Belgian 7%.

18. In view of the impact that such measures can have, the Commission supports schemes whereby the social security contributions in respect of Community seafarers would be minimized while retaining full social security protection for the seafarer.

Repatriation costs

19. The cost of the repatriation of seafarers at the end of their tour of duty is another area where assistance could be given with a view to ensuring the continued employment of Com-

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[1] COM(85) 90 final.
[2] Maritime Economic Research Centre, Rotterdam – 1987.

munity seafarers, particularly in deepsea trades. Denmark has introduced a system of payments for up to 50% of the cost, while the UK has also introduced a similar scheme.

The Commission believes that such assistance should be available in respect of all Community seafarers employed on vessels in the Community-registered fleet.

Training costs

20. The majority of Member States already provide considerable assistance with training costs. However, shipping companies bear significant costs too, and in some cases the cost is borne by the seafarer. The Commission regards the level and quality of training as a crucial factor for the success of Community shipping, but recognizes too, that shipping companies frequently have to reduce their training budgets at times of low profitability. Retraining of seafarers is equally important, in view of the necessary adaption to technological change.

21. A transfer of those costs to national education and professional training systems — especially where the training arises from the requirements of ratified international instruments — is not only an appropriate way of improving the financial position of Community shipping. It will also contribute to the safer and more efficient operation of Community vessels.

III. State aid policy with regard to financial and fiscal measures

22. The measures referred to in Section II(a) and (b) above would constitute State aid and their compatibility with Community law must be ensured by the Commission. It needs to be borne in mind that in shipping, Member States are in competition both with third countries and with other Member States. The analysis of Member State responses to the structural problems of Community shipping has shown that a number of them have had recourse to financial aid to alleviate the difficulties faced by shipping companies. At present, a wide variety of State aid is given to shipping companies in an uncoordinated way. Therefore, there is a risk that competition between Member States is being distorted.

23. The Commission has a duty to ensure that such measures are compatible with the relevant provisions of the EC Treaty, particularly those concerning State aid.

24. Within the limits the Commission has defined for these rules, there is scope for a variety of measures which can be applied by Member States according to the particular situation of their fleets. The Commission has approved schemes for the reduction of seafarers' personal taxation and for direct financial aid to shipping companies to assist the training costs of seafarers and to provide aid for the travelling costs of crew replacements, measures intended to encourage the employment of Community seafarers.

25. The Commission considers that it is now appropriate to develop a policy framework on State aid. The starting point has been an analysis of all aid in the sector which has allowed the Commission to evaluate:

(a) The types of aid which may be considered compatible with the common market as they aim at the development of the poorer regions of the Community.

(b) Aid which does not affect trade to an extent contrary to the common interest in view of the specific objectives of the common shipping policy. Such objectives include the modernization of the fleet, the maintenance of a strategic capacity, and the employment of Community seafarers. In the assessment of this common interest the Commission will give particular consideration to the following criteria:

(i) The scope of the measures must not be out of proportion to the aim of restoring competitiveness to the fleet. The global impact of State aid should not exceed a ceiling to be defined on the basis of the cost-handicap which ships operated under the flag of low-salary Member States meet on world markets. According to the studies undertaken by the Commission (Tables 1 and 2), the operating cost could be reduced by 22% for a container vessel (1 500 TEU (twenty-foot equivalent unit)) registered in a high-salary Member State and by 3.5% in the case of a low-salary Member State by 'flagging out'. For a bulk carrier of 30 000 TDW the figures would be 44 and 15% respectively. There is therefore a cost gap between vessels registered in Community registers and those in third world registers which amounts to 3.5% for a containership and 15% for a bulk carrier in the case of European low-salary countries.

(ii) Aid must be transparent and temporary.

(iii) Aid must not specifically contribute to increasing capacity in sectors with manifest overcapacity.

(c) Aid which is incompatible with the common market as it distorts competition and affects trade between Member States to an extent contrary to the common interest.

26. In the light of these general principles and of the analysis of existing aid schemes, the Commission has specified the conditions under which State aid to shipping companies might be considered to be compatible with the common market (see Annex 1).

27. The Commission has concluded that the introduction of national aid in an uncoordinated manner threatens to endanger, instead of improving, the situation of the Community fleet because of the increasing divergence of operating conditions between Member States' fleets, even if such aid complies with the general criteria quoted above. Therefore, the Commission has provided for an instrument, the European ship register, as a way of establishing a framework adequate to reach the objectives of the common shipping policy as described in Section 1. In principle, only such aid as complies with the abovementioned criteria and is at the same time granted with the purpose of reaching these objectives will be considered as aid not affecting trading conditions between Member States to an extent contrary to the common market.

28. Under these conditions the cost gap between ships operated under national flags and ships registered abroad, could be reduced so as to restore the competitiveness of the fleet and enable the necessary modernization and restructuring to take place.

ANNEX 1

GUIDELINES FOR THE EXAMINATION OF STATE AID TO COMMUNITY SHIPPING COMPANIES

I. Introduction

The prolonged recession in world trade with the accompanying excess shipping capacity, the erosion of the comparative advantage of Community shipping and the growth of protectionist practices adopted by third countries have been the major causes of the decline of the Community fleet relative to world tonnage over the last decade. During the same period, open registry and other third country fleets, including those of developing countries, have continued to expand. The expansion of non-Community merchant fleets has, *inter alia,* been based on the comparative advantage deriving from specific fiscal treatment and low manning, including social costs. This loss of the EC share of the world fleet shows that the competitive disadvantages of operating under Community flags have proved too great for many Community shipowners.

To counter this situation Member States have responded with a variety of national measures, mainly aid, either in an isolated way or covered by the establishment of second registers.

In principle under the EC Treaty State aid as defined in Article 92(1) is incompatible with the common market. However, it is for the Commission to establish, with regard to the derogations provided for in Article 92(2) and (3), whether or not new State aid is compatible with the common market. As for existing aid schemes, the Commission has a duty to maintain them under constant review and to propose any appropriate measures required by the progressive development or by the functioning of the common market.

Accordingly, several national State aid schemes have already been examined and approved by the Commission.

Taking into account the special difficulties the maritime transport sector has gone through, the Commission considers that it is now appropriate to define in the form of guidelines how it approaches its responsibilities for the supervision of aid granted by Member States to shipping companies. These guidelines express the general principles of the Commission on the compatibility of State aid with the common market and are also based on the conclusions of the communication on measures to improve the operating conditions of Community shipping, including those in support of a European register.

II. General principles

The present guidelines are applicable to State aid within the meaning of Article 92 to the benefit of one or several shipping companies, or of shipping companies in general in so far as they operate ships registered in the Community.

Member States have supplied information to the Commission in relation to the existing aid in the maritime sector. This information shows that aid granted to shipping companies frequently takes the following forms:

direct subsidies for vessel operation;

total or partial cover of financial losses;

loan guarantees for the purchase of capital goods;

tax reliefs on earnings arising from maritime activities and on seafarer's income;

reduced rates of contribution for the social protection of seamen;

capital contributions on terms which would be unacceptable for a private investor operating in normal market economy conditions.

These are generally operating aid which in principle is to be considered incompatible with the common market under Article 92(1) of the EC Treaty. However, without excluding Article 92(2) and 92(3)(a) and (b), State aid in the maritime sector must carefully be assessed in the light of Article 92(3)(c).

This subparagraph provides that aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered to be compatible with the common market. It is therefore very important to define the concept of 'common interest' in the particular sector of maritime transport according to the objectives of the common maritime transport policy.

The Commission considers that a strong Community fleet is essential to the Community both for economic and strategic reasons. As the leading world trading entity the Community should not be excessively dependent on third country fleets for its imports and exports, so losing control and influence on the price and quality of transport to and from its territory. Therefore, the common interest would be met by measures aiming first at the maintenance of ships under Community flags, that is to say countering the 'flagging-out' trend, notably by improving their technological equipment, and second by the employment, to the highest possible proportion, of Community seafarers on board such ships.

However, measures taken by individual Member States in order to improve the situation of their fleet are not adequate to strengthen the position of the Community fleet as a whole, in the way described. Indeed, the compatibility of State aid with the common market must be assessed in a Community context, taking account of the effects it produces on competition between Member State fleets. Therefore, in spite of the shipping industry's undeniable need for aid, the Commission has to give proposed aid very strict consideration.

However, the undesirable effects of national aid can be minimized notably if it is granted in a Community framework devised with the objective of furthering the common interest described above.

The Commission proposal for the establishment of a European ship register will make a major contribution to the objective of furthering the common interest by reinforcing the image and the commercial attractiveness of a high quality service Community fleet. In consequence, the Commission will regard in a more favourable manner State aid granted to shipowners in pursuance of the abovementioned common interest, provided in all cases that they comply with a number of principles of compatibility with the common market derived from the general doctrine of the Commission concerning sectoral aid, and taking into account the particular situation of the merchant fleet in the world. The Commission also considers that where difficulties are caused by unfair practices, Community interests should not, in principle, be defended by means of aid.

It is preferable to concentrate on Community action to prevent Community shipping lines being placed in an unfavourable situation compared with the non-Community lines whose practices are undermining Community interests. For such cases the Community has an instrument (Regulation EEC No 4057/86)[1] which provides for the possibility of imposing a redressive duty on freight to remedy this situation.

The challenge facing Member States also involves unequal operating conditions, which can largely be attributed to the considerable differences in manning costs at world level. According to the studies undertaken by the Commission the operational costs of a Community registered vessel could be reduced between 3.5 and 22% in the case of a containership, and between 15 and 44% for a bulk carrier, by 'flagging out'. A large percentage of these amounts would be represented by savings on crew costs. There is therefore a cost gap between vessels registered in Community registers and those in third world registers which amounts to 3.5% for a containership and 15% for a bulk carrier in the case of European low salary countries.

State aid not exceeding a ceiling to be defined on the basis of the lowest relevant cost difference, could be considered compatible with the common market under Article 92(3)(c) provided it complies with the following constraints:

(a) Aid must not be out of proportion to its aim.

On several occasions the Commission has stated that the intensity of the aid granted must be in proportion to the intensity of the problems which it intends to solve.[2] This intensity is represented by the abovementioned ceiling. This ceiling will be regularly reviewed.

The Commission will take care when confronted with a specific aid scheme, that the total amount of aid granted by itself or in addition to other possible existing schemes does not exceed this ceiling. The compatibility with the common market of investment or operating aid carried out within the framework of a restructuring plan will be examined by the Commission with particular reference to the need for new or modernized ships to meet the requirements set out in the Directive establishing a European register.

(b) Aid must be transparent, temporary and preferably on a declining scale.

The Commission will periodically examine the necessity for each scheme to be maintained in view of the situation of the Community fleet.

(c) Aid must not specifically contribute to increasing or maintaining capacity in sectors with manifest overcapacity.

The scale of aid schemes to maritime transport in most Member States means that the Commission must be ever more vigilant in exercising its powers in this area. It will ensure that such schemes comply with the general doctrine concerning State aid and do not flout the principles established when the first measures were taken under Community policy for the maritime sector.

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1 OJ L 378, 31.12.1986, p. 14.

2 See, for example 'Communication to the Council concerning the Commission's policy on sectorial aid' (COM(78) 221).

III. Principles of compatibility of the various categories of aid

The Commission will apply the principles set out below with respect to each specific category of aid to shipping companies, and in particular will take into account the abovementioned lowest relevant cost gaps to determine, on a case-by-case basis, the ceiling of aid which may be compatible with the common market, in so far as the companies operate ships registered in the Community, in the light of the derogations provided for in Article 92(3) of the EC Treaty.

1. Aid to reduce manning costs

Aid in the field of social security and seafarers' income taxation, tending to reduce the costs borne by shipping companies without reducing the level of social security for the seafarers and resulting from the operation of ships registered in the Community may be considered compatible with the common market.

2. Aid for crew relief

Aid granted in order to reduce the costs of employing Community crews on ships registered in the Community and operating in distant waters, in the form of payment or reimbursement of the cost of repatriation of seafarers may be considered compatible with the common market provided it does not exceed 50% of the total costs incurred for such reason.

3. Aid for training

Aid granted in order to assist the training costs of seafarers on board ships registered in the Community may be considered compatible with the common market provided that the trainees are employed on a supernumerary basis, not having any input into the working of the ships in which they are trained.

4. Aid in the form of special taxation of certain shipping activities

Aid consisting in differential tax treatment on earnings arising from maritime activities of Community shipowners in so far as they operate ships registered in the Community may be considered compatible with the common market.

5. Operating aid

Any other kind of operating aid, the aim or effect of which is basically to improve the liquidity situation of the recipients is in principle incompatible with the common market. The Commission will examine such aid on a case-by-case basis, if it is directly linked to a restructuring plan considered compatible with the common market. Rescue aid given to shipping companies experiencing difficulties should comply with the guidelines set out by the Commission in its Eighth Report on Competition Policy.[1]

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[1] Eighth Report on Competition Policy, point 228.

6. Aid to investment

To the extent that aid granted to shipping companies is available as aid for building or conversion of ships, particular regard should be had to the provisions of the sixth Council Directive of 26 January 1987 on aid to shipbuilding,[1] whereby such aid is to be counted as indirect contract-related production aid to national yards.

7. Aid in the form of public authority holdings in company capital

The Commission laid down precise criteria in its letter of 17 September 1984 to the Member States.[2] The Commission's approach is based on the consideration that aid that is incompatible with the common market is not involved in cases where new capital is contributed to a company in circumstances which would be acceptable to a private investor operating in normal market economy conditions.

IV. Procedural matters

The present guidelines do not alter or affect the existing rules concerning notification and the time-limits set for this purpose.

The Commission draws the attention of Member States to the obligation of notification contained in Article 93(3) of the EC Treaty and the consequences derived from the non-respect of such obligation.[3]

The Commission will require the necessary information from Member States in order to monitor State aid in this sector.

The principles defined in the present guidelines apply also to existing aid regimes. These are examined by the Commission and will be the subject of appropriate measures as foreseen in Article 93(1) of the Treaty.

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1 OJ L 69, 12.3.1987, p. 55.
2 Bull. EC 9-1984.
3 Communication of the Commission OJ C 318, 24.11.1983.

ANNEX 2

IMPACT OF TAXATION

(a) Personal income taxation of seafarers

The table below is given in the MERC study (see footnote 2 on page 438) which provides detailed information on the assumptions in respect of the rank, seniority and age of four selected categories of seafarer on a 3 500 dwt (dead-weight tonnage) vessel. In addition assumptions are made about other items such as overtime and leave as well as individual tax status, for example, whether married and receiving a mortgage allowance. The gross income on which the tax is based is derived from data collected for the survey.

Percentage income tax paid by various national seafarers on annual gross income

(%)

Nationality	Captain	Chief Officer	Second Engineer	Sailor A/B[1]
Belgium	36.1	32.4	32.0	28.2
Denmark	:	40.1	37.8	35.6
France	11.5	9.1	:	14.4
Germany	18.1	16.2	13.7	12.1
Greece	5.5	5.5	5.5	
Ireland	26.2	21.6	:	23.9
Italy	26.5	24.8	23.7	20.4
Netherlands	13.4	9.1	8.5	12.1
Portugal	28.0	25.8	24.8	18.6
Spain	23.0	20.3	21.5	16.6
United Kingdom	19.4	16.9	16.9	18.8

[1] Single person

The study by KPMG Peat Marwick Treuhand GmbH (see footnote on page 453) provides as shown in the following graph an indication of the impact of personal taxation on the wage costs of a crew of 21 on a 30 000 dwt bulker. This study adopts a gross income of ECU 528 000 as the basis for calculation of the tax in the Member States, Cyprus, Norway and the Republic of China (Taiwan). The detailed assumptions are given on the following page.

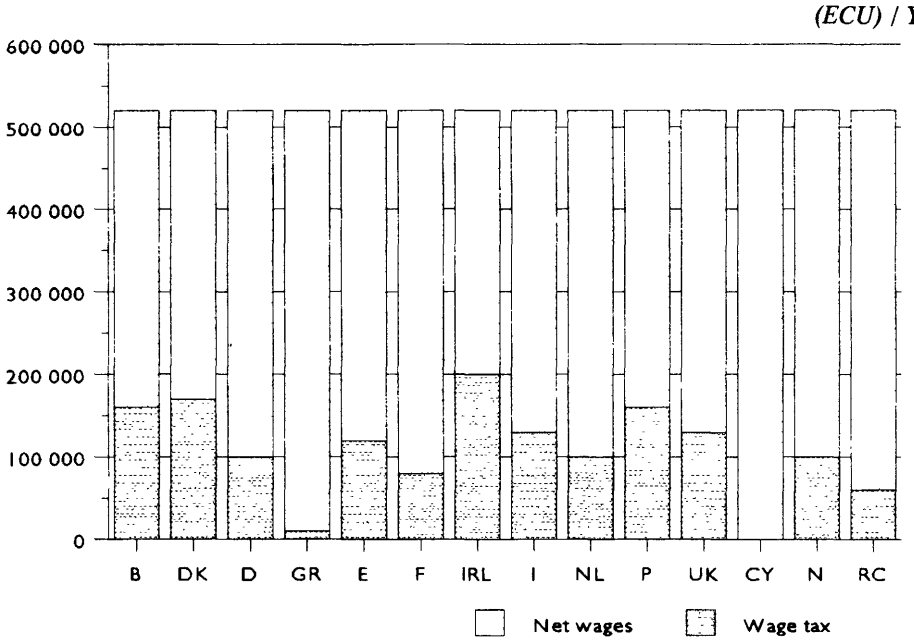
Type of crew	Classification	No	Other information
Licensed	Class 1	3	Married, two children under 18 years
Licensed	Class 2	4	Married, no children
Unlicensed	Class 3	7	Unmarried
Unlicensed	Class 4	7	Unmarried

- In all 22% of the wages are paid for overtime (that is, exceeding 8 hours/day or at the weekend).
- All are natives and also residents of each country considered.
- All will stay abroad on board the ships for at least 183 days per year.
- The wages are paid in local currency (except Greece).
- The sailors have no other income.

Vessel — Bulker

- Built 1983, purchase date 1 January 1988.
- Dimensions overall 175 × 28 × 17 metres.
- Deadweight: 30 000 dwt.
- Light displacement tonnes: 14 500 dwt.
- Engine: 8 300 kw/12.00 hp.
- Cranes 5 × 25 tonnes.

Wage taxes to gross income



(b) Corporate income taxation

Using the same assumptions for the vessel and crew as for personal taxation KPMG Peat Marwick Treuhand GmbH use the following additional assumptions on a bulker company to consider the impact of corporate taxation in different profit situations:

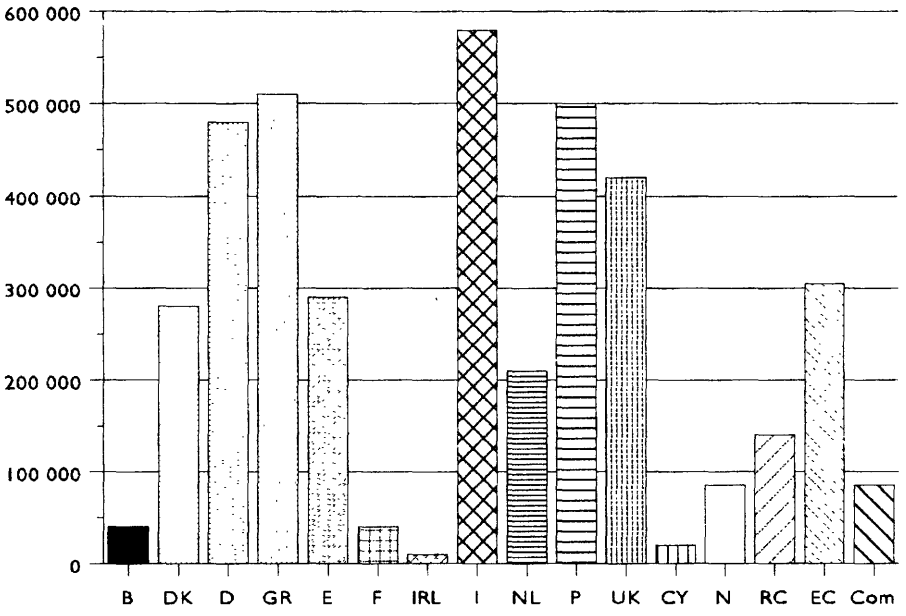
Bulker company

- Company formed on 31 December 1987.
- All revenues are earned from the ship.
- All costs are connected with the ship.
- All revenues are connected with international trade.
- All revenues are in USD.
- Share capital is the equivalent of USD 1 million in local currency.
- Short-term debt amounts to USD 1 million, bearing interest at 10% per annum.
- Long-term ship mortgage loans amount to approximately USD 3 million in local currency: the amortization period is eight years and the interest rate is 8%.

The results are set out in the following graphs and summary.

The differences in corporate income taxation

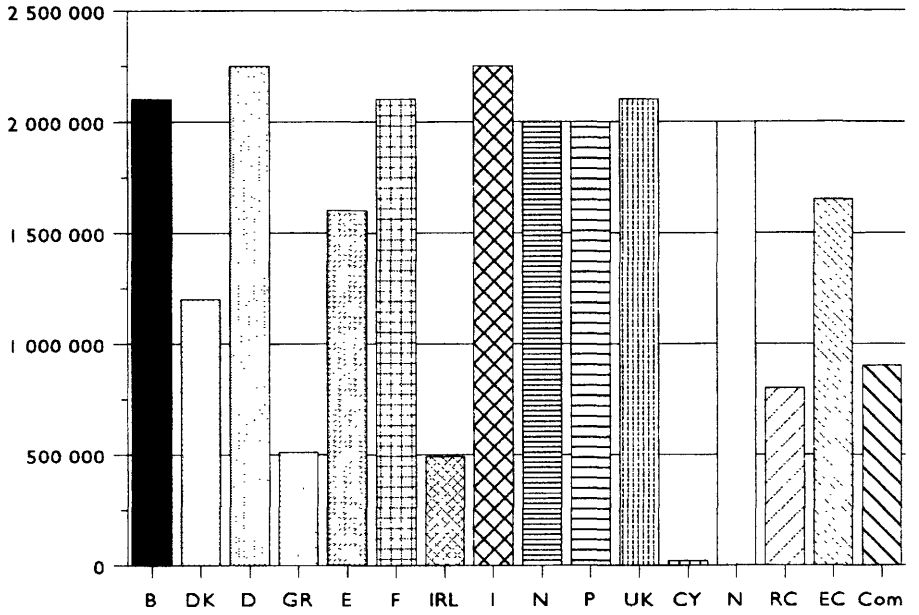
Bulker low-profit situation — Company tax (in ECU)



Assumptions

- Daily charter rate of USD 9 500.
- Time charter for 295 days of the year.
- Losses as long as the depreciation is high and interest payable has not been cut back to nearly zero.
- Revenues of USD 2 800 000.

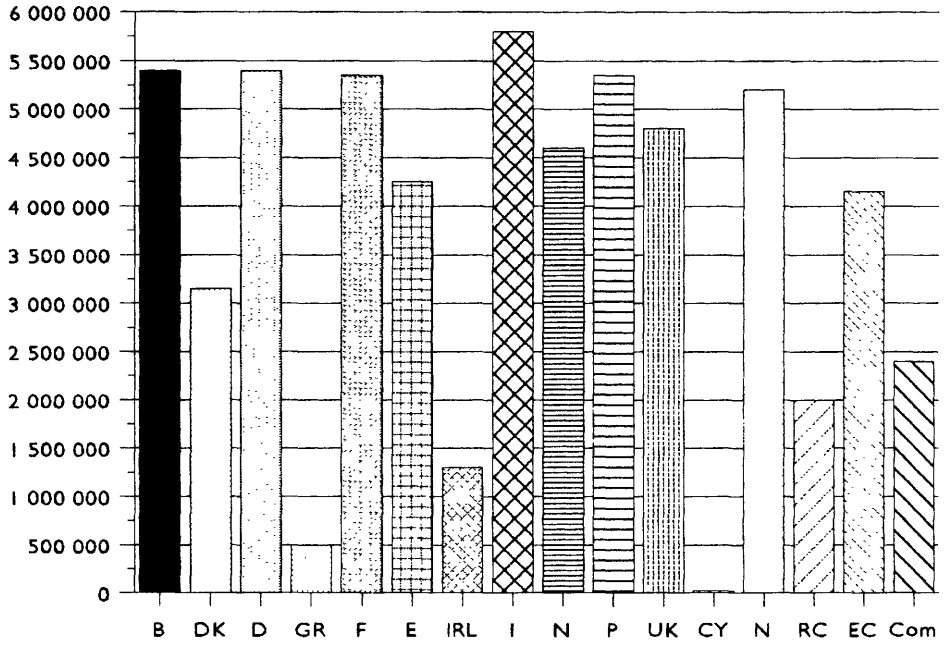
Bulker medium-profit situation — Company tax (in ECU)



Assumptions

- Daily charter rate of USD 11 000.
- Time charter for 300 days.
- Medium profit should mean an acceptable, but not good, return of investment.

Bulker high-profit situation — Company tax (in ECU)



Assumptions

- Daily charter rate of USD 11 000.
- Time charter for 350 days.

Differences in corporate income taxation for bulker in various profit situations

(Tax in ECU)

Country	Low-profit situation	Ranking	Medium-profit situation	Ranking	High-profit situation	Ranking
B	30 000	2	2 050 000	8	5 450 000	9
DK	290 000	5	1 250 000	3	3 200 000	3
D	480 000	8	2 250 000	10	5 450 000	9
GR	500 000	10	500 000	2	500 000	1
E	298 000	6	1 600 000	4	4 250 000	4
F	30 000	2	2 000 000	5	5 350 000	8
IRL	1 000	1	498 000	1	1 250 000	2
I	590 000	11	2 200 000	10	5 900 000	11
NL	201 000	4	2 000 000	5	4 600 000	5
P	500 000	9	2 000 000	5	5 250 000	7
UK	420 000	7	2 050 000	8	4 800 000	6
CY	3 000		3 000		3 000	
N	95 000		2 000 000		5 250 000	
RC	150 000		900 000		2 000 000	
Average EC[1]	301 000		1 700 000		4 200 000	
Average Competitors	950 000		950 000		2 450 000	

[1] Excluding Luxembourg.

Table 1 Cost differences in ecu for a container vessel[1]

	Germany	Portugal	Cyprus
1.A.1. Total cost			
Social insurance	232 000	183 000	0
Wage taxes	248 000	99 000	0
Net salary	628 000	288 000	490 000
Depreciation	1 670 000	1 670 000	1 670 000
Interest	780 000	780 000	780 000
Fuel and oil	1 084 000	1 084 000	1 084 000
Insurance	125 000	125 000	125 000
Repair and maintenance	300 000	300 000	300 000
Overheads	120 000	120 000	120 000
Other	120 000	120 000	120 000
Total	5 307 000	4 769 000	4 689 000
1.A.2. Total cost comparative table			
Percentage difference	100.00%	89.86%	88.35%
		100.00%	98.32%
1.B.1. Operational cost			
Social insurance	232 000	183 000	0
Wage taxes	248 000	99 000	0
Net salary	628 000	288 000	490 000
Fuel and oil	1 084 000	1 084 000	1 084 000
Insurance	125 000	125 000	125 000
Repair and maintenance	300 000	300 000	300 000
Overheads	120 000	120 000	120 000
Other	120 000	120 000	120 000
Total	2 857 000	2 319 000	2 239 000

[1] *Source*: Study of the possible financial impact on shipping companies and sailors of measures to aid the Community fleet (Part III); KPMG, Peat Marwick Treuhand GmbH, Hamburg (not published).

Table 1 *(cont.)*

	Germany	*Portugal*	*Cyprus*
1.B.2. Operational cost comparative table			
Percentage difference	100.00	81.16	78.37
		100.00	96.55
1.C.1. Crew cost			
Social insurance	232 000	183 000	0
Wage taxes	248 000	99 000	0
Net salary	628 000	288 000	490 000
Total	1 108 000	570 000	490 000
1.C.2. Crew cost comparative table			
Percentage difference	100.00%	51.44%	44.22%
		100.00%	85.96%

Conclusion: The cost gap in the operational costs of a container between a high-salary Community country and a third country amounts to 22%. This gap is about 3.5% in the case of a low-salary Community country.

Table 2 Cost differences in ecu for a bulk carrier[1]

	Italy	Portugal	Cyprus
2.A.1. Total cost			
Social insurance	495 000	183 000	0
Wage taxes	222 000	99 000	0
Net salary	599 000	288 000	350 000
Depreciation	330 000	330 000	330 000
Interest	150 000	150 000	150 000
Fuel and oil	458 000	458 000	458 000
Insurance	25 000	25 000	25 000
Repair and maintenance	200 000	200 000	200 000
Overheads	80 000	80 000	80 000
Other	100 000	100 000	100 000
Total	2 659 000	1 913 000	1 693 000
2.A.2. Total cost comparative table			
Percentage difference	100.00%	71.94%	63.67%
			88.49%
		100.00%	
2.B.1. Operational cost			
Social insurance	495 000	183 000	0
Wage taxes	222 000	99 000	0
Net salary	599 000	288 000	350 000
Fuel and oil	458 000	458 000	458 000
Insurance	25 000	25 000	25 000
Repair and maintenance	200 000	200 000	200 000
Overheads	80 000	80 000	80 000
Other	100 000	100 000	100 000
Total	2 179 000	1 433 000	1 213 000

[1] *Source:* Study of the possible financial impact on shipping companies and sailors of measures to aid the Community fleet (Part III); KPMG, Peat Marwick Treuhand GmbH, Hamburg (not published).

Table 2 *(cont.)*

	Italy	*Portugal*	*Cyprus*
2.B.2. Operational cost comparative table			
Percentage difference	100.00%	65.76% 100.00%	55.66% 84.64%
2.C.1. Crew cost			
Social insurance	495 000	183 000	0
Wage taxes	222 000	99 000	0
Net salary	599 000	288 000	350 000
Total	1 316 000	570 000	350 000
2.C.2. Crew cost comparative table			
Percentage difference	100.00	43.31 100.00	26.59 61.40

Conclusion: The cost gap in the operational costs of a bulker between a high-salary Community country and a third country amounts to 44%. This gap is about 15% in the case of a low-salary Community country.

VIII — Agriculture

Commission communication regarding State aid for investments in the processing and marketing of agricultural products[1]

(Text with EEA relevance)

1. It is established Commission policy to apply by analogy the sectoral restrictions governing the part-financing by the Community of investments at processing and marketing levels when assessing State aid for such investments. The sectoral restrictions imposed in the context of Community aid reflect the structural situation of specific product sectors in the Community. In restricting the grant of any investment aid in these sectors — even State aid — the Commission seeks to ensure consistency between common agricultural policy and State aid policy such that investment is not encouraged where, for structural reasons, this is inappropriate.

2. The sectoral restrictions on Community aid at present applied in the context of State aid are set in point 2 of the Annex to Commission Decision 90/342/EEC of 7 June 1990 (OJ L 163, 29.6.1990). This Decision has recently been repealed and replaced by Commission Decision 94/173/EC of 22 March 1994 (OJ L 79, 23.3.1994). For reasons of legal certainty, the Commission hereby informs Member States and interested parties that, notwithstanding the adoption of Decision 94/173/EC, it will continue to apply in the context of State aid the sectoral restrictions set out in point 2 of the Annex to Decision 90/342/EEC. Any subsequent change in this policy will be the subject of a publication in the *Official Journal of the European Communities* and it is anticipated, will take place as soon as preparatory work involving the Member States has been completed.

[1] OJ C 189, 12.7.1994, p. 5.

Framework for national aid for the advertising of agricultural products and certain products not listed in Annex II to the EEC Treaty, excluding fishery products[1]

1. Preliminary remarks

1.1. Advertising is defined for the purposes of this document as any operation which, using the media (such as press, radio, TV or posters), is designed to induce consumers to buy the relevant product. It thus excludes promotion operations in a broader sense, such as the dissemination to the general public of scientific knowledge, the organization of fairs or exhibitions, participation in these and similar public relations operations, including surveys and market research.

1.2. In practically all the Member States, the authorities help to finance advertising of agricultural products, either through direct financial contributions from their budgets of using government resources, including 'parafiscal' charges or compulsory contributions.

Public interference of this kind in the free play of the market may, by favouring certain firms or certain products, distort competition and affect trade between the Member States; the Commission therefore takes the view that such aid should have a framework which is as specific as possible.

1.3. Since the Treaty fails to make any consistent distinction between the agricultural products listed in Annex II and those which are not listed in that Annex, and since the Community should have a coherent policy on State aid, the Commission feels that is must apply the present framework system also to aid for the advertising of non-Annex II products which consist preponderantly of products listed in Annex II (in particular, milk products, cereals, sugar and ethyl alcohol) in a processed form (e.g. fruit yoghurt, milk-powder preparations with cocoa, butter/vegetable fat mixtures, pastry products, bakers' wares, confectionery, and spirituous beverages), hereinafter referred to as 'allied products'.

The present framework will not apply, however, to aids to advertising of fishery products, which will have a special framework of their own.

1.4. If such aid is not to be considered simply as operating aid for the benefit of producers or traders who derive some direct or indirect advantage from subsidized advertising campaigns and if it is to be deemed compatible with the common market under Article 92(3)(c) of the EEC Treaty, the aid granted towards a given publicity campaign:

- must not interfere with trade to an extent contrary to the common interest; (see point 2 below) and
- must facilitate the development of certain economic activities or certain regions by promoting the disposal of their specific products (see point 3 below).

The compatibility of each case of advertising aid should be scrutinized in this order; consequently, where there is exclusion from compatibility by one of the negative criteria below,

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[1] OJ C 302, 12.11.1987, p. 6.

the question as to whether the aid can be justified under one of the positive criteria referred to in point 3 no longer arises and need not be raised.

2. Negative criteria

By definition, aid within the meaning of Article 92(1) is that which distorts or threatens to distort competition, but under Article 92(3)(c) such aid is considered incompatible only if it adversely affects trading conditions to an extent contrary to the common interest, as defined below, account being taken of the objectives referred to in Article 39 of the Treaty.

The granting of the aid concerned is against the common interest in the following cases:

2.1. Aid for campaigns contrary to Article 30 of the EEC Treaty

National aid for an advertising campaign which, by virtue of its content, infringes Article 30 cannot be considered as compatible with the common market within the meaning of Article 92(3).

2.1.1. To ensure that no such infringement is committed, the Commission requests the Member States to provide, whenever a draft measure concerning aid for advertising is notified, assurances that the Commissions's guidelines on this subject are being followed (see point III.1 of the Annex)[1].

2.1.2. Although the criteria spelled out by the Court in the context of Article 30 apply only to advertising campaigns launched on the territory of the Member State granting the aid, within the framework of Article 92, the same criteria must be applied to subsidized publicity campaigns conducted on the territory of another Member State, in order to ensure equal conditions of competition within the Community, in line with economic logic.

2.1.3. On the other hand, the problems are more complex where advertising of this kind is aimed at consumers in non-Community countries. Here, the Commission must reserve its position until a later date, given the scope and content of the advertising campaigns which non-EEC countries conduct within the Community on behalf of their agricultural products.

2.2. Aid for advertising related to particular firms

The common interest can in no circumstances be advanced as a justification for aid for advertising relating directly to the products of one of more specific firms; this would be nothing more than operating aid, as such incompatible with the common market.

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[1] OJ C 272, 28.10.1986, p. 3.

3. Positive criteria

The absence of any factor contrary to the public interest is not sufficient for the Commission to consider advertising aid as compatible with the common market. Such aid must also facilitate the development of certain economic activities or certain regions by promoting the disposal of their produce.

In accordance with its general guidelines,[1] the Commission believes that this positive condition is met where the subsidized advertising concerns one of the following:

3.1. Surplus agricultural products

Advertising can help to develop certain activities or regions by promoting the disposal of the products concerned. Generally speaking, this condition is fulfilled if the product concerned belongs to one of the sectors showing a structural surplus at Community level.

Advertising aid for the disposal of surplus agricultural products helps to achieve two goals of Article 39 (raising of agricultural incomes and stabilization of markets); it is also in the Community's financial interest to husband the resources of the EAGGF.

3.2. New products or replacement products not yet in surplus

To cut down the output of surplus products, action is needed to encourage the production of agricultural items which are new at Community level or which replace surplus products, provided that there are still outlets within the Community for them (e.g. oilseeds and protein plants). But aid schemes for products imitating or replacing agricultural products are excluded.[2]

Advertising can help to promote products of alternative production methods, which is desirable in that the diversification of production can help to make the most of the Community's agricultural potential while avoiding the creation or increase of surpluses.

3.3. Development of certain regions

3.3.1. Aid for advertising may be justified for the disposal of products (even non-surplus products) from certain regions of the Community if such products are not yet sufficiently known elsewhere.

3.3.2. Similarly, aid for the advertising of products from particularly less-favoured regions could be justified under Article 92(3)(c) and, where appropriate, under Article 92(3)(a).

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[1] A future for Community agriculture: Commission guidelines following the consultations in connection with the Green Paper (communication from the Commission to the Council and Parliament, 18 December 1985, p. 13).

[2] For milk products, see definition at point III.1.(c) of the framework system for investment aid concerning the manufacture and marketing of certain dairy products and substitute products.

'Particularly less-favoured regions' are defined as regions qualifying under the Community policy on agricultural structures for preferential treatment.

3.4. Development of small and medium-sized undertakings

There may be a special justification for subsidized advertising in those sectors where the manufacture of agricultural or allied products (as referred to in this document) is largely in the hands of small and medium-sized undertakings or holdings which do not have sufficient resources with which to advertise their products and to whom the cost of advertising would outweigh any advantage to be gained thereby.

There is a special justification for such advertising in cases where small and medium-sized undertakings are exposed to strong competition from rival products, particularly substitute products marketed in the Community by powerful firms or by non-Community countries spending considerable sums on the advertising and promotion of their products.

3.5. Advertising of high-quality products and health foods

3.5.1. The Commission takes the view that, in the medium and long term, consumers appreciate products of a consistently high quality. Advertising is a particularly effective way of developing the agricultural production of such goods.

Several Member States have introduced quality control specifically for agricultural products; if the products concerned meet the quality standards laid down (which are higher or more specific than those set by Community or national legislation), they are entitled to be marketed with a special label, the advertising of which is subsidized.

Provided that the genuine purpose of such a strategy is to achieve a high standard of quality and not to serve as a pretext for 'chauvinistic' advertising (see point 2.1 above), the Commission should take a favourable view of these developments. It could not, however, approve aid for the advertising of a label designed mainly to stress the national or regional origin of a product.

The same applies, only more so, to appropriately guaranteed products containing no substances for which national or Community legislation lays down a maximum permissible dose.

3.5.2. As the Commission has already pointed out, it is in the Community's interests to take account of the consumer's increasing preference for 'natural' foods and the dietary value thereof, by prohibiting harmful substances and by encouraging healthy varieties, and to provide consumers with the necessary information and guarantees which will restore a climate of confidence and have positive effects on consumption.[1]

The Commission will therefore adopt a favourable attitude towards aid for the advertising of agricultural products grown by 'biological' means, provided that the consumer can be given adequate guarantees.

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[1] See footnote to the introductory paragraph of point 3.

4. Maximum level of national aid for the advertising of agricultural and allied products

National aid for the advertising of agricultural products, even where they do not adversely affect trading conditions to an extent contrary to the public interest (point 2 above) and even where they may facilitate the development of certain economic activities or certain regions (point 3 above), may interfere with normal trade flows between Member States for a given agricultural product.

It is therefore in the public interest that additional guarantees should be sought to prevent trading conditions being influenced in favour of Member States expending substantial sums on advertising their own national products, to the detriment of those Member States which, for budgetary or other reasons, have to limit their expenditure on such advertising.

4.1. The Community's attitude towards such national aid should take account of the sums which the sector itself spends on the measures concerned. It should therefore be stipulated that, as a general rule, direct aid (from a general-purpose government budget) must not exceed the amount which the sector itself has committed to a given advertising campaign. Thus, the trade will have to contribute at least 50% of the cost, either through voluntary contributions or through the collection of parafiscal levies or compulsory contributions.[1]

4.2. It is not possible to discuss in this context those cases where sectoral funds have been employed in conjunction with Community programmes for the promotion of certain products (milk products, olive oil, etc.).

4.3. To take account of the respective weight of the various positive criteria outlined in points 3.1 to 3.5 above, however, the Commission could provide for the raising of the above-mentioned maximum rate of direct aid (50% of costs), particularly in the case of products from small and medium-sized undertakings or farms or products from certain regions (points 3.3.1 and 3.4).

5. Procedure for notifying aid for the advertising of agricultural and allied products

5.1. In order that the Commission can ensure that the criteria contained in this framework are satisfied, specific procedures should be laid down for notifying the aid in question under Article 93(3) of the EEC Treaty.

5.1.1. Any aid scheme which a Member State plans to introduce and any changes to an existing scheme must be notified to the Commission, using the sheet of which a specimen is shown in the Annex hereto.

The Commission will not authorize any new aid plans notified to it under Article 93(3) of the Treaty, that do not comply with the conditions laid down in this framework.

5.1.2. The Commission requests the Member States to confirm to it by 1 December 1987 that they will comply, as from 1 January 1988, with the provisions of this framework by

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[1] The use made of the yield from such compulsory contributions would of course have to be considered (in the same way as direct government aid) as aid within the meaning of Articles 92 to 94 of the Treaty.

adjusting their existing aid schemes accordingly, where necessary. In the event of their failure to do so, the Commission reserves the right to initiate the procedure provided for in Article 93(2) of the EEC Treaty.

5.1.3. Each Member State must forward to the Commission, for the first time on 1 March 1988 and at the end of each subsequent period of two years, a comprehensive report on the schemes which have received aid during the preceding period, specifying:

(i) which aid is intended for advertising in non-Community countries, in other Member States and on national territory;

(ii) the funds used for this purpose (total cost);

(iii) the financial contribution made by the trade interests concerned, with a breakdown into voluntary and compulsory contributions;

(iv) the general direction of the advertising (main sectors concerned);

(v) the guarantees given by the Member State as regards the material content of the proposed schemes: measures taken to prevent:

  (a) negative advertising, contrary to Article 30 of the EEC Treaty (point 2.1);

  (b) advertising relating to particular firms (point 2.2).

5.2. The Commission may verify at any time whether a specific advertising campaign qualifying for aid complies with the criteria contained in this framework. For this purpose, it will call upon the Member States, where appropriate, to provide any relevant information on a given campaign or given campaigns.

ANNEX

NOTIFICATION, UNDER ARTICLE 93(3) OF THE EEC TREATY,[1] OF A DRAFT AID MEASURE FOR AN ADVERTISING CAMPAIGN ON BEHALF OF AGRICULTURAL PRODUCTS OR ALLIED PRODUCTS NOT LISTED IN ANNEX II TO THE TREATY

(Use a separate sheet for each campaign)[2]

I. Advertising campaign planned

1. Member State:

2. Product concerned:

3. Description and duration of the campaign planned,[2] where appropriate reference to a similar campaign undertaken in the past:

4. Geographical area (which region(s), national territory or territory of which other Member States, which non-Community country or countries?):

5. Beneficiary of the aid:

6. Body implementing the campaign (if different from the beneficiary):

II. Financial contribution of the sectoral interests concerned (in national currency)

1. Total cost of the planned campaign:

2. Financing by direct aid from the Member State:

3. Costs borne by the parties concerned:

(i) in the form of 'parafiscal' charges or compulsory contributions:

(ii) in the form of voluntary contributions:

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[1] In accordance with point 5.1.1. of the framework, the Commission considers to be valid notifications under Article 93(3) of the EEC Treaty only those which are submitted using this sheet.

[2] This may of course be an *ad hoc* specific or 'sectoral' campaign, or a campaign made up of several measures and/or concerning several product groups but forming an interrelated whole according to the aim and strategy pursued. Where the Member State proceeds to the notifications of such a set of measures, the description must show how they complement one another. In all cases, without giving necessarily the precise content of each advertising statement to be made to the consumers, notification on this sheet must show in an appropriate manner, determined on the basis of the specific case, that the rules contained in the framework will be complied with.

4. Where the financial contribution by the parties concerned (point 3) is less than 50% of the campaign costs, this must be justified in accordance with point 4 of the framework:

III. Assurances given by the Member State as to the material content of the planned campaign: measures taken to prevent:

1. Negative advertising, contrary to Article 30 of the EEC Treaty (point 2.1 of the framework):

2. Advertising geared to specific brands or firms (point 2.2 of the framework):

IV. Detailed positive justification for the aid in accordance with one or more of the criteria listed in point 3 of the framework.

IX — Fisheries

Guidelines for the examination of State aid to fisheries and aquaculture[1]

(Text with EEA relevance)

Introduction

The maintenance of a system of free and undistorted competition is one of the basic principles of the European Community. Community policy towards State aid is directed towards ensuring free competition, efficient allocation of resources and the unity of the Community market. Consequently, since the founding of the common market, the Commission's attitude has always been one of particular vigilance in this field.

The common fisheries policy aims to establish the conditions necessary for ensuring the viability and future of the fisheries sector. The market organization stabilizes prices and unifies the Community market; the rules of fishing provide for the best possible use of available stocks and their optimum conservation while ensuring relative stability of access for fishermen; and in addition to these measures, durable links have been established at international level with a view to maintaining or developing access to stocks outside Community waters. Moreover, the incorporation of the structural aspect of fisheries within the framework of the Structural Funds seeks to ensure the structural adaptation necessary to attain the objectives of the common fisheries policy by requiring action in the sector to comply with the objective of establishing balance between stocks and their exploitation.

State aid is only justified, therefore, if it is in accordance with the objectives of this policy.

It is within this framework that the Commission intends to administer the derogations to the principle of incompatibility of State aid with the common market (Article 92(1) of the EC Treaty) provided for in Article 92(2) and (3) of the Treaty and in its implementing instruments.

These guidelines apply to the entire fisheries sector and concern the exploitation of living aquatic resources and aquaculture together with the means of production, processing and marketing of the resultant products, but excluding non-commercial recreation and sports.

The Commission can, under the procedure for authorizing State aid schemes, ask the Member States to provide it with a report on the implementation of individual operations under-

[1] OJ C 260, 17.9.1994, p. 3.

taken. The Commission would point out that these reports are a prerequisite of the authorization of aid. They enable checks to be made that the aid has been granted in compliance with the Commission authorization and the Community rules and that it has not been misused.

In order to ensure that the common market functions properly and develops gradually, the Community finds it necessary to propose to the Member States, pursuant to Article 93(1) of the EC Treaty, that they apply to their existing aid schemes for fisheries the criteria laid down in these guidelines.

These guidelines replace those published in 1992 in light of the changes that have taken place in the common fisheries policy, in particular the adoption of Council Regulation (EEC) No 3670/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture,[1] Council Regulation (EEC) No 2080/93 of 20 July 1993 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the financial instrument for fisheries guidance[2] and Council Regulation (EC) No 3699/93 of 21 December 1993 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of the products.[3]

1. General principles

1.1. These guidelines relate to all measures entailing a financial advantage in any form whatsoever funded directly or indirectly from the budgets of public authorities (national, regional, provincial, departmental or local). The following are to be considered as aid: capital transfers, reduced-interest loans, interest subsidies, certain State holdings in the capital of undertakings, aid financed by special levies and aid granted in the form of State securities against bank loans or the reduction of, or exemption from charges or taxes, including accelerated depreciation and the reduction of social contributions.

All these measures are covered by the term 'State aid' as referred to in Article 92(1) of the Treaty.

1.2. These guidelines do not concern subsidies which are partly funded by the Community.

1.3. State aid may be granted only if it is consistent with the objectives of the common policy.

Aid may not be protective in its effect: it must serve to promote the rationalization and efficiency of the production and marketing of fishery products in a way which encourages and accelerates the adaptation of the industry to the new situation it faces.

In more practical terms, aid must provide incentives for development and adaptation which cannot be undertaken under normal market circumstances because of insufficient flexibility in the sector and the limited financial capacity of those employed in it. It must yield lasting

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[1] OJ L 389, 31.12.1992, p. 1.
[2] OJ L 193, 31.7.1993, p. 1.
[3] OJ L 346, 31.12.1993, p. 1.

improvements so that the industry can continue to develop solely on the basis of market earnings. Its duration must therefore be limited to the time needed to achieve the desired improvements and adaptations.

Consequently the following principles apply:

(i) State aid must not impede the application of the rules of the common fisheries policy. In particular, aid to the export of, or to trade in fishery products within the Community is compatible with the common market.

(ii) Those aspects of the common fisheries policy that cannot be considered to be fully regulated, in particular as regards structural policy, may still warrant State aid provided such aid complies with the objectives of the common rules so as not to jeopardize or risk distorting the full effect of these rules; this is why it must, where relevant, be included in the various programming instruments provided for under Community rules.

(iii) State aid which is granted without imposing any obligation on the part of recipients and which is intended to improve the situation of undertakings and increase their business liquidity (subject to 2.10.2), or is calculated on the quantity produced or marketed, product prices, units produced or the means of production, and which has the effect of reducing the recipient's production costs or improving the recipient's income is, as operating aid, incompatible with the common market. The Commission will examine such aid on a case-by-case basis where it is directly linked to a restructuring plan considered to be compatible with the common market.

1.4. The examination of aid schemes will be based on values expressed in gross subsidy equivalent. However, account will be taken of all factors making it possible to assess the real (net) advantage to the recipient.

The cumulative effect for the recipient of all measures involving an element of subsidy granted by the State authorities pursuant to Community, national, regional or local law, particularly those that are designed to promote regional development, will be taken into account when State aid schemes are being assessed.

If the available Community funds are insufficient to cover the part-financing of the measures eligible for such assistance, the overall rate of the State aid may be aggregated, where appropriate, with the rate of Community part-financing provided it does not exceed the overall rate of the aid laid down under the Community rules.

1.5. State aid is to be considered incompatible with the common market where it is financed by means of parafiscal taxes both on products imported from other Member States and on domestic products. However, in view of the particular characteristics of certain activities in the fisheries and aquaculture sector, aid schemes funded by special charges, in particular parafiscal charges, will be considered on a case-by-case basis in the light of the criteria laid down by the Court of Justice.

1.6. In its letter of 21 December 1998,[1] the Commission informed the Member States of the principles of coordination which it would apply to regional aid schemes in force or to be established in the regions of the Community. These principles, as set out in that communi-

[1] OJ C 31, 3.2.1979, p. 9.

cation, do not apply to the products listed in Annex II to the EC Treaty and consequently the components of regional aid schemes involving the fisheries sector will therefore be examined on the basis of the present guidelines.

1.7. The Commission will continue to amplify or modify these guidelines as and when experience is gained in the regular examination of inventories of State aid schemes and in the light of the gradual development of the common fisheries policy.

2. Principles of compatibility of the various categories of aid

2.1. Aid of a general nature

2.1.1. Aid for training and advisory services

Aid for the technical and economic training of persons working in the fisheries sector and aid to the provision of advisory services in new techniques and to technical or economic assistance is deemed to be compatible with the common market provided it is directed exclusively at improving the knowledge of recipients so as to help them increase the efficiency of their operations.

2.1.2. Aid to research

Without prejudice to the provisions laid down in the scheme for a Community framework for State aid for research and development,[1] aid or other schemes implemented by the Member States relating to scientific and technical research may be deemed compatible with the common market provided that:

(a) the use of such aid is supervised by the authorities of the Member States concerned, if it is organized by trade associations or private undertakings; and

(b) the results of the research work are made accessible to nationals of all the Member States in a manner consistent with industrial property rights.

2.1.3. Aid to advertising, product promotion and the search for new markets

2.1.3.1. Without prejudice to Article 12 of Council Regulation (EEC) No 3699/93, advertising aid in the strict sense, namely any measure which uses advertising media to invite consumers to buy a given product, may be regarded as being compatible with the common market provided that it relates to one or more of the following schemes:

(a) an entire sector, or product, or group of products in such a way that they do not promote the products of one or more specific undertakings;

(b) an advertising campaign which is regarded as being compatible with Article 30 of the Treaty pursuant to the Commission communication concerning State involvement in the promotion of agricultural, fisheries and aquaculture products;

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[1] OJ C 83, 11.4.1986, p. 2.

(c) generic advertising for fish in general or publicity:

(i) for species which have rarely or never been used for human consumption, which are not subject to quantitative catch restrictions and catches of which could be increased; or

(ii) of a temporary nature, in particular seasonal advertising for species which are subject to quantitative restrictions and the supply of which temporarily exceeds demand; or

(iii) for new fishery products, over a period which should not normally extend beyond the first two years after such products have been introduced on the market; or

(iv) relating to fish products which are typical of production in particularly less-favoured regions as covered by Article 92(3)(a) of the Treaty.

2.1.3.2. Aid for product promotion and that aimed at seeking new market outlets for fishery products may be deemed to be compatible with the common market provided that the following conditions are met:

(a) it concerns the measures provided for in Article 12 of Regulation (EC) No 3699/93;

(b) the conditions for its payment are comparable with those laid down in Annex III to the above Regulation and are at least as stringent.

2.1.3.3. The rate of such aid may not exceed, in subsidy equivalent, the overall rate of the national and Community subsidies permitted under Annex III to Regulation (EC) No 3699/93.

2.1.4. Aid in the form of advice to small and medium-sized undertakings

Aid to promote better use of the undertakings' equipment, relating in particular to advice on financial and technical management and data processing, is in principle compatible with the common market.

2.2. Aid to sea fishing

2.2.1. Aid for the permanent withdrawal of fishing vessels

Aid for the permanent withdrawal of fishing vessels which is not linked to the purchase or construction of new vessels is compatible with the common market provided that it meets the requirements of Regulation (EC) No 3699/93 for eligibility for Community aid.

In the case of vessels of less than 25 gross registered tonnes (GRT), only the scrapping of the vessel may qualify for public assistance.

2.2.2. Aid for the temporary cessation of fishing

Aid for the temporary cessation of fishing may be deemed compatible if it is intended to offset part of the loss of income associated with a temporary cessation measure introduced as a result of unforeseen and non-recurring circumstances attributable to biological causes, without prejudice to the provisions contained in the following numbered paragraph.

Other aid schemes for the temporary cessation of fishing will be examined by the Commission on a case-by-case basis.

However, aid to restrict fishing activities which is introduced for the purpose of helping to achieve the target reductions in fishing effort under the multiannual guidance programmes for Community fishing fleets is incompatible with the common market.

2.2.3. Aid for investment in the fleet

2.2.3.1. Aid for the construction of new fishing vessels may be deemed to be compatible with the common market subject to the requirements of Articles 7 and 10 and Annex III (paragraph 1.3) of Regulation (EC) No 3699/93 and provided that the scales set out in Annex IV to that Regulation are observed ant that the sum of the State aid does not exceed, in subsidy equivalent, the level of the State aid fixed by Annex IV to that Regulation.

2.2.3.2. Aid for the modernization of commissioned vessels may be deemed compatible with the common market subject to the requirements of Articles 7 and 10 and Annex III (paragraph 1.4) of Regulation (EC) No 3699/93 and provided that the scales set out in Annex IV to that Regulation are observed and that the sum of the State aid does not exceed, in subsidy equivalent, the level of the State aid fixed by Annex IV to that Regulation.

2.2.3.3. Aid for the purchase of used vessels may be deemed compatible with the common market only if all the following requirements are met:

(a) vessels which can be used for fishing for a further 10 years at least, and which, at the time of purchase, are not more than 10 years old, with possible exceptions in certain cases to be examined on an individual basis are concerned;

(b) its aim is to enable sea fishermen to acquire part-ownership of vessels so that their means of livelihood can be kept in commission, or to help young fishermen establish themselves initially, or to enable fishing vessels to be replaced after their total loss, for example in a shipwreck, or in other similar circumstances to be examined on an individual basis;

(c) the rate of aid does not exceed, in subsidy equivalent, 50% of the participation rate provided for in Annex IV to Regulation (EC) No 3699/93, applying the scale relating to construction aid set out in that Annex;

(d) any aid granted less than 10 years previously for the construction or modernization of a vessel or for the earlier purchase of the same vessel is reimbursed in proportion to the amount of time elapsed. However, a Member State may waive this reimbursement if the purchaser in turn fulfils the conditions to qualify for aid and undertakes to assume the rights and obligations of the previous beneficiary of the aid.

2.2.4. Aid for temporary joint ventures may be deemed compatible with the common market if it meets the requirements of the Community rules (Article 9 of, and Annex III to Regulation (EC) No 3699/93) provided that the scales set out in Annex IV to that Regulation are observed and that its level does not exceed, in subsidy equivalent, the level of the State aid fixed in Annex IV to that Regulation.

2.2.5. Aid for the creation of joint enterprises may be deemed compatible with the common market if it meets the requirements of the Community rules (Article 9 and Annex III to Regulation (EC) No 3699/93) provided that the scales set out in Annex IV to that Regulation are observed and that its level does not exceed, in subsidy equivalent, the level of the State aid fixed in Annex IV to that Regulation.

2.2.6. Aid for technical assistance at sea

Aid for technical assistance at sea is compatible with the common market in so far as such assistance is provided only in emergencies which cannot be coped with by means of the equipment and supplies normally found on fishing vessels.

2.2.7. Aid for activities in ports

Aid for the operation of ports and aid granted either directly or indirectly to reduce port charges to which fishermen are liable will be examined case-by-case.

2.2.8. Aid for improving stock conservation and management

Where, pursuant to Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources[1] a Member State adopts measures intended to improve stock conservation and management by limiting catches by means of technical measures going beyond the minimum requirements laid down in that Regulation, State aid designed to encourage or facilitate the implementation of such measures may be considered compatible with the common market subjects to a case-by-case examination. The measures must not go beyond what is strictly necessary in order to attain the conservation objective pursued.

2.2.9. Aid to strengthen the monitoring of fishing activities

Aid to strengthen the monitoring of fishing activities may be deemed compatible with the common market, subject to a case-by-case examination, if it is aimed at improving the effectiveness of the control measures adopted in accordance with Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy.[2]

2.3. Aid to processing and marketing in the fisheries sector

Aid to investment in the processing and marketing of fishery products may be deemed to be compatible with the common market provided that:

(a) the conditions for granting it are comparable with those laid down in Regulation (EC) No 3699/93 and are at least as stringent;

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[1] OJ L 288, 11.10.1986, p. 1.
[2] OJ L 261, 20.10.1993, p. 1.

(b) the level of the aid does not exceed, in subsidy equivalent, the overall level of the national and Community subsidies permitted under those rules (see Annex IV to Regulation (EC) No 3699/93).

If this aid concerns investments which, according to the above Regulation, are not eligible for Community assistance, the Commission shall consider its compatibility with the objectives of the common fisheries policy on a case-by-case basis.

2.4. Aid for port facilities

Aid for fishing port facilities intended to assist landing operations and the provision of supplies to fishing vessels may be regarded as being compatible with the common market provided that:

(a) it meets all the requirements for eligibility for Community aid pursuant to Regulation (EC) No 3699/93);

(b) the rate of aid does not exceed, in subsidy equivalent, the total rate of national and Community subsidies permitted under that Regulation (see Annex IV to Regulation (EC) No 3699/93).

2.5. Aid for the development of coastal waters

Aid for the protection and development of fish stocks in coastal waters may be deemed to be compatible with the common market provided that:

(a) the conditions for granting it are comparable with those laid down in Regulation (EC) No 3699/93 and are at least as stringent;

(b) the rate of aid does not exceed, in subsidy equivalent, the total rate of national and Community subsidies permitted under Annex IV to that Regulation.

2.6. Aid relating to product quality

Aid relating to product quality may be deemed compatible with the common market subject to the following conditions:

(a) it concerns control carried out under binding national or Community rules, where the aid only covers the expenditure necessary to carry out such control, or measures aimed at promoting product quality when restricted to advice to undertakings, the promotion of quality marks and to voluntary monitoring of the measures;

(b) it is granted without distinction in respect of the specified products intended for marketing within the Member States concerned.

Aid to advertising using a quality mark is subject to the provisions laid down in 2.1.3 of these guidelines.

2.7. Aid to producer associations

Aid intended to improve or provide support for the activities of producer groups or associations other than the producer organizations recognized under Council Regulation (EEC) No 3759/92[1] is incompatible with the common market, notwithstanding the provisions below.

Such aid for trade organizations which are not recognized under Community rules may be deemed to be compatible with the common market provided that its rate does not exceed 80% of the rate of aid granted to such organizations recognized at Community level.

The other categories of aid granted to the said producer associations, groups and organizations are subject to examination under these guidelines.

Aid for measures implemented by members of the industry may be deemed to be compatible with the common market provided that it covers joint schemes of limited duration and contributes to attaining the objectives of the common fisheries policy.

2.8. Freshwater fishing and aquaculture

(a) Aid for investment in commercial freshwater fisheries (stocking with fry, restocking, installing/improving waterways and ponds) may be considered compatible with the common market.

(b) Aid for investment in aquaculture may be regarded as being compatible with the common market provided that:

  (i) the conditions for granting it are comparable with those laid down in Article 11 and Annex III to Regulation (EC) No 3699/93 and are at least as stringent;

  (ii) the rate of aid does not exceed, in subsidy equivalent, the overall rate of national and Community subsidies permitted under Annex IV to that Regulation.

2.9. Aid in the veterinary and health fields

Aid in veterinary and health protection fields (e.g. veterinary fees, health checks, tests, screening, preventive treatment, drugs, eradication action following outbreaks of disease) may be deemed compatible with the common market provided that there are national or Community provisions which show that the competent public authority is concerned about disease in question, either by organizing an eradication campaign, in particular a compulsory scheme with compensation, or by introducing — as a first step — an early-warning system, possibly combined with aid incentives to encourage individuals to take part on a voluntary basis in preventive measures.

This will ensure that only action involving the public interest, notably in view of the danger of contamination, will attract aid to the exclusion of cases in which managers must reasonably themselves take responsibility for the normal risks run by the firm.

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[1] OJ L 388, 31.12.1992, p. 1.

The objectives of the aid measures must be either preventive, in that they involve tests, screening, action against certain living organisms transmitting disease, prevention or preventive destruction of apparently healthy fish, crustaceans or molluscs that are in fact real or presumed bearers of epizootic disease, or compensatory, in that the animals affected are destroyed by order or recommendation of the competent public authority or die following and because of previous preventive measures, imposed or recommended by that authority, or mixed, in that the compensatory aid scheme for the loss of products affected by one of the diseases referred to is combined with the conditions that the beneficiary undertakes to take appropriate prevention action as specified by the competent public authority.

2.10. Special cases

2.10.1. These guidelines also apply to fishery undertakings which are entirely or partly publicly-owned.

2.10.2. As regards aid granted in the form of management loans at reduced rates linked to operating expenditure over a fishing year or production cycle, the Community may, if appropriate, draw up specific guidelines in the light of the results of a 'horizontal' examination of aid of this type in all Member States.

2.10.3. Direct income aid to workers in the fisheries and aquaculture sector and to workers employed in the processing and marketing of fishery and aquaculture products may be considered compatible with the common market provided it forms part of socioeconomic backup measures designed to resolve difficulties linked to the adjustment or reduction of capacity (e.g. aid for training, in connection with retraining, etc.).

3. Procedural matters

3.1. The implementation of these guidelines presupposes discipline both on the part of the authorities in the Member States and on the part of the Commission, particularly as regards the formal obligations to provide notification and the time-limits set for this purpose.

In the interests of accelerating the examination of aid measures, the Commission reminds the Member States of their duty to notify aid schemes at the draft stage in accordance with Article 93(3) of the EC Treaty, supplying all the particulars necessary for their assessment. Where aid is granted without being notified beforehand or before the Commission has taken a position on the draft scheme, the Commission intends in future to apply the procedure arising from the Court of Justice judgement of 14 February 1990 in Case C-301/87 (*Boussac*). (See letter from the Commission to the Member States of 4 March 1991 on the procedure for notifying aid and the procedures regarding aid granted in breach of Article 93(3) of the EC Treaty.)

In the case of existing aid schemes for fisheries, the Member States will confirm to the Commission before 31 December 1994 that these will comply with the criteria laid down in these guidelines.

3.2. Furthermore, the Commission draws the attention of the Member States to its letter of 2 November 1983[1] concerning the recover of aid granted unlawfully and the possible repercussions of such aid on the European Agricultural Guidance and Guarantee Fund. The economic effects of this aid, i.e. its impact on competition, will be taken into consideration when decisions are taken regarding the reimbursement of aid unlawfully granted.

With regard to the impact of unlawfully granted aid on the activities financed by the EAGGF Guarantee Section, any repercussions on expenditure financed by the Guarantee Section will be taken into account during the clearance of the accounts.

3.3. As granted the non-financing by the EAGGF Guarantee Section of any expenditure likely to be affected by a unilateral national measure which is incompatible in particular with the nature and objectives of the fisheries market organization or which impedes the proper operation of its instruments, the Commission must ensure that the Community budget does not contribute to operations constituting infringements of Community law; it may therefore withhold the advances provided for in Article 5 of Regulation (EEC) No 729/70 and Regulation (EEC) No 2776/88 where such advances would finance operations affected by a national measure.

3.4. Aid schemes in the fisheries and aquaculture sector not covered by these guidelines will be examined by the Commission on a case-by-case basis in the light of the objectives of the common fisheries policy. The same procedure will apply to aid schemes contemplated by Member States pursuant to Article 16(2) of Regulation (EC) No 3699/93.

[1] OJ C 318, 24.11.1983, p. 3.

COUNCIL REGULATION (EEC) NO 2080/93[1] OF 20 JULY 1993

laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the Financial Instrument of Fisheries Guidance

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission,[2]

Having regard to the opinion of the European Parliament,[3]

Having regard to the opinion of the Economic and Social Committee,[4]

Whereas the common fisheries policy supports the general objectives of Article 39 of the Treaty; whereas, in particular, Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture[5] contributes towards achieving a balance between conservation and the management of resources, on the one hand, and the fishing effort and the stable and rational exploitation of those resources, on the other;

Whereas fisheries structural measures should contribute to the attainment of the objectives of the common fisheries policy and the objectives of Article 130a of the Treaty;

Whereas the incorporation of structural measures in the fisheries and aquaculture sector into the operational framework resulting from the reform of the Structural Funds as laid down in Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments,[6] and Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments,[7] should improve the synergy of Community operations and enable a more coherent contribution to be made to the strengthening of economic and social cohesion;

Whereas the tasks of the Financial Instrument for Fisheries Guidance (FIFG) should be defined on the basis of its contribution to the achievement of Objective 5(a) as defined in Article 1 of Regulation (EEC) No 2052/88;

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1 OJ L 193, 31.7.1993, p. 1.
2 OJ C 131, 11.5.1993, p. 18.
3 Opinion delivered on 14 July 1993.
4 OJ C 201, 26.7.1993, p. 52.
5 OJ L 389, 31.12.1992, p. 1.
6 OJ L 185, 15.7.1988,p. 9. Regulation as amended by Regulation (EEC) No 2081/93.
7 OJ L 374, 31.12.1988, p. 1. Regulation as amended by Regulation (EEC) No 2082/93.

Whereas the Community should provide financial assistance in those fields which are crucial for the structural adaptation necessary to achieve the objectives of the common fisheries policy; whereas, furthermore, aid measures in this sector should be subject to compliance with the objectives of balance between resources and their exploitation;

Whereas the Council, after consulting the European Parliament, should decide at a later date on the detailed rules and conditions for the FIFG contribution to the measures for adaptation of fisheries structures in order to guarantee the coherence of the common fisheries policy;

Whereas the measures provided for will coincide with the scope of Council Regulation (EEC) No 4028/86 of 18 December 1986 on Community measures to improve and adapt structures in the fisheries and aquaculture sector[1] and that of Council Regulation (EEC) No 4042/89 of 19 December 1989 on the improvement of the conditions under which fishery and aquaculture products are processed and marketed;[2] whereas, therefore, these Regulations should be repealed and the detailed rules necessary for a transition preventing an interruption in structural aid should be laid down;

Whereas, however, Regulation (EEC) No 4028/86 establishes in a uniform manner the maximum amounts of aid which can be granted to each individual project directly contributing to priority requirements of the common fisheries policy; whereas the Council, after consulting the European Parliament, must continue to establish these maximum amounts in a uniform manner,

HAS ADOPTED THIS REGULATION:

Article 1

1. The structural measures implemented under this Regulation in the fisheries and aquaculture sector and the industry processing and marketing their products (hereinafter referred to as 'the sector') shall support the general objectives of Articles 39 and 130a of the Treaty and the objectives set out in Regulations (EEC) No 3760/92 and (EEC) No 2052/88.

2. The tasks of the FIFG shall be:

(a) to contribute to achieving a sustainable balance between resources and their exploitation;

(b) to strengthen the competitiveness of structures and the development of economically viable enterprises in the sector;

(c) to improve market supply and the value-added to fisheries and aquaculture products.

Furthermore, the FIFG shall contribute towards technical assistance and information measures, and support studies and pilot projects for the adaptation of the structures of the sector.

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[1] OJ L 376, 31.12.1986, p. 7. Regulation as last amended by Regulation (EEC) No 2794/92 (OJ L 282, 26.8.1992, p. 3).

[2] OJ L 388, 30.12.1989, p. 1.

Article 2

1. FIFG assistance may be granted for the implementation of measures directly contributing towards ensuring compliance with the requirements of the common fisheries policy in the following fields:

redeployment operations

temporary joint enterprises

joint ventures

adjustment of capacities.

In the framework of the procedure referred to the Article 6, the Council may adapt the list of fields referred to in this paragraph.

2. Article 13(3) of Regulation (EEC) No 2052/88 and Article 17 of Regulation (EEC) No 4253/88 shall apply to measures referred to in paragraph 1 of this Article. However, the aid granted to each individual project under measures referred to in paragraph 1 may not exceed the maximum amount to be established pursuant to the procedure provided for in Article 6.

Article 3

1. The FIFG may contribute towards the funding for investments and operations in support of one or more of the tasks referred to in Article 1(2), in the following fields:

restructuring and renewal of the fishing fleet

modernization of the fishing fleet

improvement of the conditions under which fishery and aquaculture products are processed and marketed

development of aquaculture and structural works in coastal waters

exploratory fishing

facilities at fishing ports

search for new markets

specific measures.

In the framework of the procedure provided for in Article 6, the Council may adapt the list of fields referred to in this paragraph.

2. In particular, the investments and operations referred to in paragraph 1 may cover the operating conditions on board vessels, an improvement in the selectivity of fishing methods and gear, an improvement in product quality and the introduction of Community standards for product hygiene, health and safety at the workplace and environment protection.

3. The limits of Community participation referred to in Article 13(3) of Regulation (EEC) No 2052/88 and in Article 17(3) of Regulation (EEC) No 4253/88 shall apply to the investments and operations referred to in this Article.

4. In appropriate cases, in accordance with procedures specific to each policy, Member States shall provide the Commission with information relating to compliance with the provisions of Article 7(1) of Regulation (EEC) No 2052/88.

Article 4

Within the fields specified in Articles 2 and 3 and up to a maximum of 2% of the appropriations available annually for structural measures in the sector, the FIFG may finance:

(i) studies, pilot projects and demonstration projects;

(ii) the provision of services and technical assistance for the purposes in particular of preparing, accompanying and evaluating the implementation of this Regulation;

(iii) concerted action to remedy particular difficulties affecting specific aspects of the sector;

(iv) information campaigns.

Measures referred to in this Article and implemented at the Commission's initiative may, exceptionally, be financed at a rate of 100%; those implemented on the Commission's behalf shall be financed at a rate of 100%.

Article 5

1. The Commission shall decide on FIFG assistance on the terms laid down in Article 14 of Regulation (EEC) No 4253/88.

2. The Member State concerned and, where appropriate, the intermediate body appointed by the Member State referred to in Article 14(1) and Article 16(1) of Regulation (EEC) No 4253/88 shall be notified of the decisions referred to in paragraph 1.

Article 6

Without prejudice to Article 33 of Regulation (EEC) No 4253/88 and Article 9 of this Regulation, the Council, acting on a proposal from the Commission in accordance with the procedure laid down in Article 43 of the Treaty, shall adopt, not later than 31 December 1993, the detailed rules and conditions for the FIFG contribution to the measures for adaptation of the structures of the sectors covered by this Regulation.

Article 7

1. Pursuant to Article 17 of Regulation (EEC) No 2052/88 and Article 29(2) of Regulation (EEC) No 4253/88, a standing management committee for fisheries structures under the auspices of the Commission is hereby, consisting of representatives of the Member States, under

the chairmanship of a representative of the Commission. The European Investment Bank shall designate a representative who shall not vote. The committee shall draw up its own rules of procedure.

2. The committee provided for in this Article shall replace the committee established in Article 11 of Regulation (EEC) No 101/76[1] in all functions conferred upon it pursuant to that Regulation.

Article 8

Where the procedure laid down in this Article is to be followed, the chairman shall refer the matter to the committee either on his own initiative or at the request of the representative of a Member State. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the said draft within a time-limit which the chairman may lay down according to the urgency of the matter under consideration. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission; the votes of the representatives of the Member States within the committee shall be weighted in the matter set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication. The Council, acting by a qualified majority, may take a different decision within a time-limit of one month.

The opinions of the committee shall be communicated to the committees referred to in Articles 27, 28 and 29(1) of Regulation (EEC) No 4253/88.

Article 9

1. With effect from 1 January 1994, Regulations (EEC) No 4028/86 and (EEC) No 4042/89 and the provisions establishing the detailed rules for their implementation, with the exception of those of Commission Regulation (EEC) No 163/89 and decisions adopting the multiannual guidance programmes for fishing fleets for the period 1993 to 1996, are hereby repealed.

However:

- they shall remain valid for aid applications introduced before 1 January 1994;
- aid applications for projects submitted in 1993 under Regulation (EEC) No 4028/86 shall be examined and approved on the basis of that Regulation, before 1 November 1994.

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[1] OJ L 20, 28.1.1976, p. 19.

Applications under Regulation (EEC) No 4028/86 for which no aid decision has been taken by 1 November 1994 shall be considered null and void. However, the measures and projects provided for in such applications may be taken into consideration under the detailed rules provided for in Article 6 of this Regulation.

2. Portions of sums committed as aid for projects adopted by the Commission before 1 January 1989 under Regulation (EEC) No 4028/86 for which no final application for payment has been submitted to the Commission before 31 March 1995 shall be automatically released by the Commission on 30 September 1995 at the latest, without prejudice to projects which have been suspended on legal grounds.

Portions of sums committed as aid for projects adopted by the Commission between 1 January 1989 and 31 October 1994 under Regulation (EEC) No 4028/86 for which no final application for payment has been submitted to the Commission within six years and three months of the date of decision granting the aid shall be automatically released by the Commission not later than six years and nine months after the date of aid grant, without prejudice to projects which have been suspended on legal grounds.

Article 10

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

COUNCIL REGULATION (EC) No 3699/93[1] OF 21 DECEMBER 1993

laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to Council Regulation (EEC) No 2080/93 of 20 July 1993 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the Financial Instrument of Fisheries Guidance,[2] and in particular Article 6 thereof,

Having regard to the proposal from the Commission,[3]

Having regard to the opinion of the European Parliament,[4]

Having regard to the opinion of the Economic and Social Committee,[5]

Whereas Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments[6] and Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing the said Regulation,[7] define the general objectives and tasks of the Structural Funds and the Financial Instrument for Fisheries Guidance, hereinafter referred to as the 'FIFG', their organization, the assistance methods, programming and general organization of the aid provided by the Funds and the general financial arrangements;

Whereas Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture[8] lays down the objectives and general rules of the common policy; whereas the development of the Community fishing fleet must in particular be restricted according to the decisions that the Council is called to take by virtue of Article 11; whereas it is for the Commission to translate these decisions into precise measures at the level of each Member State; whereas, furthermore, the provisions of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy[9] must be respected;

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1 OJ L 346, 31.12.1993, p. 1.
2 OJ L 193, 31.7.1993, p. 1.
3 OJ C 305, 11.11.1993, p. 12.
4 Opinion delivered on 17 December 1993.
5 Opinion deliverd on 21 December 1993.
6 OJ L 185, 15.7.1988, p. 9. Regulation as last amended by Regulation (EEC) No 2081/93 (OJ L 193, 31.7.1993, p. 1).
7 OJ L 374, 31.12.1988, p. 1. Regulation as amended by Regulation (EEC) No 2082/93 (OJ L 193, 31.7.1993, p. 20).
8 OJ L 389, 31.12.1992, p. 1.
9 OJ L 261, 20.10.1993, p. 1.

Whereas Council Regulation (EEC) No 2080/93 defines the specific tasks of Community structural aid measures in the fisheries and aquaculture sector and the industry processing and marketing its products, hereinafter referred to as 'the sector'; whereas under Article 6 the Council must decide, no later than 31 December 1993, on the terms and conditions of the contribution of the FIFG to adaptation measures of the structures of the sector;

Whereas the Council must lay down detailed rules for the implementation of measures connected with the modification of the structures of the sector in order to ensure that FIFG assistance achieves the objectives assigned to the structural policy of the sector within the overall framework of Community structural assistance and the common fisheries policy as a whole, which comes under the exclusive competence of the Community, and so that each Member State is in a position to manage structural assistance in the sector; whereas, in so far as such assistance is not limited to the granting of Community aid, it is appropriate in particular to integrate, in a coherent manner, the programming of the restructuring of Community fishing fleets in the context of structural assistance as a whole,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

The FIFG may, under the conditions laid down in this Regulation, provide assistance for the measures referred to in Titles II, III and IV, within the fields covered by the common fisheries policy as defined in Article 1 of Regulation (EEC) No 3760/92.

TITLE 1 — PROGRAMMING

Article 2

General provisions

1. The measures referred to in Article 1 of this Regulation shall be the subject of a two-stage programming procedure under the conditions laid down in Articles 3 and 4.

2. Provision for the restructuring of the Community's fishing fleets shall be made in multi-annual guidance programmes, as referred to in Article 5.

Article 3

Sectoral plans and aid applications

1. Each Member State shall present to the Commission in the form of a single programming document, hereinafter referred to as 'the document':

a sectoral plan,

an aid application.

Each document shall cover a period of six years, the first programming period beginning on 1 January 1994.

For the part of the programme period covered by a multiannual guidance programme already approved by the Commission under Article 5(2), the document shall be drawn up in accordance with paragraph 2 of this Article.

For the remainder of the programme period not yet covered by a multiannual guidance programme approved by the Commission, the programme information given in the document shall be purely indicative; it shall be specified by Member States when the new multiannual guidance programme is approved, in accordance with its objectives.

Unless arrangements are made to the contrary with the Member States in question, documents covering the first programme period shall be submitted within three months of the entry into force of this Regulation; the documents covering subsequent programme periods shall be submitted at least six months before the start of each period.

2. Each sectoral plan may cover all of the fields referred to in Titles II, III and IV. It shall contain all the information specified in Annex I. It shall be drawn up in accordance with the objectives of the common fisheries policy and the provisions of the multiannual guidance programme referred to in Article 5.

Aid applications shall be drawn up in accordance with Article 14(1) and (2) of Regulation (EEC) No 4253/88. They shall describe all the measures that are planned in order to give effect to common measures and shall specify the forms of assistance within the meaning of Article 5 of Regulation (EEC) No 2052/88.

3. The document shall drawn a distincion between information relating to Objective 1 regions and information relating to other regions.

The information relating to Objective 1 regions shall be covered by the programming referred to in Article 8(7) of Regulation (EEC) No 2052/88 and Article 5(2) of Regulation (EEC) No 4253/88.

Article 4

Community programmes

1. The Commission shall examine the sectoral plans to determine whether they are consistent with the tasks of the FIFG as provided for in Article 1 of Regulation (EEC) No 2080/93 and with the provisions and policies referred to in Articles 6 and 7 of Regulation (EEC) No 2052/88.

Aid applications shall be examined in accordance with Article 14(3) and (4) of Regulation (EEC) No 4253/88.

2. On the basis of the document referred to in Article 3 of this Regulation, within six months of receiving it, the Commission shall adopt a single decision on a Community programme for structural assistance in the sector.

The Commission's decision, taken in accordance with the procedure laid down in Article 8 of Regulation (EEC) No 2080/93, shall be taken in the framework of the partnership referred

to in Article 4(1) of Regulation (EEC) No 2052/88 and in agreement with the Member State concerned.

The Commission's decision on a Community programme shall be communicated to the Member State concerned and published in the *Official Journal of the European Communities*.

3. Community programmes shall be drawn up in accordance with the objectives of the common fisheries policy and the provisions of the multiannual guidance programmes referred to in Article 5. They may in particular, to this end, be revised in the event of major changes and at the end of each programme period for the restructuring of the Community's fishing fleets.

Article 5

Multiannual guidance programmes for fishing fleets

1. For the purpose of this Regulation, a 'multiannual guidance programme for the fishing fleet' shall mean a series of objectives accompanied by a set of measures for their realization, allowing for management of fishing efforts on a consistent, longer-term basis.

2. On the basis of multiannual objectives and measures for restructuring the fisheries sector as laid down by the Council pursuant to Article 11 of Regulation (EEC) No 3760/92, the Commission shall, acting in accordance with the procedure provided for in Article 8 of Regulation (EEC) No 2080/93, adopt the multiannual guidance programmes for individual Member States.

3. The multiannual guidance programmes adopted for the period from 1 January 1993 to 31 December 1996, as referred to in Article 9(1) of Regulation (EEC) No 2080/93, shall remain in effect until they expire.

4. By 1 January 1996 at the latest, Member States shall supply the Commission with the information specified in Annex II to this Regulation, to be used in drawing up multiannual guidance programmes for the period from 1 January 1997 to 31 December 1999.

Article 6

Monitoring multiannual guidance programmes

1. For the purpose of monitoring the implementation of multiannual guidance programmes, Member States shall transmit to the Commission, before 1 April each year, a document reviewing the progress made with their multiannual guidance programme. Within three months of this deadline the Commission shall forward an annual report to the European Parliament and the Council on the implementation of multiannual guidance programmes throughout the Community.

2. Member States shall transmit to the Commission information on the monitoring of fishing efforts by fleet segment, particularly as regards the development of capacities and the

corresponding fishing activities, in accordance with the procedures implemented by the Commission.

3. To this end the Commission shall operate a Community register of fishing vessels designed for use in managing fishing efforts.

4. The Commission shall adopt the rules relating to the register referred to in paragraph 3 in accordance with the procedure laid down in Article 18 of Regulation (EEC) No 3760/92.

5. At the request of the Member State concerned or the Commission, or pursuant to provisions laid down in the multiannual guidance programmes, any multiannual guidance programme which has been adopted may be re-examined and, if necessary, revised.

6. The Commission shall decide whether or not to approve the revisions provided for in paragraph 5 of this Article in accordance with the procedure laid down in Article 18 of Regulation (EEC) No 3760/92.

7. For the implementation of this Article, Member States must comply in particular with Article 24 of Regulation (EEC) No 2847/93.

TITLE II — IMPLEMENTATION OF MULTIANNUAL GUIDANCE PROGRAMMES FOR FISHING FLEETS

Article 7

Common provisions

1. At the end of a multiannual guidance programme, where, with regard to a given segment of a Member State's fleet, the reductions in capacity financed by official aid lead to over-achievement of the objectives for that segment, the new situation brought about solely as a result of that aid may not be invoked to bring into service new capacity.

These provisions do not apply in the particular case of small local coastal fishing fleets made up of vessels of under 220 Kw, for which fisheries quotas have not been set at Community level.

For such fleets, the Member State may finance, by State aid alone and within the limits of the premiums and ceilings of the official aid referred to in 1.3 and 2.1 of Annex IV, the capacities corresponding to this excess.

2. Each year, for each fleet segment, Member States shall ensure that aid for modernization and construction does not result in an increase in fishing effort.

Article 8

Adjustment of fishing effort

1. Member States shall take measures to adjust fishing effort to achieve at least the objectives of the multiannual guidance programmes referred to in Article 5.

Where necessary, Member States shall take measures to stop vessels' fishing activities permanently or restrict them.

2. Measures to stop vessels' fishing activities permanently may include:

scrapping;

permanent transfer to a third country, provided such transfer is not likely to infringe international law or affect the conservation and management of marine resources;

permanent reassignment of the vessel in question to uses other than fishing in Community waters.

For vessels of less than 25 gross registered tonnes (GRT) only the scrapping of the vessel may qualify for official aid within the meaning of this Article.

Member States shall ensure that vessels concerned by such measures are deleted from the registration lists for fishing vessels and from the Community fishing vessel register. They shall also ensure that deleted vessels are permanently excluded from fishing in Community waters.

3. Measures to restrict fishing activities may include restrictions on fishing days or days at sea authorized for a specific period. Such measures may not give rise to any State aid.

Article 9

Reorientation of fishing activities — temporary joint ventures and joint enterprises

1. Member States may take measures to promote the reorientation of fishing activities by encouraging the creation of temporary joint ventures and/or joint enterprises.

2. For the purposes of this Regulation 'temporary joint venture' means any association based on a contractual agreement of limited duration between Community shipowners and physical or legal persons in one or more third countries with which the Community maintains relations, with the aim of jointly fishing for and exploiting the fishery resources of the third country or countries and sharing the costs, profits or losses of the economic activity jointly undertaken, with a view to the priority supply of the Community market.

The contractual agreement shall provide for the catching and, where necessary, the processing and/or marketing of those species covered, the provision of know-how and/or the transfer of technology where linked to the said operations.

3. For the purposes of this Regulation 'joint enterprise' means any company regulated by private law comprising one or more Community shipowners and one or more partners in a third country, constituted in the framework of formal relations between the Community and the third country, with the aim of fishing for and possibly exploiting fishery resources in the waters under the sovereignty and/or jurisdiction of the third country, with a view to the priority supply of the Community market.

4. Where necessary, the Commission, acting in accordance with the procedure referred to in Article 8 of Regulation (EEC) No 2080/93, shall set conditions for implementing this Article.

Article 10

Fleet renewal and modernization of fishing vessels

1. Member States may take such measures to promote the construction of fishing vessels that comply with the global annual intermediate objectives and the final objectives by segment under their multiannual guidance programme within the stated time-limits.

Member States shall, when forwarding any pertinent aid proposal, inform the Commission of provisions taken to ensure that this condition is complied with.

2. Member States may take measures to promote the modernization of fishing vessels. Such measures shall be subject to the conditions referred to in paragraph 1 where investments are likely to result in an increase in fishing effort.

The measures referred to in this paragraph may be taken under the conditions referred to in Article 9(1) of Regulation (EEC) No 2080/93 for vessels regarding which the request for assistance within the meaning of Title III of Regulations (EEC) No 4028/86 has not been accepted despite its formal eligibility under the provisions of the latter Regulation.

TITLE III — INVESTMENT AID IN THE FIELDS OF AQUACULTURE, THE DEVELOPMENT OF COASTAL WATERS, FISHING PORT FACILITIES AND PROCESSING AND MARKETING

Article 11

Scope

1. Member States may, under the conditions specified in Annex III, take measures to encourage capital investment in the following fields:

(i) aquaculture;

(ii) protection and development of marine resources in coastal waters in particular by the installation of fixed or movable facilities to enclose protected underwater areas;

(iii) fishing port facilities;

(iv) processing and marketing of fishery and aquaculture products.

2. In addition, Member States may take measures to encourage the devising and implementation of systems for the improvement and control of quality, hygiene conditions, statistical instruments and environmental impact, as well as research and training initiatives in enterprises. The relevant expenditure, with the exception of beneficiary enterprises' operating costs, may be funded from the FIFG, provided that it is directly linked to the investments referred to in paragraph 1.

TITLE IV — OTHER MEASURES

Article 12

Measures to find and promote new market outlets

Member States may take measures in favour of finding and promoting new market outlets for fishery and aquaculture products, in particular:

(i) operations associated with quality certification and product labelling;

(ii) promotion campaigns, including those highlighting quality issues;

(iii) consumer surveys;

(iv) projects to test consumer reactions;

(v) organization of and participation in trade fairs and exhibitions;

(vi) organization of study and sales visits;

(vii) market studies, including those relating to the prospects for marketing Community products in third countries, and surveys;

(viii) campaigns improving marketing conditions;

(ix) sales advice and aid, services provided to wholesalers and retailers.

The above measures must not be based around commercial brands nor make reference to particular countries or regions.

Article 13

Operations by members of the trade

Member States may take measures to promote operations carried out by members of the trade themselves and regarded by the competent authorities in the Member State as short-term operations of collective interest, provided such operations serve to attain the objectives of the common fisheries policy.

The measures referred to in this Article include in particular aid to producer organizations within the meaning of Article 7 of Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organization of the market in fishery and aquaculture products.[1]

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[1] OJ L 388, 31.12.1992, p. 1. Regulation as last amended by Regulation (EEC) No 697/93 (OJ L 76, 30.3.1993, p. 12).

Article 14

Temporary cessation of activities

Member States may take measures for the temporary cessation of activities.

FIFG assistance may be used only to finance measures intended to partially offset the loss of income suffered as a result of a temporary cessation of fishing activities caused by unforeseen and non-repetitive events resulting from biological phenomena in particular.

TITLE V — GENERAL AND FINANCIAL PROVISIONS

Article 15

Compliance with the conditions governing assistance

1. Member States shall ensure that the special conditions governing assistance listed in Annex III to this Regulation are complied with.

2. When requesting payment of each annual aid instalment, Member States shall certify that compliance with the conditions governing assistance set out in this Regulations has been verified.

3. Where the conditions referred to in paragraph 2 have not been complied with, the Commission shall carry out a suitable examination of the circumstances in the framework of the partnership, in particular asking the Member State or the authorities appointed by it for implementation of the measure to submit their comments within a given period.

Following that examination, the Commission may suspend, reduce or cancel FIFG assistance in the area of assistance concerned as defined in point 1 of Annex I if the examination confirms that the conditions referred to in paragraph 2 have not been complied with.

Article 16

Scales and rates of assistance

1. The maximum amounts of assistance payable under this Regulation and the limits on financial participation from the Member States, beneficiaries and the Community are listed in Annex IV.

2. Within the scope of this Regulation, Member States may introduce supplementary aid measures subject to conditions or rules other than those laid down in this Regulation, or covering a sum in excess of the maximum amounts referred to in this Article, provided that they comply with Articles 92, 93 and 94 of the Treaty.

Article 17

Budget commitments

1. In the case of multiannual operations, Member States shall forward to the Commission each year the information required to permit commitment of the annual instalments provided for in Article 20 of Regulation (EEC) No 4253/88.

2. Budgetary resources shall be committed in line with the implementation stages set out in the decisions granting assistance.

3. Detailed rules for the application of this Article shall be adopted by the Commission in accordance with the procedure laid down in Article 8 of Regulation (EEC) No 2080/93.

Article 18

Procedures for the payment of assistance

1. Financial assistance shall be paid in accordance with Article 21 of Regulation (EEC) No 4253/88 and in line with the implementation stages and financial provisions set out in the decision to grant assistance.

2. Applications for payment must be accompanied by documents providing evidence of the progress made in implementing the operation and any payments made by the Community and national authorities to the beneficiaries.

3. Detailed rules for the application of this Article shall be adopted by the Commission in accordance with the procedure laid down in Article 8 of Regulation (EEC) No 2080/93.

Article 19

Entry into force

This Regulation shall enter into force on 1 January 1994.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX I

INDICATIVE CONTENTS OF SECTORAL PLANS

1. Description of current situation broken down by area of assistance[1]

Strengths and weaknesses.

Summary of operations undertaken and impact of funds used in previous years.

Needs of the sector.

2. Strategy for adjustment of fishery structures

General objectives under the common fisheries policy.

Objectives specific to each area of assistance, quantified if possible.

Anticipated impact (on employment, production, etc.).

3. Means to attain the objectives

Measures selected (legal, financial or other) in each area of assistance.

Indicative financing schedule covering the entire programming period and listing the national and Community resources provided for each area of assistance.

Indications of how the FIFG assistance is to be used (forms of assistance, etc.).

Justification for Community assistance.

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[1] 'Area of assistance' means subsectors of the fishery sector whose problems can be grouped together, for example:
adjustment of fishing effort,
renewal and modernization of the fishing fleet,
aquaculture,
enclosed seawater areas,
fishing port facilities,
product processing and marketing,
product promotion.

ANNEX II

MINIMUM CONTENT OF MULTIANNUAL GUIDANCE PROGRAMMES FOR THE FISHING FLEET FROM 1997 TO 1999

1. Updating of the description of the situation provided for in Annex I

This consists in describing the change in the situation regarding fisheries, fleet and related employment since the date when the sectoral plan was submitted.

2. Results from the previous programme

2.1. Identify and comment on the progress achieved in attaining the objectives set for the 1993 to 1996 programmes.

2.2. Analyse the general administrative and socioeconomic context in which it was implemented and in particular, where appropriate, the context in which measures to reduce fishing activity were implemented.

2.3. Specify and comment on the Community, national and regional financial resources committed in attaining the results achieved, for each fleet segment.

3. New guidelines

On the basis of the replies given to points 1 and 2, indicate the guidelines which should be given to the various fleet segments for the period 1997-99, in particular in relation to the following two operations:

3.1. adjustment of fishing effort: desirable levels of fishing effort per segment on 31 December 1999 in relation to the objectives set for each segment for 31 December 1996. Associated laws, regulations or administrative provisions. Systems for managing fishing activity. Extent of administrative resources and funds to be used to attain the new objectives thus set;

3.2. fleet renewal: rate of renewal desirable for each segment and associated funding. Legal or administrative provisions by each Member State for monitoring the inward and outward movements of its fleet's vessels. Measures taken by Member States per fleet segment to ensure that State aid granted for renewal and fishing effort adjustment operations does not have contradictory effects where the pursuit of the objectives of the programmes is concerned.

ANNEX III

SPECIAL CONDITIONS AND CRITERIA FOR ASSISTANCE

1. Implementation of multiannual guidance programmes (Title II)

1.1. Permanent withdrawal (Article 8(2))

(a) Permanent withdrawal may concern only vessels which have carried out a fishing activity for at least 75 days at sea in each of the two periods of 12 months preceding the date of request for permanent withdrawal or, as the case may be, a fishing activity for at least 80% of the number of days at sea permitted by current national regulations.

As regards vessels for which a request for permanent withdrawal within the meaning of Regulation (EEC) No 4028/86 has been submitted by 31 December 1993 to the competent authority of the Member State concerned, the criteria of Article 24 of Regulation (EEC) No 4028/86 shall apply.

(b) Operations may concern only vessels more than 10 years old.

1.2. Temporary joint ventures and joint enterprises (Article 9)

(a) Operations must satisfy the following conditions:

(i) they must involve vessels of more than 25 grt, registered in a Community port, operating for more than five years under the flag of a Community Member State and technically suited to be proposed fishing operations; however, a minimum operating period of five years will not be required of vessels registered in a Community port between 1 January 1989 and 31 December 1990;

(ii) the vessels in question must fly the flag of a Member State throughout the duration of the temporary joint venture, which must consist of fishing activities lasting between six months and one year;

(iii) in the case of the founding of a joint enterprise, they must be accompanied by the permanent transfer of the vessel(s) to the third country concerned with no possibility of a return to Community waters.

(b) The financial assistance given to joint enterprise projects may not be added to other Community aid granted under this Regulation or Regulation (EEC) No 2908/83[1] or (EEC) No 4028/86. The assistance granted is to be reduced *pro rata temporis* by the amount previously received in the following cases:

(i) aid for construction during the 10 years preceding the setting up of the joint enterprise;

(ii) aid for the modernization and/or allowance for a temporary joint venture during the five years preceding the setting up of the joint enterprise.

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[1] Council Regulation (EEC) No 2908/83 of 4 October 1983 on a common measure for restructuring, modernizing and developing the fishing industry and for developing aquaculture (OJ L 290, 22.10.1983, p. 1).

1.3. Vessel construction (Article 10)

(a) Vessels must be built to comply with the Regulations and Directives governing hygiene and safety and the Community provisions concerning the dimension of vessels. They shall be entered in the appropriate segment of the Community register.

(b) Financial assistance shall be granted by way of priority to those vessels using the most selective fishing gear and methods.

1.4. Vessel modernization (Article 10)

(a) Investments should relate to:

(i) the rationalization of fishing operations, in particular by the use of more selective fishing gear and methods; and/or

(ii) improvement of the quality of products caught and preserved on board, the use of better fishing and preserving techniques and the implementation of legal and regulatory provisions regarding health; and/or

(iii) improvement of working conditions and safety; and/or

(iv) equipment on board vessels to monitor fishing activities.

(b) Operations may cover only vessels less than 30 years old. This limit shall not apply where investment relates to the improvement of working conditions and safety and/or equipment on board vessels to monitor fishing activities.

2. Investment in the areas referred to in Title III

2.0. General

(a) Investments must:

contribute to lasting economic benefits from the structural improvement in question;

offer an adequate guarantee of technical and economic viability, in particular by avoiding the risk of creating surplus production capacity.

(b) In all the spheres referred to in Title III, physical investment intended to improve conditions of hygiene or human or animal health, to improve product quality or reduce pollution of the environment shall be eligible.

(c) Investment in the purchase of land, coverage of general expenses beyond 12% of costs and vehicles for passenger transport shall not be eligible.

2.1. Aquaculture

Measures may involve physical investments:

(a) in the construction, equipping, expansion and modernization of aquaculture installations, such as:

(i) the construction, modernization and acquisition of buildings;

(ii) works concerning the development or improvement of water circulation in aquaculture enterprises;

(iii) the acquisition and installation of new plant and machinery intended exclusively for aquaculture production, including service vessels and equipment concerned with data processing and data transmission;

(b) concerning projects intended to demonstrate, on a scale approaching that of normal productive investments, the technical and economic viability of farming species not yet commercially exploited in the aquaculture sector or innovative farming techniques, provided that they are based on successful research work.

2.2. Development of coastal waters

Investment should meet the following conditions:

(a) they must include scientific monitoring of the operation for at least five years, in particular the evaluation and monitoring of the development of marine resources in the waters concerned;

(b) they must be carried out by public institutions, recognized producer organizations of bodies designated for that purpose by the competent authorities of the Member State concerned.

2.3. Fishing port facilities

(a) Eligible investments shall relate in particular to installations and equipment:

(i) to improve the conditions under which fishery products are landed, handled and stored in ports;

(ii) to support fishing vessel activities (provision of fuel, ice and water, maintenance and repair of vessels);

(iii) to improve jetties with a view to improving safety during the landing or loading of products.

(b) Priority is to be given to investments:

(i) of interest to all fishermen using a port;

(ii) contributing to the general development of the port and to the improvement of services offered to fishermen.

2.4. Processing and marketing

(a) Eligible investments shall relate in particular to:

(i) the construction and acquisition of buildings and installation;

(ii) the acquisition of new equipment and installations needed for the processing and marketing of fishery and aquaculture products between the time of landing and

the end-product stage (including in particular data-processing and data-transmission equipment);

(iii) the application of new technologies intended in particular to improve competitiveness and increase value-added.

(b) Investments shall not be eligible for assistance where they concern:

(i) fishery and aquaculture products intended to be used and processed for purposes other than human consumption, with the exception of investments exclusively for the handling, processing and marketing of fishery and aquaculture product wastes;

(ii) the retail trade.

3. Promotion (Article 12)

(a) Eligible expenditure shall cover in particular:

expenditure by advertising agencies and other providers of services involved in the preparation and implementation of promotion campaigns;

the purchase or hire of advertising space and the creation of slogans and labels for the duration of promotion campaigns;

expenditure on publishing externall staff, premises and vehicles required for the compaigns.

(b) Priority is to be given to:

campaigns to encourage the sale of surplus or underexploited species;

campaigns of a collective nature;

operations to develop a quality policy for fishery and aquaculture products.

(c) The beneficiary's operating costs (staff, equipment, vehicles, etc.) shall not be eligible.

ANNEX IV

SCALES AND RATES OF ASSISTANCE

1. Scales of assistance relating to fishing fleets (Title II)

1.1. Permanent withdrawal and joint enterprises (Articles 8(2) and 9(3); Annex III, 1.1 and 1.2)

Table 1

Class of vessel by gross registered tonnage (GRT)	Maximum amount of premium for a 15-year-old vessel (in ecus)
0 < 25	6 215/GRT
25 < 50	5 085/GRT + 28 250
50 < 100	4 520/GRT + 56 500
100 < 400	2 260/GRT + 282 500
400 and over	1 130/BRT + 734 500

(a) The premiums for scrapping a vessel and for setting up joint enterprises paid to beneficiaries may not exceed the following amounts:

15-year-old vessels: see Table 1 above,

vessels less than 15 years old: scale from Table 1 increased by 1.5% per year less than 15,

vessels more than 15 years old: scale from Table 1 decreased by 1.5% per year over 15.

(b) Premiums for the permanent transfer of a vessel to a third country or for permanent re-assignment, in Community waters, to uses other than fishing paid to beneficiaries, may not exceed the maximum amounts for the scrapping premiums referred to in (a) above, less 50%.

1.2. Temporary cessation of fishing activities and temporary joint ventures (Articles 14 and 9(2); Annex III, 1.2)

The laying-up premiums (for temporary cessation) and cooperation premiums (for temporary joint ventures) paid to beneficiaries may not exceed the scales set out in Table 2 below.

Table 2

Class of vessel by gross registered tonnage (GRT)	Maximum amount of premium per vessel (ecu/day)
0 < 25	4.52/GRT + 20
25 < 50	4.30/GRT + 25
50 < 70	3.50/GRT + 65
70 < 100	3.12/GRT + 88
100 < 200	2.74/GRT + 120
200 < 300	2.36/GRT + 177
300 < 500	2.05/GRT + 254
500 < 1 000	1.76/GRT + 372
1 000 < 1 500	1.50/GRT + 565
1 500 < 2 000	1.34/GRT + 764
2 000 < 2 500	1.23/GRT + 956
2 500 and over	1.15/GRT + 1 137

1.3. Construction aid (Article 10; Annex III, 1.3)

The eligible expenditure for aid for the construction of fishing vessels may not exceed the scales in Table 1 above, increased by 37.5%. However, for vessels with a steel or glass fibre hull, the coefficient of increase is 92.5%.

1.4. Modernization aid (Article 10; Annex III, 1.4)

The eligible expenditure for aid for the modernization of fishing vessels may not exceed 50% of the eligible costs for construction aid referred to in 1.3 above.

2. Participation rates

For all the operations referred to in Titles II, III and IV, the restrictions on Community participation (A), total State participation (national, regional and other) by the Member State concerned (B) and, where applicable, participation by private beneficiaries (C) shall be subject to the following conditions, expressed as a percentage of eligible costs:

2.1. Investments in enterprises

Group 1: construction and modernization of vessels, aquaculture;

Group 2: other investments and measures with financial participation by private beneficiaries.

Table 3

	Group 1	Group 2
Objective 1 regions	A ≤ 50% B ≥ 5% C ≥ 40%	A ≤ 50% B ≥ 5% C ≥ 25%
Other regions	A ≤ 30% B ≥ 5% C ≥ 60%	A ≤ 30% B ≥ 5% C ≥ 50%

2.2. Other measures: scrapping premiums, temporary cessation premiums, temporary joint ventures, joint enterprises and investments and measures financed exclusively by the Community and the national, regional or other authorities of the Member States concerned.

Table 4

Objective 1 regions	50% ≤ A ≤ 75% B ≥ 25%
Other regions	25% ≤ A ≤ 50% B ≥ 50%

ANNEX

Chronological list of Court judgments in State aid cases

Date	Case	Parties Decision reference Keywords	ECR page reference
1. EC			
1964			
15.7.1964	C-6/64	*Costa* v *ENEL*	[1964] I-1141
		Preliminary ruling — Interpretation — Articles 37, 52, 53, 92, 93, 102 — Member States of the EEC — Obligations to the Community binding them as States — Commission's duty of supervision — Impossibility for individuals to allege either failure by the State concerned to fulfil any of its obligations or breach of duty by the Commission — Approximation of laws — Avoidance of distortion — Aid granted by States — Elimination — Procedure — No creation of individual rights — Right of establishment — Restrictions — Elimination — Prohibition on the introduction of new restrictions — Nature of that prohibition — State monopolies of a commercial character — Prohibition — Review by the Court — Rights of individuals — Protection of those rights by national courts	

Date	Case	Parties Decision reference Keywords	ECR page reference
1969			
10.12.1969	C-6/69 C-11/69	*Commission* v *France (Banque de France)* Decision 68/301/EEC, OJ L 178, 23.7.1968, p. 15; Decision 914/68/ECSC, OJ L 159, 6.7.1968, p. 4; Decision 18.12.1968 (unpublished). Failure to fulfil an obligation arising from the Treaty — Rate of preferential rediscount for exports — Granted for national products exported — Nature of the aid — Member States of the EEC — Economic policy — Balance of payments — Sudden crisis — Protective measures — Unilateral actions authorized by the Treaty as a precaution — Obligations of the Member State concerned — Failure to fulfil an obligation arising from the Treaty — Necessity for rapid intervention by the Community institutions — Reasoned opinion addressed by the Commission to the Member State concerned — Submission based on the illegality of this opinion — Inadmissibility — Adverse effect upon the conditions of competition — Action by a Member State of the ECSC — Damaging effect — Aid to undertakings in the coal and steel sector — Authorization by the Commission — Rate of preferential rediscount for exports — Nature of the aid within the meaning of Article 67(2) ECSC — Member States of the ECSC — Failure to fulfil an obligation arising from the Treaty — Finding by the Commission — Action by the Member State concerned — Subject-matter different from that of action for annulment	[1969] I-523

Date	Case	Parties Decision reference Keywords	ECR page reference
1970			
25.6.1970	C-47/69	*France* v *Commission institut textile de France - Union des industries textiles)* Decision 69/266/EEC, OJ L 220, 18.7.1979, p. 1. Action for annulment — Aid to the textile industry — EEC policy — Aid granted by States or through State resources — General evaluation by the Commission — Method of financing — Taxation — Article 95 — Direct and indirect aid — Connection between method of financing and aid — Quasifiscal charge.	[1970] I-487
1973			
19.6.1973	C-77/72	*Capolongo* v *Maya* Preliminary ruling — Interpretation — Articles 13, 30, 86 and 92 — Aid granted by States — Abolition — Direct effect — Conditions — Customs duties — Charges having equivalent effect — Notion — Abolition — Direct effect.	[1973] I-611
12.7.1973	C-70/72	*Commission* v *Germany (North Rhine-Westphalia)* Decision 71/121/EEC, OJ L 57, 17.2.1971, p. 19. Failure to fulfil an obligation arising from the Treaty — Decision of the Commission concerning aid for rationalization of mining regions — Termination of such failure — Means — Measures of internal law — Specification by the Commission — Action — Admissibility — Aid granted by States or through State resources — Systems of aid existing — Review by the Commission — Abolition or alteration — Aspects of aid incompatible with the Treaty — Indispensable indications for the efficacy of the decision	[1973] I-813

Date	Case	Parties Decision reference Keywords	ECR page reference
11.12.1973	C-120/73	*Lorenz* v *Germany*	[1973] I-1471
		Preliminary ruling — Interpretation — Article 93(3) — Aid granted by States — Proposals — Alterations in existing aid — Informing the Commission — Object — Period for consideration and examination — Length — Expiration of the period for consideration and examination — Introduction — Prior notice — Prohibition on introduction — Preliminary examination — Decision not to initiate the contentious procedure — Notification — No special form — Putting into effect — Prohibition — Direct effect — Extent — Application in Member States — Rules — Rights of the individual — Protection by national courts	
11.12.1973	C-121/73	*Markmann* v *Germany*	[1973] I-1495
		Preliminary ruling — Interpretation — Article 93(3) — Aid granted by States — Proposals — Alterations in existing aid — Informing the Commission — Object — Period for consideration and examination — Length — Expiration of the period for consideration and examination — Introduction — Prior notice — Prohibition on introduction — Preliminary examination — Decision not to initiate the contentious procedure — Notification — No special form — Putting into effect — Prohibition — Direct effect — Extent — Application in Member States — Rules — Rights of the individual — Protection by national courts	

Date	Case	Parties Decision reference Keywords	ECR page reference
11.12.1973	C-122/73	*Nordsee* v *Germany*	[1973] I-1511
		Preliminary ruling — Interpretation — Article 93(3) — Aid granted by States — Proposals — Alterations in existing aid — Informing the Commission — Object — Period for consideration and examination — Length — Expiration of the period for consideration and examination — Introduction — Prior notice — Prohibition on introduction — Preliminary examination — Decision not to initiate the contentious procedure — Notification — No special form — Putting into effect — Prohibition — Direct effect — Extent — Application in Member States — Rules — Rights of the individual — Protection by national courts	
11.12.1973	C-141/73	*Lohrey* v *Germany*	[1973] I-1527
		Preliminary ruling — Interpretation — Article 93(3) — Aid granted by States — Proposals — Alterations in existing aid — Informing the Commission — Object — Period for consideration and examination — Length — Expiration of the period for consideration and examination — Introduction — Prior notice — Prohibition on introduction — Preliminary examination — Decision not to initiate the contentious procedure — Notification — No special form — Putting into effect — Prohibition — Direct effect — Extent — Application in Member States — Rules — Rights of the individual — Protection by national courts	

Date	Case	Parties Decision reference Keywords	ECR page reference
1974			
2.7.1974	C-173/73	*Italy* v *Commission* Decision OJ L 128, 27.5.1970 p. 33; Decision 73/274/EEC, OJ L 254, 25.7.1973, p. 14. Action for annulment — Decision of the Commission concerning family allowances in the textile industry — Aid granted by States — Plans — Implementation in contravention of Article 93(3) — Powers of the Commission — Prohibition — Public charges devolving upon undertakings in a sector of industry — Reduction — Aim — Exemption — Classification as aid	[1974] I-709
1975			
23.1.1975	C-51/74	*Hulst* v *Produktschap voor Siergewassen* Preliminary ruling — Interpretation — Articles 16, 40, 93(3) and Articles 1 and 10 of Council Regulation No 234/68 (EEC) — Customs duties on export — Charges having equivalent effect — Agriculture — Common organization of the market — Infringements by Member States of the provisions or objects of Community — Inadmissibility — Live trees and other plants — National intervention mechanism — Internal levy falling more heavily on export sales than on sales on the national market — Incompatibility with Community law — Prohibition of discrimination within the meaning of Article 95 — Application by analogy	[1975] I-79

Date	Case	Parties Decision reference Keywords	ECR page reference
18.6.1975	C-94/74	*IGAV* v *ENCC*	[1975] I-699
		Preliminary ruling — Interpretation — Article 86 — System of importation of paper, cardboard and pulp into Italy — Customs duties — Charges having equivalent effect — Concept — Internal taxation — Definition — Distinction — Prohibition — Direct effect — Due — Utilization— Purpose incompatible with Treaty — Consequences	
1976			
21.1.1976	C-40/75	*Produits Bertrand* v *Commission*	[1976] I-1
		Application for compensation — Commission failure to initiate proceedings under Article 93(2) and to secure the abolition of aid to Italian manufacturers of semolina and pasta	
1977			
3.2.1977	C-52/76	*Benedetti* v *Munari*	[1977] I-163
		Preliminary ruling — Interpretation — Regulations No 120/67 (EEC) and No 132/67 (EEC) of the Council and (EEC) No 376/70 of the Commission — Agriculture — Common organization of the markets — Cereals — Price — Formation — Member States — Intervention — Admissibility — Conditions — Prohibition	

Date	Case	Parties Decision reference Keywords	ECR page reference
22.3.1977	C-74/76	*Iannelli* v *Meroni*	[1977] I-557
		Preliminary ruling — Interpretation — Articles 30 and 95 — Aid granted by States — Compatibility with Community law — Challenge by individuals — Inadmissibility — Aspects of aid which are not necessary for attainment of its object or for its proper functioning — Incompatibility with Article 30 — Internal taxation — Imported product — Domestic product — Discrimination within the meaning of Article 95 — Prohibition — Field of application — Jurisdiction of the national court	
22.3.1977	C-78/76	*Steinike and Weinlig* v *Germany*	[1977] I-595
		Preliminary ruling — Interpretation — Articles 92, 93 and 95 — Aid granted by States — Compatibility with Community law — Challenge by individuals — Inadmissibility — National court — Jurisdiction — Limits — Bringing before the Court — Undertakings and production within the meaning of Article 92 — Concepts — Measures by public authority — Financing — Contributions imposed by this authority on the undertakings concerned — Customs duties — Charges having equivalent effect — Internal taxation — Distinction — Criteria — Levying subsequent to crossing the frontier — Imported products — Domestic product — Discrimination	
21.5.1977	C-31/77* C-53/77R	*Commission* v *United Kingdom*	[1977] I-921
		Decision 77/172/EEC, OJ L 54, 17.2.1977, p. 39.	
		Application for interim measures — Aid to domestic pig farmers — Article 93(2) proceedings initiated — Measures put into effect before final decision — Incompatibility with the common market — Prohibition — Possibility of granting disputed aid retroactively	

* Decisions marked with an asterisk* are orders rather than judgments

Date	Case	Parties Decision reference Keywords	ECR page reference
1978			
24.1.1978	C-82/77	*Public Department the Netherlands* v *van Tiggele* Preliminary ruling — Interpretation — Articles 30 to 37, 92 to 94 — Quantitative restrictions — Measures having equivalent effect — Prohibition — Criteria — Fixed minimum price — Application without distinction to domestic products and imported products — Lower cost price of imported products — Not to be reflected in the selling price to consumers — Exemption from fixed minimum price and temporary nature of its application — Lack of justification — Aid granted by States — Minimum prices — Fixing by public authorities of minimum retail prices — Cost borne exclusively by consumers — Not State aid	[1978], I-25
10.10.1978	C-148/77	*Hansen jun.* v *Hauptzollamt Flensburg* Preliminary ruling — Interpretation — Articles 9, 37, 92, 93, 95 and 227 — EEC Treaty — Geographical area of application — French overseas departments — Tax provisions — Prohibition of discrimination — Applicability — Absence of any provision in the EEC Treaty — Possible basis in other treaties — Internal taxation — Preferential treatment of certain types of spirits or certain classes of producers — Products coming from other Member States — Extension of tax advantages — Criteria	[1978] I-1787
12.10.1978	C-156/77	*Commission* v *Belgium (SNCB)* Decision 76/649/EEC, OJ L 229, 4.5.1976, p. 24. Failure to fulfil an obligation arising from the Treaty — Aid to SNCB for international railway tariffs for coal and steel — Transport — Aid to transport — General system of aid — Application — Procedure — Objection of illegality — Measures with regard to which an objection of illegality may be put forward	[1978] I-1881

Date	Case	Parties Decision reference Keywords	ECR page reference
1979			
13.3.1979	C-91/78	*Hansen GmbH* v *Hauptzollamt Flensburg* Preliminary ruling — Interpretation — Articles 37, 92 and 93 of Council Decision 70/549/EEC — Tax applicable to spirits — State monopolies of a commercial character — Provisions of the Treaty — Temporal application — Exercise of exclusive rights — Measures linked to the grant of an aid — Marketing of a product at an abnormally low resale price — Discrimination — Incompatible with Article 37 — Prohibition — Association of the overseas countries and territories — Goods coming from the countries and territories concerned — Community products subject to a monopoly of a commercial character — Equality of treatment	[1979] I-935
26.6.1979	C-177/78	*Pigs and Bacon Commission* v *McCarren* Preliminary ruling — Interpretation — Agriculture — Common organization of the market — Pigmeat — Provisions of the Treaty on aid granted by States — Applicability — Conditions — Undermining Community rules — Prohibition — Freedom of intra-Community trade — Conferment of special advantages on national producers — Export subsidy — Exhaustive rules — National marketing scheme — Prohibition — Criteria — National levy incompatible with Community law — Impossibility of recovering — Right to reimbursement — Arrangements for securing — Discretion of national court	[1979] I-2161

Date	Case	Parties Decision reference Keywords	ECR page reference
11.7.1979	C-59/79*	*Producteurs de vins de table et vins de pays* v *Commission* Decision OJ C 305, 8.12.1978, p. 3. Action for failure to act — Natural or legal persons — Notice to the institution to act — Request for adoption of an act — Concepts — Request for a finding that aid granted by a State is not compatible with the common market — Bar — Inadmissibility	[1979] I-2425
1980			
27.3.1980	C-61/79	*Amministrazione delle finanze dello Stato* v *Denkavit Italiana* Preliminary ruling — Interpretation — Article 92 — Public health inspection charges — Free movement of goods — Custom duties — Charges having an equivalent effect — Prohibition — Direct effect — Consequences — Individual rights — Protection by national courts — Principle of cooperation — National charges incompatible with Community law — Conditions for recovery — Application of national law — Conditions — Taking into account possible passing on of charge — Permissibility — Aid granted by States — Repayment of charges unduly levied — Exclusion	[1980] I-1205

Date	Case	Parties Decision reference Keywords	ECR page reference
24.4.1980	C-72/79	*Commission* v *Italy*	[1980] I-1411
		Failure to fulfil an obligation arising from the Treaty — Council Regulation (EEC) No 3330/74 — Agriculture — Common organization of the markets — Aid granted by States — Prohibition — Appraisal of the compatibility of an aid with the rules of the common organization — Procedure to be followed — Sugar — System of compensation for storage costs — Flat-rate refund for whole Community — Exhaustive — Appraisal by the Council alone of the justification for any amendments — Sugar carried forward to following marketing year — Exclusion	
21.5.1980	C-73/79	*Commission* v *Italy*	[1980] I-1533
		Failure to fulfil an obligation arising from the Treaty — Agriculture — Common organization of the market — Sugar — National adaptation aids — Method of financing — Compatibility with Community law — Conditions — Tax provisions — Internal taxation — Discriminatory taxation coming under a system of aid — Criteria for appraisal — Cumulative application of Articles 92, 93 and 95 — Purpose to which revenue from the charge is put — Financing aid for the sole benefit of domestic products — Not permissible — Passing financial burdens on to the consumer — No effect	

Date	Case	Parties Decision reference Keywords	ECR page reference
10.7.1980	C-811/79	*Amministrazione delle finanze dello Stato* v *Ariete* Preliminary ruling — Interpretations — Articles 12 and following, 85 and following — Free movement of goods — Customs duties — Charges having equivalent effect — Prohibition — Direct effect — Rights of individuals — Protection by national courts — Principle of cooperation — National charges incompatible with Community law — Recovery — Detailed rules — Application of national law — Conditions — Taking into account of fact that charge may have been passed on — Permissibility having regard to provisions of Treaty relating to competition	[1980] I-2545
10.7.1980	C-826/79	*Amministrazione delle finanze dello Stato* v *Mireco* Preliminary ruling — Interpretation — Articles 9, 12, 13, 92, 93, 95, 171, 177 and 189 — Free movement of goods — Customs duties — Charges having equivalent effect — Prohibition — Direct effect — Rights of individuals — Protection by national courts — Principle of cooperation — National charges incompatible with Community law — Recovery — Detailed rules — Application of national law — Conditions — Taking into account of fact that charge may have been passed on — Permissibility having regard to provisions of Treaty relating to free movement of goods, competition and the prohibition of tax discrimination	[1980] I-2559

Date	Case	Parties Decision reference Keywords	ECR page reference
17.9.1980	C-730/79	*Philip Morris* v *Commission (Philip Morris)* Decision 79/743/EEC, OJ L 217, 27.7.1979, p. 17. Action for annulment — Commission decision on proposed assistance to increase the production of a cigarette manufacturer — Aid granted by States — Effect on trade between Member States — Criteria — Prohibition — Derogations — Aid which may be considered as compatible with the common market — Commission's discretion — Reference to the Community context	[1980] I-2671
1981			
27.5.1981	C-142/80 C-143/80	*Amministrazione delle finanze dello Stato* v *Essevi and Salengo* Preliminary ruling — Interpretation — Article 95 — Tax applicable to spirits — Failure to fulfil an obligation arising from the Treaty — Stage preceding commencement of proceedings — Reasoned opinion — Effect restricted to commencement of proceedings before the Court — Exemption of Member State from compliance with its obligations — Not permissible — Tax provisions — Internal taxation — System of differential taxation of a discriminatory nature — Grant of tax advantages subject to conditions which can be satisfied only with domestic products — Prohibition — Rule against discrimination — Direct effect — Date on which rule took effect — Aid granted by States — Aid in form of tax discrimination — Authorization — Not permissible — National taxes incompatible with Community law — Refund — Detailed rules — Application of national law — Taking into account of any passing-on of tax — Whether permissible	[1981] I-1413

Date	Case	Parties Decision reference Keywords	ECR page reference
1982			
29.4.1982	C-17/81	*Pabst and Richarz* v *Hauptzollamt Oldenburg* Preliminary ruling — Interpretation — Articles 37, 92 and following and 53(1) of association agreement EC/Greece — Tax applicable to spirits — Internal taxation — Discrimination between domestic products and similar imported products — Prohibition — Uniform application — Relief for national products at the expense of similar imported products from Greece — Relief prohibited — Selling price of a product covered by a national monopoly — Component in the nature of taxation forming part of that price — Tax on imported products — Tax corresponding to a non-tax component in the selling price of the similar product covered by the monopoly — Discriminatory taxation — Whether discriminatory taxation may come under a system of State aid — Relief by an equal amount for the two products — Continuation of discrimination — State monopolies of a commercial character — Specific provisions of the Treaty — Matters covered — Activities intrinsically connected with the specific function of monopolies — Relief for spirits on which tax was previously charged — Provisions not applicable — International agreements — Prohibition of discrimination in taxation	[1982] I-1331

Date	Case	Parties Decision reference Keywords	ECR page reference
6.7.1982	C-188/80 C-190/80	*France, Italy and United Kingdom* v *Commission*	[1982] I-2545
		Action for annulment — Commission Directive 80/723/EEC — Competition — Public undertakings — Transparency of financial relations between Member States and public undertakings — Commission's power to obtain information — Scope — National published information — Possibility for the Commission to require additional information — Determination of the financial relations covered — Determination of criteria common to all the Member States — Financial participation of the public authorities — Position of the public authorities in the management of the undertaking — Difference in treatment as compared with private undertakings — Situations not comparable — No discrimination	
13.10.1982	C-213/81 C-215/81	*Nordeutsches Vieh-und Fleischkontor* v *Balm*	[1982] I-3583
		Preliminary ruling — Interpretation — Article 3 of Council Regulation (EEC) No 2956/79 and Article 7 of Council Regulation (EEC) No 805/68 — Common customs tariff — Community tariff quotas — Frozen beef and veal — Member States' administrative powers — Allocation of national quota shares — Conditions — Reference to imports and to exports within the Community and exports to non-member countries — Permissible — Reference to purchase of beef and veal from intervention agencies — Whether compatible with the common organization of the market — Financial advantage obtained from an incorrect allocation of a national quota share — Whether State aid — Exclusion	

Date	Case	Parties Decision reference Keywords	ECR page reference
24.11.1982	C-249/81	*Commission* v *Ireland (Irish Goods Council)* Failure to fulfil an obligation arising from the Treaty — Article 30 — Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Publicity campaign to promote domestic products — Provisions governing aid granted by States — Whether applicable to the method of financing the campaign — Possibility which does not exclude application of the prohibition on measures having an equivalent effect — Practice constituting a measure having equivalent effect — Requirements — Practice based on measures which are not binding — Not significant	[1982] I-4005
1983			
14.7.1983	C-203/82	*Commission* v *Italy* Decision 80/932/EEC, OJ L 264, 15.9.1980, p. 28. Failure to fulfil an obligation arising from the Treaty — Commission Decision 80/932/EEC — Partial taking-over by the State of employers' contributions to the sickness insurance scheme — Failure to comply within the prescribed period — Discriminatory reduction in employers' contributions — Advantage given to industries with large numbers of female employees — Textiles, clothing, footwear and leather — Aid incompatible with the common market under Article 92 — Abolition	[1983] I-2525

Date	Case	Parties Decision reference Keywords	ECR page reference
20.9.1983	C-171/83R*	*Commission* v *France* Decision 83/245/EEC, OJ L 137, 12.1.1983, p. 24. Application for interim measures — Aid to textile and clothing sector — Draft aid programmes — Notification to the Commission — Implementation before compatibility has been checked — Prohibition — Date of taking effect — Planned air regarded as compatible by the Member State — Irrelevance — Failure to initiate the procedure for checking compatibility, enabling each party to state its case — Implementation of the project on the expiry of the period prescribed for preliminary check on compatibility — Conditions — Prior notice to Commission	[1983] I-2621
15.11.1983	C-52/83	*Commission* v *France* Decision 83/245/EEC, OJ L 137, 12.1.1983, p. 24. Failure to fulfil an obligation arising from the Treaty — Commission decision — Aid to textile and clothing sector — Objection of illegality — Expiry of the limitation period for an action for a declaration that it is void — Inadmissibility of the objection of illegality raised with regard to the decision	[1983] I-3707
1984			
21.2.1984	C-337/82	*St Nikolaus Brennerei* v *Hauptzollamt Krefeld* Preliminary ruling — Validity — Commission Regulation (EEC) No 851/76 — Agriculture — Provisions of the Treaty — Article 46 — Applicability after the transitional period — Countervailing charges imposed on alcohol produced in France — Products not covered by a common organization — Purpose — Not a charge having an effect equivalent to a customs duty	[1984] I-1051

Date	Case	Parties Decision reference Keywords	ECR page reference
20.3.1984	C-84/82	*Germany* v *Commission*	[1984] I-1451
		Decision 18.11.1981 (unpublished).	
		Action for a declaration of nullity of the authorization for introduction — Action in respect of failure to act — Textiles and clothing — Plans to grant aid — Review by the Commission — Preliminary review and main review — Respective characteristics — Purpose — Duties of the Commission — Expiry of reasonable period for carrying out the review — Implementation of aid — Prior notice — Compatibility of the aid with the common market — Difficulties in appraisal — Notice to the institution — Express request to act — None	
27.3.1984	C-169/82	*Commission* v *Italy*	[1984] I-1603
		Failure to fulfil an obligation arising from the Treaty — Aid to agriculture in the region of Sicily — Common organization of the markets — Aid granted by States — Cereals — Production of durum wheat — Wine — Use of table grapes for wine production — Products processed from fruit and vegetables — Processing of tomatoes — Incompatibility with Community legislation — Fruit and vegetables — Scope — Almonds, hazelnuts and pistachio nuts — Inclusion	
5.7.1984	C-114/83	*Société d'initiatives et de coopération agricoles* v *Commission*	[1984] I-2589
		Action for damages — Liability for refusal of a protective measure — Non-contractual liability — Importation of low-priced new potatoes from Greece — Commission's failure to act — Act of accession of new Member States to the Community — Hellenic Republic — Agriculture — Protective measure — Conditions for implementation — Appraisal by the Commission	

Date	Case	Parties Decision reference Keywords	ECR page reference
10.7.1984	C-72/83	*Campus Oil Ltd and Others* v *Minister for Industry and Energy and Others* Preliminary ruling — Interpretation — Articles 30 and 36 — Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Concept — Competition — Undertakings entrusted with the operation of services' general economic interest — Subject to the Treaty rules — Protection ensured by measures restricting imports from other Member States — Not acceptable — Supplies of petroleum products — Obligation to purchase from a national refinery — Derogations — Acceptable — Conditions and limits — Community rules for the protection of the same interests — Effects — Unnecessary or disproportionate measures — Objective covered by the concept of public security — Adoption of appropriate rules — Rules making it possible to achieve other objectives of an economic nature	[1984] I-2727
11.7.1984	C-130/83	*Commission* v *Italy* Decision 82/401/EEC, OJ L, 173, 5.5.1982, p. 20. Failure to fulfil an obligation arising from the Treaty — Aid to the wine, fruit and vegetables sectors in Sicily — Commission decision declaring aid compatibility with the common market — Obligation of the Member State concerned — Failure to comply within the prescribed period	[1984] I-2849

Date	Case	Parties Decision reference Keywords	ECR page reference
9.10.1984	C-91/83 C-127/83	*Heineken Brouwerijen* v *Inspecteurs der Vennootschapsbelasting, Amsterdam and Utrecht*	[1984] I-3435
		Preliminary ruling — Interpretation — Articles 92 and 93 — Plans to grant aid — Notification to the Commission — Obligation of the Member State to inform the interested parties — Extent — Extension to alterations to the initial plan — Prohibition on the putting into effect of aid measures — Application for alterations to the initial plan — Conditions	
14.11.1984	C-323/82	*Intermills* v *Commission (Intermills)*	[1984] I-3809
		Decision 82/670/EEC, OJ L 280, 22.7.1982, p. 30.	
		Action for annulment — Commission Decision 82/670 — Aid for the reconversion of a paper manufacturing business — Provisions of the Treaty — Application to a group of undertakings created under a restructuring plan — Conditions — Plans to grant aid — Review by the Commission — Hearing of the parties concerned — Notice to the parties concerned to submit their comments — Concept of 'parties concerned' — Form of notice — Aid in the form of loans or capital holdings — Form irrelevant for purpose of the application of Article 92	
13.12.1984	C-289/83	*GAARM* v *Commission*	[1984] I-4295
		Action for damages — Liability for refusal of a protective measure — Non-contractual liability — Importation of low-priced new potatoes from Greece — Commission's failure to act — Act of accession of new Member States to the Communities — Hellenic Republic — Agriculture — Protective measure — Conditions for implementation — Appraisal by the Commission	

Date	Case	Parties Decision reference Keywords	ECR page reference
1985			
15.1.1985	C-253/83	*Kupferberg* v *Hauptzollamt Mainz* Preliminary ruling — Interpretation — Articles 37 and 95 — Article 3 of Agreement EEC/Spain and Article 21(1) of Agreement EEC/Portugal — Fiscal legislation — Internal taxation — National spirits monopoly — *De facto* reduction in selling price — Compatibility with the EEC Treaty and the Agreements between EEC and Spain and Portugal — Conditions	[1985] I-157
30.1.1985	C-290/83	*Commission* v *France (Caisse nationale de crédit agricole)* Failure to fulfil an obligation arising from the Treaty — Aid granted to farmers financed from the administrative surplus of a national agricultural loans society — Aid not funded out of State resources — Aid granted through public or private bodies — Classifiable as State aid — Appraisal by the Commission — Assessment on the basis of Article 92 — Procedure under Article 93(2) — Recourse to the procedure under Article 169 — Not permissible	[1985] I-439
7.2.1985	C-240/83	*Procureur de la République* v *ADBHU* Preliminary ruling — Interpretation — Validity — Council Directive 75/439 — Approximation of laws — Disposal of waste oils — Restriction of freedom of trade and of competition — Whether permissible — Conditions — National legislation on burning — Compatibility — Criteria	[1985] I-531

Date	Case	Parties Decision reference Keywords	ECR page reference
13.3.1985	C-296/82 C-318/82	*Pays-Bas and Leeuwarder Papierwaren-fabriek Commission (Leeuwarder)* Decision 82/653/EEC, OJ L 277, 22.7.1982, p. 15. Action for annulment — Commission Decision 82/653 — Aid to the paperboard-processing industry — Measures adopted by the institutions — Statement of reasons — Duty — Extent — Individual decision — Publication — Preservation of professional secrecy — Facts covered by professional secrecy excluded from publication — Commission decision that aid is incompatible with the common market — Duty to provide a statement — Necessary information	[1985] I-809
13.3.1985	C-93/84	*Commission* v *France* Decision 83/313/EEC, OJ L 169, 8.2.1983, p. 32. Failure to fulfil an obligation arising from the Treaty - Aid to fishing undertakings — Non-compliance with a Commission decision concerning State aid — Decision not contested by means of an action for a declaration of nullity — Defences — Legality of the decision called in question — Not admissible	[1985] I-829

Date	Case	Parties Decision reference Keywords	ECR page reference
3.5.1985	C-67/85* C-68/85 C-70/85R	*Van der Kooy* v *Commission*	[1985] I-1315
		Decision 85/215/EEC, OJ L 97, 13.2.1985, p. 49.	
		Application for interim measures — Suspension of the operation of a Commission's measure C(85)284 DF — Horticulture — Price of gas — Application for interim measures — Conditions for granting — Plans to grant aid — Notification to the Commission — Aid put into effect before review of compatibility — Effect on right of the Member State concerned to challenge the Commission's decision before the Court — None	
7.5.1985	C-18/84	*Commission* v *France*	[1985] I-1339
		Failure to fulfil an obligation arising from the Treaty — Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Measure which may be defined as aid within the meaning of Article 92 — May nevertheless be covered by the prohibition on measures having equivalent effect — Tax advantages for the press — Benefit refused in respect of publications printed in other Member States — Not allowed	
13.6.1985	C-248/84R*	*Germany* v *Commission (North Rhine-Westphalia)*	[1985] I-1813
		Decision 85/12/EEC, OJ L 7, 23.7.1984, p. 28.	
		Application for interim measures — Suspension of the operation of Article 1 of Commission's Decision 85/12 — Aid to regional investments — Conditions for granting such a measure	

Date	Case	Parties Decision reference Keywords	ECR page reference
3.7.1985	C-227/83	*Commission* v *Italy (Marsala)*	[1985] I-2049
		Failure to fulfil an obligation arising from the Treaty — Reduction of the charge on spirits used in the production of Marsala wine — Tax provisions — Internal taxation — Grant of tax relief in respect of domestic products — Permissibility — Conditions — Extension to products imported from other Member States — Discriminatory taxation under a system of aid — Application of Article 95 — Discrimination — Prohibition — Limited effect of discrimination — Not relevant	
1986			
15.1.1986	C-52/84	*Commission* v *Belgium (Boch)* Decision 83/130/EEC, OJ L 91, 16.2.1983, p. 32.	[1986] I-89
		Failure to fulfil an obligation arising from the Treaty — Shareholding in an undertaking — Non-compliance with a Commission decision on State aid — Decision not challenged by way of an application for its annulment — Submissions in defence — Submission questioning the legality of the decision — Inadmissibility — Absolute impossibility of implementation — Admissibility — Commission decision finding an aid to be incompatible with the common market — Difficulties of implementation — Obligation on the part of the Commission and the Member State to cooperate in seeking a solution consistent with the Treaty	

Date	Case	Parties Decision reference Keywords	ECR page reference
28.1.1986	C-169/84	*Cofaz and Others* v *Commission (Gasunie)* Decision OJ C 327, 25.10.1983, p. 3. Decision 24.4.1984 (unpublished). Action for annulment — Natural or legal persons — Measures of direct and individual concern to them — Commission decision on a complaint concerning an infringement of Community rules — Commission decision terminating a procedure investigating the grant of aid — Procedural guarantees accorded to applicant undertaking — Right of action — Conditions	[1986] I-391
6.2.1986	C-310/85R*	*Deufil* v *Commission (Deufil)* Decision 85/471/EEC, OJ L 278, 10.7.1985, p. 26. Application for interim measures — Suspension of the operation of a Commission's measure 85/471 — Aid granted by States for the production of polyamide and polypropylene yarn — Conditions for granting — Irreparable nature of the damage	[1986] I-537
30.4.1986	C-57/86R*	*Greece* v *Commission* Decision 86/187/EEC, OJ L 136, 13.11.1985, p. 61. Application for interim measures — Suspension of the operation of a Commission's measure C(85) 2087 final — Aid granted by Greece in the form of an interest rebate in respect of the exportation of all products except petroleum products — Conditions for granting	[1986] I-1497

Date	Case	Parties Decision reference Keywords	ECR page reference
5.6.1986	C-103/84	*Commission* v *Italy*	[1986] I-1759
		Failure to fulfil an obligation arising from the Treaty — Financial aid for the purchase of nationally produced vehicles — Object of the action — Established by the reasoned opinion — Time-limit granted to the Member State — Subsequent compliance with its obligations — Interest in pursuing the action — Possible liability of the Member State — Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Concept — Measure which may be defined as aid within the meaning of Article 92 — Possibility of being aid not a sufficient reason to exempt from the prohibition of measures having equivalent effect	
10.7.1986	C-234/84	*Belgium* v *Commission (Meura)*	[1986] I-2263
		Decision 84/496/EEC, OJ L 276, 17.4.1984 p. 34.	
		Action for annulment — Commission Decision C(84)496 — Aid granted to an undertaking at Tournai manufacturing equipment for the feed industry — Concept — Aid in the form of loans or of subscription of capital — Form irrelevant as regards the application of Article 92 — Subscription of capital — Basis of assessment — Situation of the undertaking *vis-à-vis* the private capital markets — Effect on trade between Member States — Distortion of competition — Community law — Principles — Right to be heard — Application to an administrative procedure initiated by the Commission — Scope	

Date	Case	Parties Decision reference Keywords	ECR page reference
10.7.1986	C-40/85	*Belgium* v *Commission (Boch)*	[1986] I-2321
		Decision 85/153/EEC, OJ L 59, 24.10.1984 p. 21.	
		Action for annulment — Commission Decision 85/153 — Aid to a ceramic sanitary-ware and crockery manufacturer — Concept — Aid in the form of loans or of subscription of capital — Form irrelevant as regards the application of Article 92 — Subscription of capital — Basis of assessment — Situation of the undertaking *vis-à-vis* the private capital markets — Effect on trade between Member States — Distortion of competition — Community law — Principles — Right to be heard — Application to an administrative procedure initiated by the Commission — Scope	
10.7.1986	C-282/85	*DEFI* v *Commission*	[1986] I-2469
		Decision 85/380/EEC, OJ L 217, 5.6.1985, p. 20.	
		Action for annulment — Commission Decisions 85/380 — Aid to textile-clothing sector - Quasi-fiscal charges — Natural or legal persons — Measures of direct and individual concern to them — Commission decision to the effect that aid planned is incompatible with the common market — Application to the Court by a State-controlled body charged with allocating the planned aid — Not admissible	

Date	Case	Parties Decision reference Keywords	ECR page reference
1987			
24.2.1987	C-310/85	*Deufil* v *Commission (Deufil)* Decision 85/471/EEC, OJ L 278, 10.7.1985, p. 26. Action for annulment — Commission Decision 85/471 — Aid granted by States for the production of polyamide and polypropylene yarn — Provisions of the Treaty — Scope — National rules pursuing general objectives of conjunctural policy — Considerations only of the effects of those rules — Prohibition — Exceptions — Aid which may be considered as compatible with the common market — Commission's discretion — Reference to the Community context — Aid projects — Implementation before the Commission's final decision — Order to national authorities to recover aid incompatible with the common market — Breach in regard to the beneficiaries of the principle of the protection of legitimate expectations — None	[1987] I-901
9.4.1987	C-5/86	*Commission* v *Belgium (Beaulieu II)* Decision 84/508/EEC, OJ L 283, 27.6.1984, p. 42. Failure to fulfil an obligation arising from the Treaty — Failure to comply with the decision on aid to a producer of polypropylene fibre and yarn — Commission decision finding an aid to be incompatible with the common market — Decision requiring the aid to be repaid — Obligation of the Member State to comply with it in the time allowed	[1987] I-1773

Date	Case	Parties Decision reference Keywords	ECR page reference
15.6.1987	C-142/87R*	*Belgium* v *Commission (Tubemeuse)*	[1987] I-2589
		Decision 87/418/EEC, OJ L 227, 4.2.1987, p. 45.	
		Application for interim measures — Suspension of the operation of a Commission Decision C(87)507 — State aid for a steel-tube undertaking — Conditions for granting — Serious and irreparable damage to the applicant	
16.6.1987	C-118/85	*Commission* v *Italy*	[1987] I-2599
		Failure to fulfil an obligation arising from the Treaty — Commission Directive 80/723/EEC — Transparency of financial relations between Member States and public undertakings — Distinction between the role of the State as public authority and as a producer or as a provider of services — Body integrated into the administration of the State — Designation as public undertaking — Lack of legal personality distinct from that of the State — No effect	
14.10.1987	C-248/84	*Germany* v *Commission*	[1987] I-4013
		Decision 85/12/EEC, OJ L 7, 23.7.1984, p. 28.	
		Action for annulment — Compatibility of a regional aid programme — Aid granted by regional or local bodies — Inclusion — Distinction between different kinds of aid on the basis of their objective — None — Commission decision finding an aid programme incompatible with the common market — Obligation to state reasons — Necessary details — Aid for the development of particular areas — Distinction between Article 93(3)(a) and 93(3)(c) of the Treaty	

Date	Case	Parties Decision reference Keywords	ECR page reference
11.11.1987	C-259/85	*France* v *Commission*	[1987] I-4393
		Decision 85/380/EEC, OJ L 217, 5.6.1985, p. 20.	
		Action for annulment — Commission Decision 85/380/EEC — Textile/clothing industry — Community law — Principles — Right to a fair hearing — Application to administrative procedures initiated by the Commission — Examination of aid schemes — Scope — Sectoral aid financed by a parafiscal charge levied on national production in the sector in question — Arrangement of no consequence for the purpose of the application of Article 92 — Prohibition — Derogations — Adverse effect on trading conditions to an extent contrary to the common interest	
24.11.1987	C-223/85	*RSV* v *Commission (RSV)*	[1987] I-4617
		Decision 85/351/EEC, OJ L 188, 19.12.1984, p. 44.	
		Action for annulment — Commission Decision 85/351/EEC — Large shipbuilding and heavy offshore engineering sector — Aid granted by States — Commission decision declaring an aid to be incompatible with the common market — Decision given after unjustifiable delay — Breach *vis-a-vis* the beneficiaries of the aid of the principle of legitimate expectation	

Date	Case	Parties Decision reference Keywords	ECR page reference
1988			
2.2.1988	C-67/85 C-68/85 C-70/85	*Van der Kooy* v *Commission (Gasunie)* Decision 85/125/EEC, OJ L 97, 13.2.1985 p. 49. Action for annulment — Commission Decision 85/215/EEC — Natural or legal persons — Measures of direct and individual concern to them — Decision addressed to a Member State, prohibiting aid to horticultural producers in the form of preferential tariff structure for gas — Action brought by a producer benefiting thereunder — Inadmissible — Action brought by a body representing horticultural producers — Participation in the tariff agreement and in the proceedings before the Commission — admissible — Aid granted through a State-controlled organization — Preferential tariff for an energy source, without economic justification, benefiting a category of undertakings — Distortion of competition — Effect on trade between Member States — Commission decision finding an aid to be incompatible with the common market — No indication given as to the amount by which an energy tariff found to constitute a prohibited aid should be increased — No infringement of essential procedural requirements	[1988] I-219
2.2.1988	C-213/85	*Commission* v *the Netherlands (Gasunie)* Decision 85/215/EEC, OJ L 97, 13.2.1985, p. 49. Failure to fulfil an obligation arising from the Treaty — Commission Decision 85/215/EEC — Failure to comply within the prescribed period — Action under Article 93(2) — Subject-matter — Commission decision finding an aid to be incompatible with the common market — Period for implementation	[1988] I-281

Date	Case	Parties Decision reference Keywords	ECR page reference
8.3.1988	C-62/87 C-72/87	*Exécutif régional wallon and Glaverbel SA* v *Commission (Glaverbel)*	[1988] I-1573
		Decision 87/195/EEC, OJ L 77, 3.12.1986, p. 47.	
		Action for annulment — Flat glass industry — Pyrolytic laminated glass — Aid granted by States — Prohibition — Investment aid granted to an undertaking operation in a sector having unused capacity — Commission decision prohibiting the implementation of an aid project — Obligation to state reasons — Information required — Aid which may be considered as compatible with the common market — Aid helping to promote the execution of an important project of European interest — Aid to encourage the development of a sector of the economy — Power of appraisal of the Commission — Consideration by the Commission — Consultation procedure — Observations submitted by interested third parties — Observations not communicated to the authority granting the aid — No reference to those observations in the reasons given for the Commission decision — Infringement of the right to a fair hearing — None	
7.6.1988	C-57/86	*Greece* v *Commission*	[1988] I-2855
		Decision 86/187/EEC, OJ L 136, 13.11.1985, p. 61.	
		Action for annulment — Commission Decision 86/187/EEC — Aid granted by Greece in the form of an interest rebate in respect of the exportation of all products except petroleum products — Inclusion — Appraisal by the Commission for the purposes of the rules on agriculture — Irrelevant — Member States — Obligations — Exercise of powers retained in the monetary field — Unilateral measures prohibited by the Treaty — Not permissible — Aid not deriving from State resources — Aid granted through public or private bodies — Commission decision finding an aid to be incompatible with the common market — Duty to state reasons — Necessary information	

Date	Case	Parties Decision reference Keywords	ECR page reference
7.6.1988	C-63/87	*Commission* v *Greece*	[1988] I-2875
		Decision 86/187/EEC, OJ L 136, 13.11.1985, p. 61.	
		Failure to implement a Commission decision — Commission Decision 86/187/EEC — Aid granted by Greece in the form of an interest rebate in respect of the exportation of all products except petroleum products — Measures adopted by the institutions — Presumption of validity — Commission decision declaring aid incompatible with the common market — Non-implementation — Justification — Implementation absolutely impossible because of financial difficulties with which recipients would be confronted — Unacceptable	
13.7.1988	C-102/87	*France* v *Commission (SEB)*	[1988] I-4067
		Decision 87/303/EEC, OJ L 152, 14.1.1987 p. 27.	
		Action for annulment — Commission decision on a FIM (industry modernization fund) loan to a brewery — Effect on trade between Member States — Distortion of competition — Aid granted to an undertaking whose activities are confined to the domestic market — No over-capacity	

Date	Case	Parties Decision reference Keywords	ECR page reference
27.9.1988	C-106/87 C-120/87	*Asteris and Others* v *Greece and Commission*	[1988] I-5515
		Action for damages — Subject-matter — Claim for compensation against the Community — Exclusive jurisdiction of the Court — Claim for compensation for damages caused by national authorities in implementing Community law — Jurisdiction of national courts — Judgement of the Court dismissing a claim for compensation against the Community in respect against the national held unlawful — Effects — Action for damages against the national authorities which implemented the unlawful regulation — Permissibility — Condition — Action on grounds other than the unlawfulness of the regulation — Aid granted by States — Concept — Compensation for damage caused by the State for which the State is liable — Exclusion — Agriculture — Common organization of the markets — Products processed from fruits and vegetables — Aid to tomato concentrate producers — Regulation (EEC) No 381/86 granting Greek producers additional aid by reason of the unlawfulness or prior legislation — Action against the Greek State for compensation for any damage in excess of the amounts paid retrospectively — Permissibility — Limits	
15.12.1988	C-166/86 C-220/86	*Irish Cement Ltd* v *Commission*	[1988] I-6473
		Decision 14.7.1986 (unpublished). Action for failure to act and for a declaration that a measure is void — Aid for the construction of a cement manufacturing plant in Northern Ireland — Action brought against a decision confirming a decision which was not contested within the time-limit for bringing proceedings — Inadmissibility — Failure to act — Concept — Measure not considered satisfactory — Excluded	

Date	Case	Parties Decision reference Keywords	ECR page reference
1989			
2.2.1989	C-94/87	*Commission* v *Germany (Alcan)* Decision 86/60/EEC, OJ L 72, 14.12.1985 p. 30. Failure to fulfil an obligation arising from the Treaty — Aid to an undertaking producing primary aluminium — Non-compliance with a Commission decision on State aid — Decision not challenged by way of an application for its annulment — Submissions in defence — Absolute impossibility of implementation — Admissibility — Commission decision finding an aid to be incompatible with the common market — Difficulties of implementation — Obligation on the part of the Commission and the Member State to cooperate in seeking a solution consistent with the Treaty — Recovery of illegal aid — Application of national law — Conditions and limits — Interests of the Community to be taken into consideration	[1989] I-175
17.3.1989	C-303/88R*	*Italy* v *Commission (ENI-Lanerossi)* Decision 89/43/EEC, OJ L 16, 26.7.1988, p. 52. Application for interim measures — Suspension of the operation of a Commission measure — Aid to *ENI-Lanerossi* — Conditions for granting — Serious and irreparable damage suffered by the applicant	[1989] I-801

Date	Case	Parties Decision reference Keywords	ECR page reference
1990			
14.2.1990	C-301/87	*France* v *Commission (Boussac)* Decision 87/585/EEC, OJ L 352, 15.7.1987 p. 42. Action for annulment — Commission Decision 87/585/EEC — Aid to a producer of textiles, clothing and paper products *(Boussac Saint Frères)* — Capital contributions, provision of loans at reduced rates of interest and reduction in social security — Plans to grant aid — Absence of notification — Implementation before a final decision by the Commission — Commission's power to issue an order — Refusal to comply with order — Consequences — Community law — Principles — Legal certainty — Right to be heard — Whether applicable to administrative procedures initiated by the Commission — Examination by the Commission of plans to grant aid — Abnormal length of examination — Justification — Attitude of the Member State in question — Decision of the Commission that aid which has been not notified is incompatible with the common market — Obligation to state reasons — Financial assistance granted to an undertaking by a Member State — Criterion for appraisal — Position of the undertaking with regard to private capital markets — Trading conditions affected to an extent contrary to the common interest	[1990] I-307
21.2.1990	C-74/89	*Commission* v *Belgium* Decision 84/111/EEC, OJ L 62, 30.11.1983 p. 18. Failure to fulfil an obligation arising from the Treaty — Article 93(2) — Aid to a synthetic fibre producer — Member States — Obligations — Failure to fulfil an obligation arising from the Treaty — Justification — Not permissible — Recovery — Non-implementation	[1990] I-491

Date	Case	Parties Decision reference Keywords	ECR page reference
20.3.1990	C-21/88	*Du Pont de Nemours Italiana SpA* v *Carrara* Preliminary ruling — Interpretation — Articles 30, 92 and 93 — Public supply contracts — Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Reservation of a proportion of a public supply contract to undertakings located in a particular region of the national territory — Not permissible — Measure benefiting only part of domestic production — No effect — Measure which may be defined as aid within the meaning of Article 92 - Applicability of the prohibition on measures having equivalent effect not precluded by that possibility	[1990] I-889
21.3.1990	C-142/87	*Belgium* v *Commission (Tubemeuse)* Decision 87/507/EEC, OJ L 227, 4.2.1987, p. 45. Action for annulment — Commission Decision 87/507/EEC — Aid to a steel tube undertaking — Plans to grant aid — Lack of notice — Implemented before the Commission's final decision — Commission's power to issue an order — Consequences — Financial assistance granted by a Member State to an undertaking — Criteria for appraisal — Undertaking's position in regard to the capital market — Export aid — Effect on trade between Member States — Community law — Principles — Application to administrative procedures initiated by the Commission — Consideration of aid projects — Scope — Aid which may be regarded as compatible with the common market — Commission's discretion — Reference to the Community context — Withdrawal by way of recovery — Infringement of the principle of proportionality — None — Application of national law — Conditions and limits	[1990] I-959

Date	Case	Parties Decision reference Keywords	ECR page reference
12.7.1990	C-169/84	*CdF Chimie AZF* v *Commission*	[1990] I-3083
		Action for annulment — Tariff system in the Netherlands for the supply of natural gas — Preferential tariff essentially favouring a specific category of undertakings and not justified on economic grounds — Natural or legal persons — Measures of direct and individual concern to them — Commission decision on a complaint concerning an infringement of Community rules — Procedural guarantees accorded to applicant undertaking — Right of action — Commission decision terminating a procedure investigating the grant of aid	
12.7.1990	C-35/88	*Commission* v *Greece*	[1990] I-3125
		Failure to fulfil an obligation arising from the Treaty — Council Regulation (EEC) No 2727/75 — Market in feed grain — Aid granted by States — Assessment of an aid scheme in the light of Community rules other than the rules under Article 92 — Infringement of the rules of a common organization of the agriculture markets — Price formation — National measures — Incompatible with Community legislation — Plans to grant or alter aid — Notification to the Commission — Member States — Obligation — Failure to fulfil an obligation arising from the Treaty — Cooperation in investigations into failure to fulfil obligations	

Date	Case	Parties Decision reference Keywords	ECR page reference
20.9.1990	C-5/89	*Commission* v *Germany (BUG-Alutechnik)* Failure to fulfil an obligation arising from the Treaty — Commission Decision 88/174/EEC — Undertaking producing semi-finished and finished aluminium products — Recovery of illegal aid — Application of national law — Aid granted contrary to the procedural rules in Article 93 — Possible legitimate expectations of recipients — Protection — Conditions and limits — Interests of the Community to be taken into consideration	[1990] I-3437
6.11.1990	C-86/89	*Italy* v *Commission* Action for annulment — Wine sector — Aid for the use of rectified concentrated grape must — Prohibition — Support of the policy pursued under a common organization of the market — Unacceptable justification	[1990] I-3891
1991			
19.2.1991	C-375/89	*Commission* v *Belgium* Failure to fulfil an obligation — Failure to comply with the judgement in case 5/86 — Period for compliance — Aid to a producer of polypropylene fibre and yarn — Incompatibility with the common market — Recovery within the competence of the Flemish region	[1991] I-383

Date	Case	Parties Decision reference Keywords	ECR page reference
21.3.1991	C-303/88	*Italy* v *Commission (ENI-Lanerossi)*	[1991] I-1433

Decision 89/43/EEC, OJ L 16, 26.7.1988, p. 52.

Action for annulment — Commission Decision 89/43/EEC — Textiles/clothing sector — Aid granted through a body controlled by the State — Included — Financial support granted by a Member State to an undertaking — Criterion for assessment — Reasonableness of the transaction for a private investor pursuing a medium or long-term policy — Effect on trade between Member States — Distortion of competition — Aid granted to an undertaking whose operations are restricted to the domestic market — Aid of a small amount in a sector in which there is vigourous competition — Aid which may be considered as compatible with the common market — Discretion of the Commission — Reference to the Community context — Aid granted contrary to the procedural rules laid down in Article 93 — Legitimate expectation on the part of the Member State granting the aid — Not permissible — Plans to grant aid — Failure to notify — Implementation before the final decision of the Commission — Refusal to comply — Consequences — Commission decision finding an aid to be incompatible with the common market — Difficulty of implementation — Insufficient statement of grounds for the order for recovery — Impossibility of recovering the aid — Obligation of the part of the Commission and the Member State to cooperate in finding a solution which is consistent with the Treaty

Date	Case	Parties Decision reference Keywords	ECR page reference
21.3.1991	C-305/89	*Italy* v *Commission (Alfa Romeo)*	[1991] I-1603
		Decision 89/661/EEC, OJ L 394, 31.5.1989 p. 9.	
		Action for annulment — Motor vehicle sector — Aid granted through the intermediary of a State-controlled body — Inclusion — Financial assistance granted by a Member State to an undertaking — Assessment criterion — Reasonable nature of the operation for a private investor pursuing a medium or long-term — Effect on trade between Member States — Impairment of competition — Aid granted to an undertaking operating in a sector where there is surplus production capacity and effective competition — Incompatibility with the common market — Failure to notify — Recovery of unlawful aid — Obligation flowing from the unlawful nature of the aid	
8.5.1991	C-356/90R*	*Belgium* v *Commission*	[1991] I-2423
		Decision 90/627/EEC, OJ L 338, 4.7.1990. p. 21.	
		Application for interim measures — Suspension of the operation of a Commission measure 90/627 — Aid to shipbuilding — Common maximum ceiling — Interim measures — Conditions for granting — Serious and irreparable damage suffered by the applicant	

Date	Case	Parties Decision reference Keywords	ECR page reference
16.5.1991	C-263/85	*Commission* v *Italy*	[1991] I-2457
		Failure to fulfil an obligation arising from the Treaty — Aid for the purchase of vehicles of domestic manufacture — Free movement of goods — Quantitative restrictions — Measure having equivalent effect — Reservation of a part of a public contract to undertakings established in a given region of the national territory — Not permissible — Measure favouring only part of national production — No impact — Measure which may be defined as aid within the meaning of Article 92 — Possibility not excluding the applicability of the prohibition of measures having equivalent effect	
17.5.1991	C-313/90R*	*Comité international de la rayonne et des fibres synthétiques* v *Commission*	[1991] I-2557
		Application for interim measures — Refund of aid for the creation of a manufacturing unit for polyester fibres for industrial purposes — Compatibility of the aid with the common market — Application for measures going beyond the scope of the main proceedings and requiring a *prima facie* assessment of matters not within their purview — Dismissal	
11.7.1991	C-351/88	*Laboratori Bruneau* v *USL RM*	[1991] I-3641
		Preliminary ruling — Interpretation — Articles 30 and 92 — Public supply contracts — Free movement of goods — Quantitative restrictions — Measure having equivalent effect — Reservation of part of a public contract to undertakings established in a given region of the national territory — Not permissible — Measure favouring only part of national production — Measure capable of being classified as aid within the meaning of Article 92 — Possibility not excluding the applicability of the prohibition of measures having equivalent effect	

Date	Case	Parties Decision reference Keywords	ECR page reference
3.10.1991	C-261/89	*Italy* v *Commission (Aluminia-Comsal)* Decision 90/224/EEC, OJ L 118, 24.5.1989, p. 42. Action for annulment — Aid to aluminium undertakings — Capital contributions — Financial assistance granted by a Member State to an undertaking — Criterion for assessment — Reasonable nature of the operation for a private investor — Financial contribution intended for productive investment — Irrelevance — Plans to grant aid — Consideration by the Commission — Factors to be considered — Prior decision — New facts	[1991] I-4437
21.11.1991	C-354/90	*Fédération nationale du commerce extérieur et des produits alimentaires* v *France* Preliminary ruling — Interpretation — Article 93(3) — Plans to grant aid — Prohibition of giving effect to aid before the final decision of the Commission — Direct effect — Scope — Obligations of national courts — Role reserved for the Commission by the Treaty — No effect — Grant of aid in contravention of the prohibition contained in Article 93(3) — Subsequent Commission decision declaring the aid to be compatible with the common market — Effect — Regularization *ex post facto* of national legal measures relating to the grant of the aid — None	[1991] I-5505

Date	Case	Parties Decision reference Keywords	ECR page reference
4.12.1991	C-225/91R*	*Matra SA* v *Commission (Matra)*	[1991] I-5823
		Decision not published. Application for interim measures — Suspension of the operation of a Commission measure — Regional aid in the motor-vehicle sector — Aid towards the establishment of an assembly plant for multipurpose vehicles — Interim measures — Conditions for granting — Serious and irreparable damage to the applicant	
1992			
4.2.1992	C-294/90	*BAe, Rover* v *Commission (Rover)*	[1992] I-493
		Decision 89/58/EEC, OJ L 25, 13.7.1988, p. 92; Decision 91/C/21/02, OJ C 21, 27.6.1990, p. 2. Action for annulment — Commission decision imposing conditions on the authorization to pay aid to an undertaking — Subsequent payment to the same undertaking of additional aid beyond the terms of the authorization granted — Procedures open to the Commission under Article 93(2) — Institution of proceedings before the Court under Article 93(2)(2) or of an examination procedure under Article 93(2)(1) — Illegality of a decision establishing the incompatibility with the common market and ordering its reimbursement without having recourse to the procedure laid down by Article 93(2)(1)	

Date	Case	Parties Decision reference Keywords	ECR page reference
11.3.1992	C-78/90 C-83/90	*Sociétés compagnie commerciale* v *Receveur principal des douanes* Preliminary ruling — Interpretation — Articles 3, 5, 6, 12, 13, 30, 31(1), 37(2), 92 and 95 — Free movement of goods — Customs duties — Charges having equivalent effect — Internal taxation — Parafiscal charge levied on domestic and imported products but benefiting only domestic products — Included — Conditions — Basis for classification — Inapplicability of Article 30 — State monopoly of a commercial character — Parafiscal charge unconnected with the exercise of the exclusive rights existing under a monopoly — Inapplicability of Article 37	[1992] I-1847
7.4.1992	C-61/90	*Commission* v *Greece* Failure to fulfil an obligation arising from the Treaty — Regulation (EEC) No 2727/75 — Common organization of the cereal market — Price formation — National measures — Incompatible with Community legislation — Plans to grant or alter aid — Notification to the Commission — Obligation — Non-compliance — Reasoned opinion — Application originating court proceedings — Identical nature of arguments and submissions	[1992] I-2407

Date	Case	Parties Decision reference Keywords	ECR page reference
11.6.1992	C-149/90 C-150/90	*Sanders Adour SNC* v *Directeur des services fiscaux* Preliminary ruling — Interpretation — Articles 12, 92 and 95 and the rules of the common agricultural policy — Common organization of the market — Cereals — Price system — National charge on products for which there is a common organization of the market — Inadmissibility where the workings of the common organization might be disturbed — Determination by the national court — Free movement of goods — Customs duties — Charges having equivalent effect — Internal taxation — Parafiscal charge definitively levied on the importation of certain products but refunded if such products are manufactured on national territory — Classification of charge having equivalent effect — Parafiscal charge levied on domestic products and imported products alike but benefiting only domestic products — Tests — Inclusion — Conditions	[1992] I-3899
30.6.1992	C-312/90	*Espagne* v *Commission (Cenemesa)* Decision 3.8.1990 (unpublished). Action for annulment — Aid to a private group of producers of electrical equipment — Letter initiating the procedure under Article 93(2) — Contestable act — Act having legal consequences — Decision to initiate, in respect of a State aid measure, proceedings to establish whether new aid measures are compatible with the common market — Classification of the disputed aid	[1992] I-4117

Date	Case	Parties Decision reference Keywords	ECR page reference
30.6.1992	C-47/91	*Italy* v *Commission (Italgrani)* Decision 88/318/EEC, OJ L 143, 2.3.1988 p. 37; Decision 90/C/315/06, OJ C 315, 23.11.1990, p. 7 and Decision 91/C/11/06, OJ C 11, p. 32. Action for annulment — Aid to the *Italgrani* company under a framework contract — Letter initiating the procedure under Article 93(2) — Contestable act — Act having legal consequences — Decision to initiate, in respect of a State aid measure, proceedings to establish whether new aid measures are compatible	[1992] I-4145
12.10.1992	C-295/92R*	*Landbouwschap* v *Commission* Decision No 43/92, OJ C 184, 29.4.1992, p. 10. Application for interim measures — Suspension of the operation of a measure — Article 93(2) proceedings initiated — Action for annulment — Draft law amending the law on environmental protection — Natural or legal persons — Measures of direct and individual concern to them — Commission decision not to raise any objections to a State aid — Economic operator not in competition with the recipient of the aid — Inadmissibility	[1992] I-5003

Date	Case	Parties Decision reference Keywords	ECR page reference
12.11.1992	C-134/91 C-135/91	*Kerafina and Others* v *Greece*	[1992] I-5699
		Decision 88/167/EEC, OJ L 76, 7.10.1987, p. 18.	
		Preliminary ruling — Interpretation — Council Directive 77/91/EEC and Commission Decision 88/167/EEC — Free movement of persons — Right of establishment — Companies — Alteration of the capital of a public limited company — Direct effect of Article 25(1) of Directive 77/91/EEC — National rules providing for the adoption by administrative act of a decision to increase the capital of a company in financial difficulties — Inadmissibility — Aid granted by States — Prohibition — Derogations — Commission's discretion — Limits	
18.11.1992	C-222/92R*	*SFEI and Others* v *Commission*	
		Decision 10.3.1992 (unpublished).	
		Action for annulment — Decision to take no further action in a case of infringement of Article 92 and following — Withdrawal of the decision — Decision unnecessary	
16.12.1992	C-17/91	*Lornoy en Zonen* v *Belgium*	[1992] I-6523
		Preliminary ruling — Interpretation — Articles 12, 13, 30, 92 and 95 — Parafiscal charges — Compulsory contribution to a fund for animal health and livestock production — Free movement of goods — Customs duties — Charges having equivalent effect — Internal taxation — Compulsory contribution in the form of a parafiscal charge levied on domestic products and imported products but benefiting only domestic products — Tests — Inapplicability of Article 30 — Rules of the Treaty — Direct effect — Jurisdiction of national courts — Scope	

Date	Case	Parties Decision reference Keywords	ECR page reference
16.12.1992	C-114/91	*Public Department* v *Claeys*	[1992] I-6559
		Preliminary ruling — Interpretation — Articles 9 and 12 — Parafiscal charges — Compulsory contribution to a national marketing office for agricultural and horticultural products — Free movement of goods — Customs duties — Charges having equivalent effect — Internal taxation — Compulsory contribution in the form of a parafiscal charge levied on domestic products and imported products but benefiting only domestic products — Tests — Inapplicability of Article 30 — Rules of the Treaty — Direct effect — Jurisdiction of national courts — Scope	
16.12.1992	C-144/91 C-145/91	*Demoor Gilbert en Zonen* v *Belgium*	[1992] I-6613
		Preliminary ruling — Interpretation — Articles 12, 92 and 95 — Parafiscal charges — Compulsory contribution to a fund for animal health and livestock production — Free movement of goods — Customs duties — Charges having equivalent effect — Internal taxation — Compulsory contribution in the form of a parafiscal charge levied on domestic products and imported products but benefiting only domestic products — Tests — Inapplicability of Article 30 — Rules of the Treaty — Direct effect — Jurisdiction of national courts — Scope	

Date	Case	Parties Decision reference Keywords	ECR page reference
1993			
17.3.1993	C-72/91 C-73/91	*Sloman Neptun Schiffarts AG* v *Bodo Ziesemer*	[1993] I-887
		Preliminary ruling — Interpretation — Articles 92 and 117 — National shipping legislation — Employment of foreign seafarers without a permanent abode or residence in FRG employed at rates of pay on conditions of employment less favourable than those applicable to German seafarers — Aid granted by States — Concept — Advantage conferred without any transfer from public resources — Exclusion	
24.3.1993	C-313/90	*CIRFS and Others* v *Commission*	[1993] I-1125
		Decision 1.8.1990 (unpublished).	
		Action for annulment — Aid towards the establishment of a high-resistance polyester yarn unit — Prior notification required — Procedure — Intervention — Objection of inadmissibility not raised by the defendant — Inadmissibility — Acts open to challenge — Act having definitive legal consequences — Decision to refuse to initiate, in respect of a State aid measure, proceedings to establish whether new aid measures are compatible with the common market — Natural or legal persons — Measures of direct and individual concern to them — Decision addressed to a Member State excluding a State aid from the scope of the obligation to notify — Application brought by an association including the main international manufacturers in the industry and maintaining active contact with the Commission regarding aid in the industry — Admissibility — Aid granted by States — Rules for a particular industry set out by the Commission in a notice and accepted by the Member States — Binding effect — Implicit amendment by an individual decision — Inadmissibility — Precedent set	

Date	Case	Parties Decision reference Keywords	ECR page reference
28.4.1993	C-364/90	*Italy* v *Commission (Mezzogiorno)* Decision 91/175/EEC, OJ L 86, 25.7.1990, p. 23. Action for annulment — Commission Decision 91/175/EEC — Special aid for certain areas of the Mezzogiorno affected by natural disasters — Prohibition — Derogations — Duty of cooperation on Member State seeking exemption	[1993] I-2097
4.5.1993	C-17/92	*Federacion de Distribuidores Cinematograficos* v *Spain* Preliminary ruling — Interpretation — Articles 30 to 36, 59 and 92, Council Directives 63/607/EEC and 65/264/EEC — National rules encouraging the distribution of national films — Freedom to supply services — Provisions of the Treaty — Scope — Screening in a Member State, in cinemas or on television, of cinema films produced in other Member States — Inclusion	[1993] I-2239
18.5.1993	C-356/90 C-180/91	*Belgium* v *Commission* Decision 90/627/EEC, OJ L 338, 4.7.1990, p. 21; Decision 91/375/EEC, OJ L 203, 13.3.1991, p. 105. Action for annulment — Commission Decisions 90/627/EEC and 91/375/EEC — Aid to shipbuilding — Prohibition — Derogations — Scope — Direct and indirect aid — Examination by the Commission — Assessment under Article 92 — Article 93(2) proceedings — Compliance with a general ceiling — Incompatibility with the common market of any aid exceeding the ceiling — Commission's role — Establishing that the ceiling has been complied with	[1993] I-2323

Date	Case	Parties Decision reference Keywords	ECR page reference
19.5.1993	C-198/91	*W. Cook* v *Commission*	[1993] I-2487

Decision 29.5.1991, NN 12/91 (unpublished).

Action for annulment — Natural or legal persons — Measures of direct and individual concern to them — Commission decision addressed to a Member State, finding that a State aid measure is compatible with the common market — Actions brought by 'parties concerned' within the meaning of Article 93(2) — Admissibility — Plans to grant or alter aid — Examination by the Commission — Preliminary stage and stage at which comments are invited — Difficulties in determining whether aid is compatible — Obligation on the Commission to initiate proceedings giving parties the opportunity to submit their comments

Date	Case	Parties Decision reference Keywords	ECR page reference
10.6.1993	C-183/91	*Commission* v *Greece (export tax relief)*	[1993], I-3131

Decision 89/659/EEC, OJ L 349, 3.5.1989, p. 1.

Action for failure to fulfil an obligation arising from the Treaty — Commission Decision 89/659/EEC — Tax exemption on export earnings — Failure to comply with a Commission decision concerning State aid — Decision not challenged by means of an action for annulment — Arguments advanced in defence — Challenge to the lawfulness of the decision — Inadmissibility — Absolute impossibility of implementation — Admissibility — Recovery of aid unlawfully granted — Possibility of recovery by means other than retroactive taxation contrary to the general principles of Community law — Absolute impossibility of implementation — None — Aid granted in infringement of the procedural rules in Article 93 — Legitimate expectations of recipients — Protection — Conditions and limits — Commission decision finding that an aid is incompatible with the common market — Difficulty of implementation — Obligation on the part of the Commission and the Member State to cooperate in finding that a solution is consistent with the Treaty

Date	Case	Parties Decision reference Keywords	ECR page reference
15.6.1993	C-225/91	*Matra SA* v *Commission*	[1993] I-3203

Decision 16.7.1991 (unpublished).

Action for annulment — Aid towards the establishment of an assembly plant for multipurpose vehicles — Complaint by a competitor — Failure to initiate examination proceedings — Procedure — Intervention — Objection of inadmissibility not raised by the defendant — Inadmissibility — Natural or legal persons — Measures of direct and individual concern to them — Commission decision addressed to a Member State, finding that a State aid measure is compatible with the common market — Actions brought by 'parties concerned' within the meaning of Article 93(2) — Admissibility — Plans to grant or later aid — Initiation of proceedings — Commission's discretion — Reference to the Community context — Review by the Court — Limits — Preliminary stage and stage at which comments are invited — Compatibility of an aid with the common market — Difficulties in assessment — Obligation on the Commission to initiate proceedings giving parties the opportunity to submit their comments — Scale of the investment or aid — Irrelevant — Decision finding compatible with the common market an aid measure whose consequences are contrary to specific provisions of the Treaty, in particular those on competition — Inadmissibility — Obligation to await the outcome of competition proceedings before reaching a decision on the compatibility of an aid measure — None

Date	Case	Parties Decision reference Keywords	ECR page reference
15.6.1993	C-213/91	*Abertal Sat* v *Commission*	[1993] I-3177
		Action for annulment — Commission Regulations (EEC) No 1304/91 and (EEC) No 2159/89 — Aid measures for nuts and locust beans — Natural or legal persons — Measures of direct and individual concern to them — Amendment to detailed rules for their application — Admissibility	
15.6.1993	C-264/91	*Abertal Sat* v *Council*	[1993] I-3265
		Action for annulment — Council Regulations (EEC) No 2145/91 and (EEC) No 790/89 — Aid measures for nuts and locust beans — Natural or legal persons — Measures of direct and individual concern to them — Regulation amending the maximum amount of aid for quality and marketing improvement in the nut and locust bean sector — Action for annulment brought by producer's organizations — Admissibility	
16.6.1993	C-325/91	*France* v *Commission*	[1993] I-3283
		Action for annulment — Commission Directive 80/723/EEC — Public undertakings in the manufacturing sector — Transparency of financial relations between Member States and public undertakings — System of information — Act open to challenge — Acts having legal consequences — Commission communication purporting to clarify the application of Articles 92 and 93 and of Article 5 of Directive 80/723/EEC but in fact imposing new obligations on the Member States — Community law — Principles — Legal certainty — Community rules — Need for clarity and certainty — Express indication of legal basis	

Date	Case	Parties Decision reference Keywords	ECR page reference
2.8.1993	C-266/91	*Celulose Beira Industrial* v *Fazenda Publica* Preliminary ruling — Interpretation — Articles 9, 12 and following, 30, 92 and 95 — Parafiscal charge on chemical pulp — Free movement of goods — Customs duties — Charges having equivalent effect — Internal taxation — Parafiscal charge levied on domestic products and imported products alike but benefiting only domestic products — Tests — Offsetting the burden on domestic products — Inapplicability of Article 30 — Inclusion — Conditions	[1993] I-4337
6.10.1993	C-55/91	*Italy* v *Commission* Decision 90/644/EEC, OJ L 350, 30.11.1990, p. 82. Action for annulment — Commission Decision C(90)2337 — Agriculture — Clearance of EAGGF accounts — Financial year 1988 — Commission entitled to have checks carried out by its own officials — Refusal to charge to the EAGGF expenditure arising out of irregularities in the application of Community rules — Alleged irregularity in the calculation of sums due to the EAGGF — Denial by Member State — Burden of proof — Common agricultural policy — EAGGF financing — Compliance of expenditure with Community rules — Verification — Limits — Refusal to cover expenditure in the absence of verification by the national authorities — Challenge based on the impossibility of recovery in the absence of proven and substantial irregularities — No effect — Obligation on the Commission to refuse to charge irregular expenditure to the EAGGF — Irregularities tolerated for one financial year on ground of equity — Strict application of the rules in the following financial year — Infringement of the principles of legal certainty and the protection of legitimate expectations — None — Decision on the clearance of accounts — Time-limits — Failure to comply — Absence of liability on the part of the Commission except for negligence	[1993] I-4813

Date	Case	Parties Decision reference Keywords	ECR page reference
27.10.1993	C-72/92	*Scharbatke GmbH* v *Germany*	[1993] I-5509
		Preliminary ruling — Interpretation — Articles 9, 12, 92 and 95 — Parafiscal charges — Compulsory contributions to support a marketing fund for agricultural, forestry and food products — Free movement of goods — Customs duties — Charges having equivalent effect — Internal taxation — Compulsory contributions constituting a parafiscal charge levied on domestic products and imported products alike but benefiting only domestic products — Tests — Account not taken of similar charge levied in the Member State of exportation — Point not decisive — Inclusion — Conditions	
30.11.1993	C-189/91	*Kirsammer-Hack* v *Nurhan Sidal*	[1993] I-6185
		Preliminary ruling — Interpretation — Article 92(1) and Council Directive 76/207/EEC — Domestic rules providing protection against unfair dismissal — Equal treatment for men and women — Exclusion of small businesses from the ambit of protection against unfair dismissal — Advantage conferred without any transfer from public resources — Exclusion — Social policy — Male and female workers — Access to employment and working conditions — Equal treatment — Domestic rules excluding small businesses from a national system of protection of workers against unfair dismissal — Workforce calculated by excluding employees with short working hours — Admissible where it is not established that the undertakings excluded employ a greater number of women than men, and in the light of the economic objectives pursued	

Date	Case	Parties Decision reference Keywords	ECR page reference
7.12.1993	C-6/92	*Federazione sindacale italiana dell'industria estrattive (Federminer-aria) and Others* v *Commission* Decision 91/523/EEC, OJ L 283, 18.9.1991, p. 20. Action for annulment — Natural or legal persons — Measures of direct and individual concern to them — Commission decision prohibiting State aid towards the rail transport of mineral ores and products — Action brought by undertakings extracting or processing ores — Inadmissibility	[1993], I-6357
1994			
9.3.1994	C-188/92	*TWD Textilwerke Deggendorf* v *Germany* Decision 86/509/EEC, OJ L 300, 21.5.1986, p. 34. Preliminary reference seeking assessment of validity — Action challenging internal measures implementing a Commission decision — Definitive nature of the decision *vis-à-vis* the recipient of the aid to which it relates	[1994] I-833
15.3.1994	C-387/92	*Banco Exterior de Espana* v *Ayuntamiento de Valencia* Preliminary ruling — Interpretation — Articles 86, 90 and 92 — Public undertakings — Tax exemption — Abuse of a dominant position — State aid	[1994] I-877

Date	Case	Parties Decision reference Keywords	ECR page reference
13.4.1994	C-324/90 C-342/90	*Germany* v *Commission*	[1994] I-1173
		Decision 91/389/EEC, OJ L 215, 18.7.1990, p. 1.	
		Action for annulment — Decision on aid granted by the city of Hamburg — Repayment	
9.8.1994	C-44/93	*Les assurances du crédit Namur* v *Office national du ducroire and Others*	[1994] I-3829
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