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## Information and Notices

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<sup>(1)</sup> Text with EEA relevance

## I

(Information)

## COMMISSION

Ecu <sup>(1)</sup>

8 August 1997

(97/C 243/01)

Currency amount for one unit:

Belgian and Luxembourg franc	40,7388	Finnish markka	5,90435
Danish krone	7,51588	Swedish krona	8,46604
German mark	1,97275	Pound sterling	0,672855
Greek drachma	308,831	United States dollar	1,06022
Spanish peseta	166,433	Canadian dollar	1,47391
French franc	6,65180	Japanese yen	124,597
Irish pound	0,739962	Swiss franc	1,61365
Italian lira	1925,58	Norwegian krone	8,10483
Dutch guilder	2,22274	Icelandic krona	77,5019
Austrian schilling	13,8814	Australian dollar	1,45235
Portuguese escudo	199,724	New Zealand dollar	1,66675
		South African rand	4,96129

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 fax answering service (No 296 10 97/296 60 11) providing daily data concerning calculation of the conversion rates applicable for the purposes of the common agricultural policy.

<sup>(1)</sup> 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).

COMMISSION NOTICE PURSUANT TO ARTICLE 4 (1) (a) OF COUNCIL REGULATION (EEC)  
No 2408/92

**Imposition of public service obligations in respect of scheduled air services between metropolitan  
France and Guadeloupe, French Guiana, Martinique and Réunion**

(97/C 243/02)

(Text with EEA relevance)

1. Under the provisions of Article 4 (1) (a) of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes, France has decided to impose public service obligations in respect of the scheduled air services operated as from 1 April 1997 between all airports in metropolitan France and Guadeloupe, French Guiana, Martinique and Réunion.

2. The public service obligations to be complied with by all air carriers operating scheduled air services on the routes concerned are, given in particular the insularity and/or remoteness of the regions concerned, as follows:

**2.1. Operating programme:**

(a) *between all airports in metropolitan France and Guadeloupe*

The services must be operated throughout the year.

There must be at least one flight a week from at least one airport in metropolitan France. In addition, the average weekly capacity in any one scheduling season during the four weeks when this capacity is lowest may not be less than one quarter of the average weekly capacity during the four weeks when it is highest.

The capacity provided must be commensurate with demand, taking account in particular of school and public holidays.

Should it appear that the combined capacity provided by all the carriers present on the routes is no longer in line with demand, during peak periods in particular, the French authorities reserve the right to amend these public service obligations or to specify further details after giving three months' notice and consulting the carriers concerned, in accordance with the provisions of Article 4 of Regulation (EEC) No 2408/92.

The detailed operating programme (including timetables, aircraft type and capacity and the number of seats available each week) for each scheduling season must be submitted for approval to the Minister responsible for civil aviation at least one month before the commencement of the service and/or the beginning of each scheduling season to the following address:

Direction générale de l'aviation civile,  
Direction des transports aériens,  
48, rue Camille Desmoulins  
F-92452 Issy-les-Moulineaux Cedex.

(b) *between all airports in metropolitan France and French Guiana*

The public service obligations are the same as in (a) above.

(c) *between all airports in metropolitan France and Martinique*

The public service obligations are the same as in (a) above.

(d) *between all airports in metropolitan France and Réunion*

The public service obligations are the same as in (a) above.

**2.2. Fares:**

Passenger fares must be published.

Children between 2 and under 12 years old, including those aged 4 and above travelling alone, must be granted a reduction, not subject to any restrictions, of at least 33 % on the equivalent adult fares for the flight concerned.

**2.3. Aeromedical evacuation and natural disasters:**

Passengers requiring aeromedical evacuation must always be given priority boarding over other passengers on the first flight leaving. The general terms applicable to such carriage are described in the Annex.

Furthermore, in the event of a natural disaster carriers must make every effort to resume services as soon as possible and adapt them to transport requirements.

**2.4. Cancellation of flights:**

Any flight cancellations must be notified in advance to the direction générale de l'aviation civile. In addition, if the flight concerned is the only service scheduled for that week, it may not be cancelled without prior authorization of the direction générale de l'aviation civile.

Except in cases of *force majeure*, the number of flights cancelled for reasons directly attributable to the carrier must not exceed 10 % of the number of flights scheduled in the approved operating programme in any IATA scheduling season.

In addition, the carrier must give at least six months' notice before discontinuing these services.

**2.5. Monitoring:**

Within three months of the end of each scheduling season, the air carrier must forward to the direction générale de l'aviation civile the operating programme actually carried out on each of the routes serviced together with detailed weekly figures, including the flights operated, the number of passengers carried and the number of children and children travelling alone.

In accordance with Article 4 (1) (j) of Regulation (EEC) No 2408/92, an air carrier may not make 'seat-only sales' (i.e. the sale of seats, without any other bundled service, such as accommodation, directly to the public by the air carrier or its authorized agent or a charterer)

unless the air carrier concerned meets all the criteria laid down in the public service obligations.

The following are not subject to these public service obligations:

- charter flights where all of the seats are sold on a flat-rate basis;
- flights exclusively for the carriage of freight;
- flights using aircraft with less than 20 seats.

Community carriers are hereby informed that failure to comply with the abovementioned public service obligations during the operation of services may lead to imposition of the penalties provided for in the current regulations.

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*ANNEX*

**Annex concerning the carriage of sick or injured passengers**

Under the public service obligations described above, the air carrier must play a part in transporting sick or injured passengers, in accordance with the following rules and conditions:

**A. Production of a medical agreement**

The agreement of a doctor appointed or recognized by the carrier must be obtained before the carrier transports any passenger:

1. who is suffering from a disease recognized by the carrier as contagious; or
2. who may, on account of certain illnesses or a handicap, exhibit or be prone to abnormal behaviour or be in a physical condition which other passengers and/or the crew members may find disturbing or unpleasant; or
3. who may present a risk in terms of the safety or punctuality of the flight (including the possibility of its diversion and of an unscheduled landing); or
4. who cannot undertake the flight without medical assistance and/or special equipment; or
5. whose physical condition may deteriorate during or because of the flight.

The carrier must use rapid means of communication — such as telex, fax or telephone — to ensure that the medical agreement reaches the carrier's reservations department as quickly as possible.

**B. Special fares**

1. All passengers, other than those referred to in points 2 and 3 below, must pay the fare applicable on the actual day of carriage.
  2. The fare for a sick or injured passenger being transported on a stretcher shall be three times the fare applicable on the actual day of carriage, plus a 50 % surcharge. The fare for the person accompanying the sick or injured passenger shall be the fare applicable on the actual day of carriage, plus a 50 % surcharge.
  3. The fare for a passenger with a leg in plaster and occupying two seats shall be twice the fare applicable on the actual day of carriage.
  4. Wheel chairs are carried free of charge.
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## STATE AID

C 32/97 (ex NN 188/95)

Spain

(97/C 243/03)

(Text with EEA relevance)

*(Articles 92 to 94 of the Treaty establishing the European Community)***Commission notice pursuant to Article 93 (2) of the EC Treaty to other Member States and interested parties concerning aid in favour of 'Porcelanas del Norte SAL' (Ponsal)**

By the letter reprinted below, the Commission informed the Spanish Government of its decision to initiate the Article 93 (2) procedure.

'By letters dated 16 December 1994 and 23 March 1995, the Commission received a complaint concerning Ponsal.

Ponsal was set up in Pamplona (Navarra) in 1957. Since 26 September 1995, Pamplona is not longer eligible for regional aid since, on that day, your authorities agreed by letter with the new regional map for Spain according to which Pamplona is no longer eligible for regional investment aid.

In 1978, Ponsal became a worker-owned limited company. It is involved in manufacturing, marketing and selling porcelain, tableware and ornamental ceramics.

Ponsal has 265 employees. Its annual turnover increased from approximately Ptas 1 100 million (approximately ECU 9 million at that time) in 1991 to Ptas 1 400 million (roughly ECU 8,5 million) in 1995. Its market is both national and international. In 1994, 25 % of the company's activities corresponded to exports within the EU market (in particular Italy, Germany, Belgium, France and the Netherland).

Ponsal has been suffering financial problems for many years although its turnover, at least in pesetas, has increased during this period. Thus, in 1993, its losses amounted to Ptas 475 million whereas its public debt reached a total of Ptas 3 100 million. In order to overcome that situation, in 1994 Ponsal drafted a reorganization plan consisting, on the one hand, of the movement of the undertaking from the centre to the outskirts of Pamplona and, on the other, of the sale of its premises inside Pamplona and the modernisation of its plant by investing in new machines. The overall amount of the investment is, according to the complainant, roughly Ptas 3 000 million.

The complainant, a lawyer acting on behalf of a Spanish competitor of Ponsal, who is being supported by the Liaison Office of the European Ceramic Industry, alleged that Ponsal had received significant amounts of aid for the Government of Navarra in 1994, in order to support the reorganization plan. That aid had not been notified to the Commission and distorted competition and affected trade between Member States since it enabled Ponsal to sell its products at an artificially low price. He also transmitted press reports. According to those reports, that aid consisted of:

- a bank guarantee (Ptas 1 200 million),
- a subsidy of Ptas 100 million for creating employment,
- a subsidy of 20 % for investing in fixed assets,
- a partial waiver on taxes and social security duties amounting to Ptas 3 100 million (out of a current total of Ptas 4 300 million) due to the Spanish authorities.

By letter dated 4 January 1995, the complainant enclosed a copy of a legal act (Law 11/1994, 4 July) by which the Parliament of Navarra had approved aid in favour of Ponsal.

By letter dated 23 January 1995, the Commission requested information from your authorities concerning this aid.

By letter dated 17 March 1995, your authorities replied that, after the reorganization plan had been approved by Ponsal in June 1994, the Government of Navarra indeed had awarded aid in order to support the restructuring of the company. This aid, however, had been awarded under an existing aid scheme (Foral Law 1/1985,

4 March) in the meaning of Article 93 (1) of the EC Treaty, which concerned aid for reorganizing and reviving undertakings in crisis and which preceded Spain's accession to the European Community. This legal act had been communicated to the Commission as existing aid on 15 March and 14 May 1986. The Commission had not objected to that aid scheme.

In order to confirm their view, your authorities enclosed the aid scheme (Foral Law 1/1985, 4 March) under which the aid had been awarded.

This law indeed foresees that aid for reorganizing and reviving companies in crisis may be granted in that form as was the case with Ponsal. It comprises, in particular, the following aid measures which were, according to your authorities, taken in favour of Ponsal and which, besides the guarantee, went beyond the aid alleged by the complainants:

- a guarantee amounting to Ptas 1 200 million covering credits,
- a credit without interest amounting to Ptas 200 million,
- subsidy grants for interests exceeding 5 % of the new enterprise's loans,
- a 99 % tax bonification on taxes which are due to the equity increase of the enterprise.

According to your authorities, the law of 1994, which had been submitted by the complainant and by which the aid to Ponsal had been approved, was just a formal consequence of two additional laws which were approved by the Parliament of Navarra in September 1985 and in December 1988 in order to limit the Government's freedom to award aid under the law of March 1985. That latter law was still the substantial basis to award the aid in question. The additional laws only required additional approval by the Parliament if the amount of aid was to exceed Ptas 200 million for the sale of industrial estate belonging to the Government of Navarra (law of 1985) and if the guarantee was to exceed 5 % of the limit decided in the Budget Law for each year which meant in 1994 up to Ptas 100 million (law of 1988). Therefore, the law of 1994 was necessary only for formal reasons.

By letter dated 31 July 1995, your authorities were requested to comment on the inconsistency of not

mentioning the basic law of 1985 within the law of 1994. In their reply, dated 20 September 1995, they failed to provide sufficient explanation for this.

Since your authorities, in spite of a specific request, did not comment on the essential questions of that case the Commission decided on 30 April 1996 to enjoin the Kingdom of Spain to demonstrate that the aid to Ponsal was awarded under an existing aid scheme.

By letter, dated 12 July 1996, your authorities sent their reply. They emphasised again that the additional laws of September 1985 and December 1988 were only formal consequences in order to limit the Navarran government's freedom to award aid under the substantial foral law 1/85. In order to provide evidence, they highlighted that in Article 80 of the foral law of December 1988 it was expressly mentioned that a guarantee that will be awarded "in the framework of the existing laws" needs parliamentary approval if this aid exceeds 5 % of the annual budget. For your authorities, this was a clear reference to the foral law 1/85 since there was no other law allowing the government to award guarantees to enterprises in difficulties. In addition, your authorities submitted a copy of the agreement between the Navarran authorities and Ponsal, dated 26 April 1994, concerning Ponsal's rescue and restructuring plan. In paragraph 2 of this agreement, it was clearly indicated that "in the framework of the foral law regulating the award of aid for rescuing and restructuring firms in difficulties the following aid will be paid to Ponsal...". Since there was no different law for rescuing and restructuring firms in difficulties, according to your authorities, it was clear that the foral law 1/1985 was meant though not cited expressly.

While examining your authorities' reply, the Commission had serious doubts whether the aid scheme itself complies with the actual Community rules on State aid for rescuing and restructuring firms in difficulties since the aid permitted under this scheme goes far beyond these guidelines and allows aid which may lead to distortions of competition within the internal market. The Commission therefore examined under Article 93 (1) of the Treaty whether the scheme is still in line with the Community law on State aid and requested your authorities to adapt the foral law 1/1985 to the Community rules on State aid.

In addition, the Commission concluded that, in particular, the subsidy for creating employment (Ptas 100 million), the investment grant of 20 % for investing in fixed assets and the waiver of claims on taxes and social security by the public authorities (Ptas 3 100 million),

which were also alleged by the complainants, were not covered by the foral law 1/85.

Finally, the Commission found that in your authorities' reply four different legal entities all related to Ponsal were mentioned. In this context, it was not clear why the same enterprise had four different names within a very short period and which enterprise was the legal successor of which other.

By letter dated 26 July 1996, your authorities were therefore again requested to comment on the inconsistencies related to Ponsal.

In their detailed reply, dated 10 October 1996, your authorities first commented on the legal situation of the company. Therein, they confirmed again the delicate economic situation Ponsal was facing. In order to overcome this situation, the reorganization plan which had been drafted in 1994 first foresaw the implementation of a proceeding of suspension of payments which was wound up according to Spanish law and in which Ponsal's public creditors had waived public debts towards the government of Navarra and the social security amounting to Ptas 3 100 million against a total of Ptas 4 350 million. For these suspension of payments proceedings, Ponsal's name had been changed into Manufacturas Navarras SAL. in order to keep Ponsal's name out of the proceedings and enable the succeeding firm to maintain this name as a trade mark. After the liquidation of "Manufacturas Navarras", a new company was founded, called "Comercial Europa de Porcelanas SAL" which took over the name of Ponsal's original commercialization company "Comercial Europa de Porcelanas SA" but which was transformed into a worker-shareholder firm (Sociedad Anónima Laboral).

According to your authorities, the reorganization plan of 1994 also foresaw the sale of Ponsal's premises in Pamplona, the move of the production plant from the centre of Pamplona to the outskirts and new investment there. In order to support these activities the regional authorities had awarded the following aid:

- an investment grant amounting to Ptas 570 million covering 20 % of the overall new investment,
- further grants amounting to Ptas 500 000 per created job (for up to 250 new jobs).

According to your authorities, both the investment grant and the grants for job creation were not notifiable to the Commission since they are covered by another existing

aid scheme which aims at investment promotion, dated 23 June 1982, and which was communicated to the Commission on 15 March 1986 and 14 May 1986.

Meanwhile, the Commission has received press reports according to which Comercial Europa de Porcelanas SAL has received another Ptas 750 million aid. No such aid has been notified to the Commission.

The financial support to Ponsal by the authorities of Navarra certainly constitutes aid in the meaning of Art. 92 (1) of EC Treaty. All the aid measures which were taken in favour of Ponsal and might be taken in the future may distort competition and affect trade between Member States. There is a strong exchange of goods in the tableware industry between Spain and other Member States. Between January and September 1995, Spain exported 8 546 tonnes of tableware products to other Member States to the value of ECU 32,6 million whereas it imported 7 844 tonnes of tableware products to the value of ECU 34,3 million. Its share in overall intra-Community trade for tableware goods is roughly 3 %. Ponsal has been participating in this market since around 25 % of its activities correspond to export markets. Thus, any grant may improve Ponsal's position in the Common Market towards other competitors from Spain and other Member States which do not receive any State support.

In respect of the guarantee amounting to Ptas 1 200 million covering credits; the credit without interest amounting to Ptas 200 million; the subsidy grants for interests exceeding 5 % of the new enterprise's loans and the 99 % tax bonification on taxes which are due to the equity increase of the enterprise, however, the Commission can accept your authorities' explanation, provided in their reply of 12 July 1996 to the Commission's injunction of 30 April 1996, that all the aid in question was awarded under an existing aid scheme in the meaning of Article 93 (1) of the EC Treaty and therefore was not notifiable pursuant to Article 93 (3) of the EC Treaty.

It is true that the law of 1994 by which the aid to Ponsal was approved only refers to formal legal acts from 1985 and 1988 but not to the one of March 1985 which was, according to your authorities, the substantial legal basis for awarding the aid by the act of 1994. Your authorities, however, provided sufficient information which allows the Commission to conclude that the foral law of 1/85 really was the substantial basis.

Concerning the investment grant amounting to Ptas 570 million and the Ptas 500 000 grants per job created which are based on an aid scheme of 23 June 1982 which

aims to promote investment, the Commission has to accept that this also was an existing aid at the moment when the aid was awarded and that, in principle, this aid was also not notifiable pursuant to Article 93 (3) of the EC Treaty. By letter dated 26 September 1995, your authorities agreed with the new regional map for Spain according to which Pamplona is no longer eligible for regional aid. The investment aid awarded to Ponsal, however, preceded this date. On the other hand, the aid scheme of 23 June 1982 which was transmitted to the Commission on 15 March 1986 and 14 May 1986, and to which the Commission had not objected, allows only a grant amounting to Ptas 400 000 per created job whereas the authorities of Navarra provided Ptas 500 000, thus going beyond the limits of this scheme. Thus, the payment of Ptas 500 000 per created job cannot be considered as being granted under an existing aid scheme but has to be regarded as new aid as far as the grants are beyond the limits of the existing aid scheme (Ptas 100 000 per job).

In addition, there are doubts in respect of Ponsal's suspension of payment proceedings in which the public authorities waived claims amounting to Ptas 3 100 million (which is approximately 75 % of the total public debt) as mentioned in your authorities' letter dated 10 October 1996. There, it appears that the objective of these proceedings mainly consisted in rendering the company free from public debts and in continuing the same company under a new name. Thus, your authorities indicated that the new enterprise "Comercial Europa de Porcelanas" also took over Ponsal's liabilities. It was not however made clear whether this takeover also included the Ptas 3 100 million public debts which were waived by the Navarran authorities. It cannot be excluded that the above mentioned bankruptcy procedure was implemented in order to allow new industrial projects with new aid and the assets of the previous (non-viable) company. In addition, it appears doubtful that Ponsal's private creditors also waived their claims up to 75 % as the public authorities did. No information on that is available to the Commission.

Finally, your authorities have not yet explained nor did they notify new aid amounting to Ptas 750 million which was, according to recent press reports and the information provided by the complainant, newly awarded to the company. Such a grant may certainly no longer be covered by regional aid schemes because your authorities, as mentioned above, agreed and accepted by letter dated 26 September 1995 the new regional map for Spain according to which Pamplona is no longer eligible for regional investment aid regardless of whether there were still regional aid schemes in force which were not in line with this map.

Taking into account the above considerations according to which the grants per created job in favour of Ponsal exceed the limit of an existing aid scheme, the circumstances of the waiver of claims within the suspension of payment proceedings and a new grant amounting to Ptas 750 million which cannot be covered by a regional aid scheme, one has to conclude that Ponsal has received aid which is neither covered by existing aid schemes nor by newly approved aid schemes. This aid therefore was notifiable according to Article 93 (3) of the EC Treaty. The Commission regrets that your authorities did not comply with this obligation. Consequently, the awarding of this aid was formally illegal.

Nor does the aid itself seem compatible with the Community rules on State aid.

The exceptions set out in Article 92 (2) of the EC Treaty certainly do not apply in this case in view of the features of the aid and the fact that it does not seek to satisfy the conditions for application of those exceptions.

Furthermore, there are serious doubts whether the aid may be regarded as compatible with the common market by virtue of one of the derogations provided for in Article 92 (3) of the EC Treaty.

The aid may certainly not be covered by the derogation provided for in Article 92 (3) (a) of the EC-Treaty since Ponsal, at the moment when the aid was awarded, was not located in an area which is eligible for regional aid in the meaning of this rule.

It is also more than doubtful whether, at least the waiver of public debts and the investment grants for job creating, which were both awarded before 16 September 1995, the date when Spain accepted the new regional map for Spain and thus the exclusion of Pamplona as being eligible for regional aid in the meaning of Article 92 (3) (c) of the EC Treaty, may be examined under this derogation and be considered to be compatible with the common market. In this case, there are serious doubts whether the aid facilitated the economic development of the region of Pamplona since the objective of the aid clearly consisted in rescuing a deficit making firm and the jobs in that firm rather than in support for new investment and the creation of new jobs.



In addition, there are serious doubts whether the aid can be approved since it facilitates the development of certain particular economic activities in the meaning of Article 92 (3)(c) of the EC Treaty, in particular since it complies with the Community guidelines on State aid for rescuing and restructuring of firms in difficulties.

Since Ponsal was permanently loss making in the past it may certainly be regarded as a firm in difficulties in the meaning of the guidelines.

The objective of aid for such a firm in difficulties is support for restructuring the enterprise. According to the Guidelines, restructuring aid is viewed strictly since it could shift an unfair share of the burden of structural adjustment and the attendant social and industrial problems on other producers who are managing without aid, and to other Member States.

Therefore restructuring aid must be part of a feasible, coherent and far-reaching plan to restore a firm's long-term viability, which should fulfill the following conditions:

- restoration of viability,
- avoidance of undue distortions of competition through the aid,
- significant financial contribution of the beneficiary to the programme,
- the aid should be in proportion to the restructuring costs and benefits — the intensity and amount of the aid should be the strict minimum necessary,
- monitoring of full implementation of the plan and, where applicable, observance of conditions.

In respect of the restoration of viability which is the most compulsory criterion in implementing the guidelines, it has to be stated that the Commission has no information whether this objective will be achieved in short term or not. Since the Spanish authorities did not notify any aid measures in favour of Ponsal they also did not submit any restructuring plan from which the Commission could conclude that long term viability might be restored. On the contrary, since there were apparently several

attempts to restructure Ponsal and viability had not been restored in spite of all of them, it appears that the new attempt will also fail and the firm's viability will not be restored.

In respect of the avoidance of undue distortions of competition through the aid it first has to be stated that the European tableware industry like the ceramic industry as a whole showed steady growth between 1984 and 1991, followed by declines in 1992 and 1993. In 1994, a recovery in production by approximately 7,5 % took place. The industry was forced to adapt to these developments and to carry out drastic restructuring measures, in particular by reducing its workforce. Those companies that have already modernized and restructured are expected to perform well during the latter part of the 1990s (Panorama of European Union Industry 1995/96). In view of those developments it is open to doubt whether the aid measures in favour of Ponsal do not unduly distort competition and whether the payments may not seriously harm Ponsal's competitors which did not receive aid and therefore had to adapt to the structural changes with their own financial resources. These should therefore have the opportunity to express their opinion to the Commission.

It is also doubtful if there is a significant financial contribution of the beneficiary to the programme. According to the information available to the Commission the costs of the restructuring amount to Ptas 3 000 million out of which, due to the lack of a restructuring plan submitted to the Commission, it is difficult, at this stage, to see how much the company's own share will be.

The same assessment applied as regards the proportion of the aid to the restructuring costs and benefits. Due to the lack of a restructuring plan submitted to the Commission, it cannot, at this stage, assess whether this criterion is fulfilled.

Taking into account the circumstances of Ponsal's bankruptcy, in which the public authorities waived claims amounting to Ptas 3 100 million, the investment grants for job creating as far as they exceed the aid ceiling of Navarra's regional aid scheme (Ptas 100 000 per created job), and probable additional aid (grant amounting to Ptas 750 million) for which the Commission did not receive any official information from your authorities, the Commission has decided to initiate the procedure provided for in Article 93 (2) of the EC Treaty against the above aids granted to Ponsal/Comercial Europea de Porcelanas.

As part of the procedure, the Commission hereby gives your Government the opportunity to present, within one month of being notified of this letter, its comments and any information relevant to the aid and supplementary aid in form of additional guarantees.

The Commission should remind you of the suspensory effect of Article 93 (3) of the EC Treaty and would draw your attention to the communication published in the *Official Journal of the European Communities* No C 318, 24. 11. 1983, p. 3, in which it was stipulated that any aid granted unlawfully, i.e. without prior notification or without awaiting the Commission's final decision under the procedure provided for in Article 93 (2) of the EC Treaty, may have to be recovered from the beneficiary, with interest running from the day the aid was paid to it and with an interest rate equal to the reference rate, that is used to calculate the net grant equivalent of aid schemes, which was applicable at that date.

The Commission requests your authorities not to grant further aid to Ponsal/Comercial Europea de Porcelanas and to inform the recipient firm without delay of the initiation of the procedure and the fact that it may have to repay any aid improperly received.'

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 publication of this notice to the following address:

European Commission,  
Directorate General for Competition (DG IV),  
Staid Aid Directorate,  
Rue de la Loi/Wetstraat 200,  
B-1049 Brussels.

*The comments will be communicated to the Spanish Government.*

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

##### Cases where the Commission raises no objections

(97/C 243/04)

**Date of adoption:** 25. 3. 1997

**Member State:** Denmark

**Aid No:** N 887/96

**Title:** Aid for Christmas trees and other decorative plants (parafiscal tax arrangement)

**Objective:** Various activities (publicity, RTD, advice, training, investment for environmental protection)

**Legal basis:** Skovloven (lov nr. 383 af 7. juni 1989)

**Budget:** Approximately ECU 1,4 million a year

**Aid intensity:** Various, but within the limits of the relevant Community frameworks (see below)

**Duration:** Five years

**Conditions:** Compliance with the following Community frameworks:

- Publicity (OJ No C 302, 12. 11. 1987),
- Research and technical development (OJ No C 45, of 17. 2. 1996),
- Environmental protection (OJ No C 72, 10. 3. 1994).

For product development aid exceeding the maximum rate laid down in the research and technical development framework, activities receiving aid must have relevance for the sector in general and the results of the work done must be made accessible to all interested parties

**Date of adoption:** 16. 4. 1997

**Member State:** United Kingdom

**Aid No:** N 369/96

**Title:** Leader II Programme

**Objective:** As provided for in the notice to the Member States (94/C 180/12) published in OJ No C 180, 1. 7. 1994

**Legal basis:** Leader II Programme (implementation of Community initiative Leader II)

**Budget:** ECU 18,8 million

**Aid intensity:** Up to 50 % of the eligible costs

**Duration:** 1994-1999

**Date of adoption:** 16. 4. 1997

**Member State:** Greece

**Aid No:** N 551/96

**Title:** Programme of alternative methods for the control of crop diseases

**Objective:** To encourage farmers to adopt integrated control methods

**Legal basis:** Διυπουργική απόφαση σχετικά με την εφαρμογή ενός προγράμματος εναλλακτικών μεθόδων ολοκληρωμένης καταπολέμησης των εχθρών και των ασθενειών των διαφόρων καλλιεργειών, σε εθνική κλίμακα

**Budget:** Dr 225 million — ECU 0,74 million

**Aid intensity:**

- maximum 35 % of eligible costs (normal areas)
- maximum 40 % of eligible costs (less-favoured areas within the meaning of Directive 75/268/EEC), up to maximum amount of Dr 450 000/ha (ECU 1 475 /ha)

**Duration:** Until 1999

**Conditions:** Presentation of an annual report on the implementation of the measure

**Date of adoption:** 16. 4. 1997

**Member State:** Spain (Navarre)

**Aid No:** NN 30/96

**Title:** Aid in the agri-foodstuffs sector

**Objective:** Measures to assist artisanal undertakings in the agri-foodstuffs sector

**Legal basis:** Decreto Foral 103/1994, de 23 de mayo, por el que se regula en Navarra la artesanía agroalimentaria, y Orden Foral de 19 de diciembre de 1994 decree No 103

**Budget:** Ptas 20 million (approximately ECU 120 000)

**Aid intensity:** Various according to the type of aid

**Duration:** Unspecified

**Conditions:** The Spanish authorities undertake to comply with:

- the sectoral restrictions provided for in Decision 94/173/EC,
- the guidelines on publicity for agricultural products (OJ No C 302, 12. 11. 1987).

The Commission reserves the right to re-examine aid for the creation and start-up of groups when it examines aid of this type in all the Member States pursuant to Article 93 (1) of the EC treaty

**Date of adoption:** 16. 4. 1997

**Member State:** Finland

**Aid No:** N 22/97

**Title:** Aid for the partial acquisition of farms

**Objective:** To improve agricultural structures

**Legal basis:** Maaseutuelinkeinolaki (1295/90)/Maaseutuelinkeinoasetus (248/91)

**Budget:**

- 1997: Fmk 0,2 million (approximately ECU 0,03 million)
- 1998: Fmk 0,5 million (approximately ECU 0,09 million)
- 1999: Fmk 0,8 million (approximately ECU 0,14 million ECU)
- 2000: Fmk 1,0 million (approximately ECU 0,17 million ECU)

**Aid intensity:** Up to 35 % (75 % in less-favoured areas)

**Duration:** Unlimited

**Conditions:** The investment aid for fixed assets which are neither farm buildings nor land improvement works (fencing, silos), the investment aid for movable assets (machines, equipment) intended for protection and improvement of the environment, the aid for the purchase of female animals and the aid for the purchase of male animals not intended for reproduction fall within the scope of Regulation (EEC) No 2328/91 and must be examined under that Regulation

**Date of adoption:** 16. 4. 1997

**Member State:** France

**Aid No:** N 182/97

**Title:** Aid and parafiscal charges for the inter-branch committee for champagne (CIVC)

**Objective:** Research and technical assistance vocational training; collective promotion

**Legal basis:** Décret relatif aux taxes parafiscales au profit du Comité interprofessionnel du vin de Champagne

**Budget:** 1996: FF 64 690 000 (amount of the parafiscal levy) (approximately ECU 9,8 million)

**Aid intensity:** Up to 100 %

**Duration:** Until 2002

**Conditions:**

- Research measures are carried out in the general interest of the sector and the results of the research are disseminated to all interested parties;

- the Commission reserves the right to re-examine the research aid measures pursuant to Article 93 (1) of the Treaty following the entry into force of the measures proposed by the Commission under that Article with regard to State aids for research and development in agriculture;
- publicity and promotional aid is granted in accordance with the Commission's communication (OJ No C 302, 12. 11. 1987);
- examples of publicity messages (slogans and logos) must be sent to the Commission as soon as they are available

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**Date of adoption:** 16. 4. 1997

**Member State:** Austria (Lower Austria)

**Aid No:** NN 5/97 (ex N 101/96) and N 824/96

**Title:** Aid for environmental protection

**Objective:** The objectives of Council Regulation (EC) No 2078/92

**Legal basis:** Sonderrichtlinie des Bundeslandes Niederösterreich zur Förderung von besonderen Extensivnutzungsleistungen und ökologischen Leistungen von landwirtschaftlichen Betrieben in Niederösterreich

**Budget:**

- 1995: Ös 4,8 million (ECU 0,4 million)
- 1996: Ös 25,6 million (ECU 2,0 million)
- 1997: Ös 48,6 million (ECU 3,7 million)
- 1998: Ös 52,5 million (ECU 4,0 million)
- 1999: Ös 52,5 million (ECU 4,0 million)

**Aid intensity:**

- arable crops: Ös 6 450/ha — approximately ECU 490/ha
- pasture: Ös 8 200/ha — approximately ECU 620/ha
- permanent crops: Ös 12 250/ha — approximately ECU 930/ha

**Duration:** Until 1999

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**Date of adoption:** 16. 4. 1997

**Member State:** France

**Aid No:** NN 25/97

**Title:** Aid for the protection of breeds of horse threatened with extinction

**Objective:** To protect breeds of horse threatened with extinction

**Legal basis:** Circulaire DEPSE/SDSEA n° 96-7043 du 9. 8. 1996

**Budget:** For 1996: approximately ECU 800 000

**Aid intensity:** FF 1 000 (approximately ECU 153)/LU

**Duration:** 5 years

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**Date of adoption:** 23. 4. 1997

**Member State:** Austria (Upper Austria)

**Aid No:** N 120/97

**Title:** Aid for the purchase of breeding heifers

**Objective:** To improve the genetic level of stockfarming

**Legal basis:** Ankaufshilfe des Landes Oberösterreich für weibliche Zuchtrinder

**Budget:** Approximately Ös 5 million (approximately ECU 0,4 million) per year

**Aid intensity:** 20 % of eligible costs (22,5 % in less-favoured areas)

**Duration:** Unlimited

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**Date of adoption:** 29. 4. 1997

**Member State:** United Kingdom

**Aid No:** N 177/97

**Title:** Environmentally sensitive areas (amendment)

**Objective:** To protect and improve the environment and the landscape

**Legal basis:** The Agricultural Act 1986 (section 18)

**Budget:** Unchanged

**Aid intensity:** Up to 80 % of eligible costs

**Duration:** Unlimited

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**Date of adoption:** 12. 5. 1997

**Member State:** The Netherlands

**Aid No:** N 158/97

**Title:** Aid for demonstration projects

**Objective:** Spreading of new knowledge on production technology and new products by demonstration projects

**Legal basis:** Subsidieregeling demonstratieprojecten markt en concurrentiekracht

**Budget:**

- 1997: FI 10 million (approximately ECU 5 million)
- 1998: FI 10 million (approximately ECU 5 million)

**Aid intensity:** 50 % (in cases of cumulation with other aid 90 %) of eligible project costs

**Duration:** Not determined

## OPINION

of the Advisory Committee on Concentrations given at the 42nd meeting on 7 January 1997 concerning a preliminary draft decision relating to Case IV/M.794 — Coca-Cola Enterprises/Amalgamated Beverages Great Britain

(97/C 243/05)

(Text with EEA relevance)

1. The Advisory Committee agrees with the Commission's view as expressed in the preliminary draft decision that Coca-Cola Enterprises (CCE) is controlled by The Coca-Cola Company (TCCC) in the sense of Article 3 (3) of the Merger Regulation.
  2. The Advisory Committee agrees with the Commission that this operation has a Community dimension within the meaning of Article 1 and constitutes a concentration within the meaning of Article 3 (1) (b) of the Merger Regulation.
  3. A majority of the Advisory Committee agrees with the Commission that the relevant product market in Great Britain is the market for cola flavoured carbonated soft drinks. A minority favours a broader definition to include all carbonated soft drinks.
  4. The Advisory Committee agrees with the Commission that the relevant geographic market is limited to Great Britain.
  5. A majority of the Advisory Committee agrees with the Commission that Coca-Cola Schweppes Beverages (CCSB) is dominant in the supply of cola in Great Britain. A minority, favouring a broader product market definition, has doubts whether Coca-Cola Schweppes Beverages would be dominant in the broader market.
  6. The Advisory Committee agrees with the Commission that the proposed operation would not result in the strengthening of a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.
  7. The Advisory Committee agrees with the Commission that the proposed concentration should be declared compatible with the common market under Article 8 (2) of the Merger Regulation and the functioning of the EEA Agreement.
  8. The Advisory Committee requests that the Commission takes full account of the comments made during the meeting of the Committee, especially with regard to the undertaking given by the Coca-Cola Export Corporation to the Commission in 1989.
  9. The Advisory Committee recommends that its opinion be published in the *Official Journal of the European Communities*.
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# EUROPEAN INVESTMENT BANK

## RULES ON PUBLIC ACCESS TO DOCUMENTS

Adopted by the Bank's Management Committee on 26 March 1997

(97/C 243/06)

WHEREAS THE EUROPEAN INVESTMENT BANK

is a financial institution owned by the Member States of the European Union;

has the task, under Article 198e of the Treaty establishing the European Community, to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the Community by granting loans and guarantees in order to facilitate the financing of investment projects in all sectors of the economy;

recognizes the legitimate interest of the citizens of its shareholder States, as well as of citizens in other countries where the Bank lends and borrows funds, to be able to inform themselves about the principles according to which the Bank operates, the objectives, general characteristics and volumes of its operations as well as the outcome of its activities in particular regions, sectors or types of operations;

is committed to an active information policy and will continue and strengthen its efforts to provide the public with general information about its activities, policies and practices;

will also, where and to the extent appropriate, continue to release basic information on concluded individual operations, in agreement with its borrowers;

WHEREAS THE BANK

recognises that under the requirements of good administration applicable to Community institutions and bodies, including the Bank, documents should be publicly available to the maximum extent possible, and any denial of access to documents should be justified by reference to rules laid down in advance;

WHEREAS THE BANK

operates as a financial institution in both the public and private sectors and depends on the financial markets for the funding of its activities;

is, because of the nature of its activities, subject to constraints, like other banks under similar circumstances, as regards transparency and public access to documents;

WHEREAS THE BANK

must, in order to be able to carry out its task, ensure that the promoters of projects, actual and potential borrowers, as well as other parties involved in the implementation or financing of a project, can rely on the confidentiality of the banking relationship;

has to respect, in its relationships with other institutions, bodies and persons both within and outside the Community framework, the confidentiality of communications and agreements between itself and the latter;

WHEREAS THE BANK

cannot, given its role as financial institution, undertake to function as a source of documents originating outside the Bank, even as regards documents in the public domain;

WHEREAS THE BANK

has a legitimate need, in line with normal practice in the banking and financial sector, to protect any sensitive information the disclosure of which might harm its interests and its position in the pursuit of its task;

must, in order to function properly, ensure free and unencumbered exchange of views within the Bank, and avoid external interference in its internal processes of deliberation, preparation and decision-making, and must

therefore guard and protect the confidentiality of these processes;

has a duty to protect the privacy of the members of its organs, its staff as well as third parties providing services to the Bank and to respect the confidentiality of information concerning their personal, financial and other circumstances;

the Bank has adopted the following rules:

### Scope

#### *Article 1*

These rules apply where members of the public address the Bank with requests for documents held by the Bank which have not been prepared for the purpose of publication.

### Procedure

#### *Article 2*

Requests for documents shall be addressed to the Secretary General of the Bank.

Requests shall be answered within reasonable time. Denials shall be justified by reference to these rules.

### Admissibility of requests

#### *Article 3*

Requests for documents shall be acted upon only where the applicant has adequately identified himself/herself, the object of the request as well as the purpose for which the request is made. Other requests shall be dismissed.

Requests for documents in other than paper form are not admissible.

Repeated requests may be dismissed, if a regular and adequate response has already been provided.

### General rule

#### *Article 4*

The Bank shall make available documents only where none of the grounds of non-disclosure set out in these rules are applicable.

### Documents originating outside the Bank

#### *Article 5*

Access shall not be given to documents which originate from outside the Bank.

In respect of information which is known, or can be presumed, to be in the public domain, the applicant may be referred to the origin of the document or to any other known source where the document may be available.

### Documents originating within the Bank

#### *Article 6*

#### Protection of third party interests

Any document containing information about third parties shall not be disclosed, where the information has been identified to the Bank as being confidential, or is covered by an undertaking of confidentiality made by the Bank, or where the information is otherwise of such a nature that it is subject to the Bank's duty of confidentiality toward third parties.

The preceding paragraph precludes, in particular, and even in the absence of specific undertaking or identification of confidentiality, the disclosure of

- documents relating to actual or potential lending or borrowing operations, to individual projects or investment programs or to the parties actually or potentially involved in such operations or projects, such as appraisal reports and contract documents; as well as
- any other documents containing information about
  - the identity or the financial or other circumstances of actual or potential borrowers, guarantors, co-financiers, financial counterparties or other parties to particular lending or borrowing operations;
  - the technical, economic or financial characteristics of individual projects or investment programs; as well as the Bank's appraisal, monitoring or evaluation of such matters.

The first paragraph also precludes, even in the absence of specific undertaking or identification of confidentiality, the disclosure of documents containing information about any third parties, including bodies such as Community institutions or international organizations with which the Bank has relationships, where the information concerned is not in the public domain.

The Bank shall not make available any document containing information the release of which would be contrary to the rules and practices prevailing in the financial markets or would prejudice the equal treatment of investors.

#### *Article 7*

##### **Protection of the interests of the Bank**

The Bank shall not make available

1. any documents containing information about any aspects of its activity, whether operational, commercial, organizational, procedural, technical or strategic, and including any related arrangements with third parties, contractual or other, where the information, in the judgement of the Bank, taking into account normal practice in the banking and financial sector, is of such a nature that its disclosure could harm the Bank's legitimate interests;
2. any internal preparatory documents or other documents produced in the course of internal processes of deliberation, including any proposals or other documents prepared for any Bank's organs in the course of their decision-making process and any records of deliberations within the Bank's services or organs;
3. any documents prepared for the purposes of internal administration or internal procedures, including any rules, guidelines or recommendations relating to such administration or procedures;
4. any documents forming part of correspondence or other communication with third parties.

#### *Article 8*

##### **Protection of the interests of staff**

The Bank shall not make available any documents containing information about the circumstances, whether personal, financial, professional or other, of present or past members of its organs or staff.

##### **Other provisions**

#### *Article 9*

##### **Illegitimate motives**

Where the Bank has reason to believe that the identity of the applicant or the purpose of the request have been misrepresented, or that the request has been made in pursuit of commercial objectives or other motives which do not accord with the purposes that underline the principle of transparency, the request shall be rejected.

The Bank may require an undertaking by the applicant not to use documents provided for any purpose referred to in the preceding paragraph, nor to forward them to anyone for such a purpose.

#### *Article 10*

##### **Exceptions**

No exceptions from the rules under Articles 5, 6 and 8 are possible without the written authorization of the person or body for whose protection the information concerned is confidential.

#### *Article 11*

##### **Costs**

An applicant may be charged with a fee to cover the costs arising from making the documents requested available.