COMMISSION DECISION

of 28 June 2000

on the part of the Portuguese regional aid map for the period 2000 to 2006 which relates to the regions eligible for exemptions under Article 87(3)(c) of the Treaty

(notified under document number C(2000) 1964)

(Only the Portuguese text is authentic)

(Text with EEA relevance)

(2000/736/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to those provisions [1],

Whereas:

I. PROCEDURE

(1) By letters dated 19 May 1999 and 25 May 1999 (Nos 445 and 458 respectively), registered by the Commission on 20 May 1999 and 26 May 1999, the Portuguese Permanent Representation notified the Commission, in accordance with Article 88(3) of the EC Treaty, of the draft regional aid map for the period 2000 to 2006 [2]. By letter dated 11 June 1999 (D/52497) to the Portuguese Permanent Representation, the Commission requested further information. By means of letters dated 12 July 1999 and 12 October 1999 from the Portuguese Permanent Representation (Nos 692 and 994 respectively), registered by the Commission on 19 July 1999 and 4 November 1999, and a bilateral meeting held on 7 September 1999, the Portuguese authorities provided this information.

(2) By letter dated 19 January 2000 (SG(2000) D/100638), the Commission informed Portugal that, having examined the information provided by the Portuguese authorities on the measure in question, it had decided, in accordance with Articles 87 and 88 of the Treaty and Articles 61 and 62 of the EEA Agreement, not to raise any objections regarding the part of the Portuguese regional aid map relating to the regions eligible for exemptions under Article 87(3)(a) of the Treaty (State aid N 305/99), and to initiate the formal investigation procedure provided for by Article 88(2) of the Treaty in respect of the regions eligible for exemptions under Article 87(3)(c) of the Treaty (State aid C 78/99).

(3) The Commission's decision not to raise objections to one part of the Portuguese map, considering it compatible with the Treaty, and to initiate the formal investigation procedure with respect to the rest of the map, was published in the *Official Journal of the European Communities* [3]. Interested parties were invited to submit their comments within one month of the date of publication of this decision.

(4) The Commission received no comments from interested parties.

(5) By means of letters dated 21 February 2000 from the Portuguese Permanent Representation and 2 May 2000 from the Portuguese Minister for Economic Affairs (Nos 221 and 2610), registered by the Commission on 22 February 2000 and 4 May 2000 respectively, a bilateral meeting held on 12 April 2000 and a fax dated 18 May 2000, the Portuguese authorities gave their comments to the Commission.

II. DESCRIPTION OF THE PART OF THE MEASURE IN RESPECT OF WHICH THE COMMISSION INITIATED THE PROCEDURE

(6) The draft regional aid map proposed by the Portuguese authorities covers the whole of Portugal and is for the period 1 January 2000 to 31 December 2006. Under the exemption provided for in Article 87(3)(c) of the Treaty, the Portuguese authorities proposed the following NUTS (Nomenclature of Territorial Statistical Units) level III regions and the following aid intensity ceilings (in net grant equivalent — nge):

Grande Lisboa:	45,68 % nge in 2000, 36,76 % nge in 2001; 27,84 % in 2002, 18,92 % nge in 2003, 10 % nge in 2004 to 2006;

[1] OJ C 62, 4.3.2000, p. 2.

[2] In accordance with the Guidelines on national regional aid (OJ C 74, 10.3.1998, p. 9) a Member State's regional aid map is based on the regions of a Member State eligible under the derogations provided for by Article 87(3)(a) and (c), the ceilings on the intensity of aid for initial investment or the aid for job creation approved for each region, and the applicable aid combination ceilings.

[3] See footnote 1.

Lezíria do Tejo:	47,68 % nge in 2000, 40,76 % nge in 2001, 33,84 % in 2002; 26,92 % nge in 2003, 20 % nge in 2004 to 2006;
Médio Tejo:	47,68 % nge in 2000; 40,76 % nge in 2001, 33,84 % in 2002, 26,92 % nge in 2003, 20 % nge in 2004 to 2006;
Oeste:	47,68 % nge in 2000, 40,76 % nge in 2001, 33,84 % in 2002, 26,92 % nge in 2003, 20 % nge in 2004 to 2006;
Península de Setúbal:	47,68 % nge in 2000, 40,76 % nge in 2001, 33,84 % in 2002, 26,92 % nge in 2003, 20 % nge in 2004 to 2006.

(7) In the Portuguese notification, all the above aid intensity ceilings are increased by 10 percentage points gross for small and medium-sized enterprises ([4]). The figures also represent the aid combination ceilings for the total amount of aid in cases where assistance is granted concurrently under several regional aid schemes, irrespective of whether it comes from local, regional, national or Community sources.

(8) The Commission examined the Portuguese notification in the light of the Guidelines on national regional aid and, in particular, point 5.2 thereof, which stipulates that the draft map should be 'drawn up in accordance with the criteria set out in points 3.5, 3.10, 4.8 and 4.9.', taking due account of the fact that the maximum total coverage of regional aid in Portugal has been set at 100 % of the national population for the period from 2000 to 2006 ([5]).

(9) As regards the aid intensity ceilings proposed by the Portuguese authorities for each of the NUTS level III regions referred to above, the Commission recalled that, in accordance with point 4.8 of the Guidelines, 'the ceiling on regional aid must not exceed 20 % nge in general' and 10 % nge in regions eligible under Article 87(3)(c), 'which have both a higher per capita GDP/PPS and a lower unemployment rate than the respective Community average'. The NUTS level III region of Grande Lisboa is the only region subject to the 10 % nge ceiling.

(10) The Commission also recalled that, in accordance with point 5.7 of the guidelines, for regions losing their Article 87(3)(a) status as a result of the review of the regional aid map and acquiring Article 87(3)(c) status, it could accept during a transitional period a progressive reduction of the aid intensities for which such regions had been eligible under Article 87(3)(a) at a linear or faster rate until the intensity ceiling corresponding to the application of points 4.8 and 4.9 was reached. Since all the abovementioned regions, which together constitute the NUTS level II region Lisboa e Vale do Tejo, qualified for the derogation provided for in Article 87(3)(a) until 31 December 1999 and since the relevant aid ceiling was set at 75 % gross, the aid intensities proposed by the Portuguese authorities took account of this possibility.

(11) However, the Commission pointed out that, in accordance with footnote 43 concerning point 5.7 of the guidelines, the aforementioned transitional provisions do not apply to the parts of NUTS level II regions losing their Article 87(3)(a) status which, 'where the additional population-density percentage obtained by applying the second adjustment at point 8 of Annex III to these guidelines is not available, would have had to be excluded from the new aid map'. In the case of Portugal, this additional percentage corresponds to 23,2 % of the total national population.

(12) That being so, the Commission noted that, according to the Portuguese notification, the entire NUTS level II region Lisboa e Vale do Tejo, which accounts for 33,4 % of the national population, should benefit from the transitional period referred to in point 5.7 of the guidelines for the purpose of adapting the aid intensities from which they had benefited under Article 87(3)(a). In the light of the restrictions placed on the geographical scope of these transitional provisions, only 10,2 % of the Portuguese population could benefit from such a transitional period. Under the circumstances, the proposal by the Portuguese authorities regarding the aid intensity ceilings proposed for each of the NUTS level III regions concerned could not be deemed compatible with the relevant provisions of the guidelines. For this reason, the Commission doubted whether this aspect of the Portuguese proposal was compatible with the Treaty.

(13) Accordingly, the Commission noted that, in view of the aforementioned doubts regarding the aid intensities proposed for each of the above regions, it did not take the view that the said intensities reflected the seriousness and intensity of the regional problems addressed when examined in a Community context, in accordance with point 4.8 of the guidelines. By the same token, it did not consider that the aid intensities proposed for small and medium-sized enterprises were in compliance with point 4.9 of the guidelines. Moreover, the Commission did not take the view either that the aid combination rules contained in point 4.18 of the guidelines had been complied with.

([4]) OJ L 107, 30.4.1996, p. 4.
([5]) OJ C 16, 21.1.1999, p. 5.

III. **COMMENTS FROM THE PORTUGUESE AUTHORITIES**

(14) In their comments, submitted as part of the formal investigation procedure, the Portuguese authorities emphasised their opposition to the principle of limiting the geographical scope of the transitional arrangements provided for by point 5.7 of the Guidelines on national regional aid. The Portuguese authorities felt that footnote 43 would drastically limit the effect of point 5.7 of the Guidelines, at a time when proper monitoring of the regions losing their right to exemptions under Article 87(3)(a) of the Treaty was required to avoid excessively rapid changes in eligibility, and that its application to the NUTS level II region Lisboa e Vale do Tejo was unjustified, since it would lead to the imposition of excessive restrictions on industrial and regional policies in a Member State which, in relative terms, gives least aid to businesses.

(15) The Portuguese authorities also felt that the imposition of the limitations provided for in footnote 43 of point 5.7 of the Guidelines would, in any event, have the effect of unduly penalising the NUTS level II region Lisboa e Vale do Tejo for the following reasons:

— With the exception of the NUTS level III region Grande Lisboa (in which GDP is 114 % of the Community average), the NUTS level II region Lisboa e Vale do Tejo has development levels comparable to the regions covered by Article 87(3)(a) which surround it (the per capita GDP of each of the other four NUTS level III regions in question is between 55 % and 58 % of the Community average). However, the aid intensity ceilings would be significantly lower in these regions. In other words, these four NUTS level III regions (Lezíria do Tejo, Medio Tejo, Oeste and Península de Sétubal) would not be eligible for the exemption provided for by Article 87(3)(a) simply because of being part of the NUTS level II region Lisboa e Vale do Tejo.

— Under the limitations imposed by footnote 43, only a restricted part of the NUTS level II region Lisboa e Vale do Tejo, which contains less than a third of its population would benefit from the transitional arrangements provided for in point 5.7 of the Guidelines. Indeed, the four less-developed NUTS level III regions represent 45 % of the population of the NUTS level II region Lisboa e Vale do Tejo and the new aid intensity ceiling (20 % in cash terms) would apply to some of them from 1 January 2000.

— Consequently, given the relative levels of development of the NUTS level III regions in question, the imposition of the limits laid down in footnote 43 to point 5.7 of the Guidelines would not allow equal treatment of different Member States and regions, in that it would make it impossible to guarantee that all the aid intensity ceilings applicable were adequate, taking into account the seriousness and intensity of specific regional problems.

(16) The Portuguese authorities also believed that the imposition of the limits set by footnote 43 was at odds with the Council's approach to the Structural Funds, which was much more generous as regards the 'phasing out' of Objective 1 status for the NUTS level II region Lisboa e Vale do Tejo. Such limits on regional state aid would produce a contradiction between regional policy and competition policy, which would be at variance with the objective set by the Commission in this area ([6]).

(17) Despite their opposition in principle to the imposition of any limits on the geographical scope of the transitional arrangements provided for by point 5.7 of the Guidelines, the Portuguese authorities did, however, amend their original notification during the formal investigation procedure. The Portuguese authorities made this change mainly to avoid a negative decision from the Commission under Article 7(5) of Council Regulation (EC) No 659/1999 ([7]), which would have had a negative effect on the implementation of a consistent and coordinated regional policy in Portugal. The new proposal for exemptions under Article 87(3)(c) put forward the following aid intensity ceilings for the NUTS level III regions in question:

Grande Lisboa:	10 % nge for the whole period 2000 to 2006;
Lezíria do Tejo:	47,68 % nge in 2000, 40,76 % nge in 2001, 33,84 % in 2002, 26,92 % nge in 2003, 20 % nge in 2004 to 2006;
Médio Tejo:	47,68 % nge in 2000, 40,76 % nge in 2001, 33,84 % in 2002, 26,92 % nge in 2003, 20 % nge in 2004 to 2006;
Oeste:	47,68 % nge in 2000, 40,76 % nge in 2001, 33,84 % in 2002, 26,92 % nge in 2003, 20 % nge in 2004 to 2006;
Península de Sétubal:	47,68 % nge in 2000, 40,76 % nge in 2001, 33,84 % in 2002, 26,92 % nge in 2003, 20 % nge in 2004 to 2006.

([6]) Communication from the Commission to the Member States on the links between regional and competition policy — Reinforcing concentration and mutual consistency (OJ C 90, 26.3.1998, p.3).
([7]) OJ L 83, 27.3.1999, p. 1.

(18) As in the original notification, all the above aid intensity ceilings are increased by 10 percentage points gross for small and medium-sized enterprises. They also represent the aid combination ceilings for the total amount of aid in cases where assistance is granted concurrently under several regional aid schemes, irrespective of whether it comes from local, regional, national or Community sources.

IV. **ASSESSMENT OF THE MEASURE**

(19) The Commission examined the part of the Portuguese notification which related to the regions proposed for exemptions under Article 87(3)(c) of the Treaty, together with the amendments submitted during the formal investigation procedure, in the light of the Guidelines on national regional aid.

(20) As regards the aid intensity ceilings proposed by the Portuguese authorities for the NUTS level III regions, the Commission would recall that, in accordance with point 4.8 of the guidelines, and with the exception of low population density regions or outermost regions, 'the ceiling on regional aid must not exceed 20 % nge in general and 10 % nge in regions eligible under Article 87(3)(c), which have both a higher per capita GDP/PPS and a lower unemployment rate than the respective Community average'. As the Portuguese authorities were informed by letter SG(98) D/12398 of 30 December 1998, the NUTS level III region of Grande Lisboa is the only region subject to the 10 % nge ceiling.

(21) The Commission would also point out that, in accordance with point 5.7 of the guidelines, for regions losing their Article 87(3)(a) status as a result of the review of the regional aid map and acquiring Article 87(3)(c) status, it can accept during a transitional period of no more than two years for operating aid and four years for aid for initial investment and job creation, a progressive reduction of the aid intensities for which such regions had been eligible under Article 87(3)(a) at a linear or faster rate until the intensity ceiling corresponding to the application of points 4.8 and 4.9 is reached. Since all the abovementioned regions, which together constitute the NUTS level II region Lisboa e Vale do Tejo, qualify for the derogation provided for in Article 87(3)(a) until 31 December 1999 and since the relevant aid ceiling is set at 75 % gross (which corresponded, at the date of notification and for aid in the form of non-refundable grants, to 54,6 % nge), the aid intensities proposed by the Portuguese authorities for the NUTS level III regions Lezíria do Tejo, Médio Tejo, Oeste and Península de Sétubal take account of this possibility.

(22) In this regard, the Commission would also point out that, in accordance with footnote 43 concerning point 5.7 of the guidelines, the aforementioned transitional provisions do not apply to the parts of NUTS level II regions losing their Article 87(3)(a) status which, 'where the additional population-density percentage obtained by applying the second adjustment at point 8 of Annex III to these guidelines is not available, would have had to be excluded from the new aid map'.

(23) Finally, the Commission would point out that, as it stressed in point 3.3 of its Communication to the Member States on the links between regional and competition policy [8], how 'phasing out' is to be conducted will vary depending on which of the two policies is involved. Consistency between them will none the less be ensured, as Agenda 2000 points out, by the fact that 'measures for the regions which will benefit from transitional (phasing out) support from the Structural Funds will have to comply with the competition rules on State aid', so it follows that the application of the rules laid down by the Guidelines, which are in themselves a guarantee of fairness, does not imply unfair treatment of Portugal by comparison with the other Member States.

(24) That being so, the Commission would note that, according to the Portuguese notification, the four NUTS level III regions, Lezíria do Tejo, Médio Tejo, Oeste and Península de Sétubal, which account for 14,9 % of the national population, should benefit from the four-year transitional period referred to in point 5.7 of the guidelines for the purpose of adapting the current aid intensities under the system laid down in Article 87(3)(a) while, in the light of the restrictions placed on the geographical scope of these transitional provisions by footnote 43 of point 5.7 of the Guidelines, only 10,2 % of the Portuguese population could benefit from such a transitional period. This is because, in the case of Portugal, the additional percentage referred to in footnote 43, which can be calculated by the method set out at point 3 and in Annex III of the Guidelines, after the second adjustment referred to above is removed and the maximum total coverage of 42,7 % of the Community population is taken into account, corresponds to 23,2 % of the total national population.

(25) The Commission would point out, however, that the objective of the limitations imposed by footnote 43 on the geographical scope of the transitional arrangements laid down in point 5.7 of the Guidelines, is simply to ensure that regions whose socio-economic situation is such that they should not be included in the regional aid map, do not gain double benefits, firstly under the aid coverage arrangements (as regions which are losing their Article 87(3)(a) status) and in application of the second adjustment referred to at point 8 of Annex III to the Guidelines and, secondly, through the aid ceilings. Since

[8] See footnote 6.

the per capita GDP of each of the four NUTS level III regions which would benefit from the transitional arrangements in question (Lezíria do Tejo, Medio Tejo, Oeste and Península de Sétubal) is between 55 % and 58 % of the Community average, it does not seem reasonable to insist that they should be totally or partially excluded from the Portuguese regional aid map, because of their socio-economic situation. On the contrary, the four NUTS level III regions in question have sufficient regional disparities with regard to the thresholds set out at point 5 of Annex III of the Guidelines, and they were taken into consideration for this reason in the calculation of the distribution key for Community coverage of regional aid under Article 87(3)(c) of the Treaty between Member States, in accordance with the method laid down in section I of Annex III of the Guidelines. That being the case, and since the per capita GDP of these regions is now similar, any differences in treatment between these regions could damage the development prospects of the region as a whole. This being the case, despite exceeding by 4,7 % in terms of total population the limit obtained by the mechanical application of footnote 43, the Portuguese proposal can, in this instance, be considered compatible with the Guidelines as regards the scope of the transitional arrangements provided for at point 5.7.

(26) The Commission would also point out that, in accordance with point 4.8 of the Guidelines, the aid intensity ceilings proposed for each region must be adjusted to reflect the seriousness and intensity of the regional problems addressed when examined in a Community context. Given that the draft Portuguese map implies a significant and immediate reduction in the aid intensities which apply to the NUTS level II region Grande Lisboa (75 % gross for 10 % nge), and the low levels of economic development of the NUTS level III regions Lezíria do Tejo, Medio Tejo, Oeste and Península de Sétubal, this aspect of the Portuguese proposal can also be considered compatible with the relevant provisions of the Guidelines.

(27) Finally, the Commission notes that the proposed aid intensities for small and medium-sized enterprises are in line with point 4.9 of the Guidelines, which provides that the ceilings may be raised by the supplements for SMEs provided for in the Commission notice on aid for SMEs ([9]), that is, by 10 percentage points gross in the case of regions qualifying for exemption under Article 87(3)(c), and that the rules on aid combinations set out at point 4.18 of the Guidelines were respected. In relation to these two points, the Portuguese proposal can also be considered compatible with the relevant provisions of the Treaty.

V. **CONCLUSION**

(28) In the light of the above, the Commission considers the new draft Portuguese regional aid map for the period 2000 to 2006 for the regions eligible for exemptions under Article 87(3)(c) of the Treaty to be compatible with the Guidelines on national regional aid,

HAS ADOPTED THIS DECISION:

Article 1

The part of the Portuguese regional aid map for the period 2000 to 2006 which relates to the regions eligible for exemptions under Article 87(3)(c) of the Treaty is considered compatible with the common market under Article 87(3)(c) of the Treaty.

Implementation of the measure is therefore authorised.

Article 2

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 28 June 2000.

For the Commission

Mario MONTI

Member of the Commission

([9]) OJ C 213, 23.7.1996, p. 4.