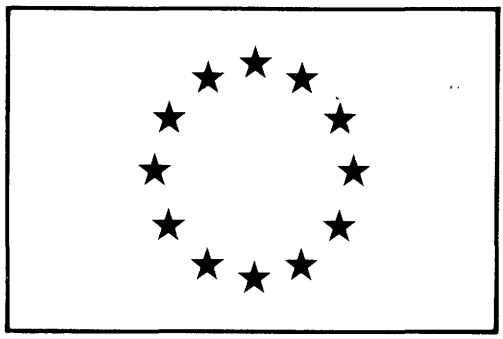
COMMISSION OF THE EUROPEAN COMMUNITIES

Competition law in the European Communities

Volume II: Rules applicable to State aids

(Situation at 31 December 1989)



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1. 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 EEC Treaty).

2. Provisions of the Treaties

2.1. Provisions of the EEC Treaty

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 7 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) such other categories of aid as may be specified by 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.

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

The Council may, acting by a qualified majority on a proposal from the Commission, 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.

Article 77

Aids shall be compatible with this Treaty if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service.

2.2. 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 aids 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 or 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, aids, 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.

3. Scrutiny by the Commission

3.1. Prior notification of State aid plans and scrutiny by the Commission

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

Dear Sir,

1. Article 93 (3) of the Treaty establishing the European Economic Community 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) (EEC 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 aids, 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 SG(89) D/5521 dated 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 ...

3.2. Evaluation of aids of minor importance

Notification of an aid scheme of minor importance [1]

The Commission has decided to modify its decision of 19 December 1984 regarding the evaluation of aids of minor importance as follows:

In principle the Commission will not object to aid schemes of minor importance notified pursuant to Article 93 (3) EEC meeting the following criteria:

New aid schemes, excluding industrial sectors covered by specific Community policy statements [2] as well as aids in the agricultural (as defined in Annex II of the EEC Treaty), fishery, transport and coal sectors, where:

— the beneficiary enterprise does not employ more than 150 people, has an annual turnover of not more than ECU 15 million,

and

— where the aid intensity does not exceed 7.5 %,

or

— when the aid is designed to lead to job creation, it amounts to not more than ECU 3 000 per job created,

or

— when, in the absence of specific investment or job creation objectives the total volume of aid a beneficiary may receive is not more than ECU 200 000.

The first criterion must be satisfied in all cases and at least one of the following three criteria must be satisfied as well. All the above figures are before any calculations 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 aids under general, regional or sectoral aid schemes.

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

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

---

[1] OJ C 40, 20.2.1990.

[2] Presently steel, shipbuilding, synthetic fibres and motor vehicles.

Existing aid schemes, which the Commission has previously approved, where there is a proposed:

— prolongation over time without increase in budgetary resources,

— increase in budget available up to 20 % of original sum but no prolongation,

— prolongation over time with budget increases up to 20 % of original sum,

— where the Member State operating the scheme proposes modifications tightening the criteria of application.

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

The Commission will decide on proposals within 20 working days.

ANNEX

1. Member State: .....
2. Title of scheme: .....
3. Is it a new scheme? .....

3.1. Level at which scheme administered:
- — central government: .....
- — region: .....
- — land: .....
- — 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 150) and having an annual turnover of up to ..... (maximum ECU 15 million)

3.7. Scale of aid

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

3.7.2. If the aid is to stimulate employment, what is the maximum amount of aid per job created?

..... (maximum ECU 3 000).

3.7.3. What is the maximum amount of 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? .....

— How is the scheme to be amended (prorogation, duration, budget, etc.)? .....

.....

5. Remarks .....

.....

.....

.....

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

.....

.....

.....

3.3. 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, aids 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;

[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 re-processing 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.

Done at Brussels, 25 June 1988.

3.4. 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 88/723/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 88/723/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 aids 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;

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

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 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.

Done at Brussels, 24 July 1985.

3.5. 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 EEC 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 aids; in most cases, in view of the particular circumstances, it has regarded them as constituting State aids. 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 aids 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)).

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

[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.

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 EEC 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 aids.

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 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.

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

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 aids, Member States are required to notify the Commission pursuant to Article 93 (3) of the EEC 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 EEC 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.

(3)

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.

3.6. Aids granted illegally

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.

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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 *et seq.*, but also Cases 121/73, 122/73 and 141/73).

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 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 aids under examination, the Commission is obliged to note that illegal aid grants are becoming increasingly common, i.e. aids 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 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 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.

3.7. State guarantees

Commission letter to Member States SG(89) D/4328 dated 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 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 dated 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 ...

4. EEC Treaty policy on categories of aid [1]

4.1. Frameworks on sectoral aid schemes

General principles

Communication to the Council on Commission policy on sectoral aid schemes (COM(78) 221 final — May 1978)

(The following text is an extract from a communication of the Commission of May 1978. Certain passages which are no longer relevant are not reproduced. This text is of obvious general interest but it does not take into account recent developments, for example in the control of the cumulation of aids granted for different purposes.)

The Commission's policy towards sectoral aid schemes

Introduction

The economic crisis, with the resultant high levels of unemployment and slow growth, could lead to the danger of a drift towards protectionism, both internally within the common market through the growth in number and intensity of State aids, as well as externally. While State aids have a role to play in securing an orderly adjustment to new economic structures viable on a world-wide basis in the longer term, their use to preserve the status quo will serve only to hinder the adjustments to Community industries that are necessary to secure the economic and social future of the Community.

General principles

The Treaty lays down the basic principle of the incompatibility of State aids with the common market (Article 92 (1) EEC), implementing Article 3 (f) of the EEC Treaty, which provides for the institution of a system ensuring that competition in the common market is not distorted. It also provides for derogations in favour of certain categories of aid

[1] Transport and fisheries excluded.

(Article 92 (2) and (3) EEC) and places responsibility for the management of the application of these derogations on the Commission.

There are three undeniable reasons for adhering to this system:

— the customs union would be quite useless and would collapse if Member States could invalidate it by granting aids;

— the common market makes little sense unless businesses tackle the market on the strength of their own resources without any aid to distort competition between them, except where such aid is clearly justified in the general interest of the Community;

— lastly, and as a corollary, a system which leaves the field open for competition and does not allow aids to interfere with the optimum distribution of production factors is essential to economic and social progress.

This does not, however, mean that a restrictive attitude must be adopted towards aids designed to remedy situations in which market conditions:

— obstruct progress towards certain economic and social objectives;

— or permit these objectives to be achieved only within unacceptable time-limits or with unacceptable social repercussions;

— or intensify competition to such an extent that it risks destroying itself.

The Commission considers that aid should be authorized when it is needed to correct serious regional imbalances, to encourage or speed up necessary changes or developments in certain industries, to enable for social reasons a smooth adjustment of certain activities or to neutralize, at least temporarily, the distortion of competition due to action outside the Community.

The objectives, forms, and conditions of such aids, whose justification is that they facilitate the orderly development of Community structures, do not conflict with the general objectives quoted in 3.1 above. It therefore follows that such aid must not be given if the need for it is not clearly established, or merely to preserve the status quo, nor has an excessively destructive effect on competition, or transfers difficulties unduly from one Member State to another.

The European Council, conscious of this situation, at its meeting in Copenhagen on 7 and 8 April 1978 underlined the need to re-establish the competitiveness of industries in difficulties and stated that this remained the chief object for the policy of Member States in this field. In this context the European Council emphasized the need to overcome the grave problems posed by structural overcapacity in many industries and the need to promote an industrial structure which would face up to world-wide competition.

General applications

The Treaty rules are not a static instrument but give the Commission a flexibility to accept the realities of the situation at both Community and Member State level. Given the

conditions of the past few years, a certain multiplication of sectoral aids, particularly in the Member States with economic structures less well adapted to the new situation in the world economy, is seen as an inevitable reaction to the pressure to which their economies are subject, bearing in mind particularly the social pressures created by limited growth and rising unemployment.

In determining its position on individual aid proposals the Commission has developed a number of basic criteria:

In the context of changing economic and social situations to ensure that the Community dimension is taken into account within the actions of Member States; in particular that action is taken only where there is real need, that that action will lead to a restoration of long-term viability and that all these actions will give added efficacity to the economic, social and regional policies of the Community. State aids should seek to solve long-term problems and not to preserve the status quo or put off decisions and changes which are inevitable. In balancing the Community and national interests, the Commission endeavours to ensure that industrial problems and unemployment are not transferred from one Member State to another.

The Commission accepts that the need to adapt structures should be qualified by taking into account the short-term social costs involved. Time is necessary for adjustment. While State aids should not be used simply to preserve existing structures, limited use of resources to ameliorate the social and economic costs of change, for example, in the form of rescue operations or even controlled operating aids for a strictly limited period (crisis measures), can be accepted.

The intensity of aid given should be proportionate to the problem it is sought to resolve. In this respect problems, whether regional or industrial, should be overcome with a minimum disturbance to competition and respect for the difficulties which have to be solved in each Member State.

Moreover, the Commission is also concerned to ensure that proposed aid measures should be degressive (e.g. in the rate and/or amount of aid); limited in time; and clearly linked to objectives for restructuring of the sector concerned.

The principles of competition laid down in the Treaty limit the initiatives that the Commission can take in the field of State aids and determine the role of the Commission in handling cases of State aid, which is principally to react to the initiatives envisaged by Member States.

Therefore, the principal method of operation of the Commission is a case-by-case examination of proposals from Member States to grant aid. Such proposals, if their economic impact can be judged in advance, are considered in the light of the provisions of the Treaty and in particular the derogations of Article 92 (3) of the EEC Treaty. If, as is the case in most general aid schemes, it is not possible initially to judge the effect of an aid proposal, the Commission will review the individual cases of application of the aid in

question in the light of the general principles outlined above. This examination will include the application of the principles defined in any framework for aid to specific sectors.

The Commission does not systematically define a priori such general principles to be followed by Member States because of the danger of generalizing the use of the aids within Member States even where they are not strictly necessary and the inflexibility which would result, as such frameworks cannot take into account the specific characteristics of the industry concerned in each Member State. However, in cases where it has become evident that an industry faces a situation of particular difficulty throughout the Community, or shall face such difficulties, it is possible to develop certain guidelines which indicate the policy the Commission will pursue in matters of subsidies for this industry. Such guidelines have been developed in particular in cases where industries are in crisis, for example, textiles, shipbuilding and steel, under the rules of the ECSC, or because particular industries are growth points which should be stimulated in the common interest. In other areas where Member States face problems of a similar nature or intensity, for example, regional aid and aid for the environment, the Commission has also developed this kind of framework.

The Commission has to take into account also the sectoral effects of certain other types of aid given, for example, aids for regional development or social purposes, such as employment aids. The Commission has applied restrictions when necessary (see point 13 below).

Policy in specific sectors

Acting within the above policy, the Commission has approached equally the problems created by industries in crisis as well as those where the problem is growth. The former group has concerned shipbuilding (four successive Council Directives on aid), textiles (general principles on aid first elaborated in 1971 and refined and extended in 1976), man-made fibres (proposal of appropriate measures under Article 93 (1)) and steel (general principles were proposed to Member States in April 1977 and a proposal for a Decision under Article 95 ECSC sent to the Council and the Consultative Committee in May 1978).

The Commission's approach in the case of industries in crisis cited above has been based on certain common principles. The Commission has recognized that the crisis in these industries has threatened either a disorderly rundown of their activities with serious adverse consequences for employment in general, or a series of interventions by Member States designed to protect their industries, possibly by transferring difficulties to other Member States, with aid levels being fruitlessly bid up at substantial cost to all Member States. The general purpose of the Commission's initiatives has been to avoid both of these undesirable eventualities and at the same time to encourage the establishment of industries able to compete freely on the world market. To these ends it has accepted the justification for aids where these have facilitated adaptation to the new market conditions in an orderly manner. Such adaptations require (a) either an actual reduction in capacity or the avoidance of undesirable increases in capacity; and (b) the restoration of the competitiveness of Community industry.

In more concrete terms this has led to the specification of the following principles in these initiatives:

— aids should not be given where their sole effect would be to maintain the status quo. Production aids as such are therefore in principle inadmissible, unless firstly they are conditional on action by the recipient which will facilitate adjustment (e.g. restructuring programmes); and secondly they are limited in time;

— similarly, rescue measures have been recognized as necessary to provide a breathing space while longer term solutions to an enterprise's difficulties are worked out; so as not to frustrate any required capacity reductions, such rescue measures should be limited to cases where they are required to cope with acute social problems;

— aids for investment should not result in capacity increases, since it is a common feature of the industries concerned that capacity is excessive. (The Commission has sought in certain instances to apply this criterion in the case of regional aids—a point discussed in paragraph 13 below.)

As far as concerns industrial growth sectors, the Commission, while it is in principle positively disposed to their stimulation, emphasizes in its decisions the benefits to be obtained from Community-wide cooperation in such actions. The principal competitive problems facing the Community come from States outside the Community, in particular those highly industrialized and/or technically advanced. The Commission has encouraged Member States to promote an active policy of development in the fields of computer technology, electronics, aeronautics, particularly by general promotion of research and development. It has raised no objections therefore to the use of State aids to attain these objectives.

In this context, mention should be made also of the favourable position the Commission has adopted to proposals to promote the availability of finances for the creation of new undertakings and the development of small and medium-sized enterprises.

In considering its policy on sectoral aid schemes, the Commission has also taken into account the sectoral effects of other types of aids. In particular:

— Aids to employment. The Commission has distinguished between aids designed to promote new work places and those designed to maintain existing jobs. In regard to the latter it has considered that if such aids are concentrated on sectors which face acute difficulties in all Member States and are not associated with substantial plans for reorganization, their granting will lead not to the solution of the social and industrial difficulties, but to their transfer to other Member States. For these reasons it has recently imposed important restrictions on such an employment aid.

— As concerns regional aid, bearing in mind the general objectives of the Treaty and in particular the derogation of Article 92 (3) (a) and (c) of the EEC Treaty covering the grant of regional aid, the accumulation of sectoral with regional aids is not excluded in principle. However, where a point of extreme overcapacity has been reached in a particular sector, the Commission has demanded from Member States that even regional aid which would encourage investment that would lead to an increase in capacity should not in principle be granted, for example, in the case of the synthetic fibre industry, and shipbuilding.

Textile and clothing industry

Community framework for aids 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.

Aids to the textile industry, unknown a few years ago, have 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 haphazardly throughout the Community tend to reduce the effectiveness of the aid measures, 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 aids to the textile industry.

2. This being so, the Commission considers it necessary to specify a number of conditions which the aids 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 production in developing countries, linked with an underlying trend towards the gradual opening-up of textile markets on a world-wide scale; technological developments which could in the future transform the textile industry's production and marketing conditions;

(b) to which there is a tendency within the Community to grant aids:
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 aids are 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) and where such aids often have 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 each of such aids possible.

The guidelines laid down in this notification concern only the sectoral aspect of the aids referred to in the preceding subparagraph, but it is obvious that to the extent that these aids also meet 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 aids to the textile industry

In its note 'Sectoral policy for the textile industry', forwarded together with this notification, the Commission assures that aids by Member States may be justified in certain cases, in particular to solve pressing social problems. However, the Commission recalls that aids in this sector of industry, which is marked by a very keen degree of competition at Community level, involve a risk of causing distortion of competition which is unacceptable to competitors who do not benefit from such measures. This applies in particular to aids for

modernization and rationalization. Such aids cannot therefore be authorized unless they meet certain conditions, in particular:

— they must not lead to increases in capacity,

— they 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, aids 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 aids 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:

— to develop research, both basic and applied, into new fibres, into the improvement of the treatment of existing fibres and into processing methods;

— 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 aids should make a substantial contribution to the cost of the subsidized operations. Such aids 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:

— to facilitate the elimination of surplus capacity in the branches or sub-branches where it exists;

— to encourage the conversion of marginal activities to activities other than those of the textile sector;

— 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 these aids should meet the following conditions:

— they must apply for a short period only;

— they must be associated with a substantial contribution from the beneficiaries towards the cost and risks of the subsidized operations;

— there must be a direct connection between the grant of the aid and the operations benefiting from the aid;

— it must be possible to make an easy appraisal of the impact of the aids on the benefiting operations and to compare this impact throughout the Community;

— 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 aids have particularly marked repercussions on competitiveness, they 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 aids should find their justification in particularly pressing social problems.

Such aids 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:

— they must be strictly limited to those textile activities faced both with particularly pressing social problems and serious problems of adjustment;

— the aim of these aids 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 world-wide scale.

— they must go beyond the limited criteria of appraisal on a sectoral basis, in that they also take 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.

Examination of the present situation with regard to aids to the textile and clothing industries

Commission letter to Member States SG(77) D/1190 dated 4 February 1977 and Annex (Doc. SEC(77) 317, 25.1.1977)

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 aids 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 aids to the textile/clothing industry, has proved necessary, in difficult economic circumstances, to prevent the terms, or the operation, of State aids 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 aids 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 aids—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 aids to the textile and clothing industries (Annex to the letter of 4.2.1977)

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, aids 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 aids 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 aids 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. Aids 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 aids 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 aids to the textile industry'*

The 1971 'Approach to aids 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:

1. Specific national aids 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;

2. 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;

3. 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;

4. The Commission will also take account of the points set out at 1, 2 and 3 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.

Synthetic fibres industry

Commission communication [1]

The Commission has examined the situation in the synthetic fibres industry in the light in particular of the question of surplus capacity and the code for limiting aid introduced in July 1977, the latest extension of which expires on 19 July 1989. [2]

This examination has revealed that, despite considerable restructuring and conversion out of synthetic fibres and yarns, production capacity on a Community-wide basis still exceeds requirements and that the industry is still extremely vulnerable.

In these circumstances the Commission decided to extend the system of control of aid for a further two-year period ending on 19 July 1991.

Consequently, and after having informed the Member States, it points out to parties other than Member States, pursuant to Article 93 (1) of the EEC Treaty and on the basis of the Community guidelines concerning aid to the textile, clothing and man-made fibre industry defined in 1971 and 1977, that it will continue to express an unfavourable a priori opinion with regard to proposed aid by Member States, be it sectoral, regional or general, which has the effect of increasing the net production capacity of companies in the synthetic fibres sector (acrylic, polyester, polypropylene and polyamide fibre and yarn and the texturization of these filaments, irrespective of the nature or type of product or end-use).

Furthermore, it will continue to give sympathetic consideration only to Member States' proposals to grant aid for the purpose of solving serious social or regional problems by speeding up or facilitating the process of conversion away from synthetic fibres into other activities or restructuring leading to reductions in capacity.

The Commission also wishes to inform third parties that it requires the prior notification of all aid proposals, of whatever form, in favour of companies in the synthetic sector pursuant to Article 93 (3) of the EEC Treaty, and that any such national measure may not be implemented unless and until the Commission approves it.

[1] OJ C 173, 8.7.1989.
[2] OJ C 183, 11.7.1987.

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 wellbeing 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 competitiveness of the 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 EEC 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 aids 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.

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.

[1] OJ C 123, 18.5.1989.

Having completed its examination, the Commission decided to propose to the Member States under Article 93 (3) of the EEC 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 work-shops), 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 manufacture 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. *Aids 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 EEC 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 EEC 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 finances 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 a 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, e.g. 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

On 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 aids 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 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, e.g. 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 carefully examine aid for company-specific vocational training measures which are prompted by, and thus directly linked to, investments. The Commission will ensure that:

— such aid does not exceed a reasonable intensity, whenever linked with production investments,

— 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 aids as set out above.

[1] OJ C 83, 11.4.1986.

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.

— 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 EEC 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	%

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[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	
		deferred tax provisions	
reduction in social security contributions		amounts covered under guarantee scheme	
equity participation		losses arising from guarantee schemes	
debt conversion or write-off		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 eventually the reason for absence of an estimate.
[3] Eventually 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:

[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.

on distribution of sales:
domestic in %:
other EC in %:
non-EC in %:
on level of qualifications:
on outsourcing:
on cost structure (cost per unit):

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.).

[1] The description of the categories of aid corresponds to the technical annex of the White Book 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														

Aid to shipbuilding

Council Directive 87/167/EEC [1] of 26 January 1987

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 81/363/EEC of 28 April 1981 on aid to shipbuilding, [5] as last amended by Directive 85/2/EEC, [6] will expire on 31 December 1986;

Whereas, although progress had been made in the structural adaptation of the Community's shipbuilding industry since the adoption of Directive 81/363/EEC (the fifth Directive), the world crisis in shipbuilding continues to deepen together with the imbalance between shipbuilding capacity and demand, causing prices to fall to a level which is often below the fixed cost of European shipyards; whereas the price problem has been aggravated by the development of very cost-competitive capacity in third countries particularly in the production of standardized vessels in series;

Whereas the recovery in demand envisaged in the fifth Directive has not taken place, given that the demand outlook for shipbuilding is not encouraging and in view of the fact that any resumption in demand is likely to lead immediately to an expansion of production facilities in certain third countries;

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;

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[1] OJ L 69, 12.3.1987.
[2] OJ C 281, 7.11.1986.
[3] OJ C 7, 12.1.1987.
[4] Opinion delivered on 16 December 1986.
[5] OJ L 137, 23.5.1981.
[6] OJ L 2, 3.1.1985.

Whereas it is now clear that the sector is suffering from a fundamental structural crisis, rather than a cyclical problem of demand, in which it would be short-sighted to continue to respond to the aggravation of the crisis by multiplying the volume of operating aids which tend to increase the segregation of the internal market and constitute a continuing drain on the scarce budgetary resources of the Member States without inducing any lasting improvement in the competitiveness of the Community's shipbuilding industry;

Whereas, in view in particular of the cost differences which exist for most categories of ship in comparison to shipyards in some third countries, the immediate abolition of aid to the sector may not be possible in view of the need to encourage restructuring in many yards; whereas a tighter and more selective aid policy is nevertheless necessary in order to support the present trend in production towards more technologically advanced ships and in order to ensure fair and uniform conditions for intra-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 these considerations call for a differentiated approach with regard to the various types of aid at present granted by Member States; whereas a level of production aid which is geared towards supporting production where the Community's cost disadvantage is lowest and where there is a real possibility of restoring long-term competitiveness seems to offer the most appropriate approach in response to the abovementioned objectives of improving competitiveness and reducing intra-Community distortions in trade; whereas this level of aid should be attained by means of a common maximum ceiling to be revised periodically after consultation with the Member States and on the basis of an independent expert study which takes due account of the expected long-term development of the shipbuilding industry so as to ensure both the optimal activity levels justifiable on economic grounds and the continuation of structural adjustment; whereas, since increased efficiency is a principal objective pursued by the premises of this Directive, the yearly review of the production aid ceiling should always aim at its progressive reduction; whereas it is necessary, in order to avoid discrimination, to make all forms of operating aid subject to the common maximum ceiling, including loss compensation and such aid as is granted indirectly through third persons; whereas, in order to permit all Member States to compete equally and in view of the persistent structural disparities of yards in the different Member States, it may be necessary to authorize restructuring aid to enable desirable structural changes to be carried out provided that they do not lead to increases in capacity; whereas, although it is proposed to treat ship conversion in the same way as shipbuilding, it is not appropriate to permit aid to the ship-repair sector in view of the continuing overcapacity in this sector, except for closure and research and development aid;

Whereas the restructuring process in Spain and Portugal is less advanced than in the other Member States and the immediate application of the common maximum ceiling for production aid may cause some difficulties in these two Member States, particular arrangements should be allowed to enable them gradually, after a further period of restructuring, to comply with the aid regime applicable to the Community as a whole;

Whereas, in order to ensure full transparency, which is a vital element in assuring the proper functioning of a Community aid system both in respect of operational aids and burden-sharing with regard to restructuring efforts, it will be necessary to strengthen the notification rules, including notification of aid to shipowners for the building or conversion of ships, together with the a posteriori reporting obligations of Member States as regards actual aid payments and the achievement of restructuring objectives;

Whereas the reductions in world shipping capacities should be made in such a way as to cause the least possible damage and to be as fair as possible;

Whereas additional measures should be adopted in order to alleviate the social and regional consequences of the restructuring of the shipbuilding sector;

Whereas Community measures should also be adopted in order to improve demand for new ships from Community shipyards,

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:

— merchant ships for the carriage of passengers and/or cargo, of not less than 100 GRT,

— fishing vessels of not less than 100 GRT,

— dredgers or ships for other work at sea of not less than 100 GRT excluding drilling platforms,

— rugs 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 10.

These aids 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 these aids shall be subject in full to the rules set forth in Article 4 and the monitoring procedures laid down in Article 11, where these aids are 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 entirely without prejudice to any future Community rules on aid to shipowners.

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 regard to ensure that the aid for the building of small specialized vessels, a market segment normally served by small yards, in particular small ships costing less than ECU 6 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.

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.

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 must in no case exceed the ceiling fixed according to paragraph 2; the granting 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 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 later addendum or corrigendum to the said Agreement.

Prior notification of any such individual aid proposal must be given to the Commission. The Commission 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 preceding subparagraph.

Article 5

Other operating aid

1. Aids 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 if such aid would be likely to increase the Member States' shipbuilding capacity.

Such aid may not be granted for ship repair unless linked to a restructuring plan which results in an overall reduction in the 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:

— the amount and intensity of such aid are justified by the extent of the restructuring involved,

— 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 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.

2. The costs eligible for such aid are, in particular:

— payments to workers made redundant or retired before legal retirement age,

— 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,

— payments to workers for vocational retraining,

— 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),

— 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 aids for research and development,[1] excluding those related to industrial application and commercial exploitation of the results.

CHAPTER IV

SPAIN AND PORTUGAL

Article 9

1. Chapter II of this Directive shall be applicable neither in Spain nor, subject to paragraph 3 of this Article, in Portugal.

2. Operating aid for shipbuilding and ship conversion in Spain may be considered compatible with the common market provided that:

— Spain's shipbuilding industry has undertaken a systematic and specific restructuring programme, including capacity reductions, which can be considered capable of allowing it, within four years, to operate competitively,

— the aid is being progressively reduced.

3. The Portuguese Republic will be subject to all the provisions of this Directive. However, Portugal may, at any time before 31 December 1987 with immediate effect, or at the latest by 29 February 1988, with effect from 1 January 1988, opt for being exempted from the rules laid down in Chapter II either generally or as regards certain yards. Should Portugal choose this option, operating aid for shipbuilding and ship conversion may be considered compatible with the common market provided that:

— the shipbuilding industry—or should only certain yards be involved, those yards—has undertaken a systematic and specific restructuring programme, aiming at capacity reductions, which can be considered capable of allowing it, within four years, to operate competitively,

— the aid is progressively reduced.

[1] OJ C 83, 11.4.1986.

CHAPTER V

MONITORING PROCEDURE

Article 10

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 in Article 4 (7) or when specifically provided for by the Commission in its approval of the aid scheme concerned.

Article 11

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:

— current reports on each shipbuilding and ship conversion contract at the time of ordering and completion containing details of the financial contract support, in accordance with the form set out in the annexed schedule 1,

— 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, in accordance with the form set out in the annexed schedule 2,

— 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 form set out in the attached schedule 3,

— yearly reports on the attainment of the restructuring objectives as regards the undertakings which have received aid according to Articles 6, 7 and 9, in accordance with the form set out in the annexed schedule 4.

2. On the basis of the information communicated to it in accordance with Article 10 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.

CHAPTER VI

FINAL PROVISIONS

Article 12

1. This Directive shall replace Council Directive 81/363/EEC.

The provisions of the aforementioned Directive shall, however, remain applicable to aid projects notified before 1 January 1987 which relate to activities initiated before that date and on which, by the date on which this Directive enters into force, no Commission decision has been taken.

2. Two years after notification of this Directive[1] the Commission shall report to the European Parliament and the Council on its application and propose any necessary adjustments.

Article 13

This Directive shall apply from 1 January 1987 to 31 December 1990.

Article 14

This Directive is addressed to the Member States.

Done at Brussels, 26 January 1987.

[1] This Directive was notified to the Member States on 5 February 1987.

ANNEX

Schedule 1

EUROPEAN ECONOMIC COMMUNITY

Report of merchant ship orders and completions

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	
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 support			
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 enquiries ..... Date: .....

.....

Position: ..... Signature: .....

Schedule 2

EUROPEAN ECONOMIC COMMUNITY

Report on aid to shipowners for acquisition or conversion of ships

1	2	3			4	5			
Case	Identification	Aid granted			Month of aid granting	Acquisition or conversion contract concerned			
		Form	Volume	Details		Ship type	Tonnage (CGT)	Performing yard	
								Country	Name
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									

Contact for enquiries: ..... Date: .....

Position: ..... Signature: .....

Schedule 3

EUROPEAN ECONOMIC COMMUNITY

Report of company financial support

Name of company .....

Section 1: **Public aid**

Operating aid	Contract value[1] Costs, loss[2]	Direct aid received	Indirect aid support (of sched. 1)
1. Contract support (a) related to contracts concluded before 1 January 1987 (b) related to contracts concluded after 1 January 1987 (c) hereof related to development assistance to developing countries 2. Payment of other operation costs, inclusive loss compensation and rescue aid (cf. 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			

Section 2: **Turnover and profit/(loss) (to be filled in for all companies having received direct production aid)**

	Most recent year	Previous
10. Turnover 11. Hereof related to merchant shipbuilding and ship conversion (a) related to contracts concluded before 1 January 1987 (b) related to contracts concluded after 1 January 1987 (c) hereof related to development assistance to developing countries		
12. Losses (if any) 13. Hereof related to merchant shipbuilding and ship conversion (a) related to profit/(loss) on contracts (b) related to movement in provisions (c) related to restructuring expenditures		

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)**

	Most recent year	Previous
Expenditures 14. Trading losses before depreciation 15. Capital expenditure 16. Other expenditures 17. Other change in working capital		
Source of funds 18. Equiry receipts (a) from public shareholders (b) from private shareholders 19. Loans and overdrafts (a) from public sources (a')hereof contract support (b) from private sources (b')hereof with State guarantee 20. Government grants (a) hereof contract support		

Contact for enquiries ..... Date: .....

.....

Position: ..... Signature: .....

Schedule 4

EUROPEAN ECONOMIC COMMUNITY

Report of merchant shipyard facilities and employment

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. CGT	9. Completion date
10. Total new orders	19.....	Number	CGT	
11. Total completions	19.....	Number	CGT	

Section 3: **Shipbuilding employment** Date: .....

12. *By activity*	19. *By occupation*
13. Merchant	20. Manual
14. Offshore	21. Staff
15. Naval	22. Total merchant
16. Repair	23. Subcontractors
17. Other	24. Net change in employment
18. Total	
25. Total man-hours for the shipyard	
26. Hereof for merchant shipbuilding and conversion	

Contact for enquiries ..... Date: .....

Position: ..... Signature: .....

Commission letter to Member States SG(88) D/6181 dated 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 cofinancing 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 GT. 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 GT 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 the 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 dated 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 inter-governmental 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, *cf.* 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, *cf.* 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 substantiated 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 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)
- Maldives (LLDC)
- Mongolia (LIC)
- Morocco (LMIC)
- Nepal (LLDC)
- Nicaragua (LIC)
- Pakistan (LIC)
- Paraguay (LMIC)
- Peru (LMIC)
- Philippines (LMIC)
- Sri Lanka (LIC)

[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).

- Thailand (LMIC)
- Tunisia (LMIC)
- Turkey (LMIC)
- Viet Nam (LIC)
- Yemen (LLDC)
- Yemen, Democratic (LLDC)

ANNEX II

Flags of convenience

- Antigua
- Bahamas
- Bermuda
- Cayman Isles
- 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.

4.2. Framework on general systems 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

[1] OJ C 111, 4.11.1971.

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.

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 aids;
— adapting the existing systems towards real transparency when amending or renewing these systems;
— elimination of aids 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:

— Regional aids 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 aids shall not be granted under the heading of aid for regional development;
— 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;
— Except in the case of poles of development, regional aids must not be granted in a pinpoint manner, i.e. to isolated geographical points having practically no influence on the development of a region;
— Where problems of varying nature, intensity and urgency occur, the intensity of aid must be varied accordingly;
— 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 aids.

Independently of the development of this procedure, the double cumulation of aids, i.e. applying simultaneously to a sectorial or regional problem regional aids and sectorial aids 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 (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 aids 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 aids.

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 aids received. Similarly, it must not lead those Member States whose present aid systems do not reach this ceiling to increase present aids.

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 socio-economic 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 socio-economic 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 aids 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 aids which can to some extent be made transparent and those 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 multilateral 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	50	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

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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 of aids.

[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.

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:*

— the proportion: percentage of the capital expenditure, taking account of the standard basis, covered by the loan,

— the term of the loan,

— the term of the repayment-free period,

— the extent of the interest rate debate.

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:

— The tax levied according to a standard or a maximum rate must be based on an amount invested in the region.

— 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:

— Aid is transparent or 'measurable' when the common method of assessment of aid can be applied to it.

— 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:

— 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;

— 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;

— '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 [1]

General regional aid schemes
(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 *et seq.* 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.

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[1] OJ C 111, 4.11.1971.

[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. 1)) of 11 December 1970, p. 66).

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.

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 *et seq.* 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 *et seq.* 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 [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 *et seq.* 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 aids in force in the Community. The common method of evaluation had hitherto fixed investment as the sole denominator in considering the transparency of aids 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 aids are being supplemented as a result of the studies on measurability. All aids which have maximum intensities which can be expressed in terms of investment or jobs created can now be coordinated.

Some existing regional aids are not, however, conditional on investment, in the sense envisaged in the principles of coordination, or on job creation, and have the character of operating aids. The Commission has reservations in principle as to the compatibility of operating aids with the common market. The Commission will specify the circumstances, if any, in which it might consider operating aids to be compatible. Until then there should be no increase in the level of the existing aids and no further aids of this type should be introduced.

Finally, a method of coordinating aids 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.

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[1] OJ C 31, 3.2.1979.

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.

The Commission, in accordance with the powers vested in it by Articles 92 *et seq.* 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 aids 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 aids 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 aids 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, Toscana, 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;

[1] As defined by Council Decision 76/250/EEC of 21 April 1975 (OJ L 104, 24.4.1975).

(iii) For the 'Zonenrandgebiet' and the special development area in the north of Denmark and the islands of Bornholm, Aerø, 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;

(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 aids as far as possible.

3. One of the appropriate alternative ceilings must be respected by the total regional aids 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.

Aids not conditional on initial investment or job creation

4. There are some regional aids in use in the Community at present which are not conditional on initial investment or job creation and which have the character of operating aids. The Commission has reservations in principle as to the compatibility of operating aids with the common market.

Application of these aids may however continue until final decisions on their 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 aids to be compatible with the common market. Until then the level, duration and geographic scope of application of the existing aids should not be increased and further aids 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 aids are awarded.

Aids 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 aids 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 aids 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 aids do not cover the whole national territory, i.e. general aids may not be granted under the heading of regional aids;[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 aids are not granted in a pin-point 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;

[1] With the exception of Ireland and the Grand Duchy of Luxembourg which are considered each as one region.

(vi) that the regional aids 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 these aids may pose at Community level.

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 aids where such restrictions are justified by the situation in a sector.

12. When an investment benefits both from regional aids 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 aids 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 aids 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 maxima fixed by the Member State and accepted by the Commission under Article 93 of the EEC Treaty.

Aids conditional on initial investment or job creation

3. Labour aids will be considered measurable when the aid awarded for each job created can be expressed as a net grant equivalent in ecus. Labour aids which cannot be so expressed can, however, always be measured by the *ex post* system described at point 2 above.

4. *Aids 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 aids are to be measured.

5. *Aids 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.

Aids not conditional on initial investment or job creation

7. *Aids 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 aids of this type to be compatible.

Aids 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 aids which have the character of operating aid* will be measured by the *ex post* system outlined at point 2 above.

9. *Labour aids which have the character of operating aid* and which are 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.

Aids given on the transfer of an establishment

10. Aids given on the transfer of capital equipment will be considered measurable when they are 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. Aids 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:

— the actual costs of land, buildings and plant will be used rather than the hypothetical standard basis;

— the reference/discount rate will be the rate ruling at the beginning of the project;

— where the aids and/or investment are not given or undertaken all in one year, the actual timing of the aids and investment will be taken into account. This is done by discounting both the investment and aids, on the basis of calendar years, back to the year the investment was initially undertaken;

— in the calculation of aids 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 'aids 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 aids is not reached, the balance to the ceiling may be added to the ceiling specified for other aids 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 [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 *et seq.* 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:

— the socio-economic situation of Article 92 (3) (a) regions is assessed primarily by reference to per capita GDP/PPS using the Community index for the region;

— regions are assessed on the basis of NUTS [1] level III geographical units;

— the relative level of regional development is compared to the Community average;

— 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.

[1] Nomenclature of Statistical Territorial Units. There are 822 NUTS level III regions in the Community of Twelve.

3. *Geographical unit*

The basic geographical unit used in the analysis is the level III region. However, for the purposes of determining eligibility as a 92 (3) (a) region, reference is made to the 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 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 the 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 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 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. Whilst all 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.

[1] OJ C 31, 3.2.1979.

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).

Given the severe disadvantages of 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:

— that the aid is limited in time and designed to overcome the structural handicaps of enterprises located in Article 92 (3) (a) regions;

— 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;

— that such aid is not granted in violation of the specific rules on aid granted to companies in difficulty;

— 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;

— 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 socio-economic 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:

— regions are assessed on the basis of the NUTS level III geographical unit (in justified exceptional circumstances a smaller unit may be used);

— in the first stage of analysis, the socio-economic 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;

— a second stage of analysis considering other relevant indicators completes the first stage.

2. *First stage of analysis*

The socio-economic 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 whilst 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:

(8)

— 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

— 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 110. 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 socio-economic 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 socio-economic 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 maxima.

[1] OJ C 31, 3.2.1979.

ANNEX I

List of Article 92 (3) (a) regions

GREECE IRELAND PORTUGAL	All of Member State	
FRANCE	Overseas departments	Guadeloupe Guyane Martinique Réunion
ITALY	Calabria	Reggio di Calabria Cosenza Catanzaro
	Basilicata	Potenza Matera
	Sicilia	Agrigento Enna Palermo Messina Trapani Caltanissetta Catania Ragusa Siracusa
	Puglia	Brindisi Lecce Fogga Bari Taranto
	Campania	Napoli Benevento Avellino Salerno Caserta
	Molise	Campobasso Isernia
	Sardinia	Nuoro Oristano Cagliari Sassari
	Abruzzi	Teramo L'Aquila

		Pescara
		Chieti
SPAIN	Extremadura	Badajoz
		Cáceres
	Andalucía	Granada
		Córdoba
		Jaén
		Sevilla
		Almería
		Málaga
		Cádiz
		Huelva
	Castilla-La Mancha	Albacete
		Cuenca
		Toledo
		Ciudad Real
		Guadalajara
	Galicia	Orense
		Pontevedra
		Lugo
		La Coruña
	Castilla and León	Zamora
		Ávila
		Salamanca
		Soria
		León
		Palencia
		Valladolid
		Segovia
		Burgos
	Murcia	
	Canarias	Las Palmas
		Tenerife
	Teruel	
	Ceuta and Melilla	
UNITED KINGDOM	Northern Ireland	

ANNEX II

Thresholds used by the Commission on 1 October 1987

	GDP/GVA per capita	Structural unemployment
Belgium	82	110
France	77	118
Netherlands	79	110
Denmark	73	121
Federal Republic of Germany	74	136
United Kingdom	83	110
Italy	85	116
Ireland	85	110
Luxembourg	77	145
Greece	85	128
Spain	85	110
Portugal	85	125

ANNEX III

Regions approved for regional aid under Article 92 (3) (c) on 1 October 1987

Note: Unless otherwise indicated aid intensity ceilings are given in gross terms in France, Germany, Luxembourg and the Netherlands and in net terms in Belgium, Denmark, Italy, Spain and the United Kingdom.

1. FRANCE

A. **Aid intensity limited to 25% or FF 50 000 per job created**

Creuse, Cantal, Aude, Lozère, Pyrénées-Orientales, Haute-Corse, Corse du Sud. Parts of Ardennes, Nord, Pas-de-Calais, Meurthe-et-Moselle, Meuse, Moselle, Vosges, Bas-Rhin, Haut-Rhin, Loire-Atlantique, Côtes-du-Nord, Finistère, Ille-et-Vilaine, Morbihan, Charente-Maritime, Pyrénées-Atlantiques, Ariège, Aveyron, Lot, Tarn, Corrèze, Haute-Vienne, Ardèche, Loire, Allier, Haute-Loire, Puy-de-Dôme, Gard, Hérault.

B. **Aid intensity limited to 17% or FF 35 000 per job created**

Calvados, Manche, Maine-et-Loire, Mayenne, Vendée, Charente, Deux-Sèvres, Vienne, Dordogne, Landes, Lot-et-Garonne, Gers, Hautes-Pyrénées, Tarn-et-Garonne. Parts of

Ardennes, Haute-Marne, Aisne, Somme, Seine-Maritime, Cher, Indre, Orne, Nord, Pas-de-Calais, Meurthe-et-Moselle, Meuse, Moselle, Vosges, Haut-Rhin, Haute-Saône, Loire-Atlantique, Côtes-du-Nord, Finistère, Ille-et-Vilaine, Morbihan, Charente-Maritime, Gironde, Pyrénées-Atlantiques, Ariège, Aveyron, Haute-Garonne, Lot, Tarn, Corrèze, Haute-Vienne, Ardèche, Loire, Allier, Haute-Loire, Puy-de-Dôme, Gard, Herault, Bouches-du-Rhône, Var.

2. ITALY [1]

(until 31 December 1987)

A. **Aid intensity limited to 15%**

Parts of Toscana, Marche, Umbria, Lazio.

B. **Aid intensity limited to 8%**

Parts of Piemonte, Valle d'Aosta, Liguria, Lombardia, Trentino-Alto Adige, Veneto, Friuli-Venezia, Giulia, Emilia-Romagna.

C. **Aid intensity limited to 7%**

Parts of Toscana, Marche, Umbria, Lazio, Piemonte, Valle d'Aosta, Liguria, Lombardia, Trentino-Alto Adige, Vento, Friuli-Venezia Giulia, Emilia-Romagna.

3. THE NETHERLANDS

A. **Aid intensity limited to 20% net**

Nijmegen, Zuidoost-Drenthe, Delfzijl. Parts of Oost-Groningen, Zuid-Limburg.

B. **Aid intensity limited to 25%**

Overig Groningen, Twente, Helmond, Lelystad, Tilburg, Den Bosch, Maastricht, Valkenburg, Sittard. Parts of Oost-Groningen, Noord-Friesland, Zuidoost Friesland.

C. **Aid intensity limited to 15%**

Arnhem, Zuidwest-Friesland. Parts of Noord-Limburg, Noord-Friesland, Zuidoost-Friesland, Noord-Overijsel.

4. BELGIUM

A. **Aid intensity limited to 20% or ECU 3 500 per job created with a maximum of 25%**

Hasselt, Maaseik, Tongeren, Liège, Charleroi, Mons. Parts of Soignies, Thuin.

[1] With effect from 1 January 1988, nearly all regional aid in centre-north Italy has been withdrawn.

B. **Aid intensity limited to 15% or ECU 2 500 per job created with a maximum of 20%**

Turnhout, Diksmuide, Veurne, Ieper, Bastogne, Marche-en-Famenne, Neufchâteau, Dinant, Philippeville, Arlon, Virton. Parts of Thuin, Huy, Verviers, Namur.

5. LUXEMBOURG

A. **Aid intensity limited to 25%**

Parts of Esch-sur-Alzette, Capellen.

B. **Aid intensity limited to 20%**

Parts of Esch-sur-Alzette, Capellen.

C. **Aid intensity limited to 17.5%**

Luxembourg, Grevenmacher, Wiltz, Clervaux.

6. UNITED KINGDOM

A. **Aid intensity limited to 75% or ECU 10 000 per job created (for enterprises with no more than 10 employees and where fixed investment does not exceed ECU 600 000)**

Shetland Islands, Orkney Islands, Thurso, Wick, Sutherland, Invergordon and Dingwall, Skye and Wester Ross, Inverness, Forres and Upper Moray, Badenoch, Lochaber, Western Isles, Oban, Islay/Mid Argyll, Dunoon and Bute, Campbeltown.

B. **Aid intensity limited to 30% or ECU 5 500 per job created with a maximum of 40%**

England:

Liverpool, Widnes and Runcorn, Wigan and St Helens, Wirral and Chester, Workington, Bishop Auckland, Hartlepool, Middlesbrough, Newcastle-upon-Tyne, South Tyneside, Stockton-on-Tees, Sunderland, Rotherham and Mexborough, Scunthorpe, Whitby, Corby, Falmouth, Helston, Newquay, Penzance and St Yves, Redruth and Camborne.

Scotland:

Arbroath, Bathgate, Cumnock and Sanquhar, Dumbarton, Dundee, Glasgow, Greenock, Irvine, Kilmarnock, Lanarkshire.

Wales:
Aberdare, Cardigan, Ebbw Valle and Abergavenny, Flint and Rhyl, Holyhead, Lampeter and Aberaeron, Merthyr and Rhymney, Neath and Port Talbot, Pontyprodd and Rhondda, South Pembrokeshire, Wrexham.

C. **Aid intensity limited to 20 % or ECU 3 500 per job created with a maximum of 25 %**

England:

Accrington and Rossendale, Blackburn, Bolton and Bury. Part of Manchester, Oldham, Rochdale, Darlington, Durham, Morpeth and Ashington, Barnsley, Bradford, Doncaster, Grimsby, Hull, Sheffield, Birmingham, Coventry and Hinckley, Dudley and Sandwell, Kidderminster, Telford and Bridgnorth, Walsall, Wolverhampton, Gainsborough, Bodmin and Liskeard, Bude, Cinderford and Ross-on-Wye, Plymouth.

Scotland:

Ayr, Alloa, Badenoch, Campbeltown, Dunfermline, Dunnon and Bute, Falkirk, Forres, Girvan, Invergordon and Dingwall, Kirkcaldy, Lochaber, Newton Stewart, Skye and Wester Ross, Stewartry, Stranraer, Sutherland, Western Isles, Wick.

Wales:

Bangor and Caernarfon, Bridgend, Cardiff, Fishguard, Haverfordwest, Llanelli, Newport, Pontypool and Cwmbran, Porthmadog and Ffestiniog, Pwllheli, Swansea.

D. **Aid intensity limited to 11 % where aid does not exceed ECU 100 000**

Inner urban areas of Hackney, Islington, Lambeth, Brent, Hammersmith and Fulham, Leeds, Leicester, Nottingham, Tower Hamlets, Wandsworth, Burnley, Ealing, Greenwich, Haringey, Lewisham, Newham, Southwark.

E. **Aid intensity limited to 7.5 % or ECU 3 500 per job created with a maximum of 11 %**

Administrative districts of Ceredigion, Meirionnydd, Brecknock, Montgomery, Radnor.

7. DENMARK

A. **Aid intensity limited to 25 % or ECU 4 500 per job created with a maximum of 30 %**

Bornholm, Færøerne, Samsø and other Islands. Parts of Viborg, Nordjylland.

B. **Aid intensity limited to 20 % or ECU 2 500 per job created with a maximum of 25 %**

Parts of Sonderjylland, Lolland, Fyn, Langeland.

C. **Aid intensity limited to 17 % or ECU 3 000 per job created with a maximum of 22 %**

Parts of Nordjylland, Viborg, Ringkøbing, Ribe, Sønderjylland, Århus.

8. SPAIN

A. **Aid intensity limited to 45 %**

Parts of Madrid, Asturias.

B. **Aid intensity limited to 30%**

Cantabria. Parts of Alicante, Catellón, Valencia, Asturias, Zaragoza, Vizcaya, Álava.

C. **Aid intensity limited to 20%**

Guipúzcoa. Parts of Zaragoza, Vizcaya, Álava, Huesca, Navarra, Barcelona.

9. GERMANY [1, 2]

A. **Aid intensity limited to 23%**

Amberg, Schwandorf.

B. **Aid intensity limited to 18%**

Heide-Meldorf, Cuxhaven, Bremerhaven, Wilhemshaven, Emden-Leer, Ammerland-Cloppenburg, Oldenburg, Meppen, Nordhorn, Lingen, Detmold-Lemgo, Steinfurt, Ahaus, Bocholt, Kleve-Emmerich, Recklinghausen, Brilon, Alsfeld-Ziegenhain, Daun, Idar-Oberstein, Cochem-Zell, Trier, Bitburg-Prüm, Saarbrücken, Rothenburg o.d. T., Pirmasens, Nordfriesland, Straubing, Passau. Parts of Landau/Pfalz.

C. **Aid intensity limited to 15%**

Stade-Bremervörde, Syke, Unterweser, Bremer, Rotenburg/Wümme, Fallingbostel, Grafschaft Diepholz-Vechta, Nienburg-Schaumburg, Hameln, Coesfeld, Duisburg-Oberhausen, Bochum, Dortmung-Lüdinghausen, Soest, Bad Kreuznach, Alzey-Worms, Weißenburg in Bayern, Neumarkt/Oberpfanz, Nördlingen, Itzehoe, Soltau, Holzminden-Höxter, Neustadt/Saale, Bamberg, Weiden/Oberpfalz, Regensburg. Parts of Osnabrück.

D. **Aid intensity limited to 12%**

Flensburg-Schleswig, Lüneburg, Deggendorf.

[1] The Zonenrandgebiet, Berlin (West) and the *Länder* regional schemes are not included in this list.
[2] With effect from 1 January 1988.

4.3. Horizontal framework

Community framework on State aids in environmental matters

Commission letter to Member States S/74/30.807 dated 7 November 1974

Dear Sir,

Taking into account the development of the work of the Council on the subject of the politics of the environment, and the bilateral and multilateral discussions that have taken place on certain schemes of aid planned by Member States, the Commission considers it opportune to inform all Member States of the general considerations that have influenced it to arrive at an appreciation of the aids which are considered necessary to apply in order to facilitate the adaptation by their enterprises to the new disciplines and constraints in matters of environmental protection.

The attached communication from the Commission outlines a Community framework of this kind. The Commission considers that the principles defined in this framework are of a nature which will permit policy on matters of the environment to progress smoothly at national and Community level. Furthermore, it is foreseen that governments of Member States will find these useful in the conception of regimes of aid they wish to grant with a view to facilitating the adaptation of enterprises' policies in regard to the environment in which, in conformity with the directions of the programme of actions of the European Community in matters of the environment, the costs of protection in this will be effectively and integrally imposed on the polluters.

Please accept, Sir, the assurance of my highest consideration ...

ANNEX I

Community approach to State aids in environmental matters

(Commission memorandum to the Member States, 6 November 1974)

I. Purpose of this memorandum

The Commission is aware that the Member States have already taken or are about to take measures providing for State aids specifically aimed at protecting the environment. In the absence of the necessary Community discipline and respect for the provisions of the Treaty relating to State aids, trade and competition within the Community will be distorted to the detriment of the common interest, particularly in industries where pollution is most intense.

In this memorandum the Commission is endeavouring therefore to set out the general criteria on the basis of which it will apply Articles 92 *et seq.* to existing or planned aids which the Member States base on the need to protect and preserve the environment.

The aim is not to ask the Member States to take such measures, that is a matter of their judgment; it is rather to indicate how they should conceive their measures should they consider them to be necessary.

This memorandum does not set out to prejudge the position which the Commission will adopt on individual aid measures in exercising the powers conferred on it by the EEC Treaty. As the provisions of the Treaty relating to State aids apply to environmental aids in the same way as to any others, plans for the introduction of such aids, even if they conform to the following principles decided on by the Commission, will still have to be notified in accordance with Article 92 (3), in other words, in advance.

II. General considerations which the Commission believes should be followed when specific environmental aids are appraised

(1) The Commission considers environmental protection to be a priority Community objective.

It feels that in the long term the 'polluter pays' principle will have to be applied throughout the Community if the environment is to be protected efficiently without distorting trade flows or competition.

Applying this principle and the other general principles in the Treaty relating to State aids, the cost of measures required to reduce nuisances and pollution to an acceptable level should be borne by the firms whose activities are responsible for them.

Environment policies both at national and at Community level should be based, not on the general grant of aids by States, which simply means that the public pays in the end, but on

the imposition of obligations (regulations and levies) enabling the authorities to make polluters pay the cost of protecting the environment.

State aids, which affect trade and distort competition, particularly in the worst polluting industries, should be granted only where it appears that the new costs facing undertakings will create difficulties for them and, by threatening their existence, create socio-economic difficulties in given regions or industries.

(2) However, the Commission realizes that in present circumstances the 'polluter pays' principle is far from being generally or uniformly applied throughout the Community.

(i) Because we have become aware of the environment only very recently, environmental 'costs' are either not taken into account or only inadequately taken into account in the economic systems of the Member States.

These economic systems are characterized by the generalized utilization of products or production processes which cause pollution, by the harmful effects of the siting of industry and by the steady deterioration of the environment. Entire responsibility for this cannot be laid at industry's door, since all industry has done is to react to the market system chosen by society, and society has hitherto neglected the environmental factor. Furthermore, the fact that the Member States approach environmental costs in different manners in situations which are nevertheless similar and the fact that they impose differing requirements on polluters means that competition and trade within the Community are seriously distorted.

Finally, environmental problems in any given State will frequently have repercussions on the environment of other Member States; pollution evidently is no respecter of national frontiers.

(ii) There will have to be major changes if all this is to be put right.

The public authorities in all the Member States must therefore be urged to adopt quickly and apply strictly regulations requiring polluters to defray the cost of eliminating the pollution they have caused. Alongside this there must be a major effort on the part of businesses to adapt their existing plant, devised as it was in a psychological climate, an economic system, and a legal framework which disregarded the cost of protecting the environment.

This will not be easy, particularly in view of deeply ingrained habits and the financial charges to be made—sometimes substantial, rarely negligible—which will be imposed on firms and will in certain cases threaten their survival.

The necessary changes cannot take place overnight since all the Member States will have to overcome a considerable degree of inertia and at the same time try to ensure that improving the quality of the environment does not stand in the way of other priority objectives, particularly in the industrial, regional and social fields.

(iii) Only if they overcome these obstacles can it be assumed that Member States will be in a position to introduce rapidly and enforce effectively national or Community regulations embodying the 'polluter pays' principle. This is a matter of real urgency as the environment steadily deteriorates, the Member States grow more and more interdependent and the distortions resulting from the varying degrees of strictness in their treatment of firms grow wider. The Commission therefore believes that, during a transitional period in which the 'polluter pays' principle would be introduced stage by stage, the Member States must be enabled to promote and facilitate the adaptation of their industry to the new requirements. This will be done by the grant of State aids, and these aids will not be restricted simply to the cases (covered by point 1 above) where the Commission considers that, in the absence of the aid, the obligations imposed on the firms would create difficulties in given regions or industries.

Assuming a certain degree of discipline, carefully applied State aids would make it possible for the 'polluter pays' principle to be introduced more uniformly and rapidly throughout the Community while effectively protecting the environment and eliminating existing distortions of competition.

III. Guidelines for Commission appraisal of specific environmental aids

Following on from what has been said already, the Commission will make a distinction between:

— its attitude during a transitional period to State aids aimed at speeding up the application of regulations embodying the 'polluter pays' principle and at adapting existing business to these regulations, always assuming that these aids meet certain requirements; and

— the general principles which it will apply after the transitional period or, even during the transitional period, to environmental aids not satisfying these conditions.

1. *Transitional period*

(i) The Commission considers that during a transitional period State aids designed to assist existing firms in adapting to laws or regulations imposing major new burdens relating to environmental protection will qualify for exemption under Article 92 (3) (b) of the EEC Treaty by being aids to promote the execution of an important project of common European interest.

This will apply only for the six-year period from 1 January 1975 to 31 December 1980. The Commission calculates that this should be long enough to enable all the Member States to implement arrangements ensuring that the 'polluter pays' principle is applied throughout the Community on broadly similar principles. It would also be in line with the general policy guidelines adopted in the Declaration of the Council of the European Communities and of the Representatives of the Governments of the Member States of 22 November 1973

on the programme of action of the European Communities on the environment; paragraph 5 of Title II of Part I reads, in part, as follows:

'The cost of preventing and eliminating nuisances must in principle be born by the polluter. However, there may be certain exceptions and special arrangements, in particular for transitional periods, provided that they cause no significant distortion to international trade and investment'.

(ii) In order to qualify for exemption under Article 92 (3) (b), national aids will have to satisfy the following tests:

(a) They will have to be necessitated by new major obligations imposed by the State or by the Community on the recipient firms in relation to environmental protection.

(b) They will have to be granted to finance investments necessary to the adaptation which these firms will have to make to their plants in operation at 1 January 1975 in order to satisfy the stated obligations.

Such additional investment might be involved either in acquiring new equipment to reduce or eliminate pollution or nuisances or in adopting new production processes having the same effect; in the latter case, aid should not be granted in respect of that part of the new investment the effect of which is to increase productive capacity. The cost of replacing and operating these investments should be fully borne by the relevant firms.

(c) When expressed as a net after-tax subsidy calculated by reference to the common method set out in the Commission memorandum to the Council on regional aid schemes, [1] they must not exceed:

— 45% for investments in 1975 and 1976,

— 30% for investments in 1977 and 1978,

— 15% for investments in 1979 and 1980.

The Commission feels that this degressive scale is justified because the Member States must be made aware of the need to make polluters pay the price of their pollution as quickly as possible and because firms must be made to treat the investments required to eliminate pollution as a matter of urgency.

The maximum aid, although it is high, takes account of the degree of effort required of businesses which have thought out their activities in an economic context where environmental costs were insufficiently taken into account, while the fact that it is always less than 50% accentuates the fact that, although initially applied only in a watered-down form, the 'polluter pays' principle remains the objective.

[1] OJ C 111, 4.11.1971.

It goes without saying, moreover, that these maxima will also have to be respected where, in a given Member State, the relevant investments might benefit from several specifically environmental aid schemes, at once.

(d) Each year the Member States will have to give a statistical report for the past year on the aids granted and the investments involved in each industry, expressed as net subsidies.

As required by Article 93 (1), the Commission will thus be in a position to monitor the application of these aid schemes and to act where necessary in order to tighten discipline should it be found that the schemes are liable to create problems in certain industries as regards competition and trade within the Community.

(iii) With these limits the Member States will be able to implement both aid schemes in favour of given industries or regions and general schemes applicable to any particular industry or region. Any scheme which does not meet the above conditions will have to be modified, for otherwise the Commission will have to declare it incompatible with the common market unless it conforms to the general principles to be applied as set out below.

2. *General principles to be applied*

In dealing during the transitional period with aids not satisfying the above tests, and after the transitional period with all specifically environmental aids, the Commission will apply the following guidelines:

(i) It will declare the aids to be compatible with the common market only if they qualify for the exemptions in Article 92 (3) (a) or (c) relating to aids to promote the development of 'certain' activities or 'certain' areas. To qualify for these exemptions and to enable the Commission to decide whether they meet real needs, and to assess their effects on competition and trade, the aid schemes introduced by the Member States on environmental grounds will have to specify in detail the industries or geographical areas for which aid is to be granted.

This excludes aid schemes of Member States in the framework of the discretionary power of the national authorities unsupervised by the Commission, which could be applied in favour of any firm regardless of its geographical location or industrial context.

Furthermore, the Commission reserves the right to consider whether the new obligations imposed on firms in the matter of the protection of the environment are indeed of such a nature that, within the framework of a sector of industry or region, difficulties would be provoked such as might disturb the equilibrium of that sector of industry or region, and which justify the aids proposed.

(ii) Aids which are to be granted will have to be aimed at facilitating the adaptation of firms to the new obligations and constraints imposed on them by public authorities for the

elimination of their pollution. This end should be expressed in the modality of the aids and the definition of their beneficiaries accordingly:

(a) These aids should aim to enable firms:

— to initiate research and development programmes with a view to evolving new products or production techniques which pollute less or the results of which can be used to promote industrial exploitation (construction of pilot plants);

— to carry out new investments involving the construction of new plant so as to eliminate pollution or convert existing plant to production processes which pollute less.

On the other hand, they should not include operational aids with the sole effect of relieving certain firms or certain product lines of all or part of the financial burden which they would normally have to bear by reason of the pollution they cause (exemption from or reimbursement of environmental levies by public authorities).

(b) In regard to the aids to investment that have been defined above, these should be warranted by a sudden major change in the obligations and constraints imposed on the firms benefiting in respect of environmental pollution.

So they should be granted only to *existing businesses* and only in respect of alterations to plant in service at the time of the change. New businesses and new plant commissioned by existing ones will have to be set up in such a way that, without State financial support, they can meet the environmental standards in force at the time they start up.

Exceptions from this restriction may, however, be allowed in favour of new firms and new plant where international competition is such that certain of their activities will be seriously handicapped by being subjected to differing obligations from those imposed in given non-member countries or where non-member countries are themselves granting similar environmental protection aids.

Commission letter to Member States SG(80) D/8287 dated 7 July 1980

Dear Sir,

By letter S/74/30807 dated 7 November 1974 the Commission informed your government of a memorandum setting out the general criteria for applying Article 92 *et seq.* of the EEC Treaty to aids concerned specifically with the protection of the environment. In it the Commission stated that it would apply the derogation of Article 92 (3) (b) of the EEC Treaty, aid to promote a project of common European interest, during a transitional period of six years ending on 31 December 1980 for aids aimed at promoting the introduction of regulations which would ensure effective environmental protection and accelerate the application of the 'polluter pays' principle.

However, analysis has shown that this transitional period was too short to attain these objectives. In the enclosed memorandum, the Commission provides, therefore, a prolongation of the period for a further six years until 31 December 1986, during which the aids in question, subject to certain adjustments, may be allowed to continue.

Yours faithfully...

Communication of the Commission to the Member States (Annex to the letter of 7.7.1980)

1. *Introduction*

1.1. In its memorandum (SEC(74) 4264) dated 6 November 1974,[1] the Commission notified the Member States of the general criteria it would use in applying Article 92 *et seq.* of the EEC Treaty to existing or planned aids concerned specifically with protection of the environment. The criteria fall into two categories, the general principles governing State aids and the application to environmental aids of the derogation of Article 92 (3) (b) of the EEC Treaty, aid to promote a common European interest, for environmental aids given during a transitional period ending on 31 December 1980.

This policy was designed to allow for the implementation of the 'polluter pays' principle to ensure adequate protection of the environment and, in view of the need to make up for the back-log of investment required to protect the environment, the abovementioned transitional period was considered justifiable.

2. *The current situation*

2.1. The Commission acknowledges that, despite the progress achieved, the above objective is still far from being attained. The essential reasons are outlined below:

2.1.1. The economic recession which set in at the beginning of the transnational period, coupled to the need for industry to adjust to the new international situation, meant that the funds Member States were able to set aside for environmental protection had to be restricted and attempts to regulate the question were hampered.

2.1.2. The problems relating to protection of the environment are complex and preparation of the relevant laws and regulations is therefore a long and difficult task. Even more time is required to implement these provisions in cases where they have to be drawn up at Community level for subsequent national application.

2.1.3. Delays caused by the above developments have attracted particular attention because of the increasing degree of public requests for actions and improvements to the environment extending far beyond what has so far been achieved by governments.

2.2. Scientific and technical know-how is continuously improving and significantly affects the need and scope for improvements. This development directly affects the requirements for new environmental legislation. The result of this can, for example, lead to the situation that even a relatively recently constructed plant which at the time of its commissioning was in full accordance with environmental requirements may after a few years find itself confronted with requirements for new environment-related investments.

[1] Letter S/74/30807 dated 7 November 1974 from the Commission to the Member States.

2.3. The Commission accordingly considers that it should continue to give sympathetic consideration to specific aids to the environment during an additional transitional period to enable the Member States to put into full effect the 'polluter pays' principle as originally foreseen. Establishing such an additional period means that the definition of existing undertakings that can benefit from aids must be updated, as well as other modifications to their application. In particular the Commission considers that assistance should be granted only within the framework of legislation specifying the type of pollution abatement installation investments required. This will enable the Commission to keep a close watch on the allocation of assistance, check that the requirements in question are consistent with the general approach set out in the Community action programmes on the environment, and make sure that the assistance granted still justifies exemption under Article 92 (3) (b) of the EEC Treaty as aid to promote the execution of an important project of common European interest. This approach does not preclude Member States adopting aid measures outside this framework to promote environmental measures. Such actions, however, would have to be considered within the normal framework of Article 92 *et seq.* and would not qualify for benefit of the exemption of Article 92 (3) (b). Furthermore, the Commission must reiterate that, pursuant to Article 92 (3), all measures introducing or amending specific aids to the environment must be notified in sufficient time for the Commission to submit its comments.

3. *Prolongation of Community framework*

The Commission therefore supplements the guidelines in Section III of the communication referred to above to the Member States as follows:

3.1. The transitional period will be extended to run until 31 December 1986. During this period the Commission intends to regard as compatible with the common market, using the derogation of Article 92 (3) (b) of the EEC Treaty, aids given for the benefit of firms undertaking investments designed to implement new standards established for the protection of the environment.

3.2. Aid may be given at a rate not exceeding 15% of the value of the investment aided. The amount of aid will be calculated as a net after tax subsidy in accordance with the method of evaluation now used by the Commission and described in its communications to the Council on regional aid systems. [1]

3.3. Only undertakings having installations in operation for at least two years before entry into force of the standards in question may qualify for assistance.

3.4. Investments made in order to comply with the standards may consist in either installing additional equipment to reduce or eliminate pollution and nuisances or adapting production processes for the same purpose. In the latter case, any portion of investment leading to an increase in existing production capacity will not qualify for the proposed assistance.

[1] OJ C 111, 4.11.1971; OJ C 31, 3.2.1979.

The undertakings themselves must bear the entire cost of normal replacement investment and operating expenses.

3.5. The Member States must send to the Commission an annual report on the implementation of programmes of environmental protection involving the grant of State aids. Each report must contain statistics on the amount of aid granted in net grant equivalent and on assisted investment broken down by industry, by region, and by the type of pollution prevention pursued, i.e. water, atmospheric, noise, and solid and effluent waste.

3.6. This framework on aid relating to environmental protection will be amended if it should appear that application of the aid schemes in question is likely to affect competition and intra-Community trade, especially in the sensitive sectors, to an extent contrary to the common interest.

4. *General principles*

The principles defined by the Commission on the basis of the exemptions under Article 92 (3) (a) and (c) of the EEC Treaty at III.2 in its previous memorandum to the Member States will apply from 1 January 1981 to specific environment aids not complying with the above rules. Moreover, even when aids comply with the above rules they could affect competition as mentioned at 3.6 above, and the situation would then have to be dealt with by application of the principles referred to here.

Community framework for State aids 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 has traditionally taken a favourable view of aid for research and development when it has come to scrutinize individual schemes under Article 92 of the EEC 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

[1] OJ C 83, 11.4.1986.
[2] Memorandum 'Towards a European technology Community', COM(85) 350 final.

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 aids.

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 EEC Treaty defines the conditions under which State aids are incompatible with the common market and the exceptions which may be made to this rule. Incompatible aids are those that distort or threaten 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 EEC 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 economic 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 aids including those 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 aids are 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. Aids may take many forms, for example, direct grants, soft loans, whether or not these are repayable in case of success, guarantees, fiscal aids, 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).

[1] Philip Morris judgment.

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.

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 aids directed genuinely at smaller and medium-sized enterprises; in this case for example, aids 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 aids 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 aids 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 aids 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 aids to ensure that they do not become the equivalent of operating aids.

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 aids and the provisions of the other European Treaties and legislation made pursuant to them. This applies in particular to the case of State aids in the nuclear field, having regard to the provisions of Article 232 (2) of the EEC Treaty as well as those of the Euratom Treaty and, as concerns the area of defence, the provisions of Article 223 of the EEC 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 EEC Treaty

1. This framework is intended to cover aids 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 EEC Treaty.

The Commission considers it is possible to make the distinctions between the types of R&D activities outlined at 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 dot 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:

— personnel costs (researchers, technicians, other supporting staff) calculated as a sum of the total amount needed to carry out the project;

— other running costs calculated in the same way (costs of materials, supplies, etc.);

— 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;

— consultancy and equivalent services including bought-in research, technical knowledge, patents, etc.;

— additional overhead costs incurred directly as a result of the R&D project or programme being promoted.

4.4. Rules applicable to general aid schemes

Notification of cases of application of general investment aid schemes

Commission letter to Member States SG(79) D/10478 dated 14 September 1979

Dear Sir,

Your government has been informed on various occasions of the reasons why the Commission considers it necessary, pursuant to Article 92 *et seq.* of the EEC Treaty, to monitor the application of general aid schemes, that is, schemes without any specific industrial or regional objectives which do not therefore qualify for exemption under Article 92 (3) (a) or (c). In order to perform this task, the Commission has requested prior notification under Article 93 (3) of the EEC Treaty of:

— industry or regional plans which the Member States draw up to tailor application of these schemes to requirements;

— failing this, individual significant cases of application.

All general investment aid schemes are now covered by this procedure.

Experience has shown that, in view of increasing investment costs in the Community, the thresholds currently used to define significant cases are no longer adapted to requirements and it has become difficult therefore to implement the monitoring procedure. In accordance with the wishes expressed by most Member States, the Commission has decided therefore to raise these thresholds.

In future, the individual cases of application of general investment aid schemes, of which the Commission must be given prior notification in sufficient time as required by Article 93 (3) of the EEC Treaty, are the following:

— for aid having an intensity in net grant-equivalent of over 15% of investments: all cases of application;

— for aid having an intensity over 10% but not more than 15%: cases where investment exceeds ECU 3 million;

— for aid having an intensity over 5% but not more than 10%: cases where investment exceeds ECU 6 million;

— for aids having an intensity of 5% or less: cases where investment exceeds ECU 9 million.

In addition, for each of their general investment aid schemes, the Member States must submit by the end of the first quarter of the subsequent year a report on the operation of the scheme in the previous year. The report must contain details for branch of industry

(following the General Industrial Classification of Economic Activities within the European Communities of the Statistical Office of the European Communities) as well as for each category of region defined in point 1.2. of the 'Principles of coordination of regional aids' (and distinguishing between the aided and non-aided regions in category 2. (IV)) the amount of assistance granted, the investments covered and the number of cases involved. This will enable the Commission to take in due time all necessary measures pursuant to Article 93 (1) of the EEC Treaty should it be revealed, from the cases below the threshold, that the concentration of aid in certain branches of industry or regions is likely to give rise to problems in intra-Community trade and competition. In these cases the Member States remain obliged to observe specific rules laid down by the Commission concerning, for example, aid for certain industries or branches of industry.

The Commission would point out that all cases thus notified will be assessed on their own merits pursuant to Article 92 *et seq.* of the EEC Treaty, since the procedure does not itself imply that the Commission will be favourably disposed towards the aid scheme in question.

The Commission also wishes to point out that in order to make every provision for secrecy concerning these cases and to ensure rapid examination, notification of individual significant cases should be made by telex addressed directly to the Director-General for Competition, and headed 'urgent and confidential'. Telexes should supply information in accordance with the headings on the standard form attached herewith. If the Commission does not take a decision on a specific individual case with 30 working days from its notification, your government may implement its aid proposal. Moreover, the Commission will make every endeavour to take a decision as quickly as possible, since the 30 days constitute a maximum deadline.

As regards the United Kingdom, the new thresholds will concern individual cases of application of Sections 7 (rescue operations) and 8 of the Industry Act 1972.

The Commission hereby requests your government to notify its agreement on the above within four weeks from the date of this letter. The former thresholds will continue to apply until that date.

Finally, it must be stressed that the Commission's checks on significant individual cases do not concern aid for products listed in Annex II to the Treaty; these are covered by specific rules on aid under the common agricultural policy.

Please accept, Sir, the assurance of my high consideration ...

ANNEX

Standard format for notification to the Commission of a significant individual case of investment aid

1. *Recipient undertaking*

— Size of undertaking (turnover, payroll),

— Financial results over previous three years,

— Type and volume of main lines of business over these three years,

— Market breakdown for each line of business (domestic, other Member States, non-Community countries),

— Is it a subsidiary of a larger group?

2. *Assisted investment*

— Location,

— Type of project: new plant, extension, restructuring, conversion,

— Amount and type of investment,

— Type and volume of new or additional production; anticipated market breakdown (national, other Member States, non-member countries),

— Effects on employment.

3. *Aid*

— Legal instrument used,

— Grounds and objectives of State support,

— Benefits granted under the general aid scheme to be applied (grants, interest-relief, reduced-rate loans, guarantees, tax relief); amount and procedures for each type of aid,

— Assistance granted for the investment concerned under other types of schemes (regional, industry aid, etc.).

4. *Statistics*

For each type of production concerned, statistics covering the previous three years on:

— the volume of domestic production,

— the volume of domestic imports and exports, broken down between the Community and the non-Community countries.

Control of rescue and restructuring aids

Eighth Report on Competition Policy—point 228

Following the economic and social difficulties which have arisen since 1973, the Commission has dealt on a number of occasions with aid schemes introduced by the Member States to provide credit required by certain firms which they could not otherwise obtain: either for a limited period to provide for a study of restructuring and/or conversion opportunities (rescue aids) or to keep them in business until the restructuring and/or conversion can take effect (restructuring aids). These national measures have concerned specific industries (shipbuilding), regions or general assistance; the recipients have been defined on a case-by-case basis depending on their requirements. The Commission's approach on such aids is outlined below.

Rescue aids merely granted to keep a firm in business while the causes of their difficulties are discovered and a remedy worked out must observe the following conditions:

(i) They must consist of cash aid in the form of loan guarantees or loans bearing normal commercial interest rates;

(ii) They must be restricted to the amount needed to keep the firms in business (for example, covering wage and salary costs, routine supplies);

(iii) They must be paid only for the time needed (generally six months) to draw up the necessary and feasible recovery measures;

(iv) They must be warranted on the grounds of serious social difficulties; keeping the firm in operation must not have any adverse effects on the industrial situation in other Member States.

Restructuring aids must also be strictly conditional on the implementation of a sound restructuring and/or conversion programme and duly and effectively to restore the viability of the production concerned. Their intensity and amount must be restricted to the strict minimum for supporting the firm during the inevitable transitional period before such a programme takes effect. The period involved must therefore be limited and the assistance gradually reduced.

In the case of both rescue aids and restructuring aids the Commission requires that the industrial programmes drawn up for their application or individual significant cases of application be notified in advance.

Now more than ever, these conditions must be strictly observed. Since the effects of such assistance are generally concentrated on sensitive industries throughout the Community they might otherwise end up by transferring—without reason—social or industrial problems from one Member State to another and merely give the recipient firms a moment of respite, since their problems would be bound to reappear in exacerbated form at a later date.

4.5. Rules applicable to cases of cumulation of aids for different purposes

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 aids with other aids.

Having completed its examination, the Commission has reached the conclusion that significant cases of cumulation of aids should be notified to it to enable it to control the cumulative intensity of the aids and assess their 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 aids in accordance with the rules set out below.

I. NOTIFICATION OF SIGNIFICANT CASES OF CUMULATION OF AIDS

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

2. Cumulation of aids 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 aids 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

[1] OJ C 3, 5.1.1985.

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.

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 aids are put into effect.

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

IV. Aids concerned

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

The main types of aid schemes concerned are:

— general aids,

— regional aids,

— sectoral aids,

— aids for small and medium-sized firms,

— aids for research, development and innovation,

— aids 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 aids, it is also informed of any aid granted to rescue a firm in difficulties or for creating jobs or for marketing—although these aids do 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 aids granted of the types listed in sub-section IV.1 above where they are not directly linked to the notified investment project.

V. Technical guidelines

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

VI. Entry into force and special rules

The notification rules come 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 sectorial aid schemes to notify individual cases. [2]

[1] This rule concerns cases where several different regional aids are awarded for a given investment project.

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

5. Rules applicable to Member State aids to transport services

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;

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;

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[1] OJ L 156, 28.6.1969.
[2] OJ 88, 24.5.1965.
[3] OJ C 27, 28.3.1966.
[4] OJ C 49, 17.5.1968.

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 conditions imposed in the interests 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 which 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 covered 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 devolving 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 paragraph 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 or 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 of 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.

Done at Luxembourg, 26 June 1969.

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 tot 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

[1] OJ L 156, 28.6.1969.
[2] OJ 88, 24.5.1965.
[3] OJ C 135, 14.12.1968.
[4] OJ C 118, 11.11.1968.

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;

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

[1] OJ L 156, 28.6.1969.

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;

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 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 Sate, 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 class 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:

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);

the capital and interest burden of loans granted under this head 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:

— adjust the amounts of the compensation and alter other items in the application, if the provisions of this Regulation have not been complied with;

— 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 authorities 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.

Done at Luxembourg, 26 June 1969.

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:

1. 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

2. 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 (1), 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 (2) compensation shall be equal to either:

(a) the difference between:

— the financial burden borne by the undertaking as ascertained directly from its accounts, and

— 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 (2); or

(b) the difference between:

— 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

— 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: 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 or 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: 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) 1107/70 [1] of 4 June 1970 on the granting of aids 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 aids for transport by rail, road and inland waterway in so far as such aids relate specifically to activities within that sector;

Whereas Article 77 states that aids shall be compatible with the Treaty if they meet the needs of coordination of transport of if they represent 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 aids under Article 77 of the Treaty not covered by the aforesaid Regulation;

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[1] OJ L 130, 15.6.1970.
[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.

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 Regulation 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 aids 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 aids 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 aids granted for transport by rail, road and inland waterway, in so far as such aids relate specifically to activities within that sector.

Article 2

Articles 92 to 94 of the Treaty shall apply to aids 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 aids pursuant to Article 77 of the Treaty except in the following cases or circumstances:

1. As regards coordination of transport:

(a) where aids granted to railway undertakings not covered by Regulation (EEC) No 1192/69 are intended as compensation for additional financial burdens which those undertakings bear by comparison with other transport undertakings and which fall under one of the heads 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 aids referred to in Article 4 shall be exempt from the procedure provided for in Article 93 (3) of the Treaty. Details of such aids 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 aids 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 aids in the transport sector.

The committee shall be kept informed of the nature and amount of aids granted to transport undertakings and, generally, of all relevant details concerning such aids, as soon as the latter are 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 Article 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.

Done at Luxembourg, 4 June 1978.

Council Regulation (EEC) 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 aids 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 aids 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 aids 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[5] 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 accordance 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;

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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.
[5] OJ L 152, 12.6.1975.

Whereas, for this purpose, Article 4 of Regulation (EEC) No 1107/70 should be amended,

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.

Done at Brussels, 20 May 1975.

[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 socio-political 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;

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[1] OJ L 152.
[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.

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 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 socio-economic 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 aids 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 Bundsbahn (DB),

— Société nationale des chemins de fer français (SNCF),

— Coras Iompair Eireann (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 efficient and appropriate services at the lowest possible cost for the quality of service required.

[1] OJ L 156, 28.6.1969.

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:

— to participate directly or indirectly in any undertaking engaged in operations outside its normal activities or to carry out such operations,

— 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:

— 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;

— 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.

— from the financial assistance provided for by Article 5 (1) of this Decision.

(13)

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.

Done at Brussels, 20 May 1975.

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 aids 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 aids,

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 aids are granted as a temporary measure and designed to

[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.

facilitate the development of combined transport, such aids having to relate to investment in the following fields:

— infrastructure,

— the fixed and movable facilities necessary for trans-shipment.

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.

Done at Luxembourg, 10 June 1982.

6. Rules applicable to Member States' aids in the fisheries sector [1]

Guidelines for the examination of State aids in the fisheries sector

INTRODUCTION

The establishment of fishing zones whereby the vast majority of stocks were made subject to restrictive exploitative schemes, the general rarefaction of stocks and the economic recession triggered off by the rise in the cost of oil products resulted in a situation where the fishing industries of the Member States had to undergo sweeping changes if the long-term viability of this sector was to be restored.

The common fisheries policy has provided the basis for carrying out this task. The organization of the market serves to stabilize prices and unify the Community market. The rules on fishing activities provide for the best possible use of available stocks and their optimum conservation whilst ensuring relative stability of access for fishermen. 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. Lastly, the structural measures that have, since 1983, supplemented the common fisheries policy are designed to facilitate the adaptation of the industry to the existing situation and its likely future development. State aids are, therefore, only justified if they are in accordance with the objectives of this policy.

It is against this background that the Commission intends to administer the derogations provided for in Article 92 (2) and (3) of the EEC Treaty from the principle of incompatibility of State aids with the common market (Article 92 (1) of the EEC Treaty).

These guidelines apply to the entire fisheries sector and encompass all living resources of the sea and fresh waters, the products of the farming of such resources, the factors of production and the processing and marketing of the resultant products, but excluding non-commercial recreational and sporting activities.

[1] OJ C 268, 19.10.1985.

I — General principles

1. The granting of aid must be limited to measures necessary for achieving the objectives of the common fisheries policy as defined in Article 39 of the Treaty. These objectives concern mainly the management and rational exploitation of fish stocks and ensurance of fair standards of living for fishermen. They are achieved by adopting Community rules relating to the conservation of resources and the stabilization of markets which imply Community financial intervention both at market level and as regards the orientation of investment. State aids can, therefore, only be envisaged if they are in accordance with the objectives of the common policy.

Aid must not be conservative in its effect. On the contrary, by increasing productivity, it should 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 sector to the new situation confronting it at Community level.

In more practical terms, aid must provide an incentive for development and adaptation measures 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 result in lasting improvements so that the fishing sector 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:

— the fields covered by the common fisheries policy are governed exclusively by the rules of that policy and the operation of those rules may not be obstructed by national measures;

— those details of the common fisheries policy that cannot be considered to have been thoroughly resolved, in particular as regards structural policy, may still warrant State aids provided such aids comply with the objectives of the common rules so as not to risk calling into question or altering the full effect of those rules; this is why they must, where appropriate, form part of guidance programmes provided for under Community rules; [1]

— State aids

  — which are granted without imposing any obligation on the part of recipients and which are intended to improve the liquidity situation of their undertakings,

  — the amount of which depends on the quantity produced or marketed, the prices of products, the unit of production or the factor of production,

and the only results of which would be a reduction in the recipient's production costs or an improvement in the recipient's income are, as operating aids, incompatible with the common market. [2]

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[1] Aids of a structural nature are considered to be those referred to under II B 1, 3 and 4, C 1, 2 and 3 and D 1.

[2] Subject to application of Article 92 (2) of the Treaty.

It should be borne in mind that in any case aids to exports and to trade in fishery products within the Community are incompatible with the common market.

Any subsidy granted by virtue of Community rules is exempt from assessment under these guidelines.

2. These guidelines relate to all measures entailing a financial advantage in any form whatsoever funded from the budgets of public authorities (national, regional or provincial, departmental or local). They relate, in particular, to capital transfers, to reduced-interest loans, interest-rate subsidies, as well as certain State holdings in the capital of undertakings, aid financed by special levies and aid granted in the form of State security for bank loans or the reduction of or exemption from charges or taxes, including accelerated appreciation and the reduction of social contributions.

3. The examination of aids is based on values expressed in gross subsidy equivalent. However, account is taken of all factors making it possible to assess the real (net) advantage of the recipient.

The Commission will continue to examine the possibilities of determining parameters of comparison on the basis of which the net value of the subsidies can be assessed.

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 laws, particularly those that are designed to promote regional development, will be taken into account when assessing any State aid arrangements.

4. In accordance with the various provisions of the Treaty, particularly Article 95, and the judgments of the Court, [1] State aids shall be considered incompatible with the common market where they are financed by means of special levies which, while affecting both imported products from other Member States and domestic products, place national products, through the combination of the aid and the levy which finances it, at a relative advantage over rival products from other Member States.

5. The components of regional aid schemes relating to fisheries will be subjected to examination under these guidelines. In addition, it should be noted that the principles for the coordination of such schemes communicated to the Member States by letter of 21 December 1978 [2] do not apply to fisheries.

6. In examining the aid schemes, the Commission will also take account of the size in absolute or relative terms of the overall financial support granted by the Member State concerned to the fisheries sector in the light of its impact on competition and trade between Member States. The Commission will draw up criteria for such an assessment as part of its regular examination of existing aids, while taking account, on the basis of the information

[1] ECR 47/69 *France* v *Commission* 1978, p. 487.
[2] OJ C 13, 3.2.1979.

received, of other factors that are likely to influence the competitive position, such as measures of a social or fiscal nature.

7. The Commission will amplify or modify these guidelines as and when experience is gained in the regular examination of inventories of State aids and in the light of the common fisheries policy and the structural policy measures in particular.

II — 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 in the fisheries sector in the light both of the derogations provided for in Article 92 (3) of the Treaty and the provisions of secondary Community legislation.

A. **Aid of a general nature**

1. *Aid to training and advisory services*

Aid to the technical and economic training of persons employed in the fisheries sector and aid to the provision of advisory services in new techniques and to technical or economic assistance is 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 concerns.

2. *Aid to research*

Aid provided or measures taken by the Member States in connection with scientific and technical research are compatible with the common market provided that:

— the use of such aid is supervised by the authorities of the Member States concerned if it is organized by professional organizations or private undertakings; and

— the results of the research work are made accessible to nationals of all Member States in accordance with industrial property laws.

3. *Aid to advertising and product promotion*

Aids to advertising and those aimed at seeking commercial outlets are only compatible with the common market if they relate to a sector as a whole or to a product or group of products so as not to favour certain undertakings and provided that:

(a) The promotional measures are compatible with Article 30 of the Treaty and, along the same lines, do not favour the products of one Member State and are not intended to discourage the purchase of products from other Member States or to disparage those

products in the eyes of consumers, or to advise consumers to purchase domestic products solely by reason of their national origin;[1]

(b) the measures relate to species that have not previously been greatly used for human consumption, are not subject to quantitative catch restrictions, or to species the supply of which exceeds demand and which allow of increased catches.

The Commission may return to this paragraph in the light of the analysis made of the same question in the agricultural sector and adopt these guidelines to cover aids relating to the markets of other Member State or third countries; until then it will consider the latter category of aids on a case-by-case basis.

4. *Aid in the form of advice for small and medium-sized undertakings*

Aid to promote better use of the undertakings' equipment, relating in particular to advice on financial and technical management is, in principle, compatible with the common market. The Commission examines such measures on a case-by-case basis and will amplify the guidelines in the light of experience acquired in this field.

5. *Operating aid*

Operating aid to undertakings, the aim or effect of which is basically to improve the liquidity situation or the recipient 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.

B. Aid to sea-fishing

1. *Aid to the permanent laying-up of fishing vessels*

Aid to the scrapping or permanent laying-up of a fishing vessel which is not linked to the purchase or construction of a new vessel and not referred to in the measures provided for in the Community rules governing this matter (at present Council Directive 83/515/EEC of 4 October 1983 which limits intervention to vessels of a length between perpendiculars of 12 metres or more) is compatible with the common market provided that:

— the conditions for the granting of such aid are similar to and at least as stringent as those laid down in the said rules;

— the amount thereof is in line with the objective sought.

[1] ECR 222/82 *Apple and Pear Development Council* 1983, pp. 4083-4142.

2. *Aid to the temporary laying-up of fishing vessels*

Aid to the temporary laying-up of fishing vessels which is not referred to in the measures provided for in the Community rules governing this matter (at present Council Directive 83/515/EEC of 4 October 1983 which limits intervention of vessels of a length between perpendiculars of 18 metres or more) is compatible with the common market provided that:

— the conditions for the granting of such aid are similar to and at least as stringent as those provided for in the said Community rules;

— the rate of the daily laying-up premium is calculated in accordance with the criteria provided for in the said Community rules.

3. *Aid to investment*

Aid to the purchase or construction of fishing vessels whether linked or not to a requirement to scrap an existing vessel, and aid to the modernization of fishing vessels in service, which is not referred to in the Community rules governing this matter (at present Council Regulation (EEC) No 2908/83 of 4 October 1983 which limits aid under the EAGGF, Guidance Section, to vessels with a length between perpendiculars of between nine and 33 metres is incompatible with the common market except where:

— it is granted for investments which are in line with the objectives of a multi-annual guidance programme provided for under the said rules and approved by the Commission; [1]

— the conditions for the granting of aid are similar to and at least as stringent as those provided for in the said rules;

— the rate of such aid does not exceed, in subsidy equivalent, the overall rate of subsidies permitted under the said rules (see Article 15 of Regulation (EEC) No 2908/83).

4. *Aid to diversification*

(i) Aid to exploratory fishing voyages not referred to in the Community measures in this field (at present Council Regulation (EEC) No 2909/83 of 4 October 1983 which limits intervention to vessels of a length between perpendiculars of more than 24 metres) is incompatible with the common market except where:

— such voyages are carried out under the supervision of the Member State concerned;

— the results obtained from such voyages are made accessible to nationals of all Member States;

— the premium is calculated on the basis of the criteria provided for in the said rules; flat-rate amounts are not allowed;

[1] See Commission Decisions of 24 April 1985 (OJ L 157, 15.6.1985).

— such fishing voyages concern fishing zones or species not traditionally exploited by the vessels of the Community; these voyages may relate to waters and species which are exploited provided it is shown that their exploitation may be increased.

Aid to new fishing methods is incompatible with the common market unless the measures fulfil the conditions for exploratory fishing that is compatible by virtue of the criteria set out above. (Where the aim of the measures is solely one of research, they are assessed in accordance with paragraph A 2.)

(ii) In the absence of a general Community scheme, aid to cooperation in fisheries in the context of joint ventures which is not referred to in the Community rules in this field (at present, Council Regulation (EEC) No 2909/83 of 4 October 1983) will be examined case by case by the Commission in the light of the aforesaid rules.

5. *Aid to technical assistance at sea*

Aid to technical assistance at sea (e.g. support vessels) is compatible with the common market in so far as such assistance is limited to immediate needs which cannot be satisfied by means of the equipment and supplies normally found on fishing vessels.

6. *Aid to fishermen's activities*

Aid to the operation of ports and aids granted either directly or indirectly to reduce the port charges which have to be borne by fishermen is examined case by case. The Commission intends to undertake a study of the financing and management of ports as regards the landing of fishery products and the provision of supplies for fishing vessels. The results of such a study will help to amplify the present guidelines.

C. Aid to processing and marketing in the fisheries sector

1. *Aid to cessation of firms' activities*

Aid intended as an incentive to the final cessation of firms' processing and marketing activities is compatible with the common market provided that:

— it is limited to unprofitable processing firms and is compatible with the programme of the Member State concerned for the development or rationalization of the processing or marketing of fishery products as provided for in the Community rules governing this matter (at present Council Regulation (EEC) No 355/77 of 15 February 1977, as amended by Council Regulation (EEC) No 1932/84 of 19 June 1984); and

— the rate of compensation for cessation of activity does not exceed half of the current value of the movable and immovable assets excluding land.

2. *Aid to port infrastructure*

Aid to infrastructure investments that is intended to facilitate landing operations and the provision of supplies to fishing vessels other than those falling within the fields of application of Regulation (EEC) No 355/77, is compatible with the common market.

3. *Other aid to investment*

Aid to investment in the processing and marketing of fishery products is compatible with the common market provided that:

— the measures satisfy the aims of a programme approved by the Commission relating to the development or rationalization of the processing or marketing of fishery products as provided for in the Community rules governing this matter (at present Council Regulation (EEC) No 355/77 of 15 February 1977, as last amended and extended by Council Regulation (EEC) No 1932/84 of 19 June 1984;

— the conditions for the granting of such aid are similar to and at least as stringent as those provided for in the aforesaid rules; and

— the rate of such aid does not exceed, in subsidy equivalent, the overall rate of subsidies permitted under the said rules (see Article 17 of Regulation (EEC) No 355/77).

4. *Aid relating to product quality*

Aid relating to product quality is compatible with the common market subject to the following conditions:

(a) quality control carried out under binding national or Community rules, where the aid only covers the expenditure necessary to carry out such control;

(b) measures aimed at improving product quality when restricted to advice on undertakings, the promotion of quality labels and to voluntary monitoring of the measure;

and if aid is granted without distinction in respect of the specified products intended for marketing within the Member State concerned.

5. *Aid to producer organizations*

Aid intended to improve or provide support for the activities of producer groups or organizations other than the producer organizations recognized under Regulation (EEC) No 3796/81 is incompatible with the common market.

It should be borne in mind that the aids provided in Article 6 of the said Regulation are exhaustive in nature and may only be granted to recognized producer organizations.

Moreover, the other categories of aid granted to the said producer associations, groups and organizations are subject to examination under these guidelines.

D. **Fresh-water fishing and aquaculture**

1. *Aid to investment*

(a) Aid to investment in professional fresh-water fishing (breeding, restocking, management of waterways and ponds) can be considered compatible with the common market. The Commission will examine such aid on a case-by-case basis.

(b) Aid to investment in aquaculture which is not covered by the Community rules governing this matter (Council Regulation (EEC) No 2908/83 of 4 October 1983) is compatible with the common market provided that:

— it is granted in respect of investments which comply with the objectives of a multi-annual guidance programme provided for under the Community rules and approved by the Commission; [1]

— the conditions for granting such aid are similar to and at least as stringent as those provided for in the Community rules governing this matter; and

— the rate of such aid does not exceed, in subsidy equivalent, the overall rate of subsidies permitted under the said rules (see Article 15 of Regulation (EEC) No 2908/83).

2. *Aid in veterinary and health fields*

Aid in the veterinary and health fields (veterinary fees, health checks, tests, screening, purchase of vaccines, insecticides, medication, vaccinations, slaughter following outbreaks of disease) is compatible with the common market provided that it relates to measures which are obligatory under the legislation of the region, Member State or Community and is limited to costs resulting directly from the obligations to which the recipients are subject.

Aid covering all or part of the cost of combating epidemic diseases or harmful organisms (virus infections, bacteria, insects, fungi, parasites of vegetable or animal origin, pests) not constituting a normal risk of the activity concerned is compatible with the common market provided that:

— it is granted in the framework of regional or national programmes approved by the public authorities and the measures are carried out under their supervision;

— it is limited to the duration necessary to obtain the effective elimination of the epidemic or harmful organisms concerned.

E. **Special cases**

1. These guidelines also apply to fishery undertakings which are entirely or partly publicly-owned. The Commission's position concerning public authorities' holdings in the

[1] See Commission Decisions of 24 April 1985 (OJ L 157, 15.6.1985).

capital of firms [1] is applied in the fisheries sector from the point of view of both principle and procedure.

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 Commission proposes to draw up specific guidelines in the light of the results of a horizontal examination of aids of this type in all Member States. In the mean time, this aid will be examined case by case.

3. The Commission proposes to institute a study in all Member States on the situation with regard to aid of a social character granted via or in favour of the social security system in the fisheries sector. It will take account, in particular, of the demographic structure of the fishing population and of comparisons with the social security systems in other sectors of the economy, and in particular in the agricultural sector. The Commission will draw up additional guidelines on this basis.

In the mean time, this aid will be examined case by case.

III — Procedural matters

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. It should be borne in mind therefore that all the rules of procedure generally obeyed in this matter remain applicable. [2]

2. Furthermore, the Commission draws the attention of the Member States to its letter of 3 November 1983 [3] concerning the repayment of aid granted illicitly and the possible repercussions of such aid on the EAGGF accounts. The Commission will examine the application of these principles on a case-by-case basis in the light of the economic effect of the aid, i.e. its real impact on competition and trade between Member States.

3. As regards the non-financing by the EAGGF of any expenditure affected by a unilateral national measure which is incompatible with the nature and objectives of the common organization of the market in the fisheries sector or which otherwise impedes the correct operation of its instruments, the Commission must ensure that Community finance does not contribute to operations constituting infringements of Community law; it may therefore refuse advances provided for under Article 5 of Regulation (EEC) Nos 729/70 and 380/78 intended for the financing of operations carried out on the basis of a national measure.

Where appropriate, the same criteria will apply in connection with the clearance of the EAGGF accounts.

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[1] Letter of 17 September 1984, see monthly *Bulletin of the European Communities* No 9/84, p. 98.
[2] OJ C 252, 30.9.1980.
[3] OJ C 318, 24.11.1983.

Council Regulation (EEC) No 4028/86 [1] of 18 December 1986 on Community measures to improve and adapt structures in the fisheries and aquaculture sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 42 and 43 thereof,

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 155 thereof,

Having regard to the proposal from the Commission, [2]

Having regard to the opinion of the European Parliament, [3]

Whereas the common measure for restructuring, modernizing and developing the fishing industry and for developing aquaculture, introduced by Regulation (EEC) No 2908/83, [4] as amended by Regulation (EEC) No 3733/85, [5] the measures to encourage exploratory fishing and cooperation through joint ventures in the fishing sector, introduced by Regulation (EEC) No 2909/83, [6] as amended by Regulation (EEC) No 3727/85 [7] and the measures to adjust capacity in the fishing sector, introduced by Directive 83/515/EEC, [8] as amended by Directive 85/590/EEC, [9] expire at the end of 1986;

Whereas the continued improvement of the structural situation in the sector is indispensable for the development of a common fisheries policy and thus constitutes one means of achieving in this sector the aims of Article 39 (1) (a), (b) and (d) of the Treaty; whereas, therefore, the structural measures to bring about such improvement must be based on a Community approach and on Community criteria;

Whereas experience has shown the value of bringing the various structural measures together within a single legislative framework applicable for a sufficiently long period for the establishment of a stable and durable policy; whereas, therefore, provision should also be made so that such measures can receive Community financial assistance within the framework of a multiannual budget allocation;

Whereas the basic guidelines of the new structural policy for the fisheries sector must not only take account of the results achieved and the experience gained in the past but must

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[1] OJ L 376, 31.12.1986.
[2] OJ C 279, 5.11.1986.
[3] OJ C 322, 15.12.1986.
[4] OJ L 290, 22.10.1983.
[5] OJ L 361, 31.12.1985.
[6] OJ L 290, 22.10.1983.
[7] OJ L 361, 31.12.1985.
[8] OJ L 290, 22.10.1983.
[9] OJ L 372, 31.12.1985.

also be defined in terms of the new circumstances obtaining in the sector, which has become more important following the accession of Spain and Portugal to the Community; whereas, in view of this new situation, the structural policy must be primarily concerned with the balanced exploitation of internal resources in Community waters; whereas, moreover, since the Community has a deficit in fish products, it must endeavour to find new sources of supply, in particular by increasing its fishing possibilities and by extending its activities in the aquaculture sector; whereas, moreover, in line with the provisions of Article 39 (2) of the Treaty, the structural policy must take broad account of the economic and social environment in the fishing industry and must be capable of adjustment, where necessary, in the light of the diversity or seriousness of certain structural problems at regional level;

Whereas the considerations outlined above and the operating conditions in the fisheries sector mean that any structural policy organized at Community level and supported with public funds should be pursued with a view to ensuring the proper functioning of the common fisheries policy as a whole; whereas, however, this support could be more effective if provisions were made for forms of financing more suited to the various specific situations within the sector and facilitating the access of operators to investment capital whilst improving the economic reliability of undertakings; whereas, moreover, such new forms of aid would strengthen the impact of Community measures and should therefore be given priority;

Whereas structural measures must as far as possible be implemented within the framework of multiannual guidance programmes ensuring, in respect of each Member State, that the Community measures are consistent with national measures and that the latter are compatible with the objectives of the common policy; whereas such programmes must be compatible with the objectives and instruments of regional policy; whereas such programmes must include an in-depth analysis of the situation in each Member State, so that the Commission can assess the overall structural situation at the outset, and forecast for the development of production capacity in the medium term; whereas it must be possible for the Commission to alter its assessment during the course of the programme's implementation to take account of actual structural developments in each Member State; whereas, to this end, Member States must be required to provide the Commission with all the necessary data and to take all the steps necessary to ensure that the implementation of programmes can be monitored;

Whereas, to reduce the economic insecurity of fishermen, the Community fleets must continue to be restructured, undergoing economically appropriate renewal or modernization in line with the actual catch possibilities in Community and non-Community waters, to ensure the optimum long-term productivity of these fleets and to enhance the economic viability of undertakings;

Whereas experience has shown that the development of aquaculture has helped to improve the position as regards the supply of fish products; whereas, therefore, further encouragement should be given to this sector;

Whereas coastal areas should be protected by the provision of artificial structures to facilitate restocking and, once fishing has been halted for a certain period, to ensure optimum exploitation of such zones;

Whereas no stable balance can exist between fishing capacity and the fish stocks available; whereas steps must therefore be taken to eliminate excess fishing capacity; whereas, to this end, provision should be made for Community assistance for schemes to encourage the temporary or permanent withdrawal of vessels from fishing activities;

Whereas it is also necessary to maintain, or even improve, fishing possibilities outside the waters covered by the Community legislation on fishing; whereas this objective may be achieved by direct Community aid for exploratory fishing projets or temporary joint ventures;

Whereas, to improve the ways in which fisheries products are produced, landed and offered for sale, it is necessary to widen the scope of the measures introduced by Council Regulation (EEC) No 355/77 of 15 February 1977 on common measures to improve the conditions under which agricultural and fishery products are processed and marketed, [1] as last amended by Regulation (EEC) No 2224/86, [2] and thus provide specific aid for investments in facilities at fishing ports; whereas such investments must be made as part of an overall project covering the entire fishing port concerned; whereas such projects must primarily be financed under Regulation (EEC) No 555/77; whereas special procedural provisions are necessary for this purpose;

Whereas measures are required to promote the consumption of products derived from surplus or underfished species; whereas, for this purpose, provision should be made for direct Community aid for collective projects in this field;

Whereas certain regional or sectoral situations may necessitate the implementation of specific measures for which no provision has yet been made; whereas, to this end, provision must be made for a flexible procedure so that such specific measures can be rapidly adopted; whereas such measures should be consistent, in the regions in which they are implemented, with the other Community structural measures applicable outside the fisheries sector;

Whereas, to ensure maximum transparency in the management of all these structural measures, administrative constraints should be reduced and procedures should be simplified;

Whereas measures must be taken to prevent and to prosecute any irregularities and to recover the sums lost as a result of any such irregularity or of negligence; whereas provision should also be made so that Community financing can be suspended, reduced or discontinued;

Whereas thorough checks must be made on Community expenditure; whereas, in addition to the checks which Member States make on their own behalf and which will continue to be essential, provision should be made so that Commission staff can verify expenditure and so that the Commission has the option of calling on the services of the Member States;

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[1] OJ L 51, 23.2.1977.
[2] OJ L 194, 17.7.1986.

Whereas provision should be made for the adjustment of certain criteria in accordance with the simplified procedure so that they can be brought closer into line with developments in a situation which is subject to fluctuation to no small degree;

Whereas the transition to the arrangements laid down in this Regulation must be as smooth as possible; whereas, to this end, certain transitional measures may prove necessary, whereas, therefore, provision should be made so that the appropriate measures can be adopted by a rapid procedure subject to a time-limit,

HAS ADOPTED THIS REGULATION:

Article 1

1. In order to facilitate structural change in the fisheries sector within the guidelines of the common fisheries policy, the Commission may, subject to the conditions laid down in this Regulation grant Community financial aid for measures of the following types:

(a) the restructuring, renewal and modernization of the fishing fleet;

(b) the development of aquaculture and the establishment of protected marine areas with a view to improved management of inshore fishing grounds;

(c) the reorientation of fishing activities by means of exploratory fishing voyages and temporary joint ventures;

(d) the adjustment of fishing capacity by the temporary or permanent withdrawal of certain vessels from fishing activities;

(e) the provision of facilities at fishing ports with a view to improving the conditions in which products are obtained and landed;

(f) the search for new outlets for products derived from surplus or underfished species.

2. The measures specified in paragraph 1 (a), (b) and (d) must form part of the multiannual guidance programmes referred to in Title I.

3. The measure specified in paragraph 1 (e) must form part of the specific programmes referred to in Article 2 of Regulation (EEC) No 355/77.

TITLE I

Multiannual guidance programmes

Article 2

1. For the purposes of this Regulation, 'multiannual guidance programme' (hereinafter referred to as 'programme') means a set of objectives, together with a statement of the

means necessary for attaining them, as a guide for the development of the fisheries sector in the overall long-term context.

2. Programmes must be particularly designed:

(a) to establish a viable fishing fleet in line with the economic and social needs of the regions concerned and the foreseeable catch potential in the medium term;

(b) to adjust fishing activities to changes in consumer demand and to provide regular supplies for the market;

(c) to take account of the socio-economic consequences and the regional impact of developments foreseen in the sector concerned;

(d) to develop technically viable and profitable facilities for the farming of fish, crustaceans or molluscs.

3. Programmes must cover the entire sector in the Member State concerned and must include at least the information listed in Annex I.

4. The Commission, acting in accordance with the procedure laid down in Article 47, may supplement Annex 1.

Article 3

1. At the latest by 30 April 1987, Member States shall forward to the Commission a programme concerning their fishing fleet and a programme concerning aquaculture and the provision of protected marine areas.

2. The programmes referred to in paragraph 1 shall cover the period from 1 January 1987 to 31 December 1991.

3. Not later than eight months before the expiry of the programmes referred to in paragraph 1, Member States shall forward to the Commission new programmes covering the period from 1 January 1992 to 31 December 1996.

Article 4

1. At the request of the Commission, the Member State to which a programme relates shall provide additional date for assessment in the context of the information required under Article 2.

2. The Commission shall consider whether, having regard to foreseeable developments in fishery resources and the market for fisheries and aquaculture products and having regard to the measures adopted under the common fisheries policy and the guidelines for that

policy, programmes fulfil the conditions laid down in Article 2 and may constitute a framework for Community and national financial assistance to the sector in question.

3. Not later than six months after each programme has been forwarded, the Commission shall, acting in accordance with the procedure laid down in Article 47, decide whether or not to approve it.

Article 5

1. For the purposes of the monitoring of programmes, Member States shall send to the Commission each year before 1 April a summary report on the state of progress of their programmes. They shall also forward to the Commission the information necessary for the preparation and management of the Community index of fishing vessels.

2. At the request of the Member State concerned or the Commission, any approved programme may be reviewed and, if necessary, amendments made thereto.

3. The Commission shall decide whether to approve the amendments referred to in paragraph 2, acting in accordance with the procedure laid down in Article 47.

4. Detailed rules for applying paragraph 1 shall be adopted by the Commission in accordance with the procedure laid down in Article 47.

TITLE II

Restructuring and renewal of the fishing fleet

Article 6

1. The Commission may grant Community financial aid towards public, semi-public or private projects for material investments relating to the purchase or construction of new fishing vessels.

2. To qualify for aid, the projects referred to in paragraph 1 must:

(a) form part of a programme referred to in Article 2 and approved by the Commission;

(b) relate to vessels measuring not less than 9 metres in length between perpendiculars, this limit being raised to 12 metres in the case of vessels capable of trawling;

(c) offer a satisfactory guarantee of yielding a profit.

Article 7

1. For each project and in relation to the amount of investment eligible for aid, the aid provided for in Article 6 and the financial contribution by the Member State concerned must be granted at the rates shown in Annex II. The rates for Community aid shown in Annex II shall be increased by five percentage points where the beneficiary or one of the beneficiaries:

(a) is a sea-fisherman not having reached 40 years of age on the date when the project is first submitted to the Commission and has never, until that date, had a majority holding in another fishing vessel;

(b) is the owner, at the time when the aid is paid, of at least 40 % of the vessel to which the project relates or assumes, at this date, as manager and personally, the total responsibility for the fishing enterprise in question;

(c) undertakes to remain, except in case of *force majeure*, aboard the same vessel as its skipper for at least five years as from the date of commissioning.

2. Detailed rules for applying this Article shall be adopted by the Commission in accordance with the procedure laid down in Article 47.

Article 8

1. Member States shall ensure:

— that projects relate to vessels which have the necessary equipment for fishing operations and crew safety;

— that projects are implemented by natural or legal persons who have sufficient occupational competence for the exercise of fishing activities, particular account being taken of their vocational training in the case of natural persons.

2. The aid provided for in Article 6 shall be granted on a priority basis to projects relating to the purchase or construction of vessels:

(a) on which the person with the majority holding acts as skipper and which replace vessels more than 15 years old;

(b) which are intended to replace vessels lost as a result of accident or wreck, irreparably damaged, broken up or permanently withdrawn from fishing activities in the Community.

3. The replaced vessels referred to in paragraph 2 must not have qualified for the final cessation premium referred to in Article 22.

TITLE III

Modernization of the fishing fleet

Article 9

1. The Commission may grant Community financial aid for measures implemented by Member States to modernize the fishing fleet.

2. To qualify for aid, the measures referred to in paragraph 1 must:

(a) cover, within a given Member State, a number of public, semi-public or private projects for material investments in the modernization or conversion of operational fishing vessels;

(b) form part of a programme referred to in Article 2 and approved by the Commission.

3. Member States shall ensure that the projects referred to in paragraph 2 (a):

(a) relate to vessels measuring not less than 9 metres in length between perpendiculars, this limit being raised to 12 metres in the case of vessels capable of trawling;

(b) relate to the rationalization of fishing operations, better storage of catches, energy-saving or the improvement of working conditions and crew safety;

(c) are substantial and comprise investments eligible for aid of not less than ECU 25 000 per project, this limit being lowered to ECU 12 000 in the case of projects relating to vessels measuring between 9 and 12 metres in length between perpendiculars;

(d) relate to work to be carried out in the Community;

(e) do not exceed 50 % of the value of a new vessel of the same type as the vessel concerned;

(f) relate to vessels having the necessary equipment for fishing operations and crew safety;

(g) are implemented by natural or legal persons possessing sufficient occupational competence for the exercise of fishing activities, particular account being taken of their vocational training in the case of natural persons.

Article 10

1. For each project and in relation to the amount of investment eligible for aid, the aid provided for in Article 9 and the financial contribution by the Member State concerned must correspond to the rates shown in Annex II.

2. Detailed rules for applying this Title, and in particular definitions of the eligible investments referred to in Article 9 (3) (c), shall be adopted by the Commission in accordance with the procedure laid down in Article 47.

TITLE IV

Development of aquaculture and structural works in coastal waters

Article 11

1. The Commission may grant Community financial aid for public, semi-public or private projects relating to:

(a) physical investments in the construction, equipment or modernization or extension of installations for the farming of fish, crustaceans or molluscs;

(b) measures to protect and make fuller use of coastal marine areas by the installation, not deeper than the 50-metre isobath, of fixed or movable structures for the delimitation of the protected areas and for the protection or development of fishery resources.

2. To qualify for aid, the projects referred to in paragraph 1 must:

— form part of a programme referred to in Article 2 and approved by the Commission;

— relate to investments totalling more than ECU 50 000.

3. The projects referred to in paragraph 1 (a) must also:

— be for a purely commercial purpose;

— be implemented by natural or legal persons possessing sufficient occupational competence;

— offer a satisfactory assurance of yielding a profit in due course.

4. Member States shall ensure that shellfish-farming projects are implemented at locations where the water quality is maintained in accordance with the relevant applicable national or Community provisions.

5. The projects referred to in paragraph 1 (b) must also:

— provide for the scientific monitoring of the measures for at least three years, including the assessment and verification of changes in fishery resources within the marine area concerned;

— be accompanied by a three-year prohibition on all fishing activities in the protected area including fishing with fixed gear or direct harvesting;

— be implemented by a recognized producers' organization, a production cooperative or a body appointed for this purpose by the competent authority in the Member State concerned.

Article 12

1. For each project and in relation to the amount of investment eligible for aid, the aid provided for in Article 11 and the financial contribution by the Member State concerned must be granted at the rates shown in Annex III. The rates for Community aid shown in Annex III shall be raised by five percentage points in the case of mariculture, mussel-farming or shellfish-farming projects which are implemented within the framework of redeployment schemes for sea-fishermen and which provide for the scrapping of operational fishing vessels.

2. The amount of investment eligible for aid as referred to in paragraph 1 shall not exceed ECU 3 million, in the case of aquaculture projects comprising the construction of hatchery and on-growing units and ECU 1.8 million in the case of other projects.

3. If necessary, detailed rules for applying this Article shall be adopted by the Commission in accordance with the procedure laid down in Article 47.

TITLE V

Exploratory fishing

Article 13

For the purposes of this Title, 'exploratory fishing voyage' means any fishing operation carried out for commercial purposes in a given area with a view to assessing the profitability of regular, long-term exploitation of the fishery resources in that area.

Article 14

1. The Commission shall grant Community financial aid to projects for exploratory fishing voyages:

(a) to waters which do not fall within the sovereignty or jurisdiction of any State; or

(b) to waters which fall within the sovereignty or jurisdiction of a third country with which the Community has concluded or is negotiating a fishing agreement and to waters adjacent to the territory of Member States where no provisions of the Community legislation on fishing are applicable; or

(c) to waters under the sovereignty or jurisdiction of a Member State.

2. To qualify for Community aid, the projects referred to in paragraph 1 must also:

(a) relate to fishing vessels measuring more than 18 metres in length between perpendiculars;

(b) relate to voyages lasting for at least 60 days of fishing per year and per vessel in one or more sailings;

(c) relate to fishing zones where, on the basis of an estimate of potential fishery resources, stable and profitable exploitation seems possible in the long term;

(d) provide for the presence on board of one or more scientific observers approved by the Member State concerned or, should this be impossible, for the participation of a scientific institute in the preparation of the voyage and in the processing of the results obtained.

3. A project may comprise several successive voyages to the same fishing zone with a view to establishing the basis for the stable long-term exploitation of that zone.

4. Priority shall be given to projects:

(a) which are organized by shipowners who form a partnership for the purpose of the said voyage;

(b) which relate to voyages organized jointly by one or more shipowners and one or more processing or marketing concerns.

Article 15

1. The aid referred to in Article 14 shall consist in the granting of incentive premiums. The premium for each project shall be equal to 20% of the eligible cost of the voyage. The contribution by the Member State(s) concerned must cover between 10% and 20% of such cost.

2. Detailed rules for applying this Article, including a definition of eligible cost, provision for the payment of the premium in instalments and rules governing such payment, shall be adopted by the Commission in accordance with the procedure laid down in Article 47.

Article 16

1. Projects referred to in Article 14 shall be submitted to the Commission through the Member State(s) concerned, once the favourable opinion of the latter has been obtained.

2. The data which projects must contain and the form in which they are to be presented shall be decided on by the Commission in accordance with the procedure laid down in Article 47.

3. Within two months of the submission of a project, the Commission shall decide whether to grant the premium referred to in Article 15. This decision shall be notified to the beneficiaries and to the Member State(s) concerned. The other Member States shall be informed accordingly within the Standing Committee for the Fishing Industry (hereinafter referred to as 'the Committee').

Article 17

1. For each voyage qualifying for the premium referred to in Article 145, the beneficiary or beneficiaries shall forward to the Commission and to the Member State(s) concerned, once the voyage has been completed, a report concerning:

(a) the technical conduct of the voyage, and in particular the fishing methods used;

(b) the species caught, the locations at which they were caught, the corresponding yields and the by-catches;

(c) the economic results of the voyage;

(d) any other information collected by the observers.

2. After examining the report, the Commission shall make it available to the other Member States within the Committee.

TITLE VI

Joint ventures

Article 18

For the purposes of this Title, 'joint venture' means any contractual association set up for a limited time between Community shipowners and natural or legal persons in one or more third countries with which the Community maintains relations on fishing matters, for the purpose of the joint exploitation and use of fishery resources for this or these third country or countries and the sharing of the costs, profits or losses resulting from the joint economic venture, primary consideration being given to the supply of the Community market.

Article 19

1. The Commission shall grant Community financial aid for joint-venture projects which relate to the catching and, where appropriate, the processing and/or marketing of the species concerned, together with the supply of know-how or the transfer of technology where the latter are relevant to the fishing operations in question.

2. To qualify for Community aid, the projects referred to in paragraph 1 must relate to fishing vessels which are technically suited to the fishing operations planned, belong to natural or legal persons in the Community, fly the flag of a Member State and are registered or recorded at a port located in the Community.

3. The vessels concerned must fly the flag of a Member State during the total duration of the joint venture.

Article 20

1. The Community aid provided for in Article 19 shall consist in a cooperation premium granted to natural or legal persons in the Community who participate in the joint venture.

2. The amount of the cooperation premium shall be ECU 40 per gross registered tonne per period of three consecutive months. Payment of the premium shall be conditional on the payment of an identical premium by the Member State concerned.

3. The cooperation premium shall not be granted for a period of more than 24 consecutive months per project.

4. If necessary, detailed rules for applying this Article shall be adopted by the Commission in accordance with the procedure laid down in Article 47.

Article 21

1. The projects referred to in Article 19 shall be submitted to the Commission through the Member State(s) concerned, once the approval of the latter has been obtained.

2. Within two months of the submission of a project, the Commission shall decide whether to grant the aid referred to in Article 19. This decision shall be notified to the beneficiaries and to the Member State(s) concerned. The other Member States shall be informed accordingly within the Committee.

3. For each project qualifying for the aid referred to in Article 19, the beneficiary or beneficiaries shall forward to the Commission and to the Member State(s) concerned a periodic report on the activities of the joint venture. After examining the report, the Commission shall make it available to the other Member States within the Committee.

4. Detailed rules specifying in particular the data which the projects and the report referred to in paragraph 3 must include and the form in which they must be presented shall be adopted by the Commission in accordance with the procedure laid down in Article 47.

TITLE VII

Adjustment of capacities

Article 22

1. Member States may grant a laying-up premium or a final cessation premium for the temporary or permanent withdrawal of certain fishing vessels.

2. The Community shall contribute towards the expenditure incurred by the Member States pursuant to paragraph 1.

Article 23

1. The temporary withdrawals referred to in Article 22 shall consist in the stoppage of fishing activities for additional days in comparison to the average, recorded or determined by the Member State on a standard basis per category of vessel, of the days laid up in the three calendar years preceding the first application for the grant of the premium, less the number of days for which a laying-up premium within the meaning of Directive 83/515/EEC has been granted.

2. The laying-up premium provided for in Article 22 shall be granted only:

(a) in respect of vessels flying the flag of a Member State, registered within the territory of the Community and measuring not less than 18 metres in length between perpendiculars;

(b) in respect of vessels having engaged in fishing, or replacing a vessel having engaged in fishing, for at least 120 days during the calendar year preceding the first application for the grant of such a premium or the first application for the grant of a laying-up premium within the meaning of Directive 83/515/EEC;

(c) for additional periods laid up of:

— 45 to 150 days per year for vessels covered by laying-up plans,

— 45 to 150 days consecutive days per year for other vessels;

(d) for total additional periods of lay-up limited to 300 days maximum by vessel.

3. The laying-up premium shall be fixed in accordance with the scale shown in Annex IV, on the basis of the vessel's tonnage and the number of additional days laid up.

4. The average referred to in paragraph 1, when determined at a standard rate per category of vessel, must in no circumstances be less than 115 days.

5. Detailed rules for applying this Article, in particular those concerning the drawing up of laying-up plans, shall be adopted by the Commission according to the procedure provided for in Article 47.

Article 24

1. The permanent withdrawals referred to in Article 22 shall be effected by means of:

(a) the scrapping of the vessel concerned;

(b) the definitive transfer of the vessel concerned to a third country; or

(c) the definitive assignment of the vessel concerned to purposes other than fishing in Community waters.

2. The final cessation premium provided for in Article 22 shall be granted only:

(a) in respect of vessels flying the flag of a Member State, registered within the territory of the Community and measuring not less than 12 metres in length between perpendiculars;

(b) in respect of vessels having engaged in fishing for at least 100 days during the calendar year preceding the application for the grant of such a premium or the first application for the grant of a laying-up premium within the meaning of Article 22 of this Regulation or of Article 3 of Directive 83/515/EEC.

3. The final cessation premium shall be fixed at a standard rate on the basis of the vessel's tonnage. The premium shall be paid after the issue of the certificate attesting that the vessel has been struck off the register of fishing vessels.

4. Member States shall take the necessary measures to ensure that the vessels for which final cessation premiums have been paid are permanently barred from fishing in Community waters.

5. Member States shall forward to the Commission a list of the vessels in respect of which the final cessation premium has been paid. This list shall be published in the *Official Journal of the European Communities.*

Article 25

1. Member States which grant a laying-up premium or a final cessation premium shall forward to the Commission, as soon as they come into force, the laws, regulations or administrative provisions governing the grant of such premiums.

2. Member Stats may lay down additional or restrictive conditions governing the grant of the laying-up premium or the final cessation premium.

Article 26

1. Expenditure incurred by the Member States as a result of granting laying-up premiums or final cessation premiums within the meaning of Article 22 shall be eligible for Community reimbursement.

2. Member States which grant laying-up premiums or final cessation premiums within the meaning of Article 22 shall forward to the Commission, before 1 February each year, an estimate of their planned expenditure on such premiums for the current year.

3. Before 1 April each year the Commission, having examined the estimate referred to in paragraph 2 and having found the conditions for a Community financial contribution to be satisfied, shall decide on the maximum amount of eligible expenditure per Member State for the current year, bearing in mind the appropriations entered in the budget for this purpose. The Commission's decision shall be notified to the Member States.

4. The eligibility of expenditure on the granting of final cessation premiums shall be subject to the limits shown in Annex V.

5. Within the framework of the decisions referred to in paragraph 3, the Community shall reimburse 50 % of the Member States eligible expenditure.

6. Detailed rules for applying this Article shall be adopted by the Commission in accordance with the procedure laid down in Article 47.

TITLE VIII

Facilities at fishing ports

Article 27

1. The Commission may grant Community financial aid towards public, semi-public or private projects for material investments in the provision of facilities at fishing ports.

2. To qualify for the aid referred to in paragraph 1, projects must:

(a) form part of a specific programme, within the meaning of Article 2 of Regulation (EEC) No 355/77, which has been approved by the Commission;

(b) be proposed by a producers' organization within the meaning of Article 2 of Regulation (EEC) No 3796/81 [1] by an association of such organizations or by a body appointed for the purpose by the competent authority of the Member State concerned;

(c) comprise, in respect of the entire port concerned, coordinated investments designed to bring about a lasting improvement in conditions for the production and initial sale of fish products.

3. Detailed rules for applying this Article, specifying in particular the types of investment eligible for aid, shall be adopted by the Commission in accordance with the procedure laid down in Article 47.

[1] OJ L 379, 31.12.1981.

Article 28

1. The aid provided for in Article 27 shall consist of capital subsidies granted in one or more instalments.

2. For each project and in relation to the amount of investment eligible for aid, the aid provided for in Article 27 and the financial contribution by the Member State concerned shall be as shown in Annex VI.

3. Investments eligible for aid shall be financed on a priority basis under the common measure introduced by Regulation (EEC) No 355/77. To this end, aid applications relating to the projects referred to in Article 27 shall, when submitted pursuant to this Regulation, be considered to have been submitted at the same time pursuant to Regulation (EEC) No 355/77.

4. Detailed rules for applying paragraph 3 shall be adopted by the Commission in accordance with the procedure laid down in Article 47.

TITLE IX

Search for new markets

Article 29

1. The Commission may grant financial aid for projects to promote the consumption of fish products derived from surplus or underfished species.

2. To qualify for the aid provided for in paragraph 1, projects must:

(a) be proposed by public, semi-public or private bodies representing the fisheries sector in one or more Member States and be implemented under the direct supervision of such bodies;

(b) relate to collective measures which are not oriented towards any commercial brands and do not make reference to a particular country or production region.

3. Detailed rules for applying this Article shall be adopted by the Commission in accordance with the procedure laid down in Article 47.

Article 30

1. The Community aid provided for in Article 29 shall consist of capital subsidies granted in one or more instalments.

2. For each project the Community aid provided for in Article 29 shall be double the financial contribution by the Member State concerned, but may not exceed 50% of the expenditure eligible for aid.

3. Detailed rules for applying this Article, laying down *inter alia* the nature of the expenditure eligible for aid, shall be adopted by the Commission in accordance with the procedure laid down in Article 47.

Article 31

1. The projects referred to in Article 29 shall be submitted to the Commission through the Member State(s) concerned, once the approval of the latter has been obtained.

2. The data which projects must include and the form of presentation thereof shall be decided by the Commission in accordance with the procedure laid down in Article 47.

3. Within two months of the submission of a project, the Commission shall decide whether to grant the aid referred to in Article 29. This decision shall be notified to the beneficiaries and to the Member State(s) concerned. The other Member States shall be informed accordingly.

TITLE X

Specific measures

Article 32

1. The Commission, acting in accordance with the procedure laid down in Article 47, may decide to implement specific measures relating to the structure of the fish industry with a view to:

— either helping to remove the structural handicaps which affect fishing activities in certain areas of the Community;

— or encouraging the implementation of a structural project covering all the problems related to fishing activities in a particular region of the Community;

— or making it possible to implement concerted measures to alleviate difficulties affecting a specific aspect of fishing activities.

2. Specific measures must be coordinated with any development measures being simultaneously undertaken in sectors outside the fishing industry.

TITLE XI

Procedure for the examination of projects and obligations of beneficiaries

Article 33

The provisions of this Title shall apply to the projects referred to in Titles II, IV and VIII and to the measures referred to in Title III.

Article 34

1. Applications for Community aid in respect of projects referred to in Titles II, IV and VIII shall be submitted to the Commission through the Member State concerned, once the approval of the latter has been obtained, on the basis of the priorities of the multiannual guidance programmes.

2. Applications for Community aid in respect of measures referred to in Title III shall be submitted to the Commission by the Member State concerned.

3. Incomplete applications for aid shall not be considered.

4. The data which applications must include and the form in which they must be submitted shall be decided by the Commission in accordance with the procedure laid down in Article 47.

Article 35

1. Having consulted the Committee, the Commission shall take decisions:

(a) twice yearly on applications relating to projects or measures referred to in Titles II, III and IV, the first decision being taken not later than 30 April and covering applications submitted not later than 31 October of the preceding year and the second decision being taken not later than 31 October and covering applications submitted not later than 31 March of the current year;

(b) twice yearly on applications relating to projects referred to in Title VIII, the first decision being taken not later than 30 June and covering applications submitted not later than 31 October of the preceding year and the second decision being taken not later than 31 December and covering applications submitted not later than 28 February of the current year.

2. In 1987, notwithstanding paragraph 1, the Commission shall decide only once on applications relating to projects or measures referred to in Titles II, III and IV. The decision shall be taken not later than 31 December and shall cover applications submitted not later than 15 May 1987.

3. Decisions on aid shall be notified to the Member State concerned and to the beneficiaries of the projects referred to in Titles II, IV and VIII.

Article 36

This Regulation shall not apply to projects which receive Community aid under a common measure within the meaning of Article 6 of Regulation (EEC) No 729/70[1] with the exception of the projects referred to in Article 27, nor to projects receiving aid from the European Regional Development Fund.

Article 37

1. Aid applications in response to which no grant has been awarded for lack of funds shall be carried forward, once only, to the following budgetary year.

2. Aid applications which have been submitted for the first time after 31 October 1985 under Regulation (EEC) No 2908/83 and in response to which no Community grant was awarded for lack of funds may be taken into consideration for the 1987 budgetary year, under the terms and conditions of this Regulation.

Article 38

Investments which have received Community aid under this Regulation may not be sold outside the Community or assigned to purposes other than fishing for a period of 10 years from the date of commissioning and must be used on a priority basis for the supply of the Community market during that period. This period shall, however, be reduced to five years for projects for the modernization or reconversion of operational fishing vessels as referred to in Title III.

Article 39

1. For each project which has received aid under Titles II and IV of this Regulation, the beneficiary shall forward to the Commission, through the Member State concerned, a report on the results of the project, in particular on the financial results.

This report shall be submitted:

— two years after the last payment of aid towards projects referred to in Title II and in Article 11 (1) (a);

— five years after the last payment of aid towards projects referred to in Article 11 (1) (b).

[1] OJ L 94, 28.4.1970, p. 13.

2. If the beneficiary does not fulfil the obligations laid down in paragraph 1, the Commission may, after giving the beneficiary due notice, decide to reverse in whole or in part its decision to grant aid, acting in accordance with the procedure laid down in Article 47. The decision shall be notified to he Member State concerned and to the beneficiary. The Commission shall recover in whole or in part the sums paid.

3. Detailed rules of applying this Article, specifying in particular the data which the report referred to in paragraph 1 must contain, shall be adopted by the Commission in accordance with the procedure laid down in Article 47.

TITLE XII

General and financial provisions

Article 40

1. The proposed duration of the measure shall be 10 years as from 1 January 1987.

2. The total expenditure to be charged to the Community budget in respect of the implementation of the measures provided for in this Regulation is estimated at ECU 800 million for the period 1987 to 1991.

3. Depending on the action required to ensure the proper functioning of the common fisheries policy, and in any event at the end of a five-year period beginning on 1 January 1987, the detailed rules for applying this Regulation, including the financial estimate given in paragraph 2 and the lists in Annexes II and III of the regions qualifying for a higher rate of Community aid, shall be reviewed by the Council on a proposal from the Commission.

Article 41

The granting of Community aid must not affect the conditions of competition in a manner incompatible with the principles set out in the relevant provisions of the Treaty.

Article 42

The financial contributions from the Member States referred to in Articles 7, 10, 12, 28 and 30 may consist of capital subsidies or financial concessions on loans.

Article 43

1. The Community aid referred to in Articles 6, 9 and 11 may consist of:

(a) reductions in the rates of interest charged on loans granted by the European Investment Bank (EIB) from its own resources or from New Community Instrument (NCI) resources or through other financial agencies;

(b) a contribution in capital towards the establishment or enlargement of funds to guarantee the loans contracted for the implementation of projects;

(c) capital subsidies granted in one or more instalments;

(d) reimbursable advances.

2. Where the provisions of paragraph 1 (a), (b) and (d) are applied, the rates of Community aid referred to in Annexes II and III shall be assessed in grant-equivalent terms.

3. Before the provisions of paragraph 1 (a) may be applied, the Commission and the EIB must first reach an agreement on the cooperation arrangements.

4. Detailed rules for applying this Article shall be adopted by the Commission in accordance with the procedure laid down in Article 47.

Article 44

1. Throughout the period for which aid is granted by the Community, the authority or agency appointed for the purpose by the Member State shall send to the Commission on request all supporting documents and all documents showing that the financial or other conditions imposed for each project are satisfied. The Commission may decide to suspend, reduce or discontinue aid, in accordance with the procedure laid down in Article 47:

— if the project is not carried out as specified; or

— if certain conditions imposed are not satisfied; or

— if the beneficiary, contrary to the particulars given in his application and incorporated in the decision granting aid, has not begun the work within one year from the date of notification of the decision, or has not; before the end of this period, supplied satisfactory assurances that the project will be carried out; or

— if the beneficiary does not complete the work within a period of two years from the start of the project, except in cases of *force majeure.*

Decisions shall be notified to the Member State concerned and to the beneficiary.

The Commission shall take steps to recover any sums unduly paid.

2. Detailed rules for applying this Article shall be adopted by the Commission in accordance with the procedure laid down in Article 47.

Article 45

1. Member States shall take the necessary measures, in accordance with national laws, regulations and administrative provisions, in order to:

— ensure that the operations financed under this Regulation are in fact carried out and that they are properly carried out;

— prevent or take action against irregularities;

— recover sums lost as a result of irregularities or negligence.

Member States shall inform the Commission of the measures taken for such purposes, and in particular of the progress of any administrative or legal proceedings.

2. If the recovery of sums unduly paid is not complete, the financial consequences of irregularities or negligence shall be borne by the Community, except where such irregularities or negligence are attributable to national administrations or agencies.

3. The Council, acting by a qualified majority on a proposal from the Commission, shall adopt any general rules necessary for the application of this Article.

Article 46

1. Member States shall make available to the Commission all the information required for the implementation of measures provided for in this Regulation and shall take the necessary steps to facilitate any inspections which the Commission may see fit to undertake in connection with the management of Community aid, including on-the-spot inspections.

Member States shall communicate to the Commission the laws, regulations and administrative provisions adopted for the application of Community instruments relating to the common fisheries policy, in so far as such instruments have financial implications for the Community budget by virtue of measures covered by this Regulation.

2. Without prejudice to controls carried out by Member States in accordance with national laws, regulations and administrative provisions, and without prejudice to the provisions of Article 206 of the Treaty or to any inspection organized pursuant to Article 209 (c) of the Treaty, the persons empowered by the Commission to make checks on location shall be given access to the accounts and any other documents relating to the expenditure financed by the Community. In particular, they may check the following:

(a) the conformity of administrative practices with the Community rules;

(b) the existence of the requisite supporting documents and their consistency with the operations financed from the Community budget;

(c) the manner in which the operations financed from the Community budget have been carried out and inspected.

In good time before such inspections, the Commission shall notify the Member State concerned by the inspection or in whose territory the inspection is to be conducted. Officials of the Member State concerned may take part in such inspections.

At the Commission's request and with the consent of the Member State, inspections or investigations relating to the operations referred to in this Regulation shall be carried out by the competent authorities of the Member State concerned. Commission officials may take part in such inspections.

In order to improve the scope for inspections, the Commission may, with the consent of the Member States concerned, involve the administrations of the Member States in certain inspections or investigations.

3. The Council, acting by a qualified majority on a proposal from the Commission, shall adopt, as necessary, general rules for applying this Article.

Article 47

1. Where the procedure laid down in this Article is to be followed, matters shall be referred to the Standing Committee for the Fishing Industry, by its chairman, either on his own initiative or at the request of the representative of a Member State.

2. The representative of the Commission shall submit a draft of the measures to be taken. The Committee shall deliver its opinion within a time-limit to be set by the chairman according to the urgency of the matter. Opinions shall be adopted by a majority of 54 votes the votes of the Member States being weighted as laid down in Article 148 (2) of the Treaty. The chairman shall not vote.

3. The Commission shall adopt the measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, the Commission shall forthwith communicate them to the Council. In that event the Commission may defer their application for not more than one month from the date of such communication. The Council, acting by a qualified majority, may adopt different measures within one month.

Article 48

1. Pursuant to Article 5 of Regulation (EEC) No 1676/85,[1] the amounts in ecus referred to in Articles 9, 11 and 12 shall be converted into national currencies at the agricultural conversion rates in force on 1 January of the year preceding the year in which the Commission decides for the first time, within the meaning of Article 35 of this Regulation, on the relevant aid application.

2. Pursuant to Article 5 of Regulation (EEC) No 1676/85, the amounts in ecus specified in Article 20 and in Annexes IV and V to this Regulation shall be converted into national

[1] OJ L 164, 24.6.1985.

currencies at the agricultural conversion rates in force on 1 January of the year in which the premium are granted.

Article 49

Articles 92, 93 and 94 of the Treaty shall apply, in the sectors covered by this Regulation, to the national aids granted by Member States, other than those in respect of which Community financial assistance has been granted.

Article 50

The provisions provided for in Title I and the measures provided for in Titles II, III, IV, VII and X of this Regulation shall be applicable in the Canary Islands, in Ceuta and in Melilla. However, the measures provided for in Titles II, III, VII and X shall apply only to vessels of these territories within the meaning of Regulation (EEC) No 570/86.[1]

Article 51

To take account of special situations and to heighten the effectiveness of the restructuring measures provided for in this Regulation, the Council, voting by qualified majority on a proposal of the Commission, may make derogations from the technical requirements set out in Articles 6 (2), 7 (1), 9 (3), 10 (1), 11 (2), 12 (1), 14 (2), 15 (1), 20 (2), (3), 23 (2), (3), 24 (2), 26 (4), (5), 28 (2) and 30 (2), in particular by adjusting the upper or lower limits specified in those Articles.

Article 52

If transitional measures should be required to facilitate the changeover to the arrangements provided for in this Regulation, such measures shall be adopted in accordance with the procedure laid down in Article 47. They may not be adopted after 31 March 1987.

Article 53

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 January 1987.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18 December 1986.

[1] OJ L 56, 1.3.1986, p. 1.

ANNEX I

Minimum information to be included in multiannual guidance programmes

I. Programmes concerning the fishing fleet

1. Importance of the fishing industry in the national economy and in the various regional economies concerned,
2. Initial situation of the fleet, by category of vessel, type of fishing and region (number, tonnage, engine power and age); estimated fishing capacity.
3. Estimates of current fishery resources and foreseeable trends, especially in fishing grounds not subject to Community fishing legislation.
4. Impact on the fishing industry of the present situation and foreseeable trends on the market for fish and aquaculture products.
5. Description of the strengths and weaknesses of the various sections of the fleet; needs covered by the programme and objectives of the latter.
6. Developments in the fleet and investments needed during the period covered by the programme to attain the objectives (number of vessels, tonnage and engine power of vessels to be commissioned or withdrawn during the period concerned); situation of the fleet and the fishing capacity envisaged on completion of the programme.

II. Programmes concerning aquaculture and protected marine areas

1. Importance of aquaculture in the national economy and in the various regional economies concerned.
2. Initial situation of aquaculture by type of farming, region and species produced.
3. Estimated potential aquaculture production in the regions concerned, by species and type of farming.
4. Impact on the aquaculture industry of the present situation and foreseeable trends on the market for fish and aquaculture products.
5. Description of the strengths and weaknesses of the aquaculture industry; needs covered by type of farming, region and species.
6. Objectives of the programme and level of production sought on completion of the programme, by type of farming, region and species.
7. Investments needed during the period covered by the programme to attain the objectives pursued.
8. Prospects for the establishment or development of protected marine areas; investments envisaged in this sector; objectives pursued.
9. Measures planned for the protection of the environment.

III. Particulars to be furnished for all programmes

1. Critical assessment of the implementation of the preceding programme.
2. National or regional financial resources available or to be made available for implementation of the programme; priorities adopted for the granting of aid.
3. Laws, regulations or administrative provisions existing or foreseen for ensuring the monitoring of the programme.
4. Links with any specific programme(s) approved by the Commission under Regulation (EEC) No 355/77.
5. Compatibility with any regional development programme(s) notified to the Commission in accordance with Article 3 of Regulation (EEC) No 1787/84.[1]

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[1] OJ L 169, 28.6.1984, p. 1.

ANNEX II

Community aid and financial contributions from Member States for the restructuring, renewal and modernization of the fishing fleet

I. Vessels of which the length between perpendiculars does not exceed 33 metres

Regions	Community aid	Financial contributions from Member States
1. Greece, Andalusia, Canaries, Galicia, West of Scotland,[1] Ireland, Northern Ireland, *arrondissements* of Quimper and Lorient, Mezzogiorno, Portugal, the French overseas departments and Veneto	35%	between 10 and 30%
2. Other regions	20%	between 10 and 30%

[1] The 'West of Scotland' shall mean Dumfries and Galloway, the Western Isles, Orkney and Shetland, together with the districts of Caithness, Sutherland, Ross and Cromarty, Skye and Lochalsh, Lochaber, Argyll and Bute, Cunninghame, Kyle and Carrick.

II. Vessels of which the length between perpendiculars exceeds 33 metres

Regions	Community aid	Financial contributions from Member States
1. Greece, Andalusia, Canaries, Galicia, West of Scotland,[1] Ireland, Northern Ireland, *arrondissements* of Quimper and Lorient, Mezzogiorno, Portugal, the French overseas departments and Veneto	25%	between 10 and 30%
2. Other regions	10%	between 10 and 30%

[1] The 'West of Scotland' shall mean Dumfries and Galloway, the Western Isles, Orkney and Shetland, together with the districts of Caithness, Sutherland, Ross and Cromarty, Skye and Lochalsh, Lochaber, Argyll and Bute, Cunninghame, Kyle and Carrick.

ANNEX III

Community aid and financial contributions from Member States for the development of aquaculture and structural works in coastal waters

I. Aquaculture

Regions	Community aid	Financial contributions from Member States
1. Greece, Andalusia, Canaries, Castile-La-Mancha, Extremadura, Galicia, West of Scotland,[1] Ireland, Northern Ireland, *arrondissements* of Quimper and Lorient, Mezzogiorno, Portugal, the French overseas departments and Veneto	35%	between 10 and 30%
2. Other regions	20%	between 10 and 30%

[1] The 'West of Scotland' shall mean Dumfries and Galloway, the Western Isles, Orkney and Shetland, together with the districts of Caithness, Sutherland, Ross and Cromarty, Skye and Lochalsh, Lochaber, Argyll and Bute, Cunninghame, Kyle and Carrick.

II. Protected marine areas

Community aid: 50%.

Contributions from Member States: between 10 and 35%.

ANNEX IV

Scale of laying-up premiums

Tonnage of vessel	Maximum premium per vessel (ECU/day)	
	Vessels less than 10 years old	Vessels 10 years and over
Less than 70 grt	200	150
of 70 and less than 100 grt	300	250
of 100 and less than 200 grt	600	400
of 200 and less than 300 grt	950	700
of 300 and less than 500 grt	1 200	1 000
of 500 and less than 1 000 grt	1 500	1 300
of 1 000 and less than 1 500 grt	2 000	1 700
of 1 500 and less than 2 000 grt	2 400	2 100
of 2 000 and less than 2 500 grt	2 700	2 300
of 2 500 and less than 3 000 grt	3 100	2 600
3 000 grt and over	3 500	3 000

ANNEX V

Eligibility of expenditure on the granting of final cessation premiums

I. **Vessels of a tonnage of less than 100 tonnes**
The eligible amount is limited, per vessel, to ECU 25 000 + ECU 2 000/tonnage.

II. **Vessels of a tonnage equal to or higher than 100 tonnes but lower than 400 tonnes**
The eligible amount is limited, per vessel, to ECU 140 000 + ECU 850 tonnage.

III. **Vessels of a tonnage equal to or higher than 400 tonnes but lower than 3 500 tonnes**
The eligible is limited, per vessel, to ECU 316 000 + ECU 410/tonnage.

IV. **Vessels of a tonnage equal to or higher than 3 500 tonnes**
The eligible amount is limited, per vessel, to ECU 510/tonnage — ECU 34 000.

ANNEX VI

Community aid and financial contributions from Member States for port facilities

Regions	Community aid	Financial contributions from Member States
1. Mezzogiorno, Ireland, Northern Ireland, Greece, *arrondissements* of Quimper and Lorient, Portugal, the French overseas departments, Galicia, the provinces of Grenada and Huelva and Veneto	50% maximum	between 5 and 25%
3. Languedoc-Roussillon, Bouches-du-Rhône, Var, Asturias, Cantabria, province of Guipuzcoa, provinces of Gerona and Taragona, Comunidad Valenciana, Murcia, provinces of Cadiz, Malaga, Almeria and Sevilla, Islas Baleares	35% maximum	between 5 and 30%
3. Other regions	25% maximum	between 5 and 25%

Commission letter to Member States SG(88) D/6181 dated 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 cofinancing 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 yard 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 gt. 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 gt constructed for third countries are subject to the rules of Council Directive 87/167/EEC 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 the 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...

Guidelines for the examination of State aids in the fisheries sector [1]

INTRODUCTION

For the past two years the 'Guidelines for the examination of State aids in the fisheries sector' [2] have formed the basis for the Commission's assessment of both draft and existing aids. The experience gained over this period and the development of the common fisheries policy, in particular the introduction of a common structural policy for the medium term by Council Regulation (EEC) No 4028/86 on Community measures to improve and adapt structures in the fisheries and aquaculture sector, [3] have made it necessary to review these guidelines, in order to adapt certain existing provisions to the new Community regulations and to insert new provisions for categories of aid not included in the first version.

The common fisheries policy aims to establish the conditions necessary for ensuring the viability of the fisheries sector: the organization of the market serves to stabilize prices and unify the Community market. The rules on fishing provide for the best possible use of available stocks and their optimum conservation whilst ensuring relative stability of access for fishermen. 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. Lastly, the structural measures that have, since 1983, supplemented the common fisheries policy are designed to facilitate the adaptation of the industry to the existing situation and its likely future development.

State aids are, therefore, only justified if they are in accordance with the objectives of this policy.

It is against this background that the Commission is planning to administer the derogations to the principle of incompatibility of State aids with the common market (Article 92 (1) of the EEC Treaty) provided for in Article 92 (2) (3) of the Treaty and in its implementing instruments, in particular Directive 87/167/EEC on aids to shipbuilding. [4]

These guidelines apply to the entire fisheries sector and encompass all living resources of the sea and fresh waters, the products of the farming of such resources, the factors of production and the processing and marketing of the resultant products, but excluding non-commercial recreation and sports.

In order to ensure that the common market functions properly, the Commission finds it necessary to propose to the Member States, pursuant to Article 93 (1) of the EEC Treaty, that they apply to their existing aid schemes for fisheries the criteria laid down in these guidelines.

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[1] OJ C 313, 8.12.1988.
[2] Letter to the Member States of 16 September 1985 (OJ C 268, 19.10.1985, p. 2).
[3] OJ L 376, 31.12.1986, p. 7.
[4] OJ L 69, 12.3.1987, p. 55.

I — General principles

1. These guidelines relate to all measures entailing a financial advantage in any form whatsoever funded from the budgets of public authorities (national, regional or provincial, departmental or local). They relate, in particular, to capital transfers, reduced-interest loans, and certain State holdings in the capital of undertakings, aid financed by special levies and aid granted in the form of State security for 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 aids' as used in this document.

2. Any subsidy granted by virtue of Community rules is exempt from assessment under these guidelines.

3. State aids may be granted only if they are consistent with the objectives of the common policy.

Aids may not be conservative in their effect: they 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 at Community level.

In more practical terms, aids 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. They must yield lasting improvements so that the industry can continue to develop solely on the basis of market earnings. Their duration must therefore be limited to the time needed to achieve the desired improvements and adaptations.

Consequently the following principles apply:

— State aids must not impede the application of the rules of the common fisheries policy. Therefore in no circumstances can aids to the export of or to trade in fishery products within the Community be deemed compatible with the common market;

— those aspects of the common fisheries policy that cannot be considered to have been thoroughly resolved, in particular as regards structural policy, may still warrant State aids provided such aids comply with the objectives of the common rules so as not to jeopardize or risk distorting the full effect of these rules; this is why they must, where appropriate, form part of guidance programmes provided for under Community rules; [1]

— in the present situation, with overcapacity acknowledged by all the Member States, and with the danger that there would be a threat to the achievement of the objectives of the common fisheries policy from national aids not complying with all its requirements, the

[1] Aids of a structural nature are deemed to be those referred to under II.B.1, 2, 3 and 4, C.1, 2 and 3 and D.

Commission has decided not to authorize the grant of national aids under the sixth Directive on shipbuilding intended for the Community fleet. In this connection, it would remind the Member States of their obligations, deriving from the principle of non-discrimination laid down in the Treaty of Rome, as regards Community shipyards;

— State aids

  - which are granted without imposing any obligation on the part of recipients and which are intended to improve the liquidity situation of their undertakings,
  - the amount of which depends on the quantity produced or marketed, the prices of products, the unit of production or the factors of production;

  and the result of which would be a reduction in the recipient's production costs or an improvement in the recipient's income are, as operating aids, incompatible with the common market. [1] The Commission will examine such aids on a case-by-case basis where they are directly linked to a restructuring plan considered to be compatible with the common market.

4. The examination of aids is based on values expressed in gross subsidy equivalent. However, account is taken of all factors making it possible to assess the real (net) advantage of the recipient.

The Commission will continue to examine the possibilities of determining parameters of comparison on the basis of which the net value of the subsidies can be assessed.

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 laws, particularly those that are designed to promote regional development, will be taken into account when assessing any State aid arrangements.

5. In accordance with the various provisions of the Treaty, particularly Article 95, and the judgments of the Court, [2] State aids shall be considered incompatible with the common market where they are financed by means of special levies which, while affecting both imported products from other Member States and domestic products, place national products, through the combination of the aid and the levy which finances it, at a relative advantage over rival products from other Member States.

6. The objectives of the common fisheries policy must not be jeopardized by regional policy objectives. The components of regional aid schemes relating to the fisheries sector will therefore be examined on the basis of the present guidelines. The principles for the coordination of such schemes, which were communicated to the Member States by letter of 21 December 1978, [3] do not apply to the fisheries sector and the present guidelines apply to regional aids schemes approved in accordance with Article 92 (3) (a), in so far as they relate to the fisheries sector.

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[1] Subject to Article 92 (2) of the Treaty.
[2] ECR 1970, p. 487 (Case 47/69 *France* v *Commission*).
[3] OJ C 31, 3.2.1979.

7. In examining aid schemes, the Commission will also take account of the scale in absolute or relative terms of the overall financial support granted by the Member State concerned to the fisheries sector in the light of its impact on competition and trade between Member States. The Commission will draw up criteria for such assessments as part of its regular examination of existing aid schemes while taking account, on the basis of the information received, of other factors that are likely to influence the competitive position, such as measures of a social or fiscal nature.

8. The Commission will continue to amplify or modify these guidelines as and when experience is gained in the regular examination of inventories of State aids and in the light of the gradual development of the common fisheries policy.

II — Principles of compatibility of the various categories of aid

A. **Aid of a general nature**

1. *Aid to training and advisory services*

Aid to 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. *Aid to research*

Without prejudice to the provisions laid down in the scheme for a Community framework for State aids to research and development,[1] aids or other schemes implemented by the Member States relating to scientific and technical research may be deemed compatible with the common market provided that:

— 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

— the results of the research work are made accessible to nationals of all the Member States in accordance with industrial property laws.

3. *Aid to advertising and product promotion*

Without prejudice to Articles 29 to 31 of Regulation (EEC) No 4028/86, advertising aids in the strict sense, namely any measure which uses advertising media to invite consumers to

[1] OJ C 83, 11.4.1986.

buy a given product, may be regarded as being compatible with the common market provided that they relate to:

(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 and fisheries products, [1]

(c) generic advertising for fish in general or publicity:

— either for species which have rarely or not at all been used for human consumption, which are not subject to quantitative catch restrictions and catches of which could be increased;

— or 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 for new fishery products, over a period which should not normally extend beyond the first two years after such products have been placed on the market;

— or relating to fish products which are typical of production in particularly less-favoured regions within the meaning of Article 92 (3) (a) of the Treaty;

(d) aids the rate of which, in subsidy-equivalent, does not exceed, for fresh fish, 100 %, and, for processed products, 50 % of the cost of the publicity campaigns.

Aids for product promotion and those aimed at seeking new market outlets for fish products may be deemed to be compatible with the common market provided that they concern indirect measures such as the organization of, and involvement in, fairs and exhibitions, trade missions, market studies, marketing advice, or surveys.

Reports on the application of such aids must be submitted to the Commission and must contain a detailed description of each measure.

The Commission may, as appropriate, review this paragraph in the light of a 'horizontal' scrutiny of the matter and amplify the present guidelines for such aids relating to the markets of other Member States or non-member countries; in the mean time, it will examine such aid schemes case by case.

[1] OJ C 272, 28.10.1986, pp. 3 to 5.
Note: Where a measure is being examined under Article 92 of the Treaty, the criteria adopted in these guidelines (relating to advertising measures taken in the Member State concerned) must be applied also to advertising measures subsidized in the territory of other Member States.

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, is in principle compatible with the common market. The Commission examines such measures on a case-by-case basis and will amplify the guidelines in the light of experience acquired in this field.

B. Aid to sea-fishing

1. *Aid to the permanent laying up of fishing vessels*

Aid to the scrapping or permanent laying up of a fishing vessel which is not linked to the purchase or construction of a new vessel is compatible with the common market provided that:

— for vessels of a length between perpendiculars of 12 metres or more, thus falling within the scope of the Community rules on fisheries structures (Council Regulation (EEC) No 4028/86), the vessel meets all the requirements for eligibility for Community aid;

— for vessels of a length between perpendiculars of less than 12 metres, thus not falling within the scope of the abovementioned Community rules, the vessel meets the following requirements:

  - it is granted for measures in line with the objectives of a multiannual guidance programme as provided for in the said rules and approved by the Commission;
  - the conditions for the granting of such aid are similar to and at least as stringent as those provided for in the said rules.

If the previous operations of fishing vessels do not qualify them for a premium under Regulation (EEC) No 4028/86, the Commission may, as appropriate, examine each aid on a case-by-case basis, taking account of how far the level of the permanent laying-up premium is in proportion to the duration of the fishing activities of the vessels concerned.

Reports on the operation of such aids, containing lists of all the individual projects and descriptions thereof, must be submitted to the Commission.

2. *Aid to the temporary laying up of fishing vessels*

Aid to the temporary laying up of fishing vessels is deemed compatible with the common market provided that:

— for vessels of a length between perpendiculars of 18 metres or more, thus falling within the scope of the Community rules on fisheries structures (Council Regulation (EEC) No 4028/86), the vessel meets all the requirements for eligibility for Community aid;

— for vessels of a length between perpendiculars of less than 18 metres, thus not falling within the scope of the abovementioned Community rules, the vessel meets the following requirements:

- it is granted for measures in line with the objectives of a multiannual guidance programme as provided for in the said rules and approved by the Commission;
- the conditions for the granting of such aid are similar to and at least as stringent as those provided for in the said rules;
- the rate of the daily laying-up premium does not exceed the amount provided for in the Community rules on vessels of less than 70 GRT (see Annex IV to Regulation (EEC) No 4028/86).

Reports on the operation of such aids, containing lists of all individual projects and descriptions thereof, must be submitted to the Commission.

3. *Aid to investment in the fleet*

(i) Aid to the purchase or construction of new fishing vessels, whether linked or not to a requirement to scrap an existing vessel, may be deemed as being compatible with the common market:

— where it is for a vessel of a length between perpendiculars of metres or more, in general, or 12 metres in the case of a trawler, and thus falls within the scope of the Community rules on fisheries structures (Council Regulation (EEC) No 4028/86), subject to the following conditions:
  - it meets all the requirements for eligibility for Community aid;
  - the level of the aid does not exceed, in subsidy-equivalent, the total level of national and Community subsidies permitted under these rules (see Article 7 of, and Annex II to, Regulation (EEC) No 4028/86);

— where it is for a vessel of a length between perpendiculars of less than 9 metres, in general, and 12 metres in the case of a trawler, and thus does not fall within the scope of the abovementioned rules, subject to the following conditions:
  - it is granted for investments which are in line with the objectives of a multiannual guidance programme provided for under the said rules and approved by the Commission;
  - the conditions for the granting of aid are similar to and at least as stringent as those provided for in the said rules;
  - the rate of such aid does not exceed, in subsidy-equivalent, the overall rate of State and Community subsidies permitted under the said rules (see Article 7 of, and Annex II to, Regulation (EEC) No 4028/86).

  Reports on the operation of such aids, containing lists of all the individual projects together with descriptions thereof, must be submitted to the Commission.

(ii) Aid for the modernization of commissioned fishing vessels may be deemed compatible with the common market:

— where it is for (a) a vessel of a length between perpendiculars of 9 metres of more, in general, or 12 metres in the case of a trawler, and (b) investments of at least ECU 25 000

(ECU 12 000 in the case of vessels measuring between 9 and 12 metres) and thus falls within the scope of the Community rules on fisheries structures (Council Regulation (EEC) No 4028/86), subject to the following conditions:

- it meets all the requirements for eligibility for Community aid;
- the level of the aid does not exceed, in subsidy-equivalent, the total level of national and Community subsidies permitted under those rules (see Article 7 of, and Annex II to, Regulation (EEC) No 4028/86),

— where it is for a vessel of a length between perpendiculars of less than 9 metres, in general, or less than 12 metres in the case of a trawler, of for a vessel of a length between perpendiculars of 9 metres or more (12 metres in the case of a trawler) but with an investment of less than ECU 25 000 (ECU 12 000 in the cases of vessels measuring between 9 and 12 metres) and thus does not fall within the scope of the abovementioned rules, subject to the following conditions:

- it is granted for investments which are in line with the objectives of a multiannual guidance programme provided for under the said rules and approved by the Commission;
- the conditions for the granting of aid are similar to and at least as stringent as those provided for in the said rules;
- the rate of such aid does not exceed, in subsidy-equivalent, the overall rate of State and Community subsidies permitted under the said rules (see Article 7 of, and Annex II to, Regulation (EEC) No 4028/86).

Reports on the operation of such aids, containing lists of all the individual projects with descriptions thereof, must be submitted to the Commission.

(iii) Aid for the purchase of used vessels

Aid for the purchase of used vessels may be deemed compatible with the common market only if all the following requirements are met:

(a) it concerns an investment in the fleet which is in line with the objectives of a multiannual guidance programme provided for in Regulation (EEC) No 4028/86, on the same terms as in the case of new vessels;

(b) it concerns evidence of the vessels' present operations, which shows that they can be used for fishing for a further 10 years at least, and which, at the time of purchase, are normally not more than 15 years old, with possible exceptions in certain cases to be examined on an individual basis;

(c) its aim is to enable sea-fishermen to acquire part-ownership of a vessel so that it can be kept in commission, or to help young fishermen establish themselves initially, or to enable a fishing vessel to be replaced after the total loss thereof, e.g. in a shipwreck, or in other similar circumstances to be examined on an individual basis;

(d) the rate of aid does not exceed, in subsidy-equivalent, one quarter of the cost of the purchase;

(e) any aid granted less than seven years previously for the construction or modernization of a vessel or for the earlier purchase of the same vessel is reimbursed *pro rata temporis*;

Reports on the operation of such aids, containing lists of all the individual projects and descriptions thereof, must be submitted to the Commission.

4. *Aid to diversification*

(i) Aid to exploratory fishing voyages may be deemed compatible with the common market if:

— it meets all the conditions laid down by the Community rules on fisheries structures (at present Title V of Regulation (EEC) No 4028/86) with the exception of those defining the length of vessels and the requirement that the duration be not less than 30 days per fleet; and

— the incentive premium does not exceed, in subsidy-equivalent, 40% of the eligible costs.

Aid to new fishing methods is deemed incompatible with the common market unless the measures fulfil the conditions for exploratory fishing of a kind that is compatible by relevant virtue of the criteria set out above. (Where the aim of the measures is solely one of research, they are assessed in accordance with paragraph A.2.)

(ii) Aid to cooperation in fisheries in the context of joint ventures may be regarded as being compatible with the common market if:

— it meets all the conditions for eligibility for Community aid and thus falls within the scope of the relevant Community rules (Regulation (EEC) No 4028/86, Articles 18 to 21);

— the amount of the cooperation premium does not exceed ECU 80 per GRT and per period of three consecutive months.

(iii) Aid to cooperation in the context of joint fishing ventures involving a permanent transfer of a vessel may be regarded as being compatible with the common market if:

— the vessel concerned is transferred to the fleet of a third country for the purpose of the joint exploitation of the fishery resources of that country;

— it is removed from the register of fishing vessels;

— it is excluded definitively from fishing in Community waters;

— it is excluded from the grant of a permanent laying-up premium under national or Community arrangements;

— it has been engaged in fishing for at least 100 days of the 12 months preceding the submission of a basic contractual proposal;

— the holding of nationals of the Member State in the capital of the joint venture exceeds 40 % or is equal to the maximum permitted under local law where the latter is less than 40 %;

— the rate of the aid does not exceed ECU 2 000 per GRT of the vessel concerned.

5. *Aid to technical assistance at sea*

Aid to technical assistance at sea (e.g. support vessels) 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.

6. *Aid to fishermen's activities in ports*

Aid to the operation of ports and aids granted either directly or indirectly to reduce the port charges which have to be borne by fishermen is examined case by case. The Commission intends to undertake a study of the financing and management of ports as regards the landing of fishery products and the provision of supplies for fishing vessels. The results of such a study will help to amplify the present guidelines.

C. Aid to processing and marketing in the fisheries sector

1. *Aid to cessation of firms' activities*

Aid intended as an incentive to the final cessation of firms' processing and marketing activities is compatible with the common market provided that:

— it is limited to unprofitable processing firms and is compatible with the programme of the Member State concerned for the development or rationalization of the processing or marketing of fishery products as provided for in Community rules governing this matter (at present amended Council Regulation (EEC) No 355/77 of 15 February 1977);[1] and

— the rate of compensation for cessation of activity does not exceed half of the current value of the movable and immovable assets excluding land.

Reports on the operation of such aids, containing lists of all the individual projects and descriptions thereof must be submitted to the Commission.

[1] OJ L 51, 23.2.1977.

2. *Aid to port infrastructures*

Aid to fishing port infrastructures intended to facilitate landing operations and the provision of supplies to fishing vessels may be regarded as being compatible with the common market provided that:

— it meets all the requirements for eligibility for Community aid under Regulations (EEC) Nos 355/77 and 4028/86; and

— the rate of aid does not exceed, in subsidy-equivalent, the total rate of national and Community subsidies permitted under those Regulations (see Article 28 of, and Annex VI to, Regulation (EEC) No 4028/86).

Reports on the operation of such aids, containing lists of all the individual projects and descriptions thereof, must be submitted to the Commission.

3. *Other aid to investment*

Aid to investment in the processing and marketing of fishery products may be regarded as compatible with the common market provided that:

— the measures satisfy the aims of a programme approved by the Commission and relating to the development or rationalization or the processing of marketing of fishery products as provided for in Community rules governing this matter (at present amended Council Regulation (EEC) No 355/77);

— the conditions for the granting of such aid are similar to and at least as stringent as those provided for in the aforesaid rules; and

— the rate of such aid does not exceed, in subsidy-equivalent, the overall rate of national State and Community subsidies permitted under the said rules (see Article 17 of Regulation (EEC) No 355/77).

Reports on the operation of such aids, containing lists of all the individual projects and descriptions thereof, must be submitted to the Commission.

4. *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:

— quality 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 labels 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 State concerned.

Aid to advertising using a quality label is subject to the provisions laid down in point A.3 of these guidelines.

5. *Aid to producers' organizations*

Aid intended to improve or provide support for the activities of producer groups or organizations other than the producer organizations recognized under Regulation (EEC) No 3796/81 is incompatible with the common market.

It should be borne in mind that the aids provided for in Article 6 of the said Regulation are exhaustive in nature and may only be granted to recognized producer organizations.

The other categories of aid granted to the said producer associations, groups and organizations are subject to examination under these guidelines.

D. Fresh-water fishing and aquaculture

(a) Aid to investment in professional fresh-water fishing (breeding, restocking, management of waterways and ponds) may be considered compatible with the common market. The Commission will examine such aid on a case-by-case basis;

(b) aid to investment in aquaculture may be regarded as being compatible with the common market provided that:

— it is granted in respect of investment projects costing in excess of ECU 50 000 [1] and falls within the scope of the Community rules on fishery structures (Council Regulation (EEC) No 4028/86), subject to the following conditions:
  - it meets all the requirements for eligibility for Community aid;
  - the rate for aid does not exceed, in subsidy-equivalent, the overall rate of national and Community subsidies permitted under those rules (see Article 12 of, and Annex III to, Regulation (EEC) No 4028/86),

— it is granted in respect of investment projects costing up to ECU 50 000 and does not fall within the scope of the abovementioned rules, subject to the following conditions:
  - it is granted in respect of investments which comply with the objectives of a multiannual guidance programme provided for under those rules and approved by the Commission;

[1] In the case of projects costing in excess of ECU 1.8 million (and ECU 3 million for projects involving construction of a pre-fattening or fattening unit and the construction of a hatchery) the portion of the project in excess of these limits may be subsidized out of national funds under the terms of the second indent. The Commission reserves the right to examine them on a case-by-case basis.

- the conditions for granting such aid are similar to and at least as stringent as those provided for in the Community rules governing this matter;
- and the rate of such aid does not exceed, in subsidy-equivalent, the overall rate of national and Community subsidies permitted under the said rules (see Article 12 of, and Annex III to, Regulation (EEC) No 4028/86).

If investment projects are located at sites where the quality of the water does not meet the requirements laid down by national or Community rules, the recipients of the aid must take the necessary steps and provide that their products do not present any risk to public health. The Commission reserves the right to examine aids for such projects on a case-by-case basis.

Reports on the operation of such aids, containing lists of all the individual projects and descriptions thereof, must be submitted to the Commission.

E. **Aid in 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 under which it can be established that the competent public authority is acting as regards the relevant disease, either by organizing a drive for its eradication through, in particular, compulsory schemes with compensation, or by introducing, in an initial stage, an early-warning system, combined, where appropriate, with aid acting as an incentive to individuals to take part on a voluntary basis in prophylactic 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 runs by the firm.

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 condition that the beneficiary undertakes to take appropriate preventive action as specified by the competent public authority.

F. **Special cases**

1. These guidelines also apply to fishery undertakings which are entirely or partly publicly owned. The Commission's position concerning public authorities' holdings in the capital of firms [1] is applied in the fisheries sector from the point of view of both principle and procedure.

2. As regards aid granted in the form of management loans and reduced rates linked to operating expenditure over a fishing year or production cycle, the Commission may, if appropriate, draw up specific guidelines in the light of the results of a 'horizontal' examination of aids of this type in all Member States. In the mean time, such aid schemes will be examined case by case.

3. The Commission is considering instituting a study in all Member States on the situation with regard to aid of a social character granted via or in favour of the social security system in the fisheries sector. It will take account, in particular, of the demographic structure of the fishing population and of comparisons with social security systems in other sectors of the economy, and in particular in the agricultural sector. The Commission will draw up additional guidelines on this basis.

In the mean time, such aid schemes will be examined case by case.

III — Procedural matters

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. It should be borne in mind, therefore, that all the rules of procedure generally obeyed in this matter remain applicable. [2]

In the case of existing aid schemes for fisheries, the Member States will confirm to the Commission, before 1 January 1989, that they will comply with the criteria laid down in these guidelines.

2. Furthermore, the Commission draws the attention of the Member States to its letter of 3 November 1983 [3] concerning the repayment of aid granted illicitly and the possible repercussions of such aid on the EAGGF accounts. The Commission will examine the application of these principles on a case-by-case basis in the light of the economic effect of the aid, i.e. its real impact on competition and trade between Member States.

[1] Letter of 17 September 1984. See monthly *Bulletin of the European Communities* No 9/84, p. 98.
[2] OJ C 252, 30.9.1980.
[3] OJ C 318, 24.11.1983.

3. As regards the non-financing by the EAGGF Guarantee Section of any expenditure affected by a unilateral national measure which is incompatible with the nature and objectives of the EEC fisheries market organization or which impedes the proper use of its instruments, the Commission must ensure that Community finance 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 380/78 where such advances would help to finance operations affected by a national measure.

7. ECSC Treaty policies on categories of aid

7.1. Control of aids to the coalmining industry

Commission Decision 73/287/ECSC [1] of 25 July 1973 concerning coal and coke for the iron and steel industry in the Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 2 to 5 and 95 (1 and 2) thereof; following consultation with the Consultative Committee and with the unanimous endorsement of the Council;

I

Whereas changes in the structure of the energy market resulted in the adoption by the Member States, on 21 April 1964, of a Protocol of Agreement on energy problems; whereas, pursuant to paragraph 11 of this Protocol and on the basis of Article 95 (1 and 2) of the Treaty, the Commission adopted, on 22 December 1970, Decision No 3/71/ECSC relating to a Community system of Member State contributions in support of the coalmining industry, subsequent to Decision No 3/65 of the High Authority dated 17 February 1965;

Whereas the special nature of the market in coking coal and cokes intended for the iron and steel industry resulted in the adoption by the High Authority (following the unanimous endorsement of the Council), on 21 February 1967, of Decision No 1/67 [2] relating to coking coal and cokes intended for the iron and steel industry;

Whereas this Decision, having been extended for a year, [3] expired on 31 December 1969;

Whereas for the same reasons and following the same procedures the Commission adopted, on 19 December 1969, Decision 70/1/ECSC [4] relating to coking coals and cokes and whereas the latter ceased to have effect as from 31 December 1972;

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[1] OJ L 259, 15.9.1973.
[2] OJ 36, 28.2.1967, p. 562/67.
[3] Commission Decision No 2177/68/ECSC, 27.12.1968 (OJ L 315, 31.12.1968).
[4] OJ L 2, 6.1.1970.

Whereas it transpired that upon expiry of Decision 70/1 the great majority of coking coal producers and consumers had failed to take the necessary steps to ensure that the financing expenses incurred through supplying coke to the iron and steel industry would be offset in full by the latter;

Whereas the years to come will continue to witness economic difficulties in connection with the production and sale of coking coal and cokes intended for the iron and steel industry on account of the fact that a large part of Community production is in deficit over both the medium and the long term; whereas heavy cutbacks in production capacity could yet prove necessary; whereas, at the same time, uncertainty exists as to what would be the situation with regard to the supply of coking coal to third countries, as a result of an excessively rapid or excessively heavy run-down of Community production capacity; whereas restrictions still exist in the sphere of commercial policy;

Whereas, moreover, the sudden abolition of a special system of aids for coking coal and cokes intended for the iron and steel industry would be to run the risk of revitalizing the very disruptive forces which Decisions No 1/67 and 70/1 had set out to neutralize;

Whereas, in particular, the danger would be created that a situation running counter to Community solidarity could develop both in terms of the quantities available for intra-Community trade and also in the field of price adjustment in respect of coking coal from third countries;

Whereas any development of this nature would jeopardize the achievement of certain basic objectives for which the Community has assumed responsibility, and in particular the objectives set out in subparagraphs (a) and (b) of Article 3 of the Treaty;

Whereas, in these circumstances, it appears necessary for the achievement of these Community objectives to set up a new special system of aids for the coal industries with a view to facilitating the necessary production of coking coal and cokes intended for the iron and steel industry, while at the same time providing a Community financing system for intra-Community trade and other financing responsibilities arising out of the enlargement of the Community;

Whereas the Treaty has not provided for the necessary powers to this end; whereas, in the light of these unforeseen circumstances the provisions of Article 95 (1) have had to be invoked in order to ensure the realization of the aims in question;

II

Whereas a new special system of aids for coking coal and cokes intended for the iron and steel industry should during the period of its applicability, enable both the coal producers and the coal consumers gradually to introduce the necessary measures whereby this system would give way to a situation in which the iron and steel industry itself could bear in full the financial burden of supplying it with coke:

— either by buying Community coal [1] at a price which would covers its production costs, allowances being made for a guarantee premium where appropriate;

— or by having recourse to the world market, which in the period covered by the system of aids could imply a basic change of policy as regards supplies to the undertakings;

Whereas, accordingly, the new system should be subject to a definite time-limit and should, moreover, be phased out gradually;

Whereas, in the light of present circumstances, the best way of achieving the above-mentioned aims would appear to be by facilitating the necessary production of coking coal through the granting of production aid at a variable rate in respect of each coalfield for a period of six years and, further, by facilitating marketing procedures in respect of areas located far away from the production field and by facilitating deliveries undertaken in the framework of intra-Community trade through the granting of marketing aid at a rate which would vary according to the plant supply potential and which would be reduced for the last two years of the period of applicability of the Decision;

Whereas, in order that the different economic conditions prevailing in the various coalfields may be taken more effectively into account, the Member States should be empowered, where appropriate, to fix production aid rates which reflect, above all, the difference between the average coalfield production costs and the prices obtainable through the main sales outlets and which also reflect the long-term marketing situation, even where this difference exceeds what would be strictly justified for reasons of security of supply; whereas the fixing of these rates must be authorized by the Commission on the basis of the criteria stipulated above;

Whereas, in order to ensure that the new system of aids is fully effective, contractual relations between the producers and consumers of coking coal and coke must be placed on a firm basis, whereby each side is on an equal footing; whereas, accordingly, the granting of aid must be conditional on the existence of long-term contracts;

Whereas, in respect of marketing aid, guarantees must be provided to the effect that such aid is passed on to the purchaser in the form of price reductions and that, in the event of production aid benefits also being passed on, this must be effected in such a way as to avoid any element of discrimination *vis-à-vis* the various long-term contracts;

III

Whereas under Article 60 (2) (b), last subparagraph, alignment on the delivered prices of third-country products is permitted only if the purchaser is in a position to accept such products; whereas, for coking coal and coke, products of third countries do not effectively compete in all the regions of the common market;

[1] Apart from any support from public funds which might be justified by considerations specifically linked with the future of the coal industry.

Whereas the objective of the Decision may only be reached if undertakings are able to grant, for deliveries made within the framework of long-term contracts, rebates on their index prices, even where there is no effective competition in the place of utilization;

Whereas it is necessary to set up guarantees preventing increased alignment possibilities arising from this Decision from leading to underbidding in relation to prices for coking coal from third countries; whereas it suffices for this purpose to provide the Commission with the power to set guide prices;

Whereas it is necessary to prevent, in the event of delivery of blast furnace coke, the net coking cost from not being entirely covered; whereas for this purpose the Commission should be given the power to set standard values enabling a price for coke to be calculated on the basis of a price for coking coal;

Whereas correct application of the present Decision requires, furthermore, that the Commission be able to fix criteria for the evaluation of quality differences between coking coal and coke which are the subject of the deliveries referred to by the present Decision;

Whereas infringement of this Decision should result in the application of Article 64 of the Treaty;

IV

Whereas in paragraph 1 above the reasons why the granting of aids to coal industries to facilitate the production of coking coal and coke and the marketing of such products is likely to meet a number of the objectives defined in Article 3 of the Treaty; whereas, in this field, the size of intra-Community trade and the provisions of Article 59 of the Treaty in the event of a shortage justify Community financing of marketing aids relating to intra-Community trade;

Whereas the rules for financing aid should be adopted taking account of the interests of the Member States and of the blast furnace coke consumer industry;

Whereas about two-thirds of Community coal and coke production intended for blast furnaces are consumed in the coal-producing countries and it is therefore fair that aid to production should be borne by these countries;

Whereas the market situation justifies a marked increase in the rate of aid to marketing in relation to the previous Decision, which results in greater costs; whereas because of the impossibility of covering these costs entirely by national fiscal means, it is necessary to make provision for a Community contribution to the payment of aids to marketing relating to intra-Community deliveries;

Whereas because such a contribution is not included in the costs listed in Article 50, first subparagraph of the Treaty, the provisions of Article 95, first subparagraph, should be referred to in such a case of non-provision;

Whereas the benefit conferred on blast furnace coke consumers by the established system is such that they should also contribute to Community financing of aids to marketing for intra-Community deliveries; whereas in respect of such financing, Article 53 of the Treaty provides for the making of any financial arrangements which are recognized to be necessary for the performance of the tasks set out in Article 3 but whereas such arrangements, which usually take the form of an equalization fund, generally imply the distribution of expenditure in favour of a limited number of undertakings or of the transactions among all the undertakings in question; whereas in the case in question the consumption of Community coal definitely exceeds the consumption of imported coal, so much so that recourse to an equalization fund would prove inadequate; whereas reference should be made to the provisions of Article 95, first subparagraph, when there is no provision for such a case in the Treaty;

Whereas the contribution from the blast furnace coke consumers must be on the most neutral basis possible and at a level not likely to damage the conditions of competition;

Whereas the amount of the contributions provided by the iron and steel industries not taking part in intra-Community trade and covering a large part of their coking coal requirements of national origin can serve to reduce the burden to the producer countries concerned;

Whereas Community financing should be both simple and effective; whereas, to this end, it suffices to provide for the setting-up of a special fund operated by the Commission;

V

Whereas correct application of Decision No 3/71/ECSC of 22 December 1970 would not be guaranteed if the Commission did not take account of the aids provided for by the present Decision when considering whether the aids referred to in Articles 6 to 9 of Decision No 3/71 are likely to jeopardize the smooth running of the common market; whereas, furthermore, the Commission must ensure that the aids provided for by this Decision do not alter the conditions of competition between coal or coke-producing undertakings or between iron and steel undertakings.

Whereas provision should be made, in respect of Community institutions, for the possibility of amending the financial arrangements, particularly with a view to adapting them to long-term supply trends and patterns in the enlarged Community, and the possibility of suspending this Decision if its application raises serious difficulties causing changes in a regional economic situation, and in cases of marked changes occurring in the conditions, volume or distribution of intra-Community trade patterns, thus altering the economic conditions which led to the adoption of this Decision; whereas the Commission must be able to limit the benefit of the granting of aids in cases where the performance of long-term contracts jeopardizes the objectives of this Decision;

Whereas it could become necessary to define, by general decisions, the conditions for the application of the rules established by this Decision and whereas appropriate procedures should be laid down to this end;

Whereas this Decision is intended to bring a temporary contribution to the solution of the problems raised by such non-substitutable products as coking coal and coke intended for the iron and steel industry; whereas its period of validity should therefore be limited to six years; whereas, in order to avoid a permanent solution, it appears advisable that the provisions of this Decision relating to aid, price rules and Community financing should enter into force on 1 January 1973;

HAS ADOPTED THIS DECISION:

Section 1

Aids by Member States

Article 1

The Member States are authorized to grant to coal undertakings under their jurisdiction which supply coking coal and blast-furnace coke to the Community iron and steel industry aids to facilitate production, marketing in regions far away from the production areas and intra-Community trade, and the conclusion and implementation of long-term contracts for supply and collection. To this end the following aids may be granted;

(a) a production aid, for which the governments shall each year determine a rate per coalfield, while taking particular account of the average costs of production in that coalfield, the price of coking coal in its principal sales area and the long-term supply conditions;

(b) a sales aid applying to deliveries to areas remote from the coalfield or effected by way of intra-Community trade. The rate of any such aid may not exceed 3 u.a. per tonne of coking coal in the case of deliveries to installations which can be supplied direct via maritime transport and 1.60 u.a. per tonne in all other cases. These rates shall be reduced to 2.60 and 1.40 u.a. respectively for the fifth year and 2 and 1 u.a. respectively for the sixth year of the term of the Decision. These levels are determined on the basis of the rates applicable for the first year of application without prejudice to the provisions of Article 10. No scale adopted by a government shall introduce any element of discrimination into the aids relating to the deliveries made by the coal undertakings.

Article 2

1. Where a Member State makes use of its option under Article 1, the following rules shall apply:

(a) the aids shall be paid to the coking-coal producer undertakings in respect of their disposals of their own coal;

(b) the aids may be paid only where the coal is used for coking and the coke in question is actually consumed in the blast furnaces of the Community iron and steel industry;

(c) the aids may be paid only where deliveries of coking coal and blast-furnace coke are made under a long-term contract.

2. The production aids referred to in Article 1 (a) of this Decision may be paid only after the rates thereof have been authorized by the Commission. The authorization shall be given by the Commission with due regard to the criteria referred to in Article 1 (a). For this purpose Member States shall, by 30 December of each year, submit their applications for the following calendar year, together with supporting documents. The Commission shall give its ruling within two months after receipt of the application.

3. The sales aid referred to in Article 1 (b) may be granted only if it is passed on in the form of price rebate to the purchaser of coking coal or blast-furnace coke. When a coal undertaking passes the production aid on to his buyers, this shall not give rise to discrimination between the various long-term contracts to be performed by that undertaking.

Section II

Pricing rules

Article 3

1. Coal undertakings are authorized, where necessary, to grant rebates on their list prices, for disposals of coking coal and blast-furnace coke for the Community iron and steel industry under long-term contract, even where there is no actual competition from coal or coke from non-member countries at the point of consumption.

2. The rebates allowed under 1 above shall not cause the delivered prices of Community coal and coke to work out lower than those which would be charged for coking coal from non-member countries and coke made from non-member-country coking coal.

3. All other provisions concerning the alignment provided for by Article 60 2 (b) last subparagraph of the Treaty, and decisions in implementation thereof, shall apply to the transactions referred to in 1 above, in particular those which allow the Commission, in the event of abuse, to abrogate or restrict the right of the undertakings concerned to grant such rebates.

Article 4

Should an undertaking infringe the rules laid down in Article 3, the provisions of Article 64 of the Treaty shall apply.

Article 5

1. The delivered prices of coking coal from non-member countries referred to in Article 3 (2) shall be calculated from the prices cif Community ports for comparable transactions. The Commission may fix guide cif prices.

2. The delivered prices of blast-furnace coke from non-member countries referred to in Article 3 (2) shall be calculated from the cif prices for coking coal referred to in 1 above in such a way as to cover in full the net coking costs of the supplying coking plants. Standard values therefore may be laid down by the Commission.

3. The Commission may lay down criteria for the assessment of differences in grade in coking coal and coke.

Section III

Community financing arrangements

Article 6

Community financing arrangements shall be set up for:

— sales aids paid in pursuance of Section I of this Decision in respect of intra-Community trade;

— the amount of the contributions by the iron and steel industries of member countries not engaged in intra-Community trade, in so far as their production of coking coal covers at least 75% of the requirements of their blast-furnaces.

A special fund administered by the Commission shall be instituted for this purpose.

Article 7

1. The Community financing arrangements shall cover a quantity of coking coal amounting to no more than 15 million tonnes per annum, and the amount of the contributions referred to in Article 6 above.

2. The special fund shall be financed as follows:

(a) The contribution of the European Coal and Steel Community shall be:

— for the first year, 0.266 u.a. per tonne of coal, i.e. not more than 4 million u.a.;

— for the second year, 0.333 u.a. per tonne of coal, i.e., not more than 5 million u.a.;

— for subsequent years, 0.400 u.a. per tonne of coal, i.e., not more than 6 million u.a. per annum.

(b) The Member States shall provide the following overall contributions, on the scale shown in paragraph 3 below:

— for the first year, 0.627 u.a. per tonne of coal, i.e., not more than 9.4 million u.a.;

— for the second year, 0.560 u.a. per tonne of coal, i.e. not more than 8.4 million u.a.;

— for the third and fourth years, 0.493 u.a. per tonne of coal, i.e., not more than 7.4 million u.a. per annum;

— for the fifth year, 0.273 u.a. per tonne of coal, i.e., not more than 4.1 million u.a.;

— for the sixth year, 0.27 u.a. per tonne of coal, i.e., not more than 3.1 million u.a.;

(c) The overall contribution of the iron and steel industry not referred to in Article 6, second indent, shall be:

— for the first four years, 1.107 u.a. per tonne of coal, i.e., not more than 16.6 million u.a. per annum;

— for the fifth year, 1.027 u.a. per tonne of coal, i.e., not more than 15.5 million u.a.;

— for the sixth year, 0.593 u.a. per tonne of coal, i.e., not more than 8.8 million u.a..

The overall amount of the contributions shall be apportioned among the iron and steel undertakings on the basis of their consumption of blast-furnace coke.

The contribution of the iron and steel industries referred to in Article 6, second indent, is calculated on the basis of the rate per tonne of consumption applicable to the other undertakings.

3. The contribution to be provided by the Member States shall be on the following scale:

	%
Belgium	13
Germany	31
France	28
Italy	12
Luxembourg	10
Netherlands	6

Article 8

1. The supplier States may apply for reimbursement from the special fund of aids actually paid.

2. The Commission shall check the applications and determine the amounts to be reimbursed from the special fund to the Member States concerned. If the tonnages concerned exceed the limit fixed in Article 7 (1), the reimbursements shall be correspon-

dingly reduced. The percentage of the reduction is the same for each of the supplier States.

3. The Commission shall fix the contributions to be paid into the special fund on the basis of these amounts and the contributions by the iron and steel industries referred to in Article 7 (1) above.

4. To speed up Community financing, the supplier countries shall notify the Commission of the deliveries of coking coal qualifying for aid made during the preceding quarter under Article 6. On the basis of these notifications, the Commission shall request the Member States to pay the corresponding amounts. The Commission shall forthwith apportion these amounts between the supplier States, at the same time as the corresponding contribution of the European Coal and Steel Community. The Commission shall call for contributions from the steelmaking undertakings and immediately apportion the payments among the States concerned.

5. The final accounts shall be settled at the beginning of each calendar year in respect of the preceding year.

Section IV

General and final provisions

Article 9

1. The Commission shall take into account the aids provided for in this Decision in assessing whether the aids referred to in Articles 6 to 9 of Decision No 3/71/ECSC of 22 December 1970 are liable to interfere with the proper functioning of the common market.

2. The Commission shall also ensure that the aids provided for in this Decision do not have the effect of distorting conditions of competition between coal, coke and iron or steel undertakings.

Article 10

1. In an emergency, and otherwise at the end of the first year of application of this Decision and then every two years, the Commission may, by decisions taken after consultation with the Consultative Committee and after the unanimous assent of the Council has been given, amend:

— the rate of the sales aids,

— the ceiling to intra-Community trade,

— the rules governing the financing of the special fund,

— the scale referred to in Article 7, paragraph 3.

These amendments shall take account of the long-term trend of supply conditions and the supply pattern within the enlarged Community.

2. If at the request of a Member State or on its own initiative the Commission finds that:

(a) the implementation of this Decision is liable to give rise to serious disturbances in the common market for coal and steel, or to difficulties which may result in a deterioration in the regional economy, or that

(b) appreciable changes are taking place in the conditions, volume or pattern of intra-Community trade, thus altering the economic conditions prompting the adoption of this Decision, it may suspend application of this Decision. It shall refer the matter to the Council forthwith.

3. If at the request of a Member State or acting on its own initiative the Commission finds that performance of the long-term contracts is jeopardizing the attainment of the objectives of this Decision, it may, in respect of the undertakings in question, limit the benefits deriving from the application of Article 10

4. In an emergency, the Commission shall, on the request of a Member State, lay down without delay the necessary safeguarding measures, notify the other Member States accordingly and refer the matter to the Council forthwith.

Article 11

The Commission shall periodically report to the Council on the application of this Decision and on developments in the supply situation, in particular in connection with intra-Community trade.

Article 12

After consulting the Council and the Consultative Committee, the Commission shall take all measures necessary for the application of this Decision.

Article 13

This Decision shall enter into force on 1 August 1973. Sections I, II and III apply retrospectively from 1 January 1973 to deliveries of coking coal and coke effected since that date. The applications provided for in Article 2 (2) in respect of 1973 shall be submitted by 31 October 1973. For the year 1973 the provisions concerning the payment of aids

(Article 2 (1) (c)), possible rebates in the absence of actual competition (Article 3 (1)), and Community financing (Article (7)) shall apply notwithstanding the absence of a long-term contract.

This Decision ceases to be operative after 31 December 1978.

Done at Brussels, 25 July 1973.

Commission Decision No 3544/73/ECSC [1] of 20 December 1973 implementing Decision 73/287/ECSC

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 47, 60 and 86 thereof;

Having regard to Decision 73/287/ECSC [2] of 25 July 1973 on coking coal and coke, and in particular Article 12 thereof;

After consulting the Council and the Consultative Committee;

I

Whereas the Member States were authorized by Decision 73/287/ECSC to grant aids to promote the production and sale of coking coal and coke intended for the Community's iron and steel industry; whereas in accordance with the last indent of Article 60 (2) (b) of the Treaty, Community undertakings may grant rebates on their list prices to allow them to align their offers with conditions offered by undertakings outside the Community; whereas according to Article 3 of Decision 73/287/ECSC coal undertakings may, even where there is no actual competition at the point of consumption, grant rebates on their list prices on condition that this does not cause the delivered prices to work out lower than those which would be charged for coking coal from non-member countries and coke made from non-member-country coking coal;

Whereas the Commission has the task of ensuring that the undertakings adhere to the rules laid down in the aforementioned documents and whereas it may have to act under the powers vested in it by Article 5 of Decision 73/287/ECSC to fix guide cif prices for non-member-country coking coal or standard values for coking costs;

Whereas, for this reason it is essential that the undertakings should give the Commission basic information concerning their purchases of coking coal or coke from non-member countries which are intended for the iron and steel industry's blast-furnaces;

Whereas in each case such information should include the country of origin, the country of the consignee undertaking and the price and particulars of the products;

Whereas under Decision 73/287/ECSC production and sales aids may be paid from 1 January 1973; whereas according to Article 2 of that Decision production and sales aids may be paid only where deliveries of coking coal and coke are made under a long-term contract; whereas such a contract should be made for a period of at least three years and for a fixed tonnage, or for a period of at least six years and for at least 75% of the

[1] OJ L 361, 29.12.1973.
[2] OJ L 259, 15.9.1973.

purchaser's requirements; whereas an exception is provided for, however, in Article 13 of Decision 73/287/ECSC, for deliveries effected during 1973 only; whereas sufficient periods of time should be provided for after 31 December 1973 to facilitate commercial negotiations which are necessary on account of the new provisions; whereas payment of a sales aid is subject, for each transaction, to the condition that it is used in full by the undertaking which receives it to allow price rebates in favour of the purchaser of coking coal or blast-furnace coke intended for the iron and steel industry; whereas the transfer by a coal undertaking of the production aid must not introduce discrimination of any kind; whereas coal undertakings must therefore give the Commission the basic information concerning their transactions involving deliveries of coking coal or coke to the Community's iron and steel industry since 1 January 1973, regardless of the actual date of the transaction;

II

Whereas Decision 73/287/ECSC restricts the aid for which it makes provision to deliveries of Community coking coal for the production of blast-furnace coke which is actually intended for charging the blast-furnaces of the Community's iron and steel undertakings;

Whereas this aim can only be achieved by eliminating from the basis of the aids any quantities which, on account of their origin or final destination, do not comply with the criteria laid down in Decision 73/287/ECSC and also deliveries which, in view of the need to streamline administrative procedure as much as possible, and in accordance with long-term contracts, increase coking plant or blast-furnace stocks beyond what is required for 120 days;

Whereas with this aim in view, deliveries by the Community's collieries must be multiplied by appropriate coefficients;

Whereas the correct determination of the basis of the aid further requires that the necessary calculations should be made separately for each plant or production unit where coal, coke or pig-iron is produced;

Whereas, moreover, the existence of special links, either organic, industrial or commercial, between undertakings producing coal, coke and pig-iron may warrant simplification of the method of calculating aids; whereas, however, such simplifications must not prejudice the requirements of Decision 73/287/ECSC nor from those contained in this implementing Decision; whereas within these limits the Commission should be empowered to authorize such simplifications at the request of the Member States concerned;

III

Whereas Community financing arrangements include contributions from the ECSC, the Member States and iron and steel undertakings; whereas, as regards the latter, the

contribution is based on the consumption of blast-furnace coke and must be paid regularly by the said undertakings;

IV

Whereas Member States must calculate the basis of the aids as uniformly as possible and from comparable data; whereas Member States must, therefore, collect the information required to calculate the aid in accordance with the questionnaires drawn up in agreement with the Commission and worded in such a way as to ensure the comparability of the information requested;

Whereas each Member State is in a position to obtain information relating to the undertakings within its jurisdiction; whereas, in so far as coefficients are required for calculating the basis of aid intended for an undertaking situated in another Member State, the Commission must provide that State with the coefficients or information concerned;

Whereas payments made by the Member States and the undertakings must be regarded as being provisional until verified by the Community authorities so that errors may be rectified;

Whereas in view of Community financing arrangements the Commission must have at its disposal correlated accounts providing an analysis of aids and particularly of the countries to which the fuels are consigned;

V

Whereas it is the Commission's duty to verify that the aids and actions of the undertakings comply with the principles and criteria set forth in Decision 73/287/ECSC and in this Decision; whereas for this reason documents, in particular, received or drawn up by national administrations by virtue of this Decision must be available at all times to the Commission;

Whereas the results of the Commission's verifications concerning coking plants or blast-furnaces which use products which have been the object of aid in another country must be capable of being communicated to the State which paid the sales aid in question;

Whereas the Commission must be in a position to discharge as quickly as possible the duties devolving on it by virtue of Decision 73/287/ECSC; whereas it is therefore necessary that the Member States should forward both the information relating to undertakings within their jurisdiction and details of aid payments made by them not later than six weeks after the end of each quarter;

Whereas this Decision shall apply to all aids covered by Decision 73/287/ECSC,

HAS ADOPTED THIS DECISION:

Section 1

Notification of transactions

Article 1

1. Coal undertakings within the Community shall notify the Commission of transactions or additional clauses to transactions relating to the delivery of coking coal or coke to the Community's iron and steel industry dating from 1 January 1973.

2. The information referred to above shall be forwarded (as shown in Annexes 1 and 2 to this Decision) to the Commission not later than 30 days after the date on which the contract or codicil was concluded and shall be protected by professional secrecy.

Article 2

1. To enable the Commission to follow the development of the world market in coking coal and to empower it to fix indicative cif prices referred to in Article 5 of Decision 73/287/ECSC, the Community undertakings shall notify the Commission of their purchases of coking coal or coke from third countries intended for the iron and steel industry's blast-furnaces.

2. The information referred to above shall be forwarded to the Commission every quarter as shown in Annex 3 attached to this Decision and shall be protected by professional secrecy.

Section II

Determination of the aid basis

Article 3

1. Any mutual agreement on the supply or removal of coking coal and/or coke shall be regarded as being a long-term contract within the meaning of Decision 73/287/ECSC if it meets with the following requirements:

(a) either, it covers a period of at least three years and applies to a fixed tonnage;

(b) or, it covers a period of at least six years and applies to at least 75% of the purchaser's requirements.

2. (a) The agreement relating to a fixed tonnage may provide for variations above or below this tonnage provided that they do not exceed the following:

— for contracts for a term of three to four years either 4% of the total tonnage or 8% of each year's tonnage;

— for contracts for four years or more, either 6% of the total tonnage or 10% of each year's tonnage.

(b) The agreement on fixed tonnage may also benefit the purchaser by providing for an option on a tonnage of not less than 10% of the fixed tonnage agreed upon each year. This option must be exercised not later than six months before the commencement of the delivery period.

3. If a seller's available supplies are insufficient to meet all deliveries for which he is contractually bound he must treat each contract equally by ensuring that each fixed tonnage contract for the period concerned receives the same delivery percentage in proportion to its contractual tonnage as is allowable for contracts covering all requirements compared with the same deliveries for the previous two years.

4. (a) Without prejudice to the conditions on duration defined in subparagraphs 1 and 2 (a) above, current contracts may be amended to comply with the above criteria until the following dates:

amendments or extensions for 1974 and 1975: 31 March 1974,

amendments or extensions for 1976: 30 June 1974.

(b) Likewise, new contracts for 1974 to 1976 (three-year contracts) and later (contracts for four or more years) may be concluded until 30 June 1974.

Article 4

1. The amount of coking coal capable of benefiting from a production aid shall be calculated for each transaction by multiplying the coking coal tonnage consigned by a coal undertaking, to a coking plant under a long-term contract as defined in Article 3 by a coefficient peculiar to that coking plant and equal to the proportion between all consignments of coke from the coking plants to the blast-furnaces of the Community's iron and steel industry, covered by long-term contracts during the quarter concerned and the total production of coke in the coking plant in the same quarter less the amount of coke dust reprocessed to achieve this tonnage.

2. The quantity of coking coal capable of benefiting from a sales aid shall be calculated, as shown in subparagraph 1 above, from deliveries referred to in Article 1 (b) of Decision 73/287/ECSC and notified in accordance with Article 1 of this Decision.

3. When coal stocks in a coking plant or coke stocks in a blast-furnace exceed 120 days' supply at the date of expiry of a contract or of Decision 73/287/ECSC the surplus in question shall be deducted from the figure representing consignments as referred to in subparagraph 1 above.

Article 5

In this Decision a mine, coking plant or blast-furnace shall be understood to mean any coal, coke or pig-iron production unit which belongs to a single undertaking and is a party to the same transaction.

Article 6

The Commission may, at the request of one or more Member States, authorize the simplification of the method of calculating the basis of aids provided that such action is justified by the structure of the coal and steel industries.

Section III

Fixing and collecting the contributions of the iron and steel industry

Article 7

1. Each quarter the iron and steel undertakings shall calculate the amount of their contributions on the basis of their consumption of blast-furnace coke and at the rate per tonne that is notified to them by the Commission. They shall pay this amount to the Commission, as shown in Annex 7 to this Decision, within 15 days from the date of the call for funds as provided for in Article 8 (4) of Decision 73/287/ECSC.

2. The payments made shall be provisional until the inspection referred to in Section V below has been concluded.

Section IV

Organization of administrative proceedings

Article 8

1. The information required to determine the basis of aid and contributions defined in Sections II and III above shall be obtained by the Member States from undertakings producing coal and coke or using blast-furnace coke (within their jurisdiction).

2. The questionnaires to be used for this purpose shall be prepared in conjunction with the Commission, which will ensure comparability of the information requested.

3. The Member States will, on the basis of information provided by the undertakings, establish coefficients as defined in Article 4 above and will notify the Commission of them.

4. Where the coking plant and/or blast-furnace are situated in a country other than that where the coal undertaking is situated, the Commission shall notify the government of the coal-undertaking country of the coefficients and/or of the information necessary to calculate the basis and the aid.

5. The basis and the aid, used when arriving at the provisional payment referred to in Article 8 (4) of Decision 73/287/ECSC, shall be calculated from the latest coefficients notified to supplying countries for the current payments in question.

Article 9

1. Each quarter the Member States shall calculate the amounts owing to coal undertakings within their jurisdiction. They shall draw up an annual summary account, taking into consideration necessary changes, particularly of Article 4 of this Decision and of Article 8 of Decision 73/287/ECSC.

2. The payments shall be provisional until the inspection referred to in Section V below has been concluded.

Article 10

1. The Member States shall notify the Commission of the quarterly and annual returns for production and sales aids, broken down by undertaking and delivery base as well as by country of destination.

2. The returns shall be drawn up in accordance with Annex 4 to this Decision and accompanied by summaries of information used to determine the basis of aid as shown in Annexes 5 and 6 to this Decision.

3. These documents shall be sent to the Commission as quickly as possible and not later than six weeks after the end of each quarter.

Section V

Inspection

Article 11

1. The Commission shall inspect the declarations of undertakings and detailed accounts of contributions, the application of pricing rules and the calculation of the basis and the amount of aids.

2. The outcome of inspections of coking plants or of blast-furnaces, situated in a Member State and which have used up coal that has benefited from aid paid by another Member State, may be notified to the latter Member State.

Article 12

1. Documents obtained or drawn up by national administrations on account of this Decision shall be retained by one or more national bodies and shall be available to the Commission at all times.

Section VI

Final provision

Article 13

1. This Decision shall apply to deliveries of coking coal and blast-furnace coke effected since 1 January 1973.

2. The transactions referred to in Articles 1 and 2 and concluded before the publication of this Decision shall be notified by 15 January 1974 at the latest.

3. For the year 1973 the provisions concerning the determination of bases of aids (Section II) shall apply notwithstanding the absence of a long-term contract.

This Decision shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20 December 1973.

ANNEX 1

to Decision No 3544/73/ECSC (Article 1)

Declaration of supply contract for coal produced in the Community and intended for blast-furnace coke manufacture for the Community steel industry [1]

FORM M
Serial No: [2]
Date: [2]

Undertaking making declaration
(Name of firm — address)

A. PRODUCER (Community undertaking)

Country:
Undertaking:
Mine: [3]
Station/port of departure:
Date of contract:
Delivery period (duration):
Total tonnage covered by contract:
Variations from contract:
Tonnages for 197 , 197 , 197
Succeeding years:

B. CONSIGNEE (Community undertaking)
Country:
Undertaking:
Coking plants: [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[6]

Content or reference index	Point value

(c) Other variations from agreed price (specify)

(d) Adjustments on standard quality

D. PRICE FACTORS USED AS A PREFERENCE TO CALCULATE REBATE

(Shown under C (a) per tonne, tax excluded in the Community)[4]

(a) Country of origin of coking coal
Category and size
fob price (port:
cif price (port:
Handling and other costs
Transport costs[5]
Price delivered at coking plant

(b) Basic characteristics and adjustments for quality:
Moisture
Ash (dry)
Volatile matter (clean)
Sulphur (dry)
Coking properties[6]
Other characteristics[6]

Content or base index	Point value

(c) Adjustments on standard quality

[1] Riders to declared contracts must also be declared to the Commission.
[2] Running 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] Specify the link and means of transport.
[6] List the criteria.

ANNEX 2

to Decision No 3544/73/ECSC (Article 1)

Declaration of supply contract for coal produced in the Community and intended for blast-furnaces of the Community steel industry [1]

FORM C
Serial No: [2]
Date: [2]

Undertaking making declaration
(Name of firm — address)

E. PRODUCER

Country:
Undertaking:
Coking plant: [2]
Station/port of departure:
Date of contract:
Total tonnage covered by contract:
Variations from contract:
Delivery period (duration):
Tonnages for 197 , 197 , 197
Succeeding years:

F. CONSIGNEE

Country:
Undertaking:
Blast-furnace: [3]
Station/port of arrival:

G. FACTORS IN CALCULATING PRODUCER'S PRICE [4]
(per 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)

(c) Adjustment on standard quality

Content or base index	Point value

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 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)

(c) Adjustments on standard quality

Content or base index	Point value

[1] Riders to declared contracts must also be declared to the Commission.
[2] Running 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: $P(k) = P(c) \times Q + K$, where $P(k)$ = coke production costs, $P(c)$ = delivered coal price, Q = amount of coal to be charged to produce 1 tonne of coke, K = net cost of coking.
[6] Specify the link and method of transport.

ANNEX 3

to Decision No 3544/73/ECSC (Article 2)

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:

Undertaking making declaration
(Name of firm — address)

A. GENERAL INFORMATION

Producing country:
Port or station of departure:
Date of contract (or rider):
Delivery period (duration):
Total tonnage covered by contract:
Tonnages for 197 , 197 , 197
Succeeding years:
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 [5]

Content or base index	Point value

(c) Other variations from agreed price: [6]

[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.
[6] Index adjustments, for example. State main arrangements and formulate.

ANNEX 4

to Decision No 3544/73/ECSC (Article 10)

Statement of production and sales aids

Country: .....

Period: quarter ..... 19 .....
or year 19 .....

Coal undertakings (by coalfield)	Consignee coke producers (by country and sales area)	No of contract	Coal tonnage invoiced and despatched	Production aid				Sales aid								Total aid
								Internal deliveries				Intra-Community transactions				
				Coking coefficient K1**	Basis of assessment	Rate	Total	Coking coefficient K2**	Basis of assessment	Rate	Total	Coking coefficient K3**	Basis of assessment	Rate	Total	
			tonnes	-	tonnes	u.a./tonnes	u.a.	—	tonnes	u.a./tonnes	u.a.	-	tonnes	u.a./tonnes	u.a.	u.a.
(1)	(2)	(3)	(4)	(5)	(6) = (4)×(5)	(7)	(8) = (6)×(7)	(9)	(10) = (4)×(9)	(11)	(12) = (10)×(11)	(13)	(14) = (4)×(13)	(15)	(16) = (14)×(15)	(17) = (8)+(12)+(16)
	(a) in country and main sales area for (1) (b) in the country and in an area distant from (1) (c) in another Member State															
Totals	—	—	...	—	...	—	...	—	...	—	...	—	...	—	...	...

* Running number shown on the notification of transaction (see Annex 1), if necessary (see Art. 1 of this Decision).
** State here coefficients shown in Annex 5, column (7).

ANNEX 5

to Decision No 3544/73/ECSC(Article 10)

Country: .....

Period: quarter ..... 19.....

or year 19.....

Statement of information concerning coking plants

COKING PLANT A* .....
Total receipts: .....
Total coal consumption: ..... tonnes
Total coke production less recycled breeze: = ... tonnes

Coal stocks at
1 January 1973: ..... tonnes

1 April 19.....: = ... tonnes
1 July 19.....: = ... tonnes
1 October 19.....: = ... tonnes
31 December 19.....: = ... tonnes

Coking coal receipts by the Community			Blast-furnace coke deliveries			Calculation of coking coefficients K***	
Contracts **	Supplying undertakings (by country and coalfield)	Coal tonnage invoiced and despatched by (2)	Contract No **	Consigner blast-furnaces (by country and sales area)	Coke tonnage invoiced and despatched ***	— for production aid: K1 — for sales aid: internal deliveries: K2 intra-Community transanctions: K3	Coking coal receipts from third countries ***
—	—	tonnes	—	—	tonnes	—	tonnes
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
....	(a) in a coalfield having (A) in its main sales area	....	....	(a) in the country and main sales area for (A)	(a)	K 2 and K 3 = 0	
				(b) in the country and in an area distant from (A)	(b)	$K\,2 = \frac{(6)(b)}{P}$	
	(b) in a coalfield distant from (A)	....	....	(c) in a Member State other than that of (A)	(c)	$K\,3 = \frac{(6)(c)}{P}$	
				(d) in the country of (A)	(d)	$K\,2 = \frac{(6)(d)}{P}$	
	(c) in a coalfield in a Member State other than (A)	....	....	(e) in a Member State other than that of (A)	(e)	$K\,3 = \frac{(6)(e)}{P}$	
				(f) in the country of (2)	(f)	$K\,2 = \frac{(6)(f)}{P}$	
				(g) in a Member State other than that of (2)	(g)	$K\,3 = \frac{(6)(g)}{P}$	
	Total (2)	....		Total (6)	(g)	$K\,1 = \frac{(6)(g)}{P}$	Total (8)

* Coke production unit.
** Running number shown on notification of transaction (see Annexes 1 to 3) if necessary (see Article 1 of this Decision).
*** If Article 4.3 of this Decision is applicable, the annual statement will show the required correction.
**** Breakdown by country.

ANNEX 6

to Decision No 3544/73/ECSC (Article 10)

Statement of information concerning blast-furnaces

Country: .....

Period: quarter

19 .....

or year 19

.....

Blast-furnace *	Supplying undertakings (by country)	Contract No **	Coke tonnage invoiced and despatched by (2)	Coke tonnage charged by (1) (total)	Stock of blast-furnace coke held at (1)		
					at 1 January 1973	at the end of the period	
—			tonnes	tonnes	tonnes	tonnes	index
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
.....	(a)	.....	.....		=	52 = ...	= .....
	(b)	.....	.....				
		Totals	.....	.....			

* Pig-iron production unit.

** Give here the running number shown on the notification of transaction (see Annex 2).

ANNEX 7

to Decision No 3544/73/ECSC (Article 7)

Determination and collection of the steel industry's contribution

Undertaking making the return
(name and address)
Period: quarter 197.....
or year

List of blast-furnaces	Tonnage of coke consumed (tonnes)
.....	.....
.....	.....
.....	.....
	.....

Total tonnage ..... total contribution (1) .....
Rate per tonne .....

The above amount has been/will be remitted on ..... 197..... to the account 'Aide au charbon à coke'
No ..... of the Commission of the European Communities at the .....(Bank)

I certify that the above information is correct .....
The head of the undertaking or his agent

.....
(Place and date)

Signature

Commission Decision No 3612/85/ECSC [1] of 20 December 1985 amending Decision 73/287/ECSC

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular the first paragraph of Article 95 thereof,

Having regard to the opinion of the Consultative Committee,

Having regard to the assent of the Council,

Whereas Commission Decision 73/287/ECSC [2] was last amended by Decision No 759/84/ECSC [3] and was extended by that Decision for three years (1984 to 1986);

Whereas the second paragraph of Article 1 of Decision No 759/84/ECSC provides that the maximum tonnage for 1986 covered by the Community financing arrangements for aids relating to intra-Community trade will be revised downwards before the end of 1985;

Whereas a maximum tonnage of 8.5 million tonnes appears to be sufficient in view of the foreseeable volume of intra-Community trade in 1986 and of the decreasing character of the scale of aids;

Whereas the Treaty does not provide the powers necessary to establish this system.

HAS ADOPTED THIS DECISION:

Article 1

Decision 73/287/ECSC is hereby amended as follows:

Paragraph 1 of Article 7 is replaced by the following:

'1. The Community financing arrangements shall cover a quantity of coal amounting to no more than 8.5 million tonnes and an amount of no more than ECU 36 million for the year 1986'.

Article 2

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Communities.*

[1] OJ L 344, 21.12.1985.
[2] OJ L 259, 15.9.1973.
[3] OJ L 80, 24.3.1984.

It shall apply with effect from 1 January 1986.

This Decision shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20 December 1985.

Commission Decision No 145/85/ECSC[1] of 18 January 1985 amending Decision No 3544/73/ECSC

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision 73/287/ECSC of 25 July 1973 concerning coal and coke for the iron and steel industry in the Community,[2] as last amended by Decision No 759/83/ECSC,[3] and in particular Article 12 thereof,

Having regard to the opinion of the Consultative Committee,

Having regard to the opinion of the Council,

Whereas Commission Decision No 3544/73/ECSC[4] as amended by Decision No 2287/78/ECSC[5] provides, in Article 3 (2), that agreements relating to fixed tonnages may provide for a variation of up to 10% according to the duration of the contract;

Whereas the variations in the steel production quotas assigned to each undertaking may give rise to a variation in requirements for coal and coke in excess of the fixed rate envisaged in the contract; whereas the contracting parties should have the possibility of substituting this variation for the fixed rate;

Whereas, in order to facilitate the adaptation of contracts to the changes in requirements resulting, in particular, from the restructuring of the steel industry and its technical development, a negotiating period should be available for the contracting parties to adapt their contracts if required with retroactive effect to 1 January 1984;

Whereas modern technology makes it possible in certain cases to improve blast-furnace operation and performance through partial replacement of the coke charged to the upper part of the furnace by coal injected into the lower part; whereas in future such coal should be covered by the coking coal system,

HAS ADOPTED THIS DECISION:

Article 1

Decision No 3544/73/ECSC is hereby amended as follows:

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[1] OJ L 16, 19.1.1985.
[2] OJ L 259, 15.9.1973.
[3] OJ L 80, 23.4.1984.
[4] OJ L 361, 29.12.1973.
[5] OJ L 275, 30.9.1978.

(1) The following subparagraph (c) is added to Article 3 (2):

'(c) The agreement relating to a fixed tonnage may also provide that the variation fixed in accordance with subparagraph (a) may be replaced by the percentage variation that may arise between the annual average of steel production quotas assigned to the purchasing steel producer on the one hand for the period of the contract and on the other hand for the reference period running from 1 July 1983 to 30 June 1984.'

(2) Article 3 (4) is replaced by the following:

'4 (a) Without prejudice to the conditions on duration defined in paragraph 1 and paragraph 2 (a), current contracts may be amended to comply with the above criteria by amendments or extensions for 1984 and 1985 until 28 February 1985;

(b) Likewise new contracts for 1984 to 1986 (three-year contracts) and later (contracts for four or more years) may be concluded until 28 February 1985.'

(3) The following paragraph 4 is added to Article 13:

'4. The amount of Community coal injected directly into the blast-furnace shall be treated as equivalent to the amount of coking coal capable of benefiting from production or sales aid with effect from 1 January 1984, in so far as the supply of such coal is covered by a long-term contract notified in accordance with Article 1 and conforming to the criteria of Article 3. The contribution of the iron and steel industry shall be calculated by adding the consumption of coal injected into the blast-furnace to that of blast-furnace coke.

The obligations of the undertakings and the Member States with regard to the information to be transmitted to the Commission concerning coking coal and coke shall also cover coal injected into the blast-furnace; such information shall be communicated in printed form in a manner to be determined by the Commission.'

Article 2

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 1984.

This Decision shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18 January 1985.

Commission Decision No 2064/86/ECSC [1] of 30 June 1986 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 the first paragraph of Article 95 thereof,

Having consulted the Consultative Committee and the European Parliament and with the unanimous assent of the Council,

Whereas:

I

Structural changes on the international and Community energy markets have been forcing the coal industry to make exceptional rationalization and restructuring efforts since the early 1960s. To the competition from crude oil and natural gas has been added the growing pressure from coal imported from outside the Community. As a result, many coal undertakings are in financial difficulties and require State aid.

Since 1964, the High Authority/Commission has on a number of occasions laid down rules [2] designed to reconcile State aid to the coal industry with the objectives of the ECSC Treaty. Each new set of aid rules has been designed to take account of developments in the economy in general, and developments on the energy market and the coal market in the Community in particular.

All the Decisions in question laid down objectives and principles guaranteeing that State aid was in the common interest, was limited to what was strictly necessary in terms of volume and duration, and did not disturb the functioning of the common market. They also obliged Member States to obtain prior authorization from the High Authority/Commission before granting aid.

II

Both the economy in general and the particular conditions on the energy and coal markets in the Community have altered significantly since Decision No 528/76/ECSC was adopted.

Energy prices in general have risen following the steep rise in oil prices. On the energy supply side, this has given rise to adjustment measures resulting in new production capacity

[1] OJ L 177, 1.7.1986.
[2] Decision No 3/65/ECSC (OJ 31, 25.2.1965), Decision No 27/67/ECSC (OJ 261, 28.10.1967), Decision No 3/71/ECSC (OJ L 3, 5.1.1971) and Decision No 528/76/ECSC (OJ L 63, 11.3.1976).

for all energy sources throughout the world. On the energy demand/consumption side, considerable efforts have been made to save energy. The efforts to find substitutes have been particularly effective in the power station sector where heating oil has been replaced by coal to some extent. The changes in the behaviour of energy users have changed the direction of the trend on the Community's coal market, since the constantly falling trend in coal consumption in the Community in the years leading up to the first oil crisis has now levelled off, apart from a few short-term fluctuations, at a level of around 300 million tonnes (EUR 10).

The coal industry in the Community has scarcely benefited from this development. On the contrary, between 1975 and 1985 production in the Community dropped from 257 million tonnes to 201 million tonnes (partly as a result of the coalminers' strike in the United Kingdom), while coal imports from outside the Community more than doubled from 41 million tonnes to 86 million tonnes.

Although the competitive position of the Community's coal industry *vis-à-vis* oils and gas improved considerably as a result of the steep increase in oil prices, further strong competition in the shape of coal imports from outside the Community with which it cannot compete fully has come on to the scene. The geological conditions for the production of coal are more favourable in the United States, Australia, Canada and South Africa, etc. and so, despite the lengthy transport entailed, producers in those countries can enjoy competitive advantages which the Community's coal industry cannot offset unless further restructuring is undertaken.

The opportunities for rationalization in the coal industry in the Community are limited because of the unfavourable geological conditions. Despite considerable investment and the closure of 120 or so pits, productivity has only risen by 1.5% on a year-to-year basis on average for the Community as a whole in the last 10 years. Even though the US dollar, the decisive currency where international coal prices are concerned, rose in value against other currencies until 1984, the competitive position of Community coal *vis-à-vis* imported coal did not improve. Moreover, the dollar exchange rate has dropped considerably since 1985. Consequently, the financial situation of Community coal undertakings has steadily deteriorated in the last 10 years. Their losses and the aid required has risen appreciably. In 1984 the aid granted to them totalled ECU 4 000 million and in 1985 it amounted to ECU 3 000 million.

As a result of the fall in oil prices since the end of 1985, falling world market prices for coal and the reduction in the rate of the dollar, it is unlikely that the Community's coal industry will become fully competitive again in the years ahead.

In view of this situation on the energy and coal markets, it is necessary to adapt to the foreseeable demand and to make this branch of industry competitive again by restructuring, modernizing and rationalizing it in an ordered and socially acceptable fashion. This will demand more financial resources than the undertakings themselves can provide. Nor does the ECSC have at its disposal the resources needed in order to bridge this gap. Nevertheless, the restructuring efforts must not be abandoned, as otherwise the attainment of the general objectives set out in the second paragraph of Article 2 of the ECSC Treaty and the specific

objectives set out in Article 3 (c), (d), (e) and (g) would be jeopardized. Moreover, this could result in serious disturbances affecting the mining areas in the Community concerned by the restructuring process.

The Community is therefore once again confronted with a situation for which no provision is made in the Treaty but concerning which action must nevertheless be taken. Consequently, recourse must be had to the first paragraph of Article 95 of the Treaty in order to enable 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 State aid to the coal industry.

III

Such recourse to the first paragraph of Article 95 of the Treaty must fit into the general context of the Community's energy policy. On a proposal from the Commission, the Council is in the process of adopting new Community energy policy objectives for 1995 which envisage that the solid fuels producing industry (including the coal industry) in the Community should continue its restructuring efforts so as to become more competitive. In this context, it is considered desirable to maintain and, if possible, increase the market share of solid fuels. The creation of more secure supply conditions, *inter alia* by developing domestic energy sources in the Member States of the Community under satisfactory economic conditions, is an essential element of Community energy policy. For this reason Community coal production offers the advantage of rather greater security of supply and a degree of protection against extreme price swings on the world market. However, as the Commission has already stated,[1] in the long run these benefits as regards coal users and those employed in this branch of industry can only be achieved with a more competitive coal industry.

In addition, Community policy in this sector must take into account the fact that the restructuring measures will affect the employment situation, and the provisions of the ECSC Treaty must therefore be used.

On the basis of the coal policy guidelines set out in the preceding paragraphs, the Commission should examine State aid to the coal industry before it is granted, in order to ascertain whether it contributes to the achievement of the following aims:

— improvement of competitiveness of the coal industry, which contributes to assuring a better security of supply;

— creating new capacities provided that they are economically viable;

— solving the social and regional problems related to developments in the coal industry.

In pursuit of these aims, it is essential that aid should not exceed what is absolutely necessary, and should not depart from the rules of the Treaty except where that is

[1] COM(85) 245 final.

unavoidable in order to solve problems encountered in the Community, and that in particular indirect subsidies to industrial coal users should be avoided.

IV

The Commission's approval of proposed State aid must be based on precise and full knowledge of the aid in question, and must take due account of the economic and social context. Consequently, the Member States should be required to provide the Commission regularly with full information on the direct or indirect aid proposed to the coal production and marketing and to external trade in coal, and also on the reasons for and the scope of the proposed aid. The Member States must, in good time for the period 1987-93, provide the Commission with a statement of intentions and objectives for the coal industry giving a clear indication of medium-term policy with regard to coal production.

In assessing aid granted on the basis of this Decision, the Commission should also take into consideration all other financial aid to the coal industry.

V

Lastly, it is necessary to define the various forms of the aid for which advance approval can be given by the Commission, and to assign to them criteria corresponding to the aims of this Decision:

(a) In view of the weak competitive position of and the losses made by coal undertakings in the Community, it would be necessary to close down a large proportion of pits in the short term if these losses were not covered. In addition to supply problems, this would also give rise to considerable regional and employment problems. Consequently, aid to cover operating losses is admissible provided that it does not exceed the difference between the foreseeable average costs of coal production and the average returns achievable in the following calendar year. The financial imbalance of an undertaking may make it necessary to cover, in addition, losses which the undertaking actually incurred in the previous two years, provided that evidence is produced that failure to cover the losses would have consequences incompatible with the aims of this Decision.

(b) In order to guarantee sales of Community coal and coke to the steel industry, special aid may be granted, provided that it does not exceed the extent necessary to keep such coal competitive.

As not all areas in the Community actually face competition from coal and coke from outside the Community, and hence certain coal producers are unable to align their prices for sales of coal and coke to the steel industry pursuant to Article 60 (2) (b) of the Treaty, the aims of this Decision can only be achieved if the undertakings in question are allowed to grant reductions on their list prices (fictitious alignment) even though there is no actual competition at the place of consumption, provided that long-term supply contracts are concluded.

(c) The coal industry can only become more competitive if existing capacity is rationalized and new economically-viable capacity is created. This will require investment, and aid towards the financing of such investment is admissible provided that it does not exceed 10% of the investment expenditure.

(d) In order to maintain the productivity of the coal industry, expenditure will be needed on the maintenance of a skilled underground workforce. In order to finance such expenditure, aid may be authorized provided that it is granted in the context of existing schemes.

(e) State aid to finance social security benefits by way of compensation for anomalous burdens on the coal industry resulting from the decline in coal production may be considered compatible with the common market provided that they bring the ratio between the burden per mineworker in employment and the benefits per person in receipt of benefit into line with the corresponding ratio in other industries.

(f) As a result of the decline in coal production in recent decades, the undertakings are confronted with various kinds of anomalous high burdens. State aid, to finance such burdens with a view to covering them in whole or in part, may be considered compatible with the common market provided that supervision of such aid by the Commission is guaranteed and the relevant categories of such inherited liabilities are defined.

VI

The proper implementation of this Decision must be ensured through provisions which enable the Commission to exercise its power of approval. The Commission may make its approval subject to any appropriate conditions, carry out all necessary checks subsequently, and withdraw its approval if it is no longer justified. The Commission must also be in a position to object to aid granted to undertakings which apply artificially low prices. Consequently, provision should also be made for the possibility of suspending this Decision in the event of serious supply and market disturbances or a change in the basic economic conditions which led to its adoption. The Commission will report to the Council, the European Parliament and the Consultative Committee each year on the application of this Decision.

In view of the changes at present occurring in the conditions on the Community's coal and energy markets, it is appropriate that the period of validity of this Decision should be seven-and-a-half years,

HAS ADOPTED THIS DECISION:

Section I

Framework and general objectives

Article 1

1. All aid to the coal industry, whether specific or general, financed by Member States or through State resources in any form whatsoever, may be considered Community aid and therefore compatible with the proper functioning of the common market only if it conforms to the general objectives and criteria set out in Articles 2 to 8. Such aid shall be put into effect only in accordance with the procedures established in this Decision.

2. The concept of aid includes aid granted by central, regional or local authorities and any aid elements contained in the financing measures taken by Member States in respect of the coal undertakings which they directly or indirectly control and which cannot be regarded as the provision of risk capital according to standard company practice in a market economy.

Article 2

1. Aid granted to the coal industry may be considered compatible with the proper functioning of the common market provided that it helps to achieve at least one of the following objectives:

— improvement of the competitiveness of the coal industry, which contributes to assuring a better security of supply;

— creating new capacities provided that they are economically viable;

— solving the social and regional problems related to developments in the coal industry.

2. Any measures concerning the grant of aid referred to in Articles 3 to 8 shall be without prejudice of the criteria which are specific to them and defined by the same Articles; they shall also be appraised having regard to their suitability in relation to the objectives set out in paragraph 1 above.

Section II

Member States' aid
Deficit grant aid

Article 3

1. Aid covering operating losses may be considered compatible with the common market provided that it does not exceed, for each tonne produced and for each individual coal

region or undertaking, the difference between foreseeable average costs and the foreseeable average returns in the following financial year (coal production year).

Member States shall, without prejudice to the provisions of Article 9, submit to the Commission all details for the calculation of costs and returns per tonne.

2. In its examination of such aid, the Commission shall include, in its calculation of production costs per tonne, normal depreciation and effective interest charges on capital borrowed. If the Commission finds that the difference between the average costs of coal production and the average returns achievable is due to changes in the situation of coal undertakings which are out of keeping with satisfactory economic conditions, it may fix a maximum amount for aid covering losses.

3. The reductions in costs resulting from the grant of aid in accordance with Articles 4 to 8 must be allowed for in calculating the production costs or operating losses of pits.

4. In those exceptional cases where the financial balance of an undertaking is seriously threatened by past losses which have not been covered, aid which goes beyond that permitted in paragraph 1 may be considered compatible with the common market provided that it is limited to covering a previously uncovered difference between the production costs incurred and the returns on the coal produced during a period not exceeding the two preceding financial years. In such a case, Member States shall, without prejudice to the provisions of Article 9, supply the Commission with:

— documentary evidence covering the points referred to in paragraphs 2 and 3 for the period during which the losses were incurred;

— information regarding the extent to which such losses have in the mean time been reduced as a result of aid as defined in Article 1 (2).

Sales aid

Article 4

Aid for supplying coal and coke to the Community's iron and steel industry may be considered compatible with the common market provided that it does not exceed the rebates referred to in Article 12.

Investment aid

Article 5

1. Investment aid may be considered compatible with the common market provided that:

— it covers no more than 50% of the costs of the investment;

— such investment has been notified to the Commission as required by High Authority Decision No 22/66,[1] amended by Decision No 2237/73/ECSC[2] or by any subsequent decision;

— the Commission has delivered a favourable opinion on the project so notified.

2. The aid referred to in paragraph 1 may be granted for investment programmes or for individual investment projects.

3. In the case of investment programmes, Member States shall, without prejudice to Article 9, inform the Commission at least once a year, in respect of each individual project in the programme which it has been decided to carry out, of the amount of investment expenditure assigned to it and the amount of aid involved.

4. Where the proposed aid concerns investments which have already benefited from measures taken under Articles 54 and 55 of the ECSC Treaty, the amount of such benefits shall be shown separately for each project.

Aid for underground staff

Article 6

1. Aid granted under existing schemes to maintain the underground labour force in deep mines may be considered compatible with the common market.

2. The aid referred to in paragraph 1 must be of a specific character which enables it to be calculated separately in relation to aid granted under the provisions of Articles 3 to 5.

Financing of social grants in the coal industry

Article 7

1. State aid to finance social grant schemes specific to the coal industry may be considered compatible with the common market provided that, for coal undertakings, it brings the ratio between the burden per mineworker in employment and the benefits per person in receipt of benefit into line with the corresponding ratio in other industries.

2. The Governments of the Member States shall, without prejudice to Article 9, submit to the Commission the necessary basic data and details of the calculation of the ratios between the burdens and benefits referred to in paragraph 1.

[1] OJ 219, 29.11.1966.
[2] OJ L 229, 17.8.1973.

Inherited liabilities

Article 8

1. State aid to coal undertakings to cover the costs arising from the restructuring of the coal industry which are not related to current production (inherited liabilities) may be considered compatible with the common market provided that it does not exceed such costs. Such aid may be used to cover:

— the costs incurred only by undertakings which are carrying out or have carried out restructuring;

— the costs incurred by several undertakings.

2. Categories of costs arising from the restructuring of the coal industry are defined in Annex 1 to this Decision.

3. The aid may be granted as a lump sum and shall not exceed the actual amount of the inherited liabilities.

4. Member States shall submit to the Commission the necessary basic data and the details of the calculation of the ratio between the actual total inherited liabilities of the undertakings and the proposed measure.

Section III

Notification, appraisal and authorization procedures

Article 9

1. All Member States which intend to grant aid to coal undertakings in 1986, shall, by October 1986, provide the Commission with:

(i) a statement of intentions and objectives for the industry for the period 1987-93;

(ii) the information specified in paragraph 2.

2. If, in any subsequent financial year, a Member State seeks authorization of measures in accordance with Article 10, it shall provide the Commission, at least three months before the measures enter into force and separately for each coalfield or coal undertaking, with information in all measures which the State in question proposes to take in the following year in order to give direct or indirect support to the coal industry. The relevant detailed information to be supplied, which will be used in the analysis of the situation by the Commission, is specified in Annex 2 to this Decision.

3. If a Member State intends to take further financial measures in addition to measures already notified or to modify existing measures during the financial year, it must inform the

Commission thereof so that the latter can express an opinion in accordance with the procedures defined in Article 10.

4. Member States shall notify the Commission not later than 30 June of each year of the amounts of aid actually paid in the preceding financial year.

Article 10

1. As regards the direct aid in respect of current production referred to in Articles 3 to 6, Member States shall put the proposed measures into effect only with the approval of the Commission, acting pursuant to the objectives set out in Article 2 and the criteria laid down in the abovementioned articles, and subject to the conditions laid down by the Commission. The Commission shall inform the Member States concerned of its decision.

2. In so far as they are governed by the Treaties, the Commission shall give its opinion on all other aid and measures that are also referred to in this Decision in accordance with the procedures and rules of the Treaties.

3. In its examination of the amount of planned aid, the Commission shall take account, to the extent to which that is compatible with the objectives of this Decision, of any other aid previously granted, regardless of its objectives.

4. In assessing the measures and programmes submitted to it as regards the closure of particularly unprofitable pits or the creating of new capacities in the light of the objective laid down in Article 2, the Commission shall take account of the special situation of individual coalfields or Member States.

5. If, from the date of receipt of the notification of the proposed measures pursuant to paragraphs 1 and 2 of this Article, a period of three months elapses without the Commission having taken a decision, the proposed measures may be implemented provided that the Member State has informed the Commission of its intention beforehand.

However, the above period shall be reduced to two months from the date of receipt of the notification of measures proposed pursuant to Article 9 (3).

Section IV

Pricing provisions

Article 11

1. The Commission shall ensure that aid does not lead to discrimination, within the meaning of the ECSC Treaty, as between Community buyers or users of coal or coke.

2. In order to ensure that direct aid in respect of current production which it authorizes is used exclusively for the purposes set out in Articles 3 to 6, the Commission may, in the case of undertakings in receipt of aid, limit or modify the right of alignment provided for in Article 60 of the ECSC Treaty and require such undertakings to comply with minimum prices. Any infringements shall be dealt with under Article 64 of the ECSC Treaty.

3. The Commission may carry out any appropriate checks on undertakings.

4. The Commission shall revoke approval of aid or shall amend the terms of approval if it finds that the aid no longer fulfils the conditions imposed by Articles 3 to 6 of this Decision or that the actual consequences of such aid or the use to which it is put are contrary to the conditions required for approving the grant thereof.

Article 12

1. (a) Where there is no actual competition from coal or coke from non-member countries at the point of consumption, coal undertakings shall be authorized, where necessary, to grant rebates on their list prices or production costs, for deliveries of coking coal, blast-furnace coke and coal for injection blast-furnaces for the iron and steel industry of the Community under long-term contract.

(b) The rebates allowed under subparagraph (a) above shall not cause the delivered prices of Community coal and coke to work out lower than those which would be charged for coal from non-member countries and coke made from non-member-country coking coal.

2. The delivered prices of coking coal from non-member countries referred to in paragraph 1 (b) shall be calculated from the prices cif Community ports for comparable transactions. For this purpose the Commission shall fix guide cif prices.

3. The delivered prices of blast-furnace coke referred to in paragraph 1 (b) shall be calculated from the cif prices for coking coal from non-member countries referred to in paragraph 2 in such a way as to cover in full the net coking costs of the supplying coking plants.

Section V

General and final provisions

Article 13

In deciding whether the financial measures proposed by Member States are compatible with the common market, the Commission shall give due consideration to any aid which may be granted under Commission Decisions Nos 759/84/ECSC [1] and 3612/85/ECSC. [2]

[1] OJ L 80, 24.3.1984.
[2] OJ L 344, 27.12.1985.

Article 14

The Commission shall report annually to the Council, the European Parliament and the Consultative Committee on the application of this Decision.

Article 15

The Commission shall, after consulting with the Council, take all the measures necessary to implement this Decision.

Article 16

1. This Decision shall enter into force on 1 July 1986.

However, Articles 4 and 12 shall apply from 1 January 1987.

This Decision shall expire on 31 December 1993.

2. The Commission shall submit by the end of 1990 a report to the Council on the experiences and problems encountered in applying this Decision. It may propose in accordance with the procedure laid down in the first paragraph of Article 95 of the ECSC Treaty any modification which may be appropriate.

This Decision shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 June 1986.

ANNEX I

Definition of the costs referred to in Article 8 (2)

I. *Costs arising only for undertakings which are carrying out or have carried out restructuring*

limited to the following:

(a) costs of social grants incurred through pensioning of workers before they reach the legal retiring age;

(b) other exceptional expenditure for workers made redundant because of restructuring;

(c) the payment of pensions and allowances outside the statutory insurance scheme to workers made redundant because of restructuring, and to those who were entitled to such payments before the restructuring;

(d) free coal deliveries to workers made redundant because of restructuring and to those who were entitled to such coal before the restructuring;

(e) residual charges arising out of tax provisions;

(f) additional safety work that has to be carried out underground as a result of restructuring;

(g) subsidence or similar damage attributable to areas which were previously mined;

(h) residual charges in respect of payments to bodies dealing with water supply and disposal of waste water;

(i) other residual charges in respect of water supply and disposal of waste water;

(j) residual costs in respect of sickness insurance scheme contributions on behalf of former mineworkers;

(k) exceptional material loss caused by the restructuring of the industry where cover for these losses is vital to the continuing existence of the undertaking.

II. *Costs arising from several undertakings*

(a) increases in the contributions needed to cover social security obligations outside the statutory insurance scheme where such increases result from a reduction, due to restructuring, in the number of those liable to pay contributions;

(b) expenditure caused by restructuring, in respect of water supply and disposal of waste water;

(c) increases in payments to bodies dealing with water supply and disposal of waste where these increases are attributable to a reduction, following restructuring, in the production of coal on which the levy must be paid.

ANNEX 2

Information to be supplied to the Commission pursuant to Article 9

This information will include details of:

(a) capital contributions, the cancellation of liabilities *vis-à-vis* public authorities and the granting of credit guarantees;

(b) any other measures linked to the production or marketing of, and external trade in, coal even if they do not directly impose a burden on public budgets, which give an economic advantage to coal undertakings;

(c) in the case of measures relating to social grants in the coal industry:

(i) the legal and administrative provision in force or changes in existing provisions which have already been notified;

(ii) the total amount of social grants, broken down by category, paid during the preceding financial year to workers and former workers in the coal industry and to their dependants, the number of recipients of these grants and the corresponding information for the general system:

(iii) the various resources drawn upon and the corresponding amounts allocated for the financing of the grants referred to in (c) (ii);

(d) in the case of measures designed to cover inherited liabilities of coal undertakings:

(i) the type of liabilities to be covered;

(ii) the probable amount of the liabilities for the year in which aid is granted;

(iii) the extent to which undertakings have incorporated inherited liabilities into the costs of current production or have built up special financial reserves to cover such liabilities themselves;

(e) the reasons for, and the scope of, the various measures, together with all further information for their assessment in accordance with the Decision;

(f) available information on proposed closures of pits or parts thereof, the consequences for the workforce and for the regions concerned, and re-employment of redundant workers in connection, where applicable, with regional development programmes.

7.2. Control of aids to the steel industry

Commission Decision No 3484/85/ECSC [1] of 27 November 1985 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 consulted the Consultative Committee and with the unanimous assent of the Council,

Whereas:

I

To assist the restructuring of the Community steel industry, Commission Decision No 2320/81/ECSC, [2] as amended by Decision No 1018/85/ECSC, [3] established rules under which aid could be granted to the industry until 31 December 1985.

The results so far indicate that the objectives which the Community then set itself of bringing Community producing capacity more closely into line with demand and putting steel firms into a technical and financial shape such that they would be financially viable under normal market conditions will be achieved.

Nevertheless, the industry is still left with considerable overcapacity, for some product categories more than for others, which on forecast market trends will require the majority of firms to continue their restructuring, since, although the industry has been substantially turned round, it is still in a vulnerable condition. In this situation, it is necessary to ensure that government subsidies to the industry from 1 January 1986 do not undo what has been achieved in the restructuring exercise that has just been conducted or delay or prevent the further adjustments that are still necessary to bring supply and demand into balance.

From now on, firms should, in general, have to rely on their own financial performance to sustain their activities and to finance the further structural adjustments that will become necessary as market forces are gradually restored.

For that purpose, it is necessary to establish comprehensive Community rules to ensure that all aid which may still be granted to the steel industry is treated uniformly under a common

[1] OJ L 340, 18.12.1985.
[2] OJ L 228, 13.8.1981.
[3] OJ L 110, 23.4.1985.

procedure. These rules must cover both specific aid, that is, that given under schemes mainly intended for or benefiting the steel industry, and aid granted to the industry under general or regional schemes. They must also extend to all transfers of State resources to steel firms in the form of acquisitions of shareholdings or provisions of capital or similar financing, which in certain circumstances can have similar economic effects to those produced by aid properly so-called and must therefore be subject to the same procedure.

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 Treaty, so as to enable the Community to pursue the objectives set out in the initial Articles thereof. The comprehensive set of Community rules thereby established means that any subsidies in any form whatsoever, and whether specific or non-specific, which Member States might grant to their steel industries, other than aid expressly provided for and duly authorized under this Decision, could not in any circumstances be justified under Article 67 of the Treaty and would have to be regarded as prohibited by Article 4 (c) thereof.

II

Under Decision No 2320/81/ECSC the Commission, as was required of it, made sure that the restructuring programmes of aided firms gave them reasonable prospects of viability from 1986. In the course of this scrutiny, it also satisfied itself that the amount of aid authorized by it was necessary and sufficient to enable the aided firms to carry out normal renewal of plant. Consequently, there is no justification for allowing operating or investment aid to such firms after 1985.

On the other hand, it would be unreasonable for Member States whose steel industry had not had any aid authorized for it under Commission Decisions Nos 257/80/ECSC [1] and 2320/81/ECSC to be prohibited from granting aid to their industry under general regional schemes where the aided investment does not increase capacity.

It would also be unjustified, and would be treating the industry differently from other industries, to deny the Community steel industry aid for research and development or for bringing plants into line with new environmental standards. Aid for these purposes which is in the public interest and satisfies the conditions laid down in this Decision should be available to the steel industry, just as similar aid is permitted to other industries under Articles 92 and 93 of the EEC Treaty.

The overcapacity that persists in a number of product categories also justifies the authorization of aid to accelerate the closure of inefficient plants which, if kept in service even only temporarily, could depress the market to the detriment of all firms in the sector, and to encourage the least competitive firms to cease production entirely.

[1] OJ L 29, 6.2.1980.

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 share-holdings 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).

To ensure the orderly functioning of the common market during a period which will see Community steel firms, although already in a better technical and financial shape than before, having to make further substantial adjustments, this Decision should apply until 31 December 1988.

The Act of Accession of Spain and Portugal contains special provisions on aid to the steel industries of these two Member States; this Decision is without prejudice to those provisions,

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 1988.

Article 2

Aid for research and development

1. Aid granted under general aid schemes to defray expenditure by steel undertakings on research and development projects may be deemed compatible with the orderly functioning

of the common market provided that the research and/or development project has one of the following objectives:

— reduction in production costs, in particular through energy conservation or improvements in productivity;

— improvements in the quality of products;

— improvement in the performance of iron and steel products or extensions of the range of applications of steel;

— improvements in the environment and in working conditions (higher health and safety standards).

2. The total amount of aid granted for this purpose may not exceed 35% net grant equivalent of the eligible costs in the case of basic industrial research and 25% in the case of applied research and development.

3. Basic industrial research is defined as original theoretical or experimental work whose objective is to achieve a new or better understanding of the laws of science and technology as they apply to an industrial sector or the activities of a particular undertaking.

4. The eligible costs shall be only those directly related to research and development, excluding those related to industrial applications or commercial exploitation of the results.

Article 3

Aid for environmental protection

1. Aid granted to steel undertakings under general aid schemes 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 orderly functioning of 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 cost of payments to workers made redundant or accepting early retirement may be deemed compatible with the orderly functioning of the common market provided that:

— the payments do not exceed those customary under the rules in force in the Member States on 1 October 1985 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 Decisions Nos 257/80/ECSC or 2320/81/ECSC or granting a favourable opinion under Article 54 of the ECSC Treaty;

— the aid does not exceed 50 % of that portion of such payments which is not defrayed directly by the Member State or by the Community pursuant to Article 56 (1) (c) or (2) (b) of the ECSC Treaty 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 undertakings:

— became a legal entity before 1 October 1985;

— have been regularly producing hot-rolled products up to the date of notification of the aid;

— have not reorganized their production or plant structure since 1 October 1985; and

— are not directly or indirectly controlled, within the meaning of Decision No 24-54 of the ECSC High Authority [1] by, and do not themselves directly or indirectly control, an undertaking that is itself a steel undertaking or controls other steel undertakings,

and that the closure of their plants has not already been taken into account for the purpose of applying Decisions Nos 257/80/ECSC or 2320/81/ECSC or granting a favourable opinion under 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:

— 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

— the residual book value of the plants (ignoring that portion of any revaluations since 1 January 1980 which exceeded the national inflation rate).

Article 5

Aid granted to steel undertakings for investment under general regional aid schemes may be deemed compatible with the orderly functioning of the common market, provided that:

— the aided investment does not lead to an increase in production capacity; and

— the aided undertaking is located on the territory of a Member State which was not authorized to grant any aid under Decisions Nos 257/80/ECSC or 2320/81/ECSC.

[1] OJ of the ECSC 9, 11.5.1954.

Article 6

1. The Commission shall be informed, in sufficient time to enable it to submit its comments, for 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 this Article must be lodged with the Commission by 30 June 1988 at the latest.

2. The Commission shall be informed, in sufficient time for it to submit its comments, and by 30 June 1988 at the latest, of any plans for 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.

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 5 to 5.

3. The Commission shall seek the views of the Member States on plans for closure aid and 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. Where, after inviting interested parties 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 ECSC 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.

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

The 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 in

terms of restructuring obtained over the same period. The reports shall include particulars of all financial operations carried out by the Member States or local or regional authorities in relation to publicly-owned steel undertakings. They must be supplied within the two months following the end of each six-month period and be set out in a form determined by the Commission.

Article 8

The Commission shall draw up regular 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 not apply to aid governed by the Act of Accession of Spain and Portugal.

Article 10

This Decision shall apply from 1 January 1986 until 31 December 1988.

This Decision shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 November 1985.

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 Aids 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 No 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 aids not provided for in the Decision come under the prohibition in Article 4 (1) of the ECSC Treaty.

However, there are no specific Community rules on aids to non-ECSC steel sectors; aid may be granted on the basis of Articles 92 and 93 of the EEC 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 aids 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:

— the sectors are not covered by the ECSC Treaty;

— 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.
[2] OJ L 228, 13.8.1981.
[3] OJ L 340, 13.12.1985.

The following table defines the main subsectors involved in first-stage processing of steel:

Sector	Subsector	Definition	Consumption of ECSC steel	%
Pipes and tubes	Seamless Large welded Small and medium welded	Manufacturing of seamless and welded tubes from ingots, semis and sheet Narrow strip or coils, hot or cold-rolled, including the production of precision tubes and special purpose tubes	Strips; sheet; ingots for tubes, semis (tube rounds and squares)	43
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 ($\varnothing < 406.4$ 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 aids

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 EEC aid to a steel group is subject to the prior notification requirement provided for in Article 93 (3) of the EEC 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:

— 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 (∅ > 406.4 mm) and heavy open-die forging, followed by wire-drawing, are extensively technically integrated with ECSC steel activities.

— Financial and economic position of the sector: in theory, the ailing sectors are more likely to benefit from substantial aids. Tubes, heavy open-die forging, mild steel drawing and foundries are experiencing problems of overcapacity and are therefore in serious economic and financial difficulties.

— 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, whilst the dominant feature of the others is their fragmentation.

— 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 (∅ > 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;

[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 aids for different purposes (Commission communication on the cumulation of aids for different purposes (OJ C 3, 5.1.1985).

(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.

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 ($\varnothing > 406.4$ 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 EEC Treaty.

Notification of the aids in question must comply with the conditions in Article 93 (3) of the EEC 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.

Commission Decision No 322/89/ECSC [1] of 1 February 1989 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 consulted the Consultative Committee and with the unanimous assent of the Council,

Whereas:

I

After a period of comprehensive aid-granting during 1981 to 1985 [2] assisting the restructuring of the Community steel industry, Commission Decision No 3484/85/ECSC [3] established rules under which aid could be granted to the industry only for a few purposes and to a very limited extent during the period 1 January 1986 until 31 December 1988.

The cessation of the quota system by mid-1988 and the continuing presence of excess production capacities for most product categories makes it of particular importance to pursue a strict aid policy, comprising both specific and non-specific aid, and the close monitoring of State assistance of any form to the steel industry, in order to assure that competition conditions are being determined by normal market forces.

Nevertheless, the reasons for permitting limited aid for the sector, provided for by Decision No 3484/85/ECSC, principally still remain.

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 the initial Articles thereof.

It is emphasized that any subsidies in any form whatsoever and whether specific or non-specific, which Member States might grant to their steel industries, other than aid expressly provided for and duly authorized under this Decision, is prohibited under Article 4 (c) of the Treaty.

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[1] OJ L 38, 10.2.1989.
[2] Commission Decision No 2320/81/ECSC (OJ L 228, 13.8.1981, p. 14), as amended by Decision No 1018/85/ECSC (OJ L 110, 23.4.1985, p. 5).
[3] OJ L 340, 18.12.1985, p. 1.

It would be unjustified, and would be treating the industry differently from other industries, to deny the Community steel industry aid for research and development or for bringing plants into line with new environmental standards. Aid for these purposes which is in the public interest and satisfies the conditions laid down in this Decision should be available to the steel industry, just as similar aid is permitted to other industries under Articles 92 and 93 of the EEC Treaty.

The overcapacity that still persists in a number of product categories also justifies the authorization of aid to accelerate the closure of inefficient plants which, if kept in service even temporarily, could depress the market to the detriment of all firms in the sector, and to encourage the least competitive firms to cease production entirely.

Having in a recent span of years been offered the opportunity with the assistance of a suitable framework of aid rules to put their technical and financial structure in a competitive state, there is no justification for allowing any further operating or investment aid to the Community's steel undertakings. This is even more the case since the evolution of the financial position of steel undertakings has generally been very satisfactory.

As the special provisions on aid to the steel industries in the Act of Accession of Spain and Portugal expire by end-1988 and end-1990 respectively, this Decision is immediately applicable to Spain while it is without prejudice to the provisions contained in the Act of Accession of Portugal until 1 January 1991 when it also becomes fully applicable to that Member State.

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).

To ensure the orderly functioning of the common market for an appropriate period, during which the steel industry finds again normal market conditions, this Decision should apply until 31 December 1991,

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 1991.

Article 2

Aid for research and development

1. Aid granted under general aid schemes to defray expenditure by steel undertakings on research and development projects may be deemed compatible with the orderly functioning of the common market provided that the research and/or development project has one of the following objectives:

— reduction in production costs, in particular through energy conservation or improvements in productivity,

— improvements in the quality of products,

— improvements in the performance of iron and steel products or extensions of the range of applications of steel,

— improvements in the environment and in working conditions (higher health and safety standards).

2. The total amount of aid granted for this purpose may not exceed 35% net grant equivalent of the eligible costs in the case of basic industrial research and 25% in the case of applied research and development.

3. Basic industrial research is defined as original theoretical or experimental work whose objective is to achieve a new or better understanding of the laws of science and technology as they apply to an industrial sector or the activities of a particular undertaking.

4. The eligible costs shall be only those directly related to research and development, excluding those related to industrial applications or commercial exploitation of the results.

Article 3

Aid for environmental protection

1. Aid granted to steel undertakings under general aid schemes 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 orderly functioning of 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 make redundant or accepting early retirement may be deemed compatible with the orderly functioning of the common market provided that:

— the payments do not exceed those customary under the rules in force in the Member States on 1 October 1985 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 Nos 257/80/ECSC,[1] 2320/81/ECSC or 3484/85/ECSC or granting a favourable opinion under Article 54 of the ECSC Treaty;

— the aid does not exceed 50% of that portion of such payments which is not defrayed directly by the Member State or by the Community pursuant to Article 56 (1) (c) or (2) (b) of the ECSC Treaty but is payable by the undertaking concerned.

2. Aid to steel undertakings which permanently cease production ECSC iron and steel products may be deemed compatible with the orderly functioning of the common market, provided that the undertakings:

— became a legal entity before 1 October 1985;

— have been regularly producing hot-rolled products up to the date of notification of the aid;

— have not reorganized their production or plant structure since 1 October 1985; and

[1] OJ L 29, 6.2.1980.

— are not directly or indirectly controlled, within the meaning of Decision No 24/54 of the High Authority,[1] by, and do not themselves directly or indirectly control, an undertaking that is itself a steel undertaking or controls other steel undertakings,

and that the closure of their plants has not already been taken into account for the purposes of applying Decisions Nos 257/80/ECSC, 2320/81/ECSC or 3484/85/ECSC or granting a favourable opinion under 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:

— 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

— the residual book value of the plants (ignoring that portion of any revaluations since 1 January 1980 which exceeded the national inflation rate).

Article 5

Aid granted to steel undertakings for investment under general regional aid schemes may be deemed compatible with the orderly functioning of the common market, provided that:

— the aided investment does not lead to an increase in production capacity; and

— the aided undertaking is located on the territory of a Member State which was not authorized to grant any aid under decisions Nos 257/80/ECSC or 2320/81/ECSC, and which during the period of validity of these Decisions had already become a member of the Community.

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 by 30 June 1991 at the latest.

2. The Commission shall be informed, in sufficient time for it to submit its comments, and by 30 June 1991 at the latest, of any plans for 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.

[1] OJ of the ECSC 9, 11.5.1954.

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.

3. The Commission shall seek the views of the Member States on plans for closure aid and 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. Where, after inviting interested parties 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 this 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 ECSC 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.

6. All individual awards of the types of aid referred to in Article 4 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 or regional authorities in relation to publicity-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 determined by the Commission.

Article 8

The Commission shall draw up regular 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 not apply until 1 January 1991 to Portugal in which Member State aid will be governed until then by the Act of Accession.

Article 10

This Decision shall apply from 1 January 1989 until 31 December 1991.

This Decision shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 1 February 1989.

8. General Commission sources of information on aid policy

The monthly *Bulletin of the European Communities* regularly contains information in its chapter on 'Competition' on current issues in the field of State aid.

The annual *Report on Competiton Policy*, published by the Commission in conjunction with the *General Report on the Activities of the European Communities*, contains a comprehensive survey of the Commission's activity in the field of State aid, including a listing of the aid schemes treated by the Commission in the year under review, in part three 'Competition policy and government assistance to enterprises'.

The 'First survey on State aids' in the European Community published by the Commission in December 1988 shows the amounts of national aid given in the Member States during the period 1981-86 and contains an in-depth analysis of these figures. This survey will be regularly updated.

European Communities — Commission

Competition law in the European Communities

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