ISSN 0378-6986

Official Journal

of the European Communities

C 312

Volume 38

23 November 1995

English edition

Information and Notices

Notice No | Contents | Page

(1) Text with EEA relevance

(Continued overleaf)

EN

(1) Text with EEA relevance

I

(Information)

COUNCIL

RESOLUTION OF THE COUNCIL AND OF THE REPRESENTATIVES OF MEMBER STATES' GOVERNMENTS MEETING WITHIN THE COUNCIL

of 23 October 1995

on the response of educational systems to the problems of racism and xenophobia

(95/C 312/01)

THE COUNCIL AND REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES MEETING WITHIN THE COUNCIL:

1. Having regard to the conclusions on racism and xenophobia adopted by the European Councils in Corfu on 24 and 25 June 1994, Essen on 9 and 10 December 1994 and Cannes on 26 and 27 June 1995;

2. Having regard to the conclusions of the Council of 12 June 1995 on the recommendations in the final report of 5 May 1995 submitted by the Consultative Commission on Racism and Xenophobia set up on the instructions of the Corfu European Council, in particular Section III A thereof, relating to the report of the Subcommittee on Education and Training;

3. Whereas the continued existence of racist and xenophobic attitudes has a disruptive effect on social cohesion, the strengthening of which is one of the objectives of the European Union;

4. Whereas the European Parliament and the Council have repeatedly acknowledged the crucial role which must be played by education in the prevention and eradication of racist and xenophobic prejudices and attitudes;

5. Whereas the Council and the representatives of Member States' Governments meeting within the Council stressed in their resolution of 29 May 1990, the importance of youth and educational policies in combatting racism and xenophobia;

6. Whereas the Cannes European Council noted the significance of the work carried out by the various Council bodies and the Consultative Commission and asked it to extend its work in order to study, in close cooperation with the Council of European, the feasibility of a European Monitoring Centre on Racism and Xenophobia;

7. Whereas the Council, in its conclusions of 30 May 1995, stated that the measures proposed by the Consultative Commission on Racism and Xenophobia should be examined at greater length in various sectoral Councils, including the Education Council;

8. Whereas, in accordance with these conclusions, the Council, at its meeting on 12 June 1995, agreed to instruct the relevant bodies and fora to study the implementation of the Consultative Commission's proposals and suggestions and invited those bodies to take due account of the proposals which they considered particularly relevant;

9. Whereas the Council, at its meeting on 5 December 1994, held an initial discussion on the education-related aspects of a comprehensive European Union strategy against racism and xenophobia;

10. Whereas the Socrates programme bases all its measures on respect for the principle of equal opportunities and refers in Chapter II, Action 2, to Community support for transnational projects for the education of the children of migrant workers, and the children of those in itinerant professions, travellers and gypsies, and intercultural education;

11. Whereas the United Nations has declared 1995 International Year of Tolerance and whereas the Council of Europe, on the basis of the Vienna Declaration of 9 October 1993, and as a follow-up to the resolution of the Conference of European Ministers for Education in Madrid on 23 and 24 March 1994 on education for democracy, human rights and tolerance, agreed to conduct during 1995,

as part of its plan of action, a European campaign against racism, xenophobia, anti-semitism and intolerance,

HAVE ADOPTED THIS RESOLUTION:

I. **General considerations**

Education and training have a role of great importance involving efforts at local, national and European levels for combatting racism and xenophobia.

A fundamental task of educational systems is to promote respect for all people, whatever their cultural origin or religious beliefs. Moreover, they can make a unique contribution to improving knowledge of European cultural diversity.

Development of the teaching notably of history and the human sciences can intensify awareness of European cultural diversity and eliminate stereotypes.

In accordance with the European Convention on human rights and international legislation, in particular with Article 2 of the Convention on the Rights of the Child, all children, regardless of their parents' situation, have a right to a basic education.

II. **The role of the educational systems in contributing to the struggle against racist and xenophobic attidudes**

The political, cultural and linguistic pluralism characteristic of the European Union has helped to emphasize respect for and the value of diversity. Thus, both in educational circles and in political and social milieus, pluralism is increasingly regarded as an enriching factor and a distinguishing mark of the People's Europe.

On the other hand, one measure of the quality of educational systems in a pluralist society is their ability to facilitate the social integration of their pupils or students. Consequently, an important aim of a quality educational system should be to encourage equality of opportunity.

To that end, European educational systems should continue as well as enhance their efforts at promoting education in values which encourage attitudes of solidarity and tolerance, as well as respect for democracy and human rights.

Educational systems are able to make a valuable contribution to the promotion of respect, tolerance and solidarity towards individuals or collectivities of different ethnic or cultural origin or religious beliefs by measures such as the following:

— use of teaching materials (manuals, texts, audio-visual resources, etc.) reflecting the cultural diversity of European society,

— specific integration initiatives aimed at pupils and students who, given their social situation, may be susceptible to racist and/or xenophobic influences. In particular, specific programmes should be implemented in areas where the incidence of social exclusion is most pronounced,

— reinforcing areas of education which can help provide a better understanding of the nature of a multicultural society, in particular, history, human sciences and language teaching,

— promoting the formation of partnerships between educational establishments and between pupils with the aim of encouraging activities which will check the growth of racist and xenophobic attitudes.

The teacher plays a crucial role in forming pupils' attidudes from an early age. The new challenges posed by teaching of children with very different social and cultural backgrounds makes a significant professional demand on teachers. Within this context, the education and development of present and future teachers is an important area for cooperation between Member States.

Exchanges of experience, in order to take advantage of cultural diversity between different educational institutions, contribute to the improvement of cooperation in education.

The administration of schools plays a very important role in promoting acceptance of and respect for other cultures. However, schools alone cannot resolve the problems concerned. Cooperation between schools and their environment is therefore desirable. Educational establishments, particularly schools, can promote partnerships with representatives of parents, teachers and children, enhancing the quality of the education in various school activities and enabling schools to be a meeting-point for families of diverse origin.

In conclusion, THE COUNCIL AND REPRESENTATIVES OT THE MEMBER STATES' GOVERNMENTS:

INVITE the Member States:

1. to foster the provision of education and training of quality, enabling all children to fulfil their potential and play a role in the community;

2. to enhance the flexibility of educational systems so that they can respond to complex situations and thus promote plurality in curricula;

3. to promote educational and curricular innovations which contribute to the development of concepts such as peace, democracy, respect and equality between cultures, tolerance, cooperation, etc. and encourage the preparation of educational materials designed to foster attitudes and values favourable to understanding and tolerance;

4. to encourage initiatives promoting cooperation between schools and their local communities;

NOTE that in a communication, to be prepared by the Commission concerning action already completed under existing Community programmes, as well as the possibilities for future action relevant to the struggle against racism and xenophobia, there will be a section devoted to education and training;

INVITE the Commission, in cooperation with the Member States:

1. to exploit fully and ensure coherence among all Community programmes which promote education and training aspects of the struggle against racism and xenophobia, in particular those which assist initiatives among the local community;

2. to exploit in particular the parts of the Socrates programme involved with the problems concerned, including schools partnerships, exchanges of experience on intercultural matters and teacher training;

3. to assist in the exchange of experience by collecting and disseminating information about the contribution of European educational systems in combatting racism and xenophobia and the integration of people of different ethnic, cultural and religious backgrounds;

4. to ensure that in the field of education appropriate cooperation in combatting racism and xenophobia is achieved between the Community and international organizations, especially the Council of Europe.

COUNCIL CONCLUSIONS

of 23 October 1995

(95/C 312/02)

The Council has received with interest the Presidency discussion paper entitled 'Social participation as a factor for quality in education prior to university education', since it deals with a very topical issue in many Member States where it is the subject of study or practical development.

The Council considers it appropriate, with due regard for the distinctive features of the separate educational systems, to encourage at Community level the exchange of information and experience concerning the contribution made by the processes of social participation towards quality in education, which processes can enrich the individual's educational reality.

This exchange could enable work on various aspects to begin at Community level, such as: greater knowledge of Member States' systems of participation, through the exchange of information and experience, analysis of the impact that the various participatory sectors have on different education systems, study of initiatives taken in each country to encourage participation at the various levels of the education system, initiation of studies permitting an assessment of the results of such participation and the relationship between the quality of the latter and the quality of education.

The Council welcomes the interest shown by the European Commission. The Council asks the Commission to encourage appropriate measures, as described in the Socrates programme (Chapter III, action 3.1).

COMMISSION

Ecu (1)

22 November 1995

(95/C 312/03)

Currency amount for one unit:

Belgian and Luxembourg franc	38,5160	Finnish markka	5,59713
Danish krone	7,25792	Swedish krona	8,65754
German mark	1,87346	Pound sterling	0,853399
Greek drachma	309,962	United States dollar	1,32917
Spanish peseta	160,710	Canadian dollar	1,79943
French franc	6,46374	Japanese yen	134,778
Irish pound	0,828039	Swiss franc	1,51193
Italian lira	2113,70	Norwegian krone	8,27008
Dutch guilder	2,09783	Icelandic krona	85,6649
Austrian schilling	13,1814	Australian dollar	1,79327
Portuguese escudo	196,052	New Zealand dollar	2,03923
		South African rand	4,85047

The Commission has installed a telex with an automatic answering device which gives the conversion rates in a number of currencies. This service is available every day from 3.30 p.m. until 1 p.m. the following day.

Users of the service should do as follows:

— call telex number Brussels 23789;

— give their own telex code;

— type the code 'cccc' which puts the automatic system into operation resulting in the transmission of the conversion rates of the ecu;

— the transmission should not be interrupted until the end of the message, which is marked by the code 'ffff'.

Note: The Commission also has an automatic telex answering service (No 21791) and an automatic fax answering service (No 296 10 97) providing daily data concerning calculation of the conversion rates applicable for the purposes of the common agricultural policy.

---

(1) Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ No L 379, 30. 12. 1978, p. 1), as last amended by Regulation (EEC) No 1971/89 (OJ No L 189, 4. 7. 1989, p. 1).

Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ No L 349, 23. 12. 1980, p. 34).

Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ No L 349, 23. 12. 1980, p. 27).

Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ No L 345, 20. 12. 1980, p. 23).

Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ No L 345, 20. 12. 1980, p. 1).

Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ No L 311, 30. 10. 1981, p. 1).

Average prices and representative prices for table wines at the various marketing centres

(95/C 312/04)

(Established on 21 November 1995 for the application of Article 30 (1) of Regulation (EEC) No 822/87)

Type of wine and the various marketing centres	ECU per % vol/hl	% of GP °	Type of wine and the various marketing centres	ECU per % vol/hl	% of GP °
R I Guide price *	3,828		*A I Guide price* *	3,828	
Heraklion	No quotation		Athens	No quotation	
Patras	No quotation		Heraklion	No quotation	
Requena	No quotation		Patras	No quotation	
Reus	No quotation		Alcázar de San Juan	No quotation	
Villafranca del Bierzo	No quotation		Almendralejo	3,329	87 %
Bastia	No quotation		Medina del Campo	4,540	119 %
Béziers	4,177	109 %	Ribadavia	No quotation	
Montpellier	4,122	108 %	Villafranca del Penedés	No quotation	
Narbonne	4,160	109 %	Villar del Arzobispo	No quotation (1)	
Nîmes	4,175	109 %	Villarrobledo	3,391	89 %
Perpignan	3,951	103 %	Bordeaux	No quotation	
Asti	No quotation		Nantes	No quotation	
Florence	No quotation (1)		Bari	3,465	91 %
Lecce	No quotation		Cagliari	No quotation	
Pescara	No quotation		Chieti	3,696	97 %
Reggio Emilia	No quotation (1)		Ravenna (Lugo, Faenze)	4,389	115 %
Treviso	4,851	127 %	Trapani (Alcamo)	3,280	86 %
Verona (for local wines)	5,544	145 %	Treviso	5,198	136 %
Representative price	4,194	110 %	Representative price	3,893	102 %
R II Guide price *	3,828				
Heraklion	No quotation				
Patras	No quotation				
Calatayud	No quotation				
Falset	No quotation				
Jumilla	No quotation				
Navalcarnero	No quotation (1)				
Requena	No quotation			ECU/hl	
Toro	No quotation				
Villena	No quotation				
Bastia	No quotation		*A II Guide price* *	82,810	
Brignoles	No quotation		Rheinpfalz (Oberhaardt)	68,877	83 %
Bari	3,465	91 %	Rheinhessen (Hügelland)	73,367	89 %
Barletta	3,465	91 %	The wine-growing region of the Luxembourg Moselle	No quotation	
Cagliari	No quotation		Representative price	72,013	87 %
Lecce	No quotation				
Taranto	No quotation				
Representative price	3,465	91 %			
	ECU/hl		*A III Guide price* *	94,57	
			Mosel-Rheingau	No quotation	
R III Guide price *	62,15		The wine-growing region of the Luxembourg Moselle	No quotation	
Rheinpfalz-Rheinhessen (Hügelland)	103	166 %	Representative price	No quotation	

(1) Quotation not taken into account in accordance with Article 10 of Regulation (EEC) No 2682/77.
* Applicable from 1. 2. 1995.
° GP = Guide price.

Commission communication in the framework of the implementation of Commission Directive 95/12/EC of 23 May 1995 implementing Council Directive 92/75/EEC with regard to energy labelling of household washing machines (1)

(95/C 312/05)

(Text with EEA relevance)

(Publication of titles and references of European harmonized standards under the Directives)

OEN (1)	Reference	Title of the harmonized standards	Year of ratification
Cenelec	EN 60456 + A11	Methods for measuring the performance — electric clothes washing machines for household use	1995

(1) OEN: European Standardization body
CEN: Rue de Stassart/Stassartstraat 36, B-1050 Brussels, tel. (32 2) 550 08 11; fax (32 2) 550 08 19
Cenelec: Rue de Stassart/Stassartstraat 35, B-1050 Brussels, tel. (32 2) 519 68 71; fax (32 2) 519 69 19
ETSI: BP 152, F-06561 Valbonne Cedex France, tel. (33) 92 94 42 12; fax (33) 93 65 47 16.

NOTE:

— Any information concerning the availability of the standards can be obtained either from the European standardization organizations or from the national standardization bodies of which the list is annexed to Council Directive 83/189/EEC (2) as amended by Directive 94/10/EC (3).

— Publication of the references in the *Official Journal of the European Communities* does not imply that the standards are available in all the Community languages.

— The Commission ensures the updating of this list.

(1) OJ No L 136, 21. 6. 1995.
(2) OJ No L 109, 26. 4. 1983, p. 8.
(3) OJ No L 100, 19. 4. 1994, p. 30.

Commission communication in the framework of the implementation of Commission Directive 95/13/EC of 23 May 1995 implementing Council Directive 92/75/EEC with regard to energy labelling of household electric tumble driers (1)

(95/C 312/06)

(Text with EEA relevance)

(Publication of titles and references of European harmonized standards under the Directives)

OEN (1)	Reference	Title of the harmonized standards	Year of ratification
Cenelec	EN 61121 + A11	Methods for measuring the performance of tumble dryers for household use	1995

(1) OEN: European Standardization body
CEN: Rue de Stassart/Stassartstraat 36, B-1050 Brussels, tel. (32 2) 550 08 11; fax (32 2) 550 08 19
Cenelec: Rue de Stassart/Stassartstraat 35, B-1050 Brussels, tel. (32 2) 519 68 71; fax (32 2) 519 69 19
ETSI: BP 152, F-06561 Valbonne Cedex France, tel. (33) 92 94 42 12; fax (33) 93 65 47 16.

NOTE:

— Any information concerning the availability of the standards can be obtained either from the European standardization organizations or from the national standardization bodies of which the list is annexed to Council Directive 83/189/EEC (2) amended by Council Directive 94/10/EC (3).

— Publication of the references in the *Official Journal of the European Communities* does not imply that the standards are available in all the Community languages.

— The Commission ensures the updating of this list.

(1) OJ No L 136, 21. 6. 1995.
(2) OJ No L 109, 26. 4. 1983, p. 8.
(3) OJ No L 100, 19. 4. 1994, p. 30.

Notice on cooperation between national courts and the Commission in the State aid field

(95/C 312/07)

The purpose of this notice is to offer guidance on cooperation between national courts and the Commission in the State aid field. The notice does not in any way limit the rights conferred on Member States, individuals or undertakings by Community law. It is without prejudice to any interpretation of Community law which may be given by the Court of Justice and the Court of First Instance of the European Communities. Finally, it does not seek to interfere in any way with the fulfilment by national courts of their duties.

I. INTRODUCTION

1. The elimination of internal frontiers between Member States enables undertakings in the Community to expand their activities throughout the internal market and consumers to benefit from increased competition. These advantages must not be jeopardized by distortions of competition caused by aid granted unjustifiably to undertakings. The completion of the internal market thus reaffirms the importance of enforcement of the Community's competition policy.

2. The Court of Justice has delivered a number of important judgments on the interpretation and application of Articles 92 and 93 of the EC Treaty. The Court of First Instance now has jurisdiction over actions by private parties against the Commission's State aid decisions and will thus also contribute to the development of case-law in this field. The Commission is responsible for the day-to-day application of the competition rules under the supervision of the Court of First Instance and the Court of Justice. Public authorities and courts in the Member States, together with the Community's courts and the Commission each assume their own tasks and responsibilities for the enforcement of the EC Treaty's State aid rules, in accordance with the principles laid down by the case-law of the Court of Justice.

3. The proper application of competition policy in the internal market may require effective cooperation between the Commission and national courts. This notice explains how the Commission intends to assist national courts by instituting closer cooperation in the application of Articles 92 and 93 in individual cases. Concern is frequently expressed that the Commission's final decisions in State aid cases are reached some time after the distortions of competition have damaged the interests of third parties. While the Commission is not always in a position to act promptly to safeguard the interests of third parties in State aid matters, national courts may be better placed to ensure that breaches of the last sentence of Article 93 (3) are dealt with and remedied.

II. POWERS (1)

4. The Commission is the administrative authority responsible for the implementation and development

(1) The Court of Justice has described the roles of the Commission and the national courts in the following way:

'9. As far as the role of the Commission is concerned, the Court pointed out in its judgment in Case 78/96, Steinlike and Weinlig v. Germany (1977) ECR 595, at paragraph 9, that the intention of the Treaty, in providing through Article 93 for aid to be kept under constant review and supervised by the Commission, is that the finding that aid may be incompatible with the common market is to be arrived at, subject to review by the Court, by means of an appropriate procedure which it is the Commission's responsibility to set in motion.

10. As far as the role of national courts is concerned, the Court held in the same judgment that proceedings may be commenced before national courts requiring those courts to interpret and apply the concept of aid contained in Article 92 in order to determine whether State aid introduced without observance of the preliminary examination procedure provided for in Article 93 (3) ought to have been subject to this procedure.

11. The involvement of national courts is the result of the direct effect which the last sentence of Article 93 (3) of the Treaty has been held to have. In this respect, the Court stated in its judgment of 11 December 1973 in Case 120/73, Lorenz v. Germany, (1973) ECR p. 1471 that the immediate enforceability of the prohibition on implementation referred to in that Article extends to all aid which has been implemented without being notified and, in the event of notification, operates during the preliminary period, and if the Commission sets in motion the contentious procedure, until the final decision.

14. ... The principal and exclusive role conferred on the Commission by Articles 92 and 93 of the Treaty, which is to hold aid to be incompatible with the common market where this is appropriate, is fundamentally different from the role of national courts in safeguarding rights which individuals enjoy as a result of the direct effect of the prohibition laid down in the last sentence of Article 93 (3) of the Treaty. Whilst the Commission must examine the compatibility of the proposed aid with the common market, even where the Member State has acted in breach of the prohibition on giving effect to aid, national courts do no more than preserve, until the final decision of the Commission, the rights of individuals faced with a possible breach by State authorities of the prohibition laid down by the last sentence of Article 93 (3).'

Case C-354/90, Fédération nationale du commerce extérieur des produits alimentaires and Syndicat national des négociants et transformateurs de saumon v. France (1991) ECR I-5505, paragraphs 9, 10, 11 and 14, at pp. 5527 and 5528.

of competition policy in the Community's public interest. National courts are responsible for the protection of rights and the enforcement of duties, usually at the behest of private parties. The Commission must examine all aid measures which fall under Article 92 (1) in order to assess their compatibility with the common market. National courts must make sure that Member States comply with their procedural obligations.

5. The last sentence of Article 93 (3) (in bold below) has direct effect in the legal order of the Member States.

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

6. The prohibition on implementation referred to in the last sentence of Article 93 (3) extends to all aid which has been implemented without being notified ([2]) and, in the event of notification, operates during the preliminary period and, if the Commission sets in motion the contentious procedure, until the final decision ([3]).

7. Of course a court will have to consider whether the 'proposed measures' constitute State aid within the meaning of Article 92 (1) ([4]) before reaching a decision under the last sentence of Article 93 (3). The Commission's Decisions and the Court's case-law devote considerable attention to this important question. Accordingly, the notion of State aid must be interpreted widely to encompass not only subsidies, but also tax concessions and investments from public funds made in circumstances in which a private investor would have withheld support ([5]). The aid must come from the 'State', which includes all levels, manifestations and emanations of public authority ([6]). The aid must favour certain undertakings or the production of certain goods: this serves to distinguish State aid to which Article 92 (1) applies from general measures to which it does not ([7]). For example, measures which have neither as their object nor as their effect the favouring of certain undertakings or the production of certain goods, or which apply to persons in accordance with objective criteria without regard to the location, sector or undertaking in which the beneficiary may be employed, are not considered to be State aid.

8. Only the Commission can decide that State aid is 'compatible with the common market', i.e. authorized.

9. In applying Article 92 (1), national courts may of course refer preliminary questions to the Court of Justice pursuant to Article 177 of the EC Treaty and indeed must do so in certain circumstances. They must also request assistance from the Commission by asking it for 'legal or economic information' by analogy with the Court's Delimits ([8]) judgment in respect of Article 85 of the EC Treaty.

([2]) With the exception of 'existing' aid. Such aid may be implemented until the Commission has decided that is it incompatible with the common market: see Case C-387/92, Banco de Crédito Industrial, now Banco Exterior de Espana v. Ayuntamiento de Valencia (1994) ECR I-877 and Case C-44/93, Namur - Les Assurances du Crédit v. Office National du Ducroire and Belgium (1994) ECR I-3829.

([3]) Case C-354/90, cited at footnote 1, paragraph 11 at p. 5527.

([4]) See the Court of Justice's judgment in Case 78/76, Steinlike and Weinlig v. Germany (1977) ECR 595, paragraph 14: '... a national court may have cause to interpret and apply the concept of aid contained in Article 92 in order to determine whether State aid introduced without observance of the preliminary examination procedure provided for in Article 93 (3) ought to have been subject to this procedure'.

([5]) For a recent formulation, see Advocate-General Jacob's opinion in Joined Cases C-278/92, C-279/92 and C-280/92, Spain v. Commission, paragraph 28: '... State aid is granted whenever a Member State makes available to an undertaking funds which in the normal course of events would not be provided by a private investor applying normal commercial criteria and disregarding other considerations of a social, political or philanthropic nature'.

([6]) The Court of Justice held in Case 290/83, Commission v. France (1985) ECR p. 439, that '... The prohibition contained in Article 92 covers all aid granted by a Member State or through State resources and there is no necessity to draw any distinction according to whether the aid is granted directly by the State or by public or private bodies established or appointed by it to administer the aid' (paragraph 14 at p. 449).

([7]) A clear statement of this distinction is to be found in Advocate-General Darmon's opinion in Joined Cases C-72 and C-73/91, Sloman Neptun, (1993) ECR I-887.

([8]) Case C-234/89, Delimitis v. Henninger Bräu (1991) ECR I-935; Commission notice on cooperation between national courts and the Commission in applying Articles 85 and 86 of the EC Treaty (OJ No C 39, 13. 12. 1993, p. 6). See Advocate-General Lenz's opinion in Case C-44/93, cited at footnote 2 (paragraph 106). See also Case C-2/88, Imm, Zwartveld (1990) ECR I-3365 and I-4405: 'the Community institutions are under a duty of sincere cooperation with the judicial authorities of the Member States, which are responsible for ensuring that Community law is applied and respected in the national legal system' (paragraph 1 at p. I-3366 and paragraph 10 at pp. 4410 and 4411, respectively).

10. The national court's role is to safeguard rights which individuals enjoy as a result of the direct effect of the prohibition laid down in the last sentence of Article 93 (3). The court should use all appropriate devices and remedies and apply all relevant provisions of national law to implement the direct effect of this obligation placed by the Treaty on Member States (9). A national court must, in a case within its jurisdiction, apply Community law in its entirety and protect rights which that law confers on individuals; it must therefore set aside any provision of national law which may conflict with it, whether prior or subsequent to the Community rule (10). The judge may, as appropriate and in accordance with applicable rules of national law and the developing case-law of the Court of Justice (11), grant interim relief, for example by ordering the freezing or return of monies illegally paid, and award damages to parties whose interests are harmed.

11. The Court of Justice has held that the full effectiveness of Community rules would be impaired and the protection of the rights which they grant would be weakened if individuals were unable to obtain redress when their rights are infringed by a breach of Community law for which a Member State can be held responsible (12); the principle whereby a State must be liable for loss and damage caused to individuals as a result of breaches of Community law for which the State can be held responsible is inherent in the system of the Treaty (13); a national court which considers, in a case concerning Community law, that the sole obstacle precluding it from granting interim relief is a rule of national law, must set aside that rule (14).

12. These principles apply in the event of a breach of the Community's competition rules. Individuals and undertakings must have access to all procedural rules and remedies provided for by national law on the same conditions as would apply if a comparable breach of national law were involved. This equality of treatment concerns not only the definitive finding of a breach of directly effective Community law, but extends also to all legal means capable of contributing to effective legal protection.

III. THE COMMISSION'S LIMITED POWERS

13. The application of Community competition law by the national courts has considerable advantages for individuals and undertakings. The Commission cannot award damages for loss suffered as a result of an infringement of Article 93 (3). Such claims may be brought only before the national courts. National courts can usually adopt interim measures and order the termination of infringements quickly. Before national courts, it is possible to combine a claim under Community law with a claim under national law. This is not possible in a procedure before the Commission. In addition, courts may award costs to the successful applicant. This is never possible in the administrative procedure before the Commission.

IV. APPLICATION OF ARTICLE 93 (3)

14. Member States are required to notify to the Commission all plans to grant aid or to alter aid plans already approved. This also applies to aid that may qualify for automatic approval under Article 92 (2), because the Commission has to check that the

(9) As the Court of Justice held in Case C-354/90, cited at footnote 1, paragraph 12 at p. 5528: '... the validity of measures giving effect to aid is affected if national authorities act in breach of the last sentence of Article 93 (3) of the Treaty. National courts must offer to individuals in a position to rely on such breach the certain prospect that all the necessary inferences will be drawn, in accordance with their national law, as regards the validity of measures giving effect to the aid, the recovery of financial support granted in disregard of that provision and possible interim measures.'

(10) Case 106/77, Amministrazione delle Finanze dello Stato v. Simmenthal, (1978) ECR 629, (paragraph 21 at p. 644). See also Case C-213/89, The Queen v. Secretary of State for Transport, *ex parte:* Factortame Ltd et al., (1990) ECR I-2433, at p. 2475.

(11) Joined Cases C-6/90 and C-9/90, Andrea Francovich et al. v. Italy, (1991) ECR I-5357. Other important cases are pending before the Court concerning the responsibilities of national courts in the application of Community law: Case C-48/93, The Queen v. Secretary of State for Transport, *ex parte:* Factortame Ltd. and others (OJ No C 94, 3. 4. 1993, p. 13); Case C-46/93, Brasserie du Pêcheur SA v. Germany (OJ No C 92, 2. 4. 1993, p. 4); Case C-312/93, SCS Peterbroeck, Van Campenhout & Cie v. Belgian State (OJ No C 189, 13. 7. 1993, p. 9); Cases C-430 and C-431/93, J. Van Schindel and J. N. C. Van Veen v. Stichting Pensioenfonds voor Fysiotherapeuten (OJ No C 338, 15. 12. 1993, p. 10).

(12) Francovich, cited at footnote 11, paragraph 33 at p. 5414.

(13) Francovich, cited at footnote 11, paragraph 35 at p. 5414.

(14) The Queen v. Secretary of State for Transport, *ex parte:* Factortame Ltd. et al., cited at footnote 10.

requisite conditions are met. The only exception to the notification obligation is for aid classed as *de minimis* because it does not affect trade between Member States significantly and thus does not fall within Article 92 (1) ([15]).

15. The Commission receives notification of general schemes or programmes of aid, as well as of plans to grant aid to individual firms. Once a scheme has been authorized by the Commission, individual awards of aid under the scheme do not normally have to be notified. However, under some of the aid codes or frameworks for particular industries or particular types of aid, individual notification is required of all awards of aid or of awards exceeding a certain amount. Individual notification may also be required in some cases by the terms of the Commission's authorization of a given scheme. Member States must notify aid which they wish to grant outside the framework of an authorized scheme. Notification is required in respect of planned measures, including plans to make financial transfers from public funds to public or private sector enterprises, which may involve aid within the meaning of Article 92 (1).

16. The first question which national courts have to consider in an action under the last sentence of Article 93 (3) is whether the measure constitutes new or existing State aid within the meaning aid of Article 92 (1). The second question to be answered is whether the measure has been notified either individually or under a scheme and if so, whether the Commission has had sufficient time to come to a decision ([16]).

17. With respect to aid schemes, a period of two months is considered by the Court of Justice to be 'sufficient time', after which the Member State concerned may, after giving the Commission prior notice, implement the notified measure ([17]). This period is reduced by the Commission voluntarily to 30 working days for individual cases and 20 working days under the 'accelerated' procedure. The periods run from the time the Commission is satisfied that the information provided by the Member State is sufficient to enable it to reach a decision ([18]).

18. If the Commission has decided to initiate the procedure provided for in Article 93 (2), the period during which the implementation of an aid measure is prohibited runs until the Commission has reached a positive decision. For non-notified aid measures, no deadline exists for the Commission's decision-making process, although the Commission will act as speedily as possible. Aid may not be awarded before the Commission's final decision.

19. If the Commission has not ruled on an aid measure, national courts can always be guided, in interpreting Community law, by the case-law of the Court of First Instance and the Court of Justice, as well as by decisions issued by the Commission. The Commission has published a number of general notices which may be of assistance in this regard ([19]).

20. National courts should thus be able to decide whether or not the measure at issue is illegal under Article 93 (3). Where national courts have doubts, they may and in some cases must request a preliminary ruling from the Court of Justice in accordance with Article 77.

21. Where national courts give judgment finding that Article 93 (3) has not been complied with, they must rule that the measure at issue infringes Community law and take the appropriate measures to safeguard the rights enjoyed by individuals and undertakings.

V. EFFECTS OF COMMISSION DECISIONS

22. The Court of Justice has held ([20]) that a national court is bound by a Commission Decision addressed to a Member State under Article 93 (2) where the beneficiary of the aid in question seeks to question the validity of the decision of which it had been informed in writing by the Member State concerned and where it had failed to bring an action for annulment of the decision within the time limits prescribed by Article 173 of the EC Treaty.

VI. COOPERATION BETWEEN NATIONAL COURTS AND THE COMMISSION

23. The Commission realizes that the principles set out above for the application of Articles 92 and 93 by national courts are complex and may sometimes be insufficiently developed to enable them to carry out their judicial duties properly. National courts may therefore ask the Commission for assistance.

([15]) See point 3.2 of the Community guidelines on State aid for SMEs (OJ No C 213, 19. 8. 1992, p. 2) and the letter to the Member States ref. IV/D/06878 of 23 March 1993, Competition Law in the European Communities, Volume II.

([16]) Case 120/73, Lorenz v. Germany, (1973) ECR 1471.

([17]) Case 120/73, Lorenz v. Germany, cited at footnote 16, paragraph 4 at p. 1481; see also Case 84/42, Germany v. Commission, (1984) ECR 1451, paragraph 11 at p. 1488.

([18]) The Commission has issued a guide to its procedures in State aid cases: see Competition Law in the European Communities, Volume II.

([19]) The Commission publishes and updates from time to time a compendium of State aid rules (Competition Law in the European Communities, Volume II).

([20]) Case C-188/92, TWD Textilwerke Deggendorf GmbH v. Germany, (1994) ECR I-833; see also Case 77/72, Capolongo v. Maya, (1973) ECR 611.

24. Article 5 of the EC Treaty establishes the principle of loyal and constant cooperation between the Community institutions and the Member States with a view to attaining the objectives of the Treaty, including implementation of Article 3 (g), which provides for the establishment of a system ensuring that competition in the internal market is not distorted. This principle involves obligations and duties of mutual assistance, both for the Member States and for the Community institutions. Under Article 5, the Commission has a duty of cooperation with the judicial authorities of the Member States which are responsible for ensuring that Community law is applied and respected in the national legal order.

25. The Commission considers that such cooperation is essential in order to guarantee the strict, effective and consistent application of Community competition law. In addition, participation by the national courts in the application of competition law in the field of State aid is necessary to give effect to Article 93 (3). The Treaty obliges the Commission to follow the procedure laid down in Article 93 (2) before it can order reimbursement of aid which is incompatible with the common market ([21]). The Court has ruled that Article 93 (3) has direct effect and that the illegality of an aid measure, and the consequences that flow therefrom, can never be validated retroactively by a positive decision of the Commission on an aid measure. Application of the rules on notification in the field of State aid therefore constitutes an essential link in the chain of possible legal action by individuals and undertakings.

26. In the light of these considerations, the Commission intends to work towards closer cooperation with national courts in the following manner.

27. The Commission is committed to a policy of openness and transparency. The Commission conducts its policy so as to give the parties concerned useful information on the application of competition rules. To this end, it will continue to publish as much information as possible about State aid cases and policy. The case-law of the Court of Justice and Court of First Instance, general texts on State aid published by the Commission, decisions taken by the Commission, the Commission's annual reports on competition policy and the monthly Bulletin of the European Union may assist national courts in examining individual cases.

28. If these general pointers are insufficient, national courts may, within the limits of their national procedural law, ask the Commission for information of a procedural nature to enable them to discover whether a certain case is pending before the Commission, whether a case has been the subject of a notification or whether the Commission has officially initiated a procedure or taken any other decision.

29. National courts may also consult the Commission where the application of Article 92 (1) or Article 93 (3) causes particular difficulties. As far as Article 92 (1) is concerned, these difficulties may relate in particular to the characterization of the measure as State aid, the possible distortion of competition to which it may give rise and the effect on trade between Member States. Courts may therefore consult the Commission on its customary practice in relation to these issues. They may obtain information from the Commission regarding factual data, statistics, market studies and economic analyses. Where possible, the Commission will communicate these data or will indicate the source from which they can be obtained.

30. In its answer, the Commission will not go into the substance of the individual case or the compatibility of the measure with the common market. The answer given by the Commission will not be binding on the requesting court. The Commission will make it clear that its view is not definitive and that the court's right to request a preliminary ruling from the Court of Justice pursuant to Article 177 is unaffected.

31. It is in the interests of the proper administration of justice that the Commission should answer requests for legal and factual information in the shortest possible time. Nevertheless, the Commission cannot accede to such requests unless several conditions are met. The requisite data must actually be at its disposal and the Commission may communicate only non-confidential information.

([21]) The Commission has informed the Member States that '... in appropriate cases it may — after giving the Member State concerned the opportunity to comment and to consider alternatively the granting of rescue aid, as defined by the Community guidelines — adopt a provisional decision ordering the Member State to recover any monies which have been disbursed in infringement of the procedural requirements. The aid would have to be recovered in accordance with the requirements of domestic law; the sum repayable would carry interest running from the time the aid was paid out.' (Commission communication to the Member States supplementing the Commission's letter No SG(91) D/4577 of 4 March 1991 concerning the procedures for the notification of aid plans and procedures applicable when aid is provided in breach of the rules of Article 93 (3) of the EC Treaty), not yet published.

32. Article 214 of the EC Treaty requires the Commission not to disclose information of a confidential nature. In addition, the duty of loyal cooperation under Article 5 applies to the relationship between courts and the Commission, and does not concern the parties to the dispute pending before those courts. The Commission is obliged to respect legal neutrality and objectivity. Consequently, it will not accede to requests for information unless they come from a national court, either directly, or indirectly through parties which have been ordered by the court concerned to request certain information.

VII. FINAL REMARKS

33. This notice applies *mutatis mutandis* to relevant State aid rules, in so far as they have direct effect in the legal order of Member States, of:

— the Treaty establishing the European Coal and Steel Community and provisions adopted thereunder, and

— the Agreement on the European Economic Area.

34. This notice is issued for guidance and does not in any way limit the rights conferred on Member States, individuals or undertakings by Community law.

35. This notice is without prejudice to any interpretation of Community law which may be given by the Court of Justice and Court of First Instance of the European Communities.

36. A summary of the answers given by the Commission pursuant to this notice will be published annually in the Report on Competition Policy.

Notice pursuant to Article 19 (3) of Council Regulation No 17 concerning Case No IV/34.607 — Banque Nationale de Paris — Dresdner Bank

(95/C 312/08)

(Text with EEA relevance)

THE FACTS

1. The notified cooperation agreement

1. *The notification*

The cooperation agreement was formally notified to the Commission of the European Communities on 27 January 1993 in accordance with Articles 2 and 4 of Council Regulation No 17 [1]. It provides for full and, in principle, exclusive cooperation worldwide between Banque Nationale de Paris (BNP) and Dresdner Bank (DB) in the banking sector. It is of indefinite duration and was approved at the annual general meetings of the two banks.

2. *The aims of the cooperation*

— The two banks wish to meet the growing challenge in the banking sector that is posed by new competitors such as foreign banks, insurance companies, companies with their own in-house banks, and also the credit card companies that are offering an ever-expanding range of financial services. To that end, the two banks plan to achieve synergies in order to reduce costs, chiefly through very close cooperation in logistics and certain international activities.

— The two banks wish to meet the challenges of the single market and the globalization of markets where customers are increasingly requiring international financial services. They therefore plan to strengthen their presence in all countries other than France and Germany (third countries) in order both to compete more strongly with foreign banks and to offer their customers in France and Germany a

[1] OJ No 13, 21. 2. 1962, p. 204/62.

much wider range of international financial services.

3. *Concept underlying the cooperation*

BNP and DB both wish to remain:

— leading universal banks in their home markets,

— in the single European market, leading universal banks with branches or subsidiaries in at least the major European countries,

— present in all the major financial centres, offering appropriate services.

4. *The four areas of cooperation*

(a) Cooperation in organizational matters and through the exchange of information

In order to achieve synergies, reduce costs and risks and improve customer services, the cooperation agreement provides for some harmonization of the two banks' organization, in particular through the exchange of information and the joint development of data-processing instruments, office automation and economic data. Agreement was also reached on setting up the appropriate agreements and technical means for reducing transfer costs and times for cross-frontier payments. The partners will also exchange staff and consult each other before any public announcements, including advertising and publicity about their cooperation.

There will also be an exchange of information on economic and general subjects and on new business opportunities, new products or specialized financing techniques.

(b) Specific areas of cooperation

In the field of international financing, the partners, their structures in 'third countries' and the holding company in which they will place their 'third country' business at the appropriate time (see paragraph (c)) will be arranged so as to be perceived by the market as being a single entity. They will invite each other to participate in all types of financing (direct loans, leasing, financial instruments or other arrangements) in which banks other than domestic banks are involved. A partner requested to participate in this way may refuse to participate in the proposed financing only on reasonable grounds, which must be explained to the other party. If other financial institutions invite one of the partners to form a syndicate, that party must make every effort to ensure that the other is also invited.

As regards merchant banking, capital markets and the placing of securities in 'third countries', the partners will cooperate in the search for synergies and savings in the development of new products and in order to maximize investments.

As regards securities and their placing, derivatives, asset management and investment banking, the two banks will cooperate without geographical limits. The form of cooperation depends on the actual product: it may involve the development of new products or strategies, concerted marketing or the exchange of information.

(c) Cooperation in activities outside France and Germany (third countries)

This area of cooperation is aimed at expanding the two banks' scope for providing their customers with international financial services by improving and regrouping their structures in those countries.

To that end, they agree to identify synergies and, in time, to combine their existing banking activities in 'third countries', with the exception of the United States of America. This may in particular be achieved by merging operations within one or more joint subsidiaries, by acquiring a 50 % holding in a partner's subsidiary or eventually by establishing a joint holding company which would initially be a financial holding company and could eventually become a fully operational bank.

The partners will notify any new activities and discuss them with each other on the basis of a feasibility study, in order to reach harmonized conclusions. The other party will be invited to

participate in such activities. The offer may be rejected by the partner only for very substantial reasons.

If a partner wishes to dispose of its share of a joint activity, it requires the express agreement of the other party. A holding that is to be sold must first be offered to the partner. If a partner wishes to sell an entity which it wholly owns, it must inform the other partner and allow it to express an opinion.

As regards cooperation between the partners, the holding company and structures in 'third countries', the agreement provides that if a partner does not have the means of supplying a customer with the appropriate service for an international transaction, it must refer the customer to its partner. The partners are also required to grant credit to each other's customers in countries where one or the other does not engage in such activities, subject to terms and possibly guarantees to be agreed jointly by all the parties concerned. Interbanking activities (exchange transactions, securities, options, futures, swaps, etc.) by bodies involved in the cooperation must also be given priority by each partner, provided that the transaction are offered at competitive rates.

The offices representing the two partners in 'third countries' will be physically merged whilst retaining autonomy and their own identity, except in cases where it seems preferable to have a single joint office.

If one of the partners (the informing party) wishes to conclude a cooperation agreement with a third party, whether or not limited sectorally or geographically, it must inform the other partner (the informed party) of its intention. If the latter does not agree, it must give its reasons. If the informing party, after duly considering the reasons given by the informed party for its refusal, intends to pursue its plan and if the proposed agreement does not affect any vital interests of the informed party but could on the contrary be vital to the informing party, the latter is free to act as it wishes.

(d) Cooperation on the French and German markets

This area of cooperation is aimed at increasing the range of services available through the two networks and thus improving the competitiveness of the two banks.

To that end each partner undertakes to make available to the other all its services at the best price and in turn to offer its own customers the widest possible range of the services provided by its partner. As a result of their joint activities in 'third countries', the two banks will be able to offer their customers at home a range of new services from those countries.

As regards the activities of the two banks on their home markets, the agreement provides that the partners are free to act as they wish, unless one of them wishes to conclude a cooperation with a home country competitor: before concluding such an agreement, it must inform its partner.

If a partner is unable to provide its home customers with an international service, it must call on the other partner, or one of the structures in a 'third country', or the holding company, once the latter has become a fully operational bank.

With regard to the question of the partners' activities on each other's home markets, the cooperation agreement does not restrict access to such markets through existing subsidiaries or prohibit the creation of new subsidiaries or branches or the acquisition by one partner of a competitor on the other's domestic market. On the other hand, it does limit the extent to which one partner may operate on the other's domestic market by cooperating with a competitor of the latter: agreements with a partner's domestic competitor may only be concluded with the latter's express consent. More specifically, if one partner is considering concluding a cooperation agreement, even one that is limited geographically or sectorally, with a third party, it must inform the other partner of its intention. If the latter fails to agree it must state its reasons to the former.

Whereas the agreement initially notified to the Commission gave the informed party the absolute right to withhold approval (Annex A.1, paragraphe 3, last sentence), the two banks agreed, in

response to a request by the Commission, to limit this right of absolute and irreversible refusal to cases where a cooperation agreement with a third party involves the utilization of know-how or business secrets which the informant has received from the informed party or which results from the cooperation. 'Know-how' in this context is the know-how as defined in Article 1 of Commission Regulation (EEC) No 556/89 of 30 November 1988 on the application of Article 85 (3) of the Treaty to certain categories of know-how licensing agreements (1). This limit on the right to refuse approval to cooperation between one of the banks with a domestic competitor of the other bank will be clarified in an annex to the cooperation agreement.

The consent of the partner is not required in the day-to-day trading activities, although each must give the other preferential treatment in this area. Nor is a partner's consent required where it has not taken part in such an agreement, having exercised its right of refusal.

5. *The structures set up by the agreement*

The BNP and DB Management Boards will meet twice a year to decide on joint strategy and to take unanimous decisions on any proposals relating to the notified cooperation agreement submitted to them by a committee.

That committee, which will meet three times a year and be chaired alternately by the two banks, will define priorities and the measures to be taken by the two partners. It must, in particular, examine the recommendations of a secretariat and submit proposed amendments to the agreement at bi-annual meetings of the BNP and DB Boards.

That cooperation secretariat will be composed of representatives of the two banks. It must assist the partners in the practical implementation of the cooperation, but must also make recommendations relating to necessary improvements to the agreement, which it must submit to the Committee.

(1) OJ No L 61, 4. 3. 1989, p. 1.

6. *Cross-holdings*

The partners plan to strengthen their cooperation at the appropriate time by establishing cross-shareholdings of 10 % of the issued shares.

2. Current relations between BNP and DB

7. BNP and DB agreed in the past to appoint a Director of BNP to DB's Supervisory Board and a Director of DB to BNP's Board of Directors.

They also created a joint venture to gain access to the market of former Czechoslovakia. BNP and DB each hold 37 % of BNP-KH-Dresdner Bank RT in Hungary, 26 % of which is held by Országos Kereskedelmi és Hitelbank Rt.

The two transactions were authorized by the Commission (Cases (IV/MTF/021 and IV/MTF/124).

BNP and DB also have joint holdings in the following:

— United Overseas Bank, Geneva, Lugano, Luxembourg, Monaco, Bahamas, Montevideo: BNP and DB each hold 50 %,

— BNP-AK-Dresdner Bank AS Istanbul, Iszmir: BNP 30 %, DB 30 % and AK-Bank Group 40 %,

— Société Financiére pour les Pays d'Outre-mer, with activities in Africa: BNP 48,4 %; DB 25,8 % and BBL 25,8 %,

— BNP-Dresdner Bank (Polska) SA, Warsaw: BNP 50 % and DB 50 %,

— BNP-Dresdner Bank (Russia), St Petersburg (together with a branch in Moscow): BNP 33 %, Dresdner Bank 33 %, Europabank (wholly owned by DB) 17 % and SFA (Société Financière Auxilière, Paris, wholly owned by BNP) 17 %,

— BNP-Dresdner Bank (Bulgaria) AD, Sofia: BNP and DB each hold 40 % and EBR 20 %.

3. **The enterprises parties to the notified agreement and their position on the financial markets**

8. *Banque Nationale de Paris*

BNP SA is a full-service bank operating directly or indirectly through subsidiaries, chiefly in France, Europe, French-speaking countries and worldwide. In Germany, it owns a branch in Frankfurt with two agencies attached. It also has a subsidiary there, specializing in mergers and acquisitions.

Its total consolidated balance sheet in 1994 (1993) was ECU 222 (224) billion. Of its 54 469 (56 141) employees, 13 169 (13 851) work abroad. BNP has a total of 2 511 (2 575) offices worldwide, of which 497 (567) are outside France.

The BNP group wholly owns Natio-Vie, a life insurance company. Together with UAP it created a joint venture, Natio-Assurance, to market UAP's non-life insurance.

The capital is held as follows:

14,32 %	UAP
15,48 %	core capital shareholders
2,31 %	French State
67,89 %	public.

On the basis of its total consolidated balance sheet for 1993, BNP ranks fourth in France, seventh in Europe and 19th worldwide.

9. *Dresdner Bank*

Dresdner Bank AG is a full-service bank which operates directly or indirectly through subsidiaries, chiefly in Germany but also in other European and non-European countries. Two of its subsidiaries are in France, one being the Banque Veuve Morin-Pons SA with branches in Paris, Lyon and Strasbourg. The other is the Banque Internationale de Placement, Paris.

Its total consolidated balance sheet in 1994 (1993) was ECU 210 (197) billion. Of its 44 884 employees (1994), some 3 000 work abroad. Of a total of 1 583 branches, 58 are outside Germany.

Dresdner Bank operates in some *Länder* in Germany as a distributor of insurance contracts for Allianz and, in others, for Hamburg-Mannheimer.

The capital is held as follows:

21,97 %	Allianz AG Holding
10,60 %	FGF Frankfurter Gesellschaft für Finanzwerte mbH
10,58 %	Vermo Vermögensverwaltungsgesellschaft mbH
1,90 %	employees and pensioners
54,95 %	general public and institutional investors.

On the basis of the 1993 balance sheet, DB ranks second in Germany, 12th in Europe and 26th worldwide.

4. **The position of both banks in the countries making up the EEA in 1994**

10. The notified cooperation has an impact on all the activities of both banks. It will, in practice, affect virtually all the financial services markets on which the two banks operate, with the exception of the insurance services market.

As a general rule, each type of banking service is offered both to commercial customers (including banks) and to individuals and small firms. Customers in the first category are able, because of their experience of financial markets and the staff and resources they can use, to gain access to the financial markets at European, or even world level, but private customers do not on the whole have access to banking networks outside their country of residence.

The following table shows the position of both banks in various countries of the EEA, all activities being aggregated. The percentages show the position of BNP and Dresdner Bank in these countries if we make a country-by-country comparison of the market share held by each of the two banks with the total market share held by all banks:

Country	BNP	Dresdner Bank (1)
France	approximately 7 %	under 1 %
Germany	under 1 %	approximately 5 %
Luxembourg	under 3 %	approximately 5 %

In other EEA countries, the position of each bank, apart from BNP in Ireland, is negligible, being under 1,4 % in two cases (DB in Ireland and BNP in Greece), and not above 1 % in the other cases.

In the five principal areas of banking (loans to banks, loans to customers, securities, bank deposits and customer deposits), the respective positions of BNP and DB do not vary by more than two percentage points from the figures indicated above.

The market shares for 1994 are as follows:

German market

According to the details provided for 46 different banking services, DB's shares of the markets for services to individuals and small firms in a few cases exceed the figure stated above by some two percentage points and, in just one case, by some five percentage points, whilst in most cases the figure is below the percentage indicated above. On the other hand, its share of the commercial customer's markets in most cases considerably exceeds the above figure of some 5 %. In the case of two banking services offered to commercial customers, DB's share even reaches some 20 %.

The position of BNP with regard to the various services it offers on the German market is negligible.

French market

The details supplied for 26 markets indicate that BNP's share of the markets for services supplied to individuals and small firms differs only sligthly from the figure given above. In only one market does it achieve about 10 %. Its shares of the market for the services offered to commercial customers are slightly higher than those stated above, except in one case where its market share amounts to some 20 %.

The share of all the markets held by DB in France is negligible.

Luxembourg market

According to the figures provided for five types of services, in one case DB holds some 11 % of the relevant market, in two cases below 5 % and in two cases a very light share.

The figures provided for BNP for the same five services are in one case under 3 %, in three cases under 1,5 % and in one case under 8 %, whereas the position of DB in this area is roughly 11 %.

5. Conclusion

In view of the foregoing and in particular the undertaking of the two banks to limit the scope of the clause allowing one partner to prevent the other from concluding any cooperation agreement with a domestic competitor of the former, the Commission intends to adopt a favourable position with regard to the nofified agreement.

Before doing so, it invites interested parties to send their comments within one month of the date of publication of this notice in the *Official Journal of the European Communities*, quoting reference 'IV/34.607', to the following address:

Commission of the European Communities,
Directorate-General for Competition (DG IV),
Directorate IV/D — Services,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels.

(1) The excact figures are business secrets.

STATE AID

C 41/95 (ex NN 83/95)

Germany

(95/C 312/09)

(Text with EEA relevance)

(Article 6 (4) of Decision No 3855/91/ECSC of 27 November 1991)

Commission notice pursuant to Article 6 (4) of Commission Decision No 3855/91/ECSC of 27 November 1991 to other Member States and interested parties with respect to loans totalling DM 24,1125 million Bavaria granted to Neue Maxhütte Stahlwerke GmbH between July 1994 and March 1995

By means of the letter reproduced below, the Commission informed the German Government of its decision to initiate the Article 6 (4) procedure.

'On 16 April 1987, formal bankruptcy proceedings concerning Eisenwerk-Gesellschaft Maximilianshütte mbH (Maxhütte) were initiated. The administrator in bankruptcy decided to continue operations in order to prepare a restructuring plan. Mid-1990, two newly created companies, Neue Maxhütte Stahlwerke GmbH (NMH), covering the ECSC products range of Maxhütte, and Rohrwerke Neue Maxhütte GmbH (RNM), covering the tube production, took over the activities of Maxhütte i. K. NMH is 85 % shareholder of RNM, the remainder of 15 % is being held by Kühnlein, Nürnberg, the main sales agency for the tubes produced.

The initial shareholders of NMH were the Federal State of Bavaria (45 %), Thyssen Edelstahlwerke AG (5,5 %), Thyssen Stahl AG (5,5 %), Lech Stahlwerke GmbH (11 %), Krupp Stahl AG (11 %), Klöckner Stahl GmbH (11 %) and Mannesmann Röhrenwerke AG (11 %). In order to enable LSW to participate in NMH, the Bavarian State took over a 19,734 % share in LSW in 1988. By Decision dated 26 July 1988, the Commission concluded that the participation of the State in both companies did not contain State aid elements.

By agreement dated 7 December 1992 and 3 March 1993, Klöckner Stahl GmbH transferred its shares in NMH to Annahütte Max Aicher GmbH & Co. KG, Hammerau, for a purchase price of DM 1,—. On 14 June 1993, Krupp Stahl AG, Thyssen Stahl AG and Thyssen Edelstahlwerke AG transferred their shares in NMH to LSW for a purchase price totalling DM 200 000. Your Government informed the Commission in its letter dated 9 December 1994 that the transfer of the shares became effective notwithstanding the question whether the creditors agreed or not.

The present shareholding situation therefore appears as follows:

— Bavaria	45 %
— LSW	33 %
— Annahütte Max Aicher GmbH & Co. KG	11 %
— Mannesmann Röhrenwerke AG	11 %

LSW and Annahütte are controlled by the entrepreneur Mr Aicher.

NMH is producing approximately 299 kt/y crude steel (MPP: 444 kt/y) 81 kt/y semi-finished products and approximately 85 kt/y light and heavy sections (MPP: 258 kt/y). Its subsidiary RNM produces approximately 70 kt/y tubes (MPP: 136 kt/y). NMH currently employs 1 040 persons, RNM employs 560 persons. NMH never made profits since its outset in mid-1990. The total losses until the end of 1994 were established at DM 156,4 million (ECU 82,31 million). LSW is producing approximately 600 kt/y steel in an electric arc furnace and approximately 450 kt/y hot-rolled long products (light profiles and rebars).

In August 1992, the German authorities notified the Commission of the intention of the Bavarian Government to grant a loan to NMH. The Commission decided that the loan would not constitute State aid because all private shareholders were prepared to grant similar loans under the same conditions in line with their participation. The State acted in so far similarily to the private shareholders of the company (State aid N 671/92). The German authorities were informed about this decision and its motivation by letter dated 2 February 1993.

In May 1994, your Government informed the Commission about the plan of the Federal State of Bavaria to transfer its shares in NMH and LSW to Max

Aicher GmbH & Co. (hereinafter referred to as MA) for a nominal purchase price. As a precondition for the takeover by MA it was intended to grant an amount equivalent to approximately 80 % of the losses accumulated by NMH (finally fixed at DM 125,7 million, i.e. ECU 66,15 million) and to grant a "countervailing payment" of DM 20 million (ECU 10,52 million) to cover parts of the losses suffered by LSW.

In September 1994, the Commission initated a procedure under Article 6 (4) of the Steel Aids Code with respect to these intended financial measures and adopted a final negative decision on 4 April 1995. It held that the intended financial contributions in favour of the two ECSC undertakings would represent State aid incompatible with the Steel Aids Code and shall therefore not be granted. The Commission informed your Government about this decision by letter dated 19 April 1995 (SG(95) D/4925).

In November 1994, the Commission initiated another procedure under Article 6 (4) of the Steel Aids Code in respect to different loans of Bavaria granted to NMH in 10 tranches between March 1993 and August 1994, totalling DM 49,895 million (ECU 26,26 million). The Commission was of the opinion that these loans may represent State aid incompatible with the Steel Aids Code because the behaviour of the State may not represent a genuine provision of risk capital according to usual investment practice in a market economy. No or not all other shareholders of NMH were prepared to grant loans under equivalent conditions.

By letters dated 13 January 1995 and 15 May 1995 your Government informed the Commission that the Bavarian Government has granted the following additional loans to NMH to allow the company continuing its operations:

— July 1994:	DM 4,7 million	(ECU 2,47 million)
— September 1994:	DM 10,0 million	(ECU 5,26 million)
— October 1994:	DM 4,3125 million	(ECU 2,27 million)
— March 1995:	DM 5,1 million	(ECU 2,68 million)
	DM 24,1125 million	(ECU 12,68 million)

The conditions of these loans were the same as those being subject of the procedure initiated on 30 November 1994, i.e.:

— Interest rate: 7,5 % p.a.,

— Duration: 10 years,

— Redemption: annual, if NMH would have achieved profits during the preceding year.

The other shareholder of NMH did not participate in this financing of the company.

Your Government pointed out that the loans were granted to retain NMH in operation in order not to endanger prospects for the privatization of the shares of Bavaria to a private entrepreneur.

The Commission has explained on several occasions that any transfer of State resources to public or private steel firms in any form whatsoever would have to be considered as aid, if the financial transfer is not a genuine provision of risk capital according to usual investment practice in a market economy.

It is to be doubted whether the granting of the loans totalling DM 24,1125 million is in line with the normal behaviour of a market investor. The company in question never made profits and was not expected to become viable without further important financial assistance of the State. The final negative decision of the Commission, which was, on the basis of the reasons given to initiate the procedure and subsequent discussions between the representatives of Germany and the Commission, to be expected already at the time when the loans were granted, prohibited the aid intended to restore the company to viability. In view of all that, the State may not expect to receive any redemption on these loans. Furthermore, a private shareholder would not be prepared to provide financial liquidity to a company in difficulties if its fellow shareholders would not be prepared to contribute in line with their participation in the equity.

Consequently, the Commission concluded that the loans totalling DM 24,1125 million granted by Bavaria to NMH between July 1994 and March 1995 may represent State aid that would be prohibited under the provisions of Article 4 (c) of the ECSC Treaty, the Decision No 3855/91/ECSC of 27 November 1991 (Steel Aids Code) and Article 61 of the EEA Agreement.

The Commission decided to initiate the procedure pursuant to Article 6 (4) of its Decision No 3855/91/ECSC of 27 November 1991 with respect to

the abovementioned loans totalling DM 24,1125 million Bavaria granted to Neue Maxhütte Stahlwerke GmbH between July 1994 and March 1995.

As part of the procedure, the Commission requests your Government to provide detailed information with regard to any financial transfer of Bavaria to Neue Maxhütte Stahlwerke GmbH which might have been carried out after March 1995 or in addition to the loans subject to this communication and the procedure initiated in November 1994 and any additional information or comment it might consider to be relevant in this case within one month of being notified of this letter.

The Commission reminds you that any aid granted without prior notification or without awaiting the Commission's final decision is unlawful and, in principle, will have to be recovered from the recipient firm. Repayment should be made in accordance with the procedures and provisions of German law with interest, based on the interest rate used as reference rate in the assessment of regional aid schemes, starting to run on the date of which the aid was granted.

The Commission requests your Government to inform the recipient firm and the Government of Bavaria of the initiation of the procedure and the fact that the company in question might have to repay the financial means received.

The Commission further informs your Government that it will publish a notice in the *Official Journal of the European Communities* giving the other Member States and other parties concerned notice to submit their comments. The ESA will be informed in accordance with Protocol No 27 of the EEA Agreement.'

The Commission hereby gives the other Member States and interested parties notice to submit their comments on the measures in question within one month of the date of the publication of this notice to:

European Commission,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels.

The comments will be communicated to the German Government.

Authorization for State aid pursuant to Articles 92 and 93 of the EC Treaty

Cases where the Commission raises no objections

(95/C 312/10)

(Text with EEA relevance)

Date of adoption: 12. 7. 1995

Member State: France

Aid No: N 773/B/94

Title: Aid for voluntary cessation of activities

Road transport modernization plan

Objective: To enable old family businesses with insufficient funds or technical expertisse to restructure or diversify their business to leave the market

Measures: Premium paid to carriers who discontinue their activities

Legal basis: Projet de circulaire adressée aux préfets des régions et aux directions régionales de l'équipement

Budget: Approximately FF 60 million (ECU 9 million)

(Rate of exchange on 1. 5. 1995: ECU 1 = FF 6,53)

Intensity: Maximum premium of FF 200 000 (ECU 30 000)

Duration: Two years

Conditions: The aid entails the deletion of businesses from the registers and hence withdrawal of their declarations of qualification. The names of the recipients will appear on the central register, to prevent them from re-registering as carriers in another prefecture

Their vehicles will be sold or destroyed. In the case of vehicles more than seven years old, sale will be subject to a favourable inspection by the Mines Department

---

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

Authorization for State aid pursuant to Article 61 of the EEA Agreement and Article 11 of the Act referred to in point 1b of Annex XV to the EEA Agreement

EFTA Surveillance Authority decision not to raise objections

(95/C 312/11)

Date of adoption: 27. 9. 1995

EFTA State: Norway

Aid No: 95-004

Title: Existing State aid to the shipbuilding industry:

— Grants for shipbuilding, newbuildings and conversions,

— Export credit guarantees for ships (by the GIEK),

— The guarantee scheme for ship construction

Objective: Contract-related producion aid to shipbuilding

Legal basis:

— Directions by the Royal Ministry of Industry and Energy of 28. 12. 1994 ('Føresegner for statleg støtte ved kontrahering av skip'), as amended by the Ministry's directions of 18. 1. 1995

— For guarantees by the Guarantee Institute for Export Credits (GIEK) and the guarantee scheme for ship construction: the annual State budget

Budget: For the grant scheme for shipbuilding and conversion: Nkr 1 064 million for 1995

Aid intensity: For the construction of vessels of not less than 100 GT:

— 9 % for vessels whose contract value is ECU 10 million or more,

— 4,5 % for vessels of a contract value less than ECU 10 million,

— 4,5 % for major conversions of vessels of at least 1 000 GT

Credit guarantees within the limits of the OECD Understanding on Export Credits for Ships

Duration: Until 31 December 1995

Conditions: Reports pursuant to Article 12 of the Act referred to in point 1b of Annex XV to the EEA Agreement

EFTA-COURT

COMPOSITION OF THE EFTA COURT

(95/C 312/12)

1. Composition of the Court

Following the accession of Austria, Finland and Sweden to the European Union, and according to the Agreement on Transitional Arrangement for a period after the accession of certain EFTA States to the European Union, the appointment of the judges nominated by these States terminated on 30 June 1995.

The EEA Agreement entered into force with regard to the Principality of Liechtenstein on 1 May 1995. Upon nomination by the Government of Liechtenstein Mr Carl Baudenbacher was appointed Judge of the EFTA Court by common accord of the three Contracting Parties to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (the ESA/Court Agreement) for the period from 6 September 1995 to 5 September 2001. At a public sitting of the EFTA Court on 6 September 1995 Mr Carl Baudenbacher took the oath prescribed in Protocol 5, Article 2 of the ESA/Court Agreement.

2. Election of the President of the Court

After the appointment of the new judge to the EFTA Court Mr Bjørn Haug resigned from his position as President in order to make it possible for all three judges to participate in the election. Thereafter, on 6 September 1995, Mr Bjørn Haug was elected as President for the EFTA Court pursuant to Article 30 of the ESA/Court Agreement for the period from 6 September 1995 to 31 December 1996.

3. Appointment of the Registrar of the EFTA Court

Mr Per Christiansen was appointed as Registrar of the EFTA Court pursuant to Protocol 5, Article 9 of the ESA/Court Agreement for the period from 1 September 1995 to 31 August 1998, to succeed Ms Karin Hökborg. At a public sitting of the EFTA Court on 6 September 1995 Mr Per Christiansen took the oath prescribed in Protocol 5, Article 10 of the ESA/Court Agreement.

III

(Notices)

COMMISSION

EUROPEAN ECONOMIC INTEREST GROUPING

Notices published pursuant to Council Regulation (EEC) No 2137/85 of 25 July 1985 (1) — Formation

(95/C 312/13)

1. ***Name of grouping:*** Büro der GEMA, MCPS und SDRM zur Europäischen Lizenzierung, EWIV, genannt 'BEL'

2. ***Date of registration of grouping:*** 28. 9. 1995

3. ***Place of registration of grouping:***

   (a) ***Member State:*** D

   (b) ***Place:*** D-80097 München

4. ***Registration number of grouping:*** HRA 70482

5. ***Publication(s):***

   (a) ***Full title of publication:*** 1) Bundesanzeiger

   2) Süddeutsche Zeitung

   (b) ***Name and address of publisher:*** 1) Bundesanzeiger Verlagsges. mbH., Postfach 10 80 06, D-5000 Köln 1

   2) Süddeutsche Zeitung, D-80289 München

   (c) ***Date of publication:*** 1) 31. 10. 1995

   2) 9. 10. 1995

(1) OJ No L 199, 31. 7. 1985, p. 1.

Computer resources, software and technical assistance

Contract award notice

(95/C 312/14)

1. ***Name and address of the contracting authority:*** Commission of the European Communities, Directorate-General for Telecommunications, Information Market and Exploitation of Research, Unit XIII.E.3, Pilot and Demonstration Projects, Jean Monnet Building, L-2920 Luxembourg.

2. ***Award procedure chosen:*** In the case of the negotiated procedure without prior publication of a tender notice, justification.

   Open procedure.

3. ***Category of service and description. CPC reference No:*** Supply of an infrastructure (computer resources, software and technical assistance) for the demonstration of European content and multimedia information (DEMOCON).

   CPC reference 84 and 85.

4. ***Date of award of the contract:*** 28. 9. 1995.

5. ***Criteria for award of the contract:*** Economically most advantageous tender pursuant to article 36 (1) of Directive 92/50/EEC of 18. 6. 1992.

6. ***Number of tenders received:*** 1.

7. ***Name and address of service providers:*** Siemens Nixdorf S.A. 110-116, Chaussée de Charleroi, B-1060 Bruxelles.

8. ***Price:*** 8 548 542 ECU for 4 years.

9. ***Value and proportion of the contract which may be subcontracted to third parties:***

10. ***Other information:***

11. ***Date of publication of the contract notice in the Official Journal of the European Communities:*** OJ 95/S 63 and 95/C 79 of 31. 3. 1995.

12. ***Date of dispatch of the notice:*** 14. 11. 1995.

13. ***Date of receipt by the Office for Official Publications of the European Communities:*** 14. 11. 1995.

14.