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I

(Information)

COMMISSION

Euro exchange rates [1]

29 June 2001

(2001/C 185/01)

1 euro	=	7,4444	Danish krone
	=	9,2125	Swedish krona
	=	0,6031	Pound sterling
	=	0,848	United States dollar
	=	1,2927	Canadian dollar
	=	105,37	Japanese yen
	=	1,5228	Swiss franc
	=	7,8865	Norwegian krone
	=	88,92	Icelandic króna [2]
	=	1,6735	Australian dollar
	=	2,1045	New Zealand dollar
	=	6,83323	South African rand [2]

[1] *Source:* reference exchange rate published by the ECB.

[2] *Source:* Commission.

FINANCIAL STATEMENTS OF THE EUROPEAN COAL AND STEEL COMMUNITY AT 31 DECEMBER 2000

(2001/C 185/02)

The ECSC's balance sheet, profit-and-loss account and statement of the allocation of profit for the year ending 31 December 2000 were submitted to the Commission for approval under written procedure No E/306/2001 of 20 June 2001 and are shown in this financial report as approved by the Commission.

ECSC financial statements at 31 December 2000

(Amounts in euro)

— Before allocation of surplus —

ASSETS

	31 December 2000		31 December 1999	
Balances with central banks (Note C.1)		84 650		95 385
Loans and advances				
— repayable on demand	8 331 435		4 975 072	
— with agreed maturity dates or periods of notice (Note C.2.1)	25 381 261		71 316 975	
— loans (Note C.2.2)	611 297 253		931 643 446	
Total		645 009 949		1 007 935 493
Loans and advances to customers (Note C.3)				
— loans	1 459 488 702		1 541 269 262	
— levy	61 041		63 217	
— fines	38 950 716		37 195 283	
— interest subsidies repayable	3 304 216		4 539 978	
Total		1 501 804 675		1 583 067 740
Bonds and other fixed-income securities (Note C.4)				
— issued by public bodies	973 765 678		1 214 680 318	
— issued by other borrowers	705 940 156		503 230 250	
Shares and other variable-income securities (Note C.5)	44 040 538		50 318 525	
Total		1 723 746 372		1 768 229 093
Land and buildings (Note C.6)		0		710 287
Other assets (Note C.7)		5 170 347		9 025 480
Prepayments and accrued income (Note C.8)		96 173 610		106 529 763
TOTAL ASSETS		**3 971 989 603**		**4 475 593 241**
Off-balance-sheet commitments (Note C.23)		430 881 628		427 969 333

— Before allocation of surplus —

LIABILITIES

	31 December 2000		31 December 1999	
LIABILITIES VIS-À-VIS THIRD PARTIES				
Amounts owed to credit institutions (Note C.9)				
— repayable on demand	352 822		0	
— with agreed maturity dates or periods of notice	981 277 746		1 408 815 543	
Total		981 630 568		1 408 815 543
Debts evidenced by certificates (Note C.10)		1 062 076 396		1 027 547 730
Other liabilities (Note C.11)		7 494 034		23 630 708
Accruals and deferred income (Note C.12)		91 947 305		89 402 188
Total liabilities vis-à-vis third parties		2 143 148 303		2 549 396 169
ECSC OPERATING BUDGET (Note C.13)		835 516 282		949 154 370
PROVISIONS FOR LIABILITIES AND CHARGES				
Guarantee Fund (Note C.14.1)	565 000 000		553 000 000	
Provisions for major exposures (Note C.14.2)	17 000 000		18 000 000	
Other provisions (Note C.14.3)	158 663 347		155 196 643	
Total provisions		740 663 347		726 196 643
RESERVES AND SURPLUS (Note C.15)				
Special Reserve	176 055 284		176 055 284	
Former Pension Fund	74 577 321		72 959 662	
Surplus brought forward	213 454		666 841	
Surplus for the financial year (Note C.16)	1 815 612		1 164 272	
Total reserves and surplus		252 661 671		250 846 059
TOTAL LIABILITIES		**3 971 989 603**		**4 475 593 241**
Off-balance-sheet commitments (Note C.23)		426 626 265		415 913 293

Profit-and-loss account for the year ending 31 December 2000

(Amounts in euro)

CHARGES

	Financial year 2000		Financial year 1999	
Interest payable and similar charges (Note C.17)		170 536 669		179 314 809
Commission paid		439 219		439 353
Net losses on financial operations				
— exchange difference (Note B.2)	862 006		1 429 678	
— losses on bonds and other fixed-income securities	6 703 555		3 940 390	
— value adjustments for bonds and other fixed-income securities (Note C.4)	2 960 265		36 720 808	
— value adjustments for shares and other variable-income securities (Note C.5)	13 920 110		0	
Total		24 445 936		42 090 876
Administrative overheads (Note C.18)		5 000 000		5 000 000
Value adjustments for land and buildings (Note C.6)		166 180		328 378
Other operating charges (Note C.19)		315 884		308 312
Value adjustments for loans and advances and provisions for liabilities and commitments:				
— value adjustment for loans and advances	12 590 342		13 479 465	
— allocation to the Guarantee Fund (Note C.14.1)	12 000 000		23 000 000	
— allocation to other provisions for liabilities and charges (Notes C.13 and C.14.3)	17 134 135		2 874 287	
Total		41 724 477		39 353 752
Extraordinary charges		270 668		2 984 370
Legal commitments for the financial year (Note C.13)		129 942 347		145 553 799
Allocation to the provisions for financing the ECSC operating budget (Note C.13)		0		34 000 000
TOTAL CHARGES		**372 841 380**		**449 373 649**
Surplus for the financial year (Note C.16)		1 815 612		1 164 272
TOTAL		**374 656 992**		**450 537 921**

INCOME

	Financial year 2000		Financial year 1999	
Interest receivable and similar income (Note C.20) (including interest on fixed-income securities: 73 696 657 in 2000 and 64 332 666 in 1999)		248 795 316		254 449 772
Commissions received		93 400		0
Net profit on financial operations				
— profit on bonds and other fixed-income securities	2 158 217		17 405 532	
— withdrawal of value adjustments for bonds and other fixed-income securities	16 334 306		0	
— withdrawal of value adjustments for shares and other variable-income securities (Note C.5)	7 951 984		7 483 752	
Total		26 444 507		24 889 284
Withdrawals of value adjustments for loans and advances and from the provisions for liabilities and commitments:				
— withdrawal of value adjustments for loans and advances	13 155 711		13 760 280	
— withdrawal from the provision for major exposures (Note C.14.2)	1 000 000		5 000 000	
— withdrawal from the provision for budgetary contingencies (Note C.14.3)	0		21 000 000	
— withdrawal from other provisions for liabilities and charges (Note C.14.3)	0		26 131 467	
Total		14 155 711		65 891 747
Other operating income (Note C.21)		2 122 461		455 630
Extraordinary income		2 427 191		14 166
Income relating to the ECSC operating budget (Note C.22)		74 618 406		104 837 322
Withdrawal from the provision for financing the ECSC operating budget		6 000 000		0
TOTAL INCOME		**374 656 992**		**450 537 921**

Allocation of the surplus for the year ending 31 December 2000

(Amounts in euro)

	Financial year 2000	Financial year 1999
Surplus brought forward at 1 January	213 454	666 841
Surplus for the year to be allocated	1 815 612	1 164 272
Total	**2 029 066**	**1 831 113**
Allocation to the former Pension Fund (Note C.15)	0	1 617 659
Surplus brought forward at 31 December	2 029 066	213 454

NOTES RELATING TO THE FINANCIAL STATEMENTS AT 31 DECEMBER 2000

(Amounts in euro)

A. THE ECSC

The European Coal and Steel Community (ECSC) was established by the Treaty of 18 April 1951. According to the Treaty, the task of the ECSC is to contribute to the economic expansion of the Member States through the establishment of a common market for coal and steel. Since the ECSC Treaty is due to expire on 23 July 2002, the rate of the ECSC levy was reduced to zero in 1998 (Commission Decision of 23 December 1997), and the ECSC's lending activity has been virtually discontinued since July 1997 (Commission Decision of 22 June 1994). Thus most of the ECSC's funds now come from the net balance obtained in the management of the various reserves and provisions.

All ECSC assets and liabilities will be transferred to the European Community after 23 July 2002. The net value will be regarded as funds (referred to as the assets of the 'ECSC in liquidation') intended for research in the sectors connected with the coal and steel industry.

B. ACCOUNTING PRINCIPLES AND METHODS

1. Presentation of the financial statements

The financial statements are drawn up in accordance with generally recognised accounting principles.

The accounting principles and evaluation methods used for the items in the financial statements take account of the constraints imposed on and resolutions applicable to the ECSC under the Treaties and other ECSC-related decisions adopted by the institutions of the European Communities.

The accounting methods used also take account of the fact that the ECSC will not operate after 23 July 2002, when the ECSC Treaty expires.

They are presented in accordance with Council Directives 78/660/EEC and 86/635/EEC [1] on the annual accounts and consolidated accounts of banks and other financial institutions wherever these are applicable and subject to the abovementioned necessary adjustments.

2. Conversion of foreign currency

The currency used by the ECSC for its annual accounts is the euro (EUR).

All foreign currency transactions carried out by the ECSC are converted into euro at the monthly rate communicated by the European Central Bank.

[1] OJ L 222, 14.8.1978 and OJ L 372, 31.12.1986.

The value of non-financial assets/liabilities is converted into euro at the monthly rate applicable on the date on which they were acquired or on which their value was last adjusted.

On the balance sheet date, financial assets/liabilities are converted into euro at the monthly rate applicable on that date. Negative differences are entered under 'charges' in the profit-and-loss account, while positive differences are deferred and entered under 'accruals and deferred income' on the liabilities side.

2.1. *Conversion rates*

The following rates have been used for converting year-end balance-sheet amounts expressed in national currency into euro:

Euro zone	
Belgian and Luxembourg francs	40,3399
German mark	1,95583
French franc	6,55957
Finnish markka	5,94573
Dutch guilder	2,20371
Irish pound	0,787564
Italian lira	1936,27
Austrian schilling	13,76030
Spanish peseta	166,386

Non-euro zone	31 December	
	2000	1999
Danish krone	7,46310	7,44330
Swedish krone	8,83130	8,56250
Greek drachma	340,750	330,300
Pound sterling	0,624100	0,621700
Swiss franc	1,5232	1,60510
United States dollar	0,93050	1,00460
Japanese yen	106,92	102,730

2.2. At 31 December 2000, the various currencies listed above, together with the euro, made up the ECSC's balance sheet as follows:

(euro)

Currency	Assets	Liabilities
Euro	1 650 343 022	1 796 054 968
Belgian franc	69 192 651	26 208 740
German mark	364 261 435	407 062 393
Portuguese escudo	151 882 376	136 507 645
French franc	471 465 894	453 751 385
Finnish markka	682 910	0
Dutch guilder	2 331 523	1 038 635
Irish pound	403 488	0
Luxembourg franc	117 079 036	115 868 453
Italian lira	169 856 195	106 701 393
Austrian schilling	7 998 709	3 702 982
Spanish peseta	33 017 931	30 475 906
Sub-total	**3 038 515 170**	**3 077 372 500**
Danish krone	735 979	0
Greek drachma	1 235 840	0
Swedish krone	298 417	0
Pound sterling	633 165 746	594 608 120
Swiss franc	411 929	413 535
United States dollar	297 097 329	194 347 999
Japanese yen	529 193	105 247 449
Total	**3 971 989 603**	**3 971 989 603**

3. **Treasury investment and valuation of bonds and other securities**

The ECSC's internal prudential rules stipulate that portfolio investments are to be confined to securities issued by first-ranking entities. However in 1998, under an agreement to restructure the debt of a defaulting debtor, the ECSC exceptionally acquired shares and other variable-income securities from a private-sector company.

Bonds and other fixed-income securities and shares and other variable-income securities are valued at the average purchase price or the market value obtaining at the end of the financial year, whichever is the lower.

This principle is not applied in the case of securities considered as financial fixed assets, which are valued at the average purchase price or the redemption value, whichever is the lower.

4. **ECSC operating budget**

Part of the ECSC's funds are made available to the ECSC operating budget, which is adopted annually by the Commission after informing the Council and consulting the European Parliament.

The commitments entered into by the operating budget vis-à-vis third parties and the provisions for financing the operating budget are shown under the heading 'ECSC operating budget' (see Note C.13).

5. **Fines and interest subsidies**

Fines and interest subsidies whose repayment has been requested are not regarded as ECSC resources until they have actually been paid. Fines imposed but not yet paid and interest subsidies whose repayment has been requested are therefore allocated to provisions (see Note C.14.3.a).

6. **Presentation of comparative figures for 1999**

Following a change in the presentation of the 2000 financial statements, the 1999 figures have been reprocessed to make them comparable.

C. **EXPLANATORY NOTES TO THE HEADINGS IN THE BALANCE SHEET AND THE PROFIT-AND-LOSS ACCOUNTS**

1. **Balances with central banks**

This item represents the ECSC's balances with central banks of certain Member States.

2. **Loans and advances to credit institutions**

2.1. *With agreed maturity dates or periods of notice*

The breakdown of the remaining time to maturity of these operations is as follows:

(euro)

	31 December	
	2000	1999
Up to three months	25 381 261	60 700 922
Three months to one year	—	10 616 053
Total	**25 381 261**	**71 316 975**

2.2. *Loans*

The breakdown of the remaining time to maturity of these operations is as follows:

(euro)

	31 December	
	2000	1999
Up to three months	40 095 286	60 655 213
Three months to one year	215 609 298	250 263 601
One to five years	284 383 600	538 569 222
Over five years	71 209 069	82 155 410
Total	**611 297 253**	**931 643 446**

3. **Loans and advances to customers**

3.1. *Loans*

The loans granted to credit institutions are shown under 'Loans and advances to credit institutions' (see Note C.2).

The other loans break down as follows:

(euro)

	31 December	
	2000	1999
1. **Loans disbursed from borrowed funds**		
— amounts outstanding	1 546 451 118	1 622 783 270
— value adjustments	– 143 192 092	– 143 847 841
Sub-total	1 403 259 026	1 478 935 429
2. **Loans from the special reserve for financing subsidised housing**	19 509 794	21 862 834
Interim total	1 422 768 820	1 500 798 263

The breakdown of these loans by time remaining to maturity at 31 December is as follows:

	2000	1999
— Up to three months	131 767 190	41 007 561
— Three months to one year	315 397 548	63 949 913
— One to five years	593 899 440	1 015 442 411
— Over five years	524 896 734	524 246 220

3. **Loans paid from the former Pension Fund to officials of the European Communities for housing construction**	36 087 234	39 218 203
4. **Loan repayments overdue and interest on arrears**	632 648	1 252 796
Grand total	**1 459 488 702**	**1 541 269 262**

NB. Loans are generally guaranteed by Member States, banks or businesses or by mortgages.

3.2. *Levy*

The 1998, 1999 and 2000 levy rate was 0 %, so the claims at 31 December 2000 therefore relate to previous years.

This item breaks down as follows:

	31 December	
	2000	1999
Gross amount	5 621 065	6 061 793
Value adjustments	– 5 560 024	– 5 998 576
Net amount	**61 041**	**63 217**

It includes in particular EUR 5 551 715 subject to legal proceedings (EUR 5 281 288 at 31 December 1999).

3.3. *Fines*

This item contains the Commission's claims on companies fined in accordance with the rules set out in the Treaty.

After value adjustment it amounts to EUR 38 950 716 (EUR 37 195 283 at 31 December 1999).

This item has two main components.

A fine totalling EUR 104 364 350 that the Commission imposed on steel companies for infringing the rules on competition in the marketing of steel beams (Decision 94/215/ECSC [1]) of 16 February 1994). In its judgement of 11 March 1999, the Court of First Instance reduced the total fines by EUR 24 774 000 to EUR 79 590 350. EUR 50 631 350 had been paid in fines by 31 December 1999. Seven companies have lodged appeals against the judgement of the Court of First Instance.

A fine totalling EUR 27 380 000 was imposed by the Commission (Decision 98/247/ECSC [2]) of 21 January 1998) under Article 65 of the Treaty on steel companies for concerted agreement on the formula for calculating the alloy surcharge. Payments totalling EUR 14 740 000 have been received, while two-thirds of the companies affected by the decision have lodged appeals with the Court of First Instance.

3.4. *Interest subsidies to be recovered*

This item comprises claims on companies in receipt of subsidised loans which the Commission has been obliged to ask to reimburse all or part of the interest subsidy already paid.

4. **Bonds and other fixed-income securities**

4.1. *Composition*

Bonds and other fixed-income securities break down as follows:

(euro)

	Value adjustments on bonds and other fixed-income securities Allocation (withdrawal)	31 December	
		2000	1999
Issued by public bodies:			
Gross value		995 016 008	1 223 352 880
Value adjustments	(10 670 434)	– 21 250 330	– 31 920 764
Net value		973 765 678	1 191 432 116
Own-debt securities:			
Gross value		0	23 359 671
Value adjustments	(111 469)	0	– 111 469
Net value		0	23 248 202
Issued by other borrowers:			
Gross value		710 521 782	510 404 016
Value adjustments	(2 592 140)	– 4 581 626	– 7 173 766
Net value		705 940 156	503 230 250
Total bonds:			
Gross value		1 705 537 790	1 757 116 567
Value adjustments	(13 374 043)	– 25 831 956	– 39 205 999
Net value		1 679 705 834	1 717 910 568

[1]) OJ L 116, 6.5.1994.

[2]) OJ L 100, 1.4.1998.

4.2. *Maturities in 2001*

Securities in the portfolio reaching final maturity during 2001 represent the following amounts:

(euro)

— Issued by public bodies	170 282 570
— Issued by other borrowers	177 832 751
Total	**348 115 321**

4.3. *Financial fixed assets (see Note B.3)*

Financial fixed assets are defined as securities that will remain in the portfolio until their final maturity. They comprise mainly short- or meduim-term paper and own-debt securities repurchased for servicing ECSC borrowings.

At 31 December 2000, financial fixed assets totalled EUR 48 519 675.

The redemption value of these securities is EUR 1 548 471 less than the average acquisition price.

4.4. *Return on investment*

Treasury investments take account of the maturity dates and liquidity requirements applicable to ECSC financial operations. They are subject to strict criteria with regard to the financial standing of the counterparty.

The return on investment (calculated by the method of the Association of Investment Management and Research) was 4,72 % in 2000.

5. **Shares and other variable-income securities**

Shares and other variable-income securities break down as follows:

(euro)

	Value adjustments on shares and other variable-income securities Allocation (withdrawal)	31 December	
		2000	1999
Gross amount		98 139 651	98 449 511
Value adjustments	5 968 127	– 54 099 113	– 48 130 986
Net value		44 040 538	50 318 525

These shares and other variable-income securities were received by the ECSC as part of the restructuring plan of a defaulting debtor (see Note B.3).

A part of one of these securities, representing a net value of EUR 8 287 500, was the subject of a loan contract with a credit institution (maturity date 1 July 2004 with call option 1 July 2002).

6. **Land and buildings**

(euro)

	Date of acquisition	Acquisition price	Net value at 31.12.1999	Operations during the year			Net value at 31.12.2000
				Acquisitions	Net book value of disposals	Value adjustments	
Lisbon building	1986-1993	2 670 796	590 301		459 114	131 187	0
Lease on Milan building	1986	879 882	119 986		84 993	34 993	0
Total			**710 287**		**544 107**	**166 180**	**0**

The various buildings owned by the ECSC were originally leased to the European Community. The rent paid on such leases provided a return on the funds invested by the ECSC.

Under the terms of the leases, in 1994 and 1995, the Commission repaid the outstanding principal due to the ECSC with a view to transferring ownership officially from the ECSC to the European Community.

The transfer of ownership of the buildings in Lisbon and Milan was completed in 2000.

For the ECSC, this transaction generated a capital gain of EUR 1 987 121, this being the difference between the transfer price (EUR 2 531 228) and the net book value (EUR 544 107) at the date of transfer entered under 'other operating income' in the profit-and-loss account.

7. **Other assets**

Other assets break down as follows:

(euro)

	31 December	
	2000	1999
— Withholding taxes and VAT to be reclaimed	2 374 098	2 530 182
— Loans to officials	2 763 544	6 467 479
— Miscellaneous	32 705	27 819
Total	**5 170 347**	**9 025 480**

8. **Prepayments and accrued income**

Prepayments and accrued income break down as follows:

(euro)

	31 December	
	2000	1999
— Interest on loans and swaps	74 306 162	76 126 468
— Interest on deposits and securities portfolio	25 819 166	30 998 437
— Issuing costs and redemption premiums	2 750 794	4 743 361
	102 876 122	111 868 266
— Cumulative value adjustments	– 6 702 512	– 5 338 503
Total	**96 173 610**	**106 529 763**

9. **Amounts owed to credit institutions**

The remaining time to maturity on these operations is as follows:

(euro)

	31 December	
	2000	1999
Repayable on demand	352 822	0
With agreed maturity dates or periods of notice:		
— Borrowings		
Up to three months	59 539 460	100 388 336
Three months to one year	374 269 101	293 297 086
One to five years	543 151 231	976 419 166
Over five years	4 317 954	38 710 955
Total	**981 277 746**	**1 408 815 543**

10. **Debts evidenced by certificates**

This item comprises loan securities.

EUR 240 430 841 of the borrowings outstanding at 31 December 2000 is due to reach maturity during the 2001 financial year.

11. **Other liabilities**

Other liabilities break down as follows:

(euro)

	31 December	
	2000	1999
Current account, ECSC operating budget	7 431 189	20 542 964
Advance payments for transfer of buildings [1]	0	2 531 228
Other	62 845	556 516
Total	**7 494 034**	**23 630 708**

[1] In accordance with the possibility offered under the decision of 11 June 1992, in the course of 1994 and 1995 the Commission had made advance payments in respect of the transfer of the buildings leased to it by the ECSC (Note C.6).

12. **Accruals and deferred income**

Accruals and deferred income break down as follows:

(euro)

	31 December	
	2000	1999
Interest on borrowings and credit lines	76 202 004	79 638 283
Commissions on loans	132 307	146 412
Issuing premiums	3 684 239	4 739 972
Deferred positive exchange differences	11 928 755	4 877 521
Total	**91 947 305**	**89 402 188**

13. **ECSC operating budget**

This item comprises commitments for the operating budget totalling EUR 434 516 282 (EUR 556 154 370 at 31 December 1999) and provisions associated with financing the operating budget totalling EUR 401 000 000 (EUR 393 000 000 at 31 December 1999).

In 2000, commitments for the ECSC operating budget were as follows:

(euro)

	Amounts at 31.12.1999	New legal commitments	Payments	Cancellations	Amounts at 31.12.2000
Redeployment	151 518 884	30 766 000	37 348 300	14 035 007	130 901 577
Research	194 306 352	80 464 744	88 184 208	1 983 944	184 602 943
Interest subsidies (Article 54)	2 172 448	—	332 579	1 702 324	137 545
Interest subsidies (Article 56)	85 175 105	—	11 191 524	33 467 792	40 515 789
Social measures steel industry	49 858 038	—	14 811 683	15 129 714	19 916 641
Social measures coal industry (Rechar)	73 123 543	18 711 603	28 084 535	5 308 824	58 441 787
Total	**556 154 370**	**129 942 347**	**179 952 830**	**71 627 605**	**434 516 282**

The provision for financing future operating budgets and the provision for budgetary contingencies were as follows:

(euro)

	Amount at 31.12.1999	Allocation	Withdrawal 2000	Amount at 31.12.2000
Provision for financing future operating budgets [1]:	334 000 000		6 000 000	
— provision for the 2001 operating budget [2]				108 000 000
— provision for the 2002 operating budget and provision for the system for priming/smoothing the Coal and Steel Research Fund				220 000 000
Provision for budgetary contingencies [3]	59 000 000	14 000 000		73 000 000
Total	**393 000 000**	**14 000 000**	**6 000 000**	**401 000 000**

[1] This provision was constituted by the budgetary authority when it approved the 1997 ECSC operating budget. It was prompted by the reduction of the levy to 0 % from 1998 and the need to plan for the regular financing of future operational budgets until 2002.
In addition, the mechanism for financing the Coal and Steel Research Fund to be set up after 23 July 2002 provides for a system for priming and smoothing the Fund which will use this provision (Commission Decision of 6 September 2000 (COM(2000) 518 final and 519 final).

[2] Commission Decision No 2749/2000 of 13 December 2000.

[3] This provision is intended to guarantee the planned ECSC commitments to the resources of the 2001 and 2002 operating budgets.

14. **Provision for liabilities and charges**

14.1. *Guarantee Fund*

The Guarantee Fund is intended to cover lending and borrowing operations. After allocation of EUR 12 million, the Guarantee Fund totalled EUR 565 million at 31 December 2000. This reinforcing of the Guarantee Fund is connected with the forthcoming expiry of the ECSC Treaty.

On 11 September 1996 the Commission confirmed its intention of maintaining reserves to cover 100 % of those loans outstanding after 23 July 2002 which are not guaranteed by the government of a Member State. This means that the Guarantee Fund must be gradually increased to approximately EUR 572 million (calculated at the conversion rate applicable on 31 December 2000). At 31 December 2000, this coverage was 98,8 % on condition that there is no default on the loans due to mature before 23 July 2002.

The Guarantee Fund increased as follows:

(euro)

31.12.1999	Allocation 2000	31.12.2000
553 000 000	12 000 000	565 000 000

14.2. *Provision for major exposures*

Against the background of the expiry of the ECSC Treaty in 2002 and the gradual reduction in outstanding loans, exposure is becoming increasingly concentrated on a limited number of large loans (these large exposures are defined in accordance with Directive 92/121/EEC of 21 December 1992 on the monitoring and control of large exposures).

The provision for major exposures concerns loans exceeding 25 % of the ECSC's own funds which are not covered by first-rate guarantees.

It is intended to provide cover specifically for this concentration of risk and to enable the ECSC to weather any major default.

The provision, calculated on the basis of outstanding major exposures at 31 December 2000 according to a procedure recommended by a firm of international experts, totals EUR 17 million (EUR 18 million at 31 December 1999).

14.3. *Other provisions*

This item comprises provisions for fines and interest subsidies repayable totalling EUR 42 272 249 (EUR 41 735 261 at 31 December 1999) and other provisions totalling EUR 116 391 098 (EUR 113 461 382 at 31 December 1999).

(a) Provisions for fines and interest subsidies repayable (Note B.5):

(euro)

	31 December 1999	Change in 2000 balance sheet	31 December 2000
Provision for fines and surcharges for late payment to be paid	37 195 283	1 755 433	38 950 716
Provision for interest subsidies repayable	4 539 978	– 1 218 445	3 321 533
Total	**41 735 261**		**42 272 249**

(b) Other provisions:

(euro)

	31 December 1999	Operations in 2000			31 December 2000
		Allocation	Withdrawal	Exchange-rate movement	
Provision for interest-rate risk (1)	53 157 495	484 115	—	– 204 419	53 437 191
Provision for special costs relating to banking activities (2)	200 000	—	—	—	200 000
Provision for appeal against Decision 94/215/ECSC (3)	51 598 263	2 342 351	—	—	53 940 614
Provision for appeal against Decision 98/247/ECSC (4)	8 505 624	307 669	—	—	8 813 293
Total	**113 461 382**	**3 134 135**	—	**– 204 419**	**116 391 098**

(1) Following the default of one borrower, long-term securities issued by the ECSC (i.e. with a maturity date after 2002) are no longer paired with asset items bearing an equivalent interest rate. Under the principle of caution and in view of the expiry of the ECSC Treaty in 2002, a provision has been constituted to fully cover interest-rate risks.

(2) This provision was created to cover any legal costs and other unforeseen expenditure. The risk in question is primarily in the legal field because the ECSC has less recourse, for its operations, to national agents who bear all expenditure relating to loan operations.

(3) This provision was created from the fines paid under Decision 94/215/ECSC of 16 February 1994 to cover the possible reimbursement of the amounts received should the Court of Justice rule in favour of the companies which have appealed against the judgement of the Court of First Instance of 11 March 1999 (Note C.3.3).

(4) This provision was created from the fines paid under Decision 98/247/ECSC of 21 January 1998 to cover the possible reimbursement of the amounts received should the Court of First Instance rule in favour of the companies which have appealed against this Decision (Note C.3.3).

15. **Reserves**

(euro)

	Reserves at 31.12.1999 after allocation	Allocation (withdrawal)	Reserves at 31.12.2000 before allocation	Allocation at 31.12.2000	Reserves at 31.12.2000 after allocation
Special reserve	176 055 284	0	176 055 284	0	176 055 284
Former Pension Fund	74 577 321	0	74 577 321	0	74 577 321
Total	**250 632 605**	**0**	**250 632 605**	**0**	**250 632 605**

The Special Reserve is used to grant loans from ECSC own funds to finance subsidised housing.

The former Pension Fund originally represented the ECSC's total pension obligations prior to 5 March 1968. Since that date, the Member States have assumed responsibility, via the general budget, for the payment of staff pensions. This fund is used to finance housing loans for officials of the European Communities and has also been used to grant special loans to the coal and steel industries.

16. **Analysis of the result for the financial year**

Overall ECSC performance is influenced by both the result of non-budgetary operations (lending/borrowing — treasury investment — exchange-rate variations) and the out-turn of the ECSC operating budget.

16.1. *Non-budgetary operations*

(euro)

Result	31 December	
	2000	1999
Gross operating margin before changes in provisions		
— Lending/borrowing operations	2 179 046	2 065 277
— Interest on bank accounts	2 604 998	6 319 306
— Transactions concerning portfolio securities	78 095 255	50 243 418
— Exchange-rate difference	– 862 006	– 1 429 678
— Miscellaneous	1 691 025	– 2 855 568
Total	**83 708 318**	**54 342 755**
Net changes in provisions		
— Provision for liabilities and charges ([1])	– 3 134 135	23 257 179
— Provision for major exposures ([2])	1 000 000	5 000 000
— Value adjustments in respect of loans and advances	565 369	280 815
Result of non-budgetary operations	82 139 552	82 880 749
Amount allocated to financing the operating budget ([3])	– 54 323 940	– 79 716 477
Result after deducting the net balance allocated to the operating budget	27 815 612	3 164 272

([1]) Note C.14.3.b.

([2]) Note C.14.2.

([3]) In accordance with the change of accounting method on 31 December 1992, income received during the 1999 financial year has been allocated to financing the 1999 operating budget (net balance as in Note C.16.2).

16.2. *Out-turn of the ECSC operating budget*

(euro)

	31 December	
	2000	1999
Out-turn of the budget		
Expenditure		
— Administrative expenditure (Note C.18)	5 000 000	5 000 000
— Legal commitments (Note C.11)	129 942 347	145 553 799
— Financing of future operating budgets	0	34 000 000
Total	**134 942 347**	**184 553 799**
Revenue (net amounts)		
— Levy (Note C.22)	—	—
— Fines (Note C.22)	—	16 605 836
— Repayment of interest subsidies (Note C.22)	1 955 203	2 557 049
— Miscellaneous (Note C.22)	1 035 599	320 008
— Cancellations of legal commitments (Note C.22)	71 627 605	85 354 429
— Financing of future operating budgets	6 000 000	—
— Net balance for the year (Note C.16.1)	54 323 940	79 716 477
Total	**134 942 347**	**184 553 799**
Budget out-turn	**0**	**0**

16.3. *Result for the financial year*

(euro)

	31 December	
	2000	1999
Result from non-budgetary operations after deducting the net balance allocated to the operating budget (Note C.16.1)	27 815 612	3 164 272
Out-turn of the budget (Note C.16.2)	0	0
Total	**27 815 612**	**3 164 272**
Allocation to/withdrawal from provisions for financing the operating budget/budgetary contingencies (Note C.14.3a)	– 14 000 000	21 000 000
Allocation to the Guarantee Fund (Note C.14.1)	– 12 000 000	– 23 000 000
Result before allocation	**1 815 612**	**1 164 272**

17. **Interest and similar charges**

(euro)

	31 December	
	2000	1999
Interest on borrowings and swaps	168 492 330	177 112 390
Bank interest	51 772	44 317
Issuing costs and redemption premiums	1 992 567	2 158 102
Total	**170 536 669**	**179 314 809**

18. **Administrative overheads**

The ECSC paid a lump sum of EUR 5 million to the general budget of the Commission of the European Communities to cover its administrative expenditure.

19. **Other operating charges**

(euro)

	31 December	
	2000	1999
Borrowing costs	128 969	98 417
SWIFT/Reuters charges	158 354	192 031
Other	28 561	17 864
Total	**315 884**	**308 312**

20. **Interest received and other income**

(euro)

	31 December	
	2000	1999
Interest on loans and swaps	168 699 495	179 588 983
Payment and redemption premiums	2 072 568	2 208 051
Bank interest	2 696 044	6 637 370
Interest on bonds and other fixed-income securities	73 603 257	64 332 665
Interest on shares and other variable-income securities	1 723 951	1 682 703
Total	**248 795 316**	**254 449 772**

21. **Other operating income**

(euro)

	31 December	
	2000	1999
Lapsed coupons and bonds	5 456	12 681
Other income from lending activities	1 961	—
Miscellaneous	2 115 044	442 949
Total	**2 122 461**	**455 630**

22. **Income relating to the operating budget**

(euro)

	31 December	
	2000	1999
Levy [1]	—	—
Fines [2]	—	16 605 836
Miscellaneous	1 035 598	320 008
Cancellation of legal commitments (Note C.13)	71 627 605	85 354 429
Repayment of interest subsidies (Note B.5 and C.3.4) [3]	1 955 203	2 557 049
Total	**74 618 406**	**104 837 322**

[1] The ECSC is authorised under the Treaty to impose a levy on coal and steel produced by undertakings in the Community. The levy is calculated on the basis of the average values in the Community of the various products concerned. The European Commission decided to set the levy rate for the 1998, 1999 and 2000 financial years at 0 %.

[2] This item comprises the revenue from fines imposed by the Commission in accordance with Articles 58 and 65 of the ECSC Treaty, together with surcharges for late payment.

[3] This item comprises the revenue from the repayments of interest subsidies which the Commission was obliged to demand.

23. **Off-balance-sheet commitments**

23.1. *Commitments received*

(euro)

	31 December	
	2000	1999
Commitments arising from swaps		
— Notional capital commitments relating to interest-rate swaps	229 991 973	222 436 108
— Capital commitments relating to interest-rate and currency swaps	200 889 655	205 533 225
Total	**430 881 628**	**427 969 333**

23.2. *Commitments given*

(euro)

	31 December	
	2000	1999
(a) Commitments arising from swaps Notional capital commitments relating to interest-rate swaps	229 991 973	222 436 108
(b) Capital commitments relating to interest-rate and currency swaps	196 628 836	193 464 504
(c) Receipts from lapsed coupons and bonds	5 456	12 681
Total	**426 626 265**	**415 913 293**

The ECSC has always been keen to meet the commitments it has entered into and therefore has traditionally honoured coupons even after they have lapsed.

24. **Changes in the financial situation for the year ending 31 December 2000**

(million euro)

	2000	1999
Origin of funds		
Balance of profit-and-loss account	1,8	1,2
Items not involving a movement of funds		
— Amortisation of issuing costs and redemption premiums	2,0	2,2
— Value adjustments in respect of financial assets (withdrawals)	– 7,4	29,2
— Value adjustments in respect of tangible assets	0,2	0,3
— Value adjustments in respect of loans and advances, net	0,7	15,7
— Decrease in 'Provision for legal commitments'	– 121,6	– 139,5
— Increase (decrease) in 'Provision for financing the ECSC operating budget'	8,5	– 41,3
— Increase (decrease) in accruals and deferred payments	– 4,5	– 9,4
— Decrease in accruals and deferred income and issuing costs/ redemption premiums	7,0	11,3
— Increase (decrease) in 'Other liabilities'	– 12,1	– 1,8
— Increase in 'Other assets'	7,4	41,3
— Allocation to (withdrawal from) the provisions for liabilities and charges	2,9	– 9,4
— Allocation to (withdrawal from) the provision for major exposures	– 1,0	– 5,0
— Allocation to (withdrawal from) the provision for changes in the euro rate	– 0,7	16,9
— Exchange-rate adjustments in respect of borrowings and loans	– 12,6	20,8
— Allocation to the Guarantee Fund/Special Reserve	12,0	23,0
Total funds	**– 117,4**	**– 44,5**
Other resources		
— Proceeds from borrowings	—	—
— Loan repayments	425,4	463,5
— Disposals of buildings	0,5	0,3
— Decreases in bank balances and securities portfolio	94,8	91,8
Total resources	**403,3**	**511,1**
Use of funds		
— Loan disbursements/increase in loans and advances	3,8	—
— Redemption of borrowings	399,5	511,1
Total uses	**403,3**	**511,1**

STATE AID

Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning measure C 18/2001 (ex N 123/2000) — Climate change levy

(2001/C 185/03)

(Text with EEA relevance)

By means of the letter dated 28 March 2001, reproduced in the authentic language on the pages following this summary, the Commission notified the United Kingdom of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning part of the abovementioned measure.

The Commission decided not to raise any objections to certain other measures, as described in the letter following this summary.

Interested parties may submit their comments on the aid/measure in respect of which the Commission is initiating the procedure within one month of the date of publication of this summary and the following letter, to:

European Commission
Directorate-General for Competition
Directorate G.2
Rue de la Loi/Wetstraat 200
B-1049 Brussels
Fax (32-2) 296 12 42.

These comments will be communicated to the United Kingdom. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

SUMMARY

1. Description of the measure/aid in respect of which the Commission is initiating the procedure

The UK authorities intend to introduce from 1 April 2001 the 'Climate change levy (CCL)' on the non-domestic use of energy, which is broadly the use as heating fuel, lighting, or for motive power. The climate change levy package takes forward the government's policy on environmental taxation and is a central part of the government's climate change programme, which sets out the government's proposals for meeting the UK's legally binding target of a 12,5 % reduction in greenhouse gas emissions (Kyoto Protocol) averaged over 2008-2012 and for moving towards the government's domestic goal of a 20 % reduction in carbon dioxide emissions by 2010.'

The legal base for the levy is the Finance Act 2000, Section 30 and Schedules 6 and 7.

Mineral oils will not be brought within the scope of the tax because they are already subject to excise duty in accordance with Council Directives Nos 92/81 and 92/82/EEC [1].

The rates of levy in 2001-2002 are expected to be:

Energy product	Levy rate (pence per kilowatt hour)
Electricity	0,43
Gas	0,15
Coal and other solid fuels	1,17 p/kg (equivalent to 0,15 p/kWh)
Liquified petroleum gas	0,07

It is proposed that energy products falling within the scope of the levy will be exempt from it where the person to whom the product is supplied intends it to be used for other purposes than as fuel. The notion of 'fuel' is not defined in the Finance Act 2000. However, according to the United Kingdom authorities it broadly covers use of energy products for motor and heating purposes. It is proposed that where an energy product is used for partly fuel and partly non-fuel purposes ('mixed uses') it will be fully exempt from the levy.

The United Kingdom authorities consider this provision as a general measure, and as part of the logic of the tax system. According to the United Kingdom, this 'dual-use' provision applies to the steel sector, to the production of aluminium, iron, lead, copper, zinc, batteries and some chemicals.

[1] OJ L 316, 31.10.1992, pp. 12 and 19.

2. **Assessment of the measure/aid**

(a) *Existence of aid within the meaning of Article 87(1) of the EC Treaty*

The United Kingdom's position is that the dual use exemption is a 'general measure' that does not constitute State aid. They claim that the CCL is a tax imposed on the use of energy products used 'as fuel' and that the exemption is in line with Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils [2] ('the Mineral Oils Directive') as well as the Proposal for a Council Directive restructuring the Community framework for the taxation of energy products [3] ('the proposal'), in so far as only the use of energy products for motor and heating purposes fall within its scope.

According to the United Kingdom authorities, the purpose of the extension of this exemption to mixed uses is to provide certainty and clarity for the taxpayer, who is the fuel supplier, as to whether or not, on the basis of scientific advice, any use of a commodity by the customer is exempt from the levy. The United Kingdom authorities do not consider it to be technically feasible to objectively apportion with sufficient accuracy the fuel and non-fuel uses of energy products within certain processes.

The Commission considers that the exemption gives the benefiting companies an advantage, which is financed through State resources. In assessing whether this exemption is a general measure, as the United Kingdom authorities claim, or whether it constitutes State aid, the Commission considers it necessary to assess whether the effects would favour certain undertakings or the production of certain goods. The Commission notes that, according to the information provided by the United Kingdom authorities, the exemption will favour the production of certain goods, namely some metals (including aluminium, iron, lead, copper and coke) as well as batteries and some chemicals. The Commission therefore has doubts that the exemption can be considered as a general measure.

The Commission notes that it falls to be assessed whether the exemption can be justified on the basis of the nature and logic of the tax system. The Commission notes the claim made by the United Kingdom authorities that the imposition of the levy solely on energy used for fuel is consistent with the provisions of the Mineral Oils Directive and the Proposal for a Council Directive restructuring the Community framework for the taxation of energy products.

The Commission notes that the climate change levy is a tax on the non-domestic use of energy, which broadly covers use as heating fuel, lighting or for motive power. The levy will not apply to fuels used for other than these purposes. Such a definition of the scope of an energy tax, whereby not all uses of fuels are taxed, may be in the logic of a system such as that established in the Mineral Oils Directive and in the Proposal for a Council Directive restructuring the Community framework for the taxation of energy products.

However, the proposed exemption for dual use fuels goes beyond such a definition of the scope of the levy.

Firstly, the exemption may not treat comparable situations equally, insofar as some dual-use processes are exempt from the levy, while other processes, which may also fall to be considered as dual use, are not exempted.

Secondly, the UK exempts fuels entirely from the levy, even if they are only partially used for non-energy purposes as defined above.

1. The Commission notes that the Proposal for a Council Directive restructuring the Community framework for the taxation of energy products is not in force and cannot be automatically relied upon as a reference point to establish the logic and general nature of the tax system. However, it may provide some indication of whether the dual use provision can be considered as a general measure, although Article 13(1) refers to fuels used 'principally' for the purposes of chemical reduction. The Commission has doubts, however, that the exemption is fully consistent with the proposal, as it does not extend to energy used in all 'metallurgical' processes, as would be required under Article 13(1)(a) of the proposal. The Commission notes that according to the United Kingdom authorities, a metallurgical process is a process which results in the production of metal, for example, from ore. The Commission has doubts that this interpretation is consistent with the notion of metallurgical process in the proposal. In order to be consistent with the proposal, it appears that energy used in all metallurgical processes, namely in any metal production process, would be exempt from the levy.

2. The Commission further notes the United Kingdom's claim that it is not possible to apportion the fuel/non-fuel use amounts of energy products in certain processes with accuracy; and that for reasons of clarity and certainty, a full exemption from the levy is necessary for mixed uses. The Commission has doubts, however, that the United Kingdom authorities cannot establish a mechanism whereby an estimation of fuel/non-fuel uses for certain processes can be made and levy imposed accordingly.

The Commission further notes that, if the energy part in the dual use were to be fully exempted, the result may be not in line with the objective of the levy to reduce CO_2.

For the reasons given above, the Commission has doubts that the exemption for energy products used for purposes other than as fuel can be considered as a general measure and not as State aid.

(b) *Compatibility of the aid*

Assuming that the exemption for dual use fuels constitutes State aid, the Commission has doubts on its compatibility with the environmental aid guidelines (OJ C 37, 3.2.2001, p. 3):

1. The provision exempts energy consumption for some processes causing considerable CO_2 emissions and thus may run counter to the objective of the tax to reduce CO_2 emissions.

[2] OJ L 316, 31.10.1992, p. 12.

[3] OJ C 139, 6.5.1997, p. 14.

2. The exemption is not temporary, and not granted with a view of enabling companies to adapt to the new tax (point 48 of the environmental aid guidelines).

3. The exemption is not made conditional on the conclusion of agreements in order to achieve the environmental protection objective, nor is the tax subject to conditions that have the same effect as agreements (point 51(1)(a) of the environmental aid guidelines).

4. The UK has not demonstrated that firms eligible for the exemption must nevertheless pay a significant proportion of the national tax (point 51(1)(b) of the environmental aid guidelines).

TEXT OF THE LETTER

'The Commission wishes to inform the United Kingdom that, having examined the information supplied by your authorities on the measures referred to above, it has decided:

— not to raise objections on the tax exemptions from the climate change levy (CCL) for electricity from renewable sources, for CHP, for public transport and rail freight and on the tax reductions for companies entering into climate change agreements,

— to initiate the procedure laid down in Article 88(2) of the EC Treaty on the tax exemption for dual-use fuels.

PROCEDURE

By letter dated 14 February 2000, the UK authorities notified the 'climate change levy', following previous informal discussions on the subject in autumn 1999 and on 4 February 2000. The notification was discussed at a meeting on 8 March 2000 and additional information was subsequently submitted by letter of 26 April 2000 (registered A/33666, 3 May 2000). A second meeting was held on 4 May 2000, followed by additional information sent by letter of 14 July 2000 (registered A/36041, 19 July 2000) and of 8 September 2000 (registered A/31909, 14 September 2000). Further meetings were held on 20 October 2000 and 9 November (mainly on the agreements), and additional information was submitted by letter of 31 October (registered 6 November, A/39034), 14 November 2000 (registered on 17 November, A/39509) and by letter of 23 November (registered 27 November, A/39845). Preliminary sector targets were presented by the UK at a meeting on 1 December 2000. The letter by the Commission of 30 November was answered by letter of 13 December (A/40698, registered 18 December 2000). At a meeting on 14 December the exemption for double use fuels was discussed. Additional information on targets was sent on 15 January (registered A/30396, 16 January 2001). At a meeting on 29 January 2001 outstanding questions on CHP and renewables were discussed. Additional information on dual-use fuels was sent on 1 February (A/30986, registered 2 February 2001). Additional information was sent on 7 February 2001, confirming several commitments made orally at meetings, giving additional information on double use fuels and modifying the scope of the exemption for electricity from renewable sources. Information on double use fuels was also sent on 1 and 9 February 2001 in the context of the examination of State aid N 197/2000.

Further clarification on the exemption for CHP was provided by e-mail on 14 February 2000 and confirmation of the facts was given by letter dated 21 February 2001 (registered on 22 February, A/31532). Detailed information on targets was last submitted on 5 March 2001. Additional information on CHP was provided on 7 March 2001.

CHARACTERISTICS OF THE CLIMATE CHANGE LEVY

The UK authorities intend to introduce from 1 April 2001 the climate change levy on the non-domestic use of energy, which is broadly the use as heating fuel, lighting or for motive power. The climate change levy package takes forward the government's policy on environmental taxation and is a central part of the government's climate change programme, which sets out the government's proposals for meeting the UK's legally binding target of a 12,5 % reduction in greenhouse gas emissions (Kyoto Protocol) averaged over 2008-2012 and for moving towards the government's domestic goal of a 20 % reduction in carbon dioxide emissions by 2010.

The levy is expected to raise GBP 1 billion in its first full year (2001/2002).

1. **Environmental impact of the CCL**: This new levy is introduced in order to help meet the UK's international greenhouse gas abatement obligations and to progress towards the domestic goal of reducing CO_2 emissions. This new environmental instrument is estimated to save around 5 M tonnes of carbon per year by 2010. Of this it is estimated that at least 2,5 M tonnes of carbon savings per year will be achieved through climate change levy agreements with energy-intensive sectors.

(estimates in MtC for the entire CC package)

Negotiated agreements		2,5
Levy package	Price effect of levy	1
	Renewables exemption	0,5
	CHP exemption	0,5
	Energy efficiency measures	0,5
	Total	**5**

2. **The legal base** for the levy is the Finance Act 2000, Section 30 and Schedules 6 and 7, which received Royal Assent on 28 July 2000. The levy is scheduled to come into effect on 1 April 2001. If no Commission approval is given before 1 April 2001, the UK authorities have the option of amending their proposals in the Finance Bill before this.

3. **Scope of the levy**

The levy covers non-domestic use of primary and/or secondary fuel for lighting, heating, motive power and power for appliances by consumers in industry (including fuel industries), commerce, agriculture, public administration and other services.

The tax will be levied at the point of sale to the final consumer. In order to avoid double taxation the levy will not apply where a taxable commodity is used to produce another taxable commodity.

Mineral oils will not be brought within the scope of the tax because they are already subject to excise duty in accordance with Council Directives 92/81/EEC and 92/82/EEC ([4]).

The levy will apply also to imported commodities when used in the UK. It will not be applied to commodities which are intended to be burnt outside the UK.

4. **The rates of the levy**

The rates of levy in 2001-2002 are expected to be:

Energy product	Levy rate (pence per kilowatt hour)
Electricity	0,43
Gas	0,15
Coal and other solid fuels	1,17 p/kg (equivalent to 0,15 p/kWh)
Liquified petroleum gas	0,07

DESCRIPTION OF THE AID

The UK Government notified several exemptions or reduced rates from the tax, for a period of **10 years** ([5]). The duration of 10 years is meant to allow business to plan the necessary investments in energy savings and to gain legal certainty for their investment planning and actual decisions.

Subject of the notification in question are:

1. Exemption for electricity, gas and coal used in public transport and railfreight.
2. Exemption for input fuels and electricity generated by good quality CHP.
3. Exemption for electricity generated from some energy sources.
4. Reductions for facilities entering into climate change agreements.

The UK Government anounced its intention of entering into climate change agreements with industry until 2013, that is a period for tax benefits of 12 years. However, the UK Government seeks approval of the tax reduction linked to climate change agreements for an initial period of 10 years. Also the legal provisions for the other exemptions are by nature unlimited, but notified for a period of 10 years.

The UK authorities confirmed that although the entitlement to reductions and exemptions is contained in legislation, they will review their policy before the end of the 10-year approval and either renotify or amend the legislation and/or agreements as necessary so as to respect State aid obligations.

5. **Exemption for dual-use fuels**

The tax law exempts dual-use fuels from the levy. The UK authorities consider this exemption to be a general measure and in the nature of the tax scheme.

The levy exemption for dual-use fuels amounts to around 0,1 % of the turnover for each sector.

BUDGET OF THE SCHEME

Expenditure on the scheme is not expected to exceed GBP 420 million in the first year 2001/2002 against a net yield of GBP 1 billion of the levy. The cost and benefit is expected to fall in subsequent years as the impact of measures taken to meet the targets in the agreements are taken. The amount of revenue forgone will depend on future rates of levy; the success of the policy in encouraging more environmentally friendly forms of electricity generation; the scale of reduction in energy consumption by energy intensive users; and the development of rail transport.

The total costs for the exemption for public transport will be GBP 15 million, the exemption for railfreight will cost about GBP 1 million.

The exemption for CHP will cost GBP 40 million at current take-up. Part of this benefit will accrue to customers drawing electricity or heat directly from these plants.

The cost for exemption for renewable sources depends on the success of the policy in encouraging the development of new capacity. At current capacity an exemption will cost GBP 15 million.

The cost of the reduced rate for companies entering into climate change agreements has been calculated at GBP 350 million in the first full year.

1. **Exemption for electricity, gas and coal used in public transport and railfreight**

The UK Government is proposing to exempt energy used in public transport and rail freight from the CCL. Because diesel and petrol are not within the scope of the tax (being subject to excise duties) this means the main beneficiaries would be mainline railways, light railways, London Underground and rail freight companies using electricity.

([4]) OJ L 316, 31.10.1992, pp. 12 and 19.

([5]) The notification does not cover tax exemptions and reductions for Annex I products and for the ECSC sector, which will be dealt with as separate notifications (Annex I products: State aid N 9/2001 (intensive pig and poultry rearing) N 10/2001 (food, drinks and fisheries), N 44/2001 (horticulture), ECSC: State aid N 197/2000). An exemption for natural gas used in Northern Ireland was notified separately (State aid N 660/2000) and will also be subject of a separate decision.

In July 2000, the UK published its integrated transport White Paper 'A new deal for transport: better for everyone'. The plan aims to transform the UK transport system by helping reduce road congestion and pollution, providing better and more reliable public transport and significantly improving transport in London. Key targets of this plan are:

— to increase rail use by 50 %, measured in passenger kilometres, by 2010 from 2000 levels,

— to increase rail freight by 80 % by 2010, increasing its share of the freight market to 10 %,

— to double light rail use in England by 2010 from 2000 levels,

— to reduce road congestion on the inter-urban network and in large urban areas in England to below current levels by 2010,

— to cut journey times on London Underground services by increasing capacity and reducing delays.

Without the exemption for 10 years, the costs of the levy could be passed on to the government through the franchise renegotiations. This would create an additional support requirement that would consequently reduce the amount of support available for the new enhancements envisaged in the 10-year plan. Alternatively, the cost of the levy could be passed on to the customer in the form of higher fares/charges; this would also run counter to the objectives of the 10-year plan.

Meeting the targets in the plan will require increased investment in infrastructure and rolling stock which may be jeopardised if rail operators have to meet the costs of the CCL. It is estimated that these could add approximately GBP 15 million a year to rail operators' costs.

Securing the exemption from the climate change levy for 10 years will provide the certainty needed by industry to make the necessary investment to meet the plan targets, and is consistent with the introduction of the 10-year plan as a long-term strategy.

In addition, the exemption of rail freight from the levy would be consistent with the Commission's proposal, adopted on 26 July, regarding regulation concerning the granting of aid for the coordination of transport by rail, road and inland waterways. This proposes a comprehensive exception for State aid in the freight sector benefiting users of rail, inland waterways and combined transport infrastructure on the grounds — in the interests of sustainable mobility and to overcome existing distortions between modes — that it compensates them for the unpaid external costs (environmental, congestion, etc.) of road transport.

Of course, the levy exemption would be just one of many policies put in place to help achieve the targets in the 10-year plan. Other measures include a substantial increase in investment, both private and public, with an emphasis on promoting private and public partnerships. Total private and public investment in transport over the next 10 years will be GBP 180 billion. A number of multi-modal studies will be undertaken, which aim to identify solutions to problems on key transport corridors by looking at the contribution that all modes of transport might make, moving away from a one-dimensional approach. On railways, the Strategic Rail Authority (SRA) will take the targets in the 10-year plan into account when considering replacement of the current train operator franchises.

The plan sets out the government's commitment to monitor and evaluate progress towards the targets, including those mentioned above. The UK will be reporting regularly on the results, together with other key indicators.

The UK will be monitoring closely how this package of policies is contributing to the expansion of rail travel as an alternative to road travel, and its role in promoting more sustainable transport practices.

2. **Exemption for outputs of good quality combined heat and power plants (CHP)**

CHP makes significant fuel and emissions savings over conventional, separate forms of power generation and heat-only boilers. The generation and supply of electricity from power stations is generally at an efficiency in the range 25-50 %, based on the gross calorific value (GCV) of the fuel and including transmission and distribution losses. This means that 50-75 % of the energy content of the fuel is not usefully employed. This unutilised energy content is rejected as heat directly to the atmosphere or into seas or rivers. The generation of electricity and the recovery of heat in CHP schemes typically achieve overall efficiencies of 60-80 % and sometimes more.

Unlike conventional methods of electricity generation, some of the heat cogenerated in a CHP scheme is used typically in industrial processes or for heating and hot water in buildings. The heat used in this way displaces heat that would otherwise have to be supplied by burning additional fuel and so leads directly to a reduction in emissions. The development of CHP provides a particularly environmentally-effective approach for reducing CO_2 emissions.

The UK Government has a target of increasing the installed capacity of CHP from its current level of 4,5 GW to at least 10 GW by 2010. This will lead to additional reductions in carbon dioxide emissions of about 4 million tonnes per annum.

However, in the absence of any incentives to promote the development of CHP, it is estimated that CHP capacity will only increase to 7 GW or possibly less by 2010.

The economic viability of CHP is critically dependent on the differential between electricity and gas prices. Over the last five years, electricity prices have fallen by 3 % in real terms, while gas prices have increased by 30 %. These factors together have resulted in an extremely adverse effect on CHP economics. Without any exemption for CHP, the climate change levy (CCL) will exacerbate this problem, as it will increase gas prices proportionately more than electricity prices.

It is important to recognise that the cost-effectiveness of CHP is marginal in many instances. The proposed CHP exemption will help to tip the balance in favour of investment of CHP in many of these cases. The exemption will address market imperfections and help to counteract the effect of the trend in energy prices over recent years, which has reduced the cost-effectiveness of many CHP schemes. These issues apply just as much in the business sector as within any other sector of the economy.

The government has therefore proposed that good quality CHP should be exempt from the climate change levy. The definition of good quality CHP ([6]) is based on threshold criteria, which must be met or exceeded in order for the whole of the scheme to qualify as 'good quality'.

The CHPQA programme provides for a rigorous assessment of the energy efficiency and environmental performance of CHP schemes. It is much more rigorous in this respect than simply assessing the overall efficiency of a CHP scheme. In particular, the weighting given to the efficiency of power generation in the assessment procedures recognises the environmental benefits of using CHP rather than conventional energy generation technologies. In comparison, a conventional boiler system with a small amount of electrical power generation could achieve relatively high 'headline' energy conversion efficiencies, but offers much reduced environmental benefit compared to good quality CHP.

Threshold criteria are set for quality index and power efficiency.

Power efficiency (η_{power}) is the proportion of input energy which is converted to electrical or mechanical power (total annual power output divided by the total annual fuel input).

The quality index (QI) is a measure of the overall efficiency of a CHP scheme, taking account of the efficiency of production of both heat and power. In the definition of the quality index, the quantity of power produced is weighted relative to the quantity of heat, given the greater energy and environmental cost involved in generating power.

The general definition for $QI = (X \times \eta_{power}) + (Y \times \eta_{heat})$ ([7])

Quality index (QI) definitions for various sizes and types of CHP schemes:

Size of scheme	QI definition
≤ 1 MW_e	$QI = 230 \times \eta_{power} + 125 \times \eta_{heat}$
> 1 to ≤ 10 MW_e	$QI = 220 \times \eta_{power} + 125 \times \eta_{heat}$
> 10 to ≤ 25 MW_e	$QI = 205 \times \eta_{power} + 125 \times \eta_{heat}$
> 25 to ≤ 50 MW_e	$QI = 190 \times \eta_{power} + 125 \times \eta_{heat}$
> 50 to ≤ 100 MW_e	$QI = 185 \times \eta_{power} + 125 \times \eta_{heat}$
> 100 to ≤ 200 MW_e	$QI = 180 \times \eta_{power} + 125 \times \eta_{heat}$
> 200 to ≤ 500 MW_e	$QI = 170 \times \eta_{power} + 125 \times \eta_{heat}$
> 500 MW_e	$QI = 160 \times \eta_{power} + 125 \times \eta_{heat}$

Special cases	QI definition
Fuel cell schemes	$QI = 180 \times \eta_{power} + 125 \times \eta_{heat}$
Reciprocating engine schemes (including those in combined cycle applications) ≤ 25 MW_e	$QI = 200 \times \eta_{power} + 125 \times \eta_{heat}$
Transitional arrangements for existing steam turbine and reciprocating steam engine schemes to April 2005	$QI = 240 \times \eta_{power} + 125 \times \eta_{heat}$
Alternative fuel schemes	
Alternative fuel gases	$QI = 240 \times \eta_{power} + 125 \times \eta_{heat}$
Biogas, waste gas or waste heat	$QI = 300 \times \eta_{power} + 140 \times \eta_{heat}$
Biomass or solid or liquid waste	$QI = 400 \times \eta_{power} + 140 \times \eta_{heat}$

Threshold criteria for good quality CHP

For fuel inputs under annual and initial operation:

Normally, a scheme that qualifies as good quality CHP for its entire energy inputs is one where the power efficiency equals or exceeds 20 %.

For power outputs under annual operation:

A scheme that qualifies as good quality CHP for its entire annual energy output is one where the quality index equals or exceeds 100.

For power outputs under initial operation:

A scheme that qualifies as good quality CHP for its entire annual energy output is one where the quality index equals or exceeds 95.

For power generation capacity under annual operation:

The threshold criterion for existing good quality CHP capacity is that the CHP scheme achieves a QI of at least 100 at its maximum heat output under normal operating conditions.

For proposed new power generation capacity, threshold criteria for proposed new good quality CHP scheme capacity, at design, specification, tendering and approval stages, are:

either QI ≥ 105 and power efficiency ≥ 20 %, both under annual operation,

or QI ≥ 110 at max heat and power efficiency ≥ 35 % under annual operation.

The QI definitions shall be subject to periodic review to ensure that the values of X and Y remain applicable and appropriate for each size and type of CHP scheme, that certified good quality CHP will continue to provide significant environmental benefits compared with conventional energy supply alternatives and that the QI definitions provide a challenging threshold for all CHP schemes and promote continuous improvement of CHP plant.

([6]) Established by the UK's CHP quality assurance programme (CHPQA).

([7]) X is a coefficient related to alternative power supply options. Similarly Y is a coefficient for heat generation, related to alternative heat supply options. The values for X and Y vary for different sizes and types of scheme.

Simplified arrangements will operate for small-scale CHPs (less than 2 MWe) as regards metering, monitoring and reporting.

The extent of the exemption on fuel input and energy output depends on the proportion of good quality CHP

A scheme meeting or exceeding the threshold quality index and power efficiency criteria will qualify as good quality CHP for its entire capacity, annual energy inputs and annual energy outputs.

A CHP scheme that does not meet the threshold criteria for good quality CHP will not be eligible for CCL exemption on its entire fuel input or power output, but only for a part of it, corresponding to good quality portion of the overall CHP scheme ([8]).

Regular monitoring

It is a requirement of CHPQA that CHP schemes are assessed against the standard each year to ensure continued performance in relation to the good quality CHP threshold criteria. If there is a change in the level of performance, eligibility for exemption from the climate change levy shall be adjusted appropriately.

3. **Exemption for electricity generated from some energy sources**

The government proposes to exempt from the levy electricity sold by electricity suppliers which can be matched with purchases from an eligible generator. The technologies eligible for exemption will be: wind energy, hydro power up to 10 MW, tidal power, wave energy, photovoltaics, photoconversion, geothermal hot dry rock, geothermal aquifers, the biodegradable fraction of municipal and industrial wastes, landfill gas, agriculture and forestry wastes, energy crops and sewage gas.

Suppliers will be able to exempt sales of electricity from the levy if the supplier has contracted with a generator or generators of eligible electricity from the defined sources to purchase such electricity; the supplier agrees to independent audit by the authorities; and the generator(s) agree to the same conditions.

This exemption is also applicable to imported electricity from the same energy sources.

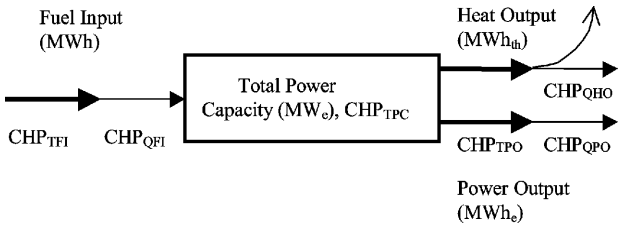
4. **Reductions for facilities entering into climate change agreements**

The government also recognises the need for special consideration to be given to the position of energy intensive industries given their energy usage, the requirements of the integrated pollution prevention and control regime and their exposure to international competition. Consequently, the government will provide an **80 % discount from the levy** for those sectors that can agree targets for improving their energy efficiency or reducing carbon emissions ('agreements').

Beneficiaries: The government defines an 'energy intensive' sector as one which operates processes which will be covered by Annex I of Council Directive 96/61/EC concerning integrated pollution prevention and control ([9]). This criterion applies throughout the UK and has been chosen because sites operating such processes will be subject to a legal requirement to use energy efficiently — other sites are not subject to this requirement. Small sites which fall below IPPC size thresholds (with the exception of thresholds relating to combustion plant), but which would otherwise be covered by the proposed regulations, will also be eligible for the relevant sector agreement.

Duration: The agreements cover a period of 12 years (2001-2013). The UK Government seeks Commission approval for a period of 10 years and confirmed that it would terminate the agreements with sectors after 10 years if no Commission decision allows their prolongation (commitment see above).

([8]) For such schemes, if the power efficiency is less than the threshold power efficiency criterion, the qualifying fuel input must be calculated. The qualifying fuel input (CHP_{QFI}) is the portion of total fuel input that would achieve the threshold power efficiency, given actual annual average power output. In this way, the fuel input to the good quality CHP power output is recognised and the threshold criterion does not represent a 'cliff-edge'.
If the quality index is less than the threshold quality index criterion, the qualifying power output (CHP_{QPO}) must be calculated. The qualifying power output is the portion of total power output that would achieve the threshold quality index, given actual annual average heat utilisation. In this way, the good quality CHP power output is identified and recognised whilst any additional power output is regarded as conventional power generation.
It is the qualifying fuel input and qualifying power output, as the fuel input and power output meeting the threshold criteria, that are used to determine CCL exemption for schemes that do not meet the threshold criteria for their total fuel inputs and outputs. In this way, benefits are only ever given to the good quality portion of any overall CHP scheme.



CHP scheme

([9]) These sites and installations will, in due course, be subject to a regulatory requirement, in terms of having to operate in an energy efficient manner. The activities in question include activities of energy industries, production and processing of metals, mineral industry, chemical industry, waste management and some other activities.

Form of agreements: Two options are envisaged for these agreements

1. Sector level agreements ('umbrella agreements') between the industrial sector associations ([10]) and the relevant Secretary of State under which sector targets would be set. Individual entities participating in the scheme would additionally agree individual targets and would enter into separate agreements with the Secretary of State ('participation agreements'). The reduction in levy would be available either if the sector as a whole met its target or, failing that, if an individual entity met its target (in which case, only that individual entity would qualify for a levy reduction).

   Most eligible sectors and participants are choosing to use these forms of agreements.

2. In this option, the sector level agreement is also between the government and the sector association. But the participant level agreement is between the sector association and each participant in respect of their facility or facilities. The UK Government has to agree the model agreement used by the sector and will also approve each individual agreement before they will be permitted to come into effect.

   The levy is only payable by those operators carrying out economic activity in the UK. All of those are equally eligible to enter climate change agreements, no matter what their origin. Any business setting up a new establishment in the UK will be eligible to enter an agreement on equivalent terms to those agreed with their sector in existing agreements. Provided an equivalent target can be agreed for qualifying activities, DETR will include the establishment within the relevant sector agreement and the establishment will become eligible for the 80 % discount.

Targets: The targets consist of quantitative energy use and carbon emissions reductions outcomes, defined in absolute terms or per unit output. Milestone targets are set for two-year periods.

Targets are reviewed twice, in 2004 and 2008 in order to ensure that they continue to represent the potential for cost effective energy savings taking into account any changes in technical or market circumstances.

The UK Government will make sector targets transparent by reporting to the UK Parliament, and as appropriate, to the devolved legislatures.

Tolerance bands allow small overshoots of the milestone target to be accepted for those participants who otherwise demonstrated satisfactory performance in view of additional qualitative criteria (such as good environmental management). The tolerance band facility will not be available after the third milestone.

Over the period envisaged for the agreements participants will wish to be free to choose whether to respond to market demand for new products or a different mix of products from that on which their original energy/CO_2 savings targets were based. This may lead to an increase or decrease of energy per unit of production. The scheme foresees an adjustment procedure in order to adapt the targets to a change in the product mix until 2006. A potential extension of this possibility will depend on the successful introduction of a carbon emission trading scheme. Participants with absolute targets would not be permitted to use this procedure. The product mix approach is not available for those participants who choose a tolerance band approach.

If the beneficiary is unable to meet a milestone target due to a relevant constraint or requirement, progress made towards meeting the targets is taken as being satisfactory. These constraints or requirements are:

— constraint or requirements imposed by or under town and country planning, environmental, health and safety or food hygiene legislation,

— certain constraints or requirements imposed on the construction or operation of a CHP plant under the Energy Act 1976 or Electricity Act 1989,

— unforeseen major disruptions to a dedicated energy supply of more than 240 consecutive hours.

The scheme foresees the possibility to meet agreed targets by carbon emission trading among entities committed to a climate change agreement. Emission trading should later on be possible also with participants in a wider emission trading scheme subject to approval of such a linkage by the Commission. Details of such a scheme are not yet available. The UK authorities undertake that unless the Commission agrees otherwise, carbon trading will only be allowed between participants in climate change agreements, and then only where the selling party has verified surplus carbon to sell. This restriction is contained in the climate change agreements.

Recuperation: A beneficiary who does not meet a milestone target will lose the levy reduction for the next two years. If he then meets the next milestone target, he will be allowed the levy reduction for the following two years.

While the mechanism of such a 'forward penalty' is different from a clawback provision for levy rebates received over the past years, the UK Government claims that the risk of losing the levy reduction for the future is a stronger incentive for beneficiaries to meet their targets than a proportionate clawback mechanism would provide ([11]).

([10]) Or an organisation especially set up by the sector association for this purpose.

([11]) An example for a beneficiary not meeting the target in year 2 and is back on target thereafter:

	Year 2	Year 4
Energy target agreed	900	800
Energy use	925	800
Levy to be paid:		
Forward penalty	100 × 20 % = 20	90 × 100 % = 90
Proportionate clawback	100 × 20 % = 20	Clawback $^1/_4$ of 80 previous rebate = 20 + 90 × 20 % = 18 = 38

For the last milestone target, for which the prospective loss of levy reduction may not create a sufficient incentive, the UK authorities undertook that they will introduce a provision to recover levy reduction granted to participants for the last two years of a 10-year State aid approval in proportion to the extent, if any, to which their last milestone targets were not met. The UK authorities consider it probable that this provision will require a change to the legislation, which will be brought forward at the appropriate time. As yet the framework for recovery has not been settled, but will be considered in the prevailing circumstances.

Level of the targets: When negotiating the targets with the sectors concerned, the principal benchmark used by the UK authorities to assess whether these targets are demanding is the UK's study of the potential for savings achievable through the implementation of all energy saving measures which are cost effective ([12]).

During the negotiations, several assumptions of the study were corrected or refined. Agreements are being finalised with most of the sectors concerned. While all negotiations are not yet finalised, the UK authorities informed the Commission on the likely outcome of the negotiations. The UK informed the Commission that they do not intend to weaken the targets in the final phase of the negotiations, but may on the contrary even enforce them for some sectors. The latest estimates being reviewed with the sector associations are:

([12]) The study has been published as 'Industrial sector CO_2 emissions: projections and indicators for the UK 1990-2020, April 1999 (EPSC 20616001/Z/1)'. The assessment of the potential savings, sector by sector, has assumed unlimited availability of capital and management time and therefore is an upper potential limit with known technologies.

First wave climate change levy: Target as agreed and carbon savings as estimated by sector associations (as of 5 March 2001)

Sector association	Type of target relative/absolute carbon/energy	Base year	Target (change from base year to 2010)	Additional carbon savings (in 1 000 t above BAU between 2000 and 2010)	Status of agreements
Non-Ferrous Alliance	Relative energy	1990	– 22,0 %	50	Agreed
Chemical Industries Association	Relative energy	1990	– 34,0 %	790	Agreed
Aluminium Federation	Relative carbon equivalent	1990	– 32,1 %	150	Agreed
Food and Drink Federation ([13])	Relative energy	1995	– 13,8 %	420 (including estimate for CHP)	Agreed
Paper Federation of Great Britain	Relative energy	1990	– 40,0 %	430	Agreed
British Cement Association	Relative energy	1990	– 25,6 %	170	Agreed
British Glass Manufacturers Association	Relative energy	1999	– 9,2 %	20	Agreed
British Ceramics Confederation	Relative energy	2000	Pottery – 12,4 % Heavy clay – 10,22 % Fletton bricks – 8,1 % Refractories – 10,33 % Cer. materials – 10,1 %	44	Agreed
Foundries: target 2010	Relative energy	2000	– 11,0 %	20	Agreed

([13]) Partly Annex I products.

Second wave climate change levy: Carbon savings estimated by sector associations (as of 5 March 2001)

Sector association	Type of target relative/absolute carbon/energy	Base year	Target (change from base year to 2010)	Carbon savings (1 000 t) from target	Status of agreements
British Rubber Manufacturers Association	Relative energy	1999	– 10,0 %	23,0	Provisionally agreed
Slag Grinders Association	Relative energy	1999	– 10,0 %	2,0	Agreed
Gypsum Products Development Association	Relative energy	2000	– 7,16 %	7,2	Agreed
British Lime Association	Relative energy	1998	– 7,9 %	6,0	Agreed
Wallcovering Manufacturing Association of GB Ltd	Relative energy	1999	– 9,0 %	2,0	Agreed
Brewers and Licensed Retailers Association	Relative energy	1999	– 11,6 %	16,0	Agreed
Maltsters Association of Great Britain	Relative energy	1999	– 7,8 %	5,0	Agreed
National Association of Master Bakers	Relative energy	1999	Scratch bakeries – 9 % Bake-off facilities – 4,5 %	2,0	Provisionally agreed
Scotch Whisky Association Gin and Vodka Association	Relative energy	1999	– 4,5 %	6,5	Agreed
UK Agricultural Supply Trade Association	Relative energy	1999	– 7,1 %	7,9	Agreed
UK Renderers Association	Relative energy	1999	– 9,0 %	4,5	Agreed
British Apparel & Textile Confederation	Relative energy	1999	– 9,0 %	Finalising data	
British Leather Confederation	Relative energy	1999	– 9,68 %	0,6	Agreed
Confederation of British Metalforming	Relative energy	2000	– 7,0 %	Finalising data	
Eurisol	Relative energy	1999	– 14,9 %	6,7	Agreed
Metal Packaging Manufacturers Association	Relative carbon	1999	– 9,0 %	2,5	Agreed
National Microelectronics Institute (Semiconductors)	Relative energy	2000	– 59,0 %	220,0	Agreed
National Microelectronics Institute (CRTs)	Relative energy	2000	– 21,0 %	7,4	Agreed
Society of British Aerospace Companies	Absolute energy	2000	– 8,5 %	0,5	Agreed
Society of Motor Manufacturers and Traders	Relative energy	1995	– 15,3 %	19,2	Agreed
Surface Engineering Association	Relative energy	1999	– 12,01 %	2,5	Agreed
Vehicle Builders and Repairers Association	Relative energy	2000	– 10,0 %	Finalising data	
British Printing Industry Federation	Relative energy	2000	– 12,0 %	4,2	Agreed
Wood Panel Industries Federation	Relative energy	1999	– 7,34 %	1,9	Agreed
Boat Builders	—	—	—	Late entrant	
Supermarkets					
Environmental Service Association (incineration)	—	—	—	Late entrant	

The UK authorities will send final versions of the agreements to the European Commission.

The UK authorities assume that the cost of meeting the milestone targets will be around GBP 2 500 million over the period 2000-2010. The diversity of investment cycle across the various industries means that there is no reason to assume that averaged over the sectors investment will be anything other than linear over the 10-year period. Therefore, averaged over the lifetime of the agreements the annual costs of investment will be GBP 250 million.

Companies will not be allowed to receive aid under this scheme and also other aid for the investments necessary to fulfil the agreements. They can however benefit from enhanced capital allowances for energy efficient investment, a measure which does not constitute State aid under Article 87(1) of the EC Treaty ([14]).

The UK authorities undertook to provide the Commission with progress reports after each two-year review.

5. **Exemption for dual-use fuels**

It is proposed that energy products falling within the scope of the levy will be exempt from it where the person to whom the product is supplied intends it to be used for other purposes than as fuel. The notion of 'fuel' is not defined in the Finance Act 2000. However, according to the United Kingdom authorities it broadly covers use of energy products for motor and heating purposes. It is proposed that where an energy product is used for partly fuel and partly non-fuel purposes ('mixed uses') it will be fully exempt from the levy.

The United Kingdom authorities consider this provision as a general measure, and as part of the logic of the tax system. According to the United Kingdom, this 'dual-use' provision applies to the steel sector, to the production of aluminium, iron, lead, copper, zinc, batteries and some chemicals.

ASSESSMENT

I. EXISTENCE OF AID

1. **Exemption for transport**

Article 87(1) of the Treaty provides that any aid granted by a Member State or through State resources in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

State aid, within the meaning of Article 87(1) of the Treaty also covers measures that, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which have the same effect as cash grant subsidies. Consequently, a system under which the public authorities grant to certain undertakings a tax exemption that relieves them of some of their costs and confers on them financial advantages which improve their competitive position constitutes State aid within the meaning of Article 87(1) of the Treaty if the aid is capable of affecting trade between Member States and distorting competition.

As described above, the UK Government will offer an exemption from the climate change levy for electricity, coal and gas used in public transport and railfreight. Since mineral oils and gases used by road vehicles are not within the scope of the levy, the benefit deriving from the tax exemption will accrue to railways and light railways using electricity, such as the London Underground and the Manchester Metro.

The exemption from the levy for rail freight will relieve the beneficiaries from costs they should normally bear due to the new tax and hence confers on them a financial advantage, which improves/safeguards their competitive position vis-à-vis other modes of transport and other operators. It thus distorts or threatens to distort competition. The advantage involves State resources as, through the exemption, the State suffers a loss of tax revenue. Road haulage operations, including cabotage, are completely liberalised within the European union and the measure therefore affects trade between Member States. Accordingly, the exemption constitutes aid within the meaning of Article 87(1) of the Treaty.

Also with regard to public transport, the tax exemption confers upon the beneficiaries a financial advantage that improves their competitive situation compared with their main competitors, e.g. undertakings providing public transport by road. The tax exemption thus favours certain undertakings and distorts or threatens to distorts competition within the meaning of Article 87(1) of the Treaty.

Access to the international passenger transport market and the right to provide passenger transport cabotage has been liberalised through Community legislation ([15]). With regard to cabotage rights, the legislation has opened up the market to competition in respect of special regular services and of national regular services, which are provided in the course of an international regular service. The Commission recalls that urban and suburban transport services are not covered by this right to provide passenger cabotage. However, both the Community's public procurement rules and, in particular, national legislation in most Member States enhance an EU-wide market access in this respect. The Commission notes that public transport contracts in many cases takes the form of a concession contract between an transport operator and a public authority and that the detailed procedural rules

([14]) Notified N 797/2000, Commission decision on 13 February 2001.

([15]) Council Regulation (EEC) No 684/92 on common rules for the international carriage of passengers by coach and bus and Council Regulation (EC) No 12/98 laying down conditions under which non-resident carriers may operate national road passenger transport within a Member State.

contained in the public procurement directives impose only limited obligations in relation to works concessions and do not apply in the case of service concessions ([16]). However, although a service concession is not directly covered by the detailed rules on public procurement and work concessions are subject to only limited obligations, public entities concluding such contracts are bound to comply with the fundamental rules of the Treaty, in particular the principle of non-discrimination on the ground of nationality ([17]). In some cases public transport contracts may amount to public service contracts which are subject to the detailed procedural requirements of Directive 92/50/EEC on the award of public service contracts. However, where such contracts are for the provision of 'non-priority' services listed in Annex 1B of that Directive, the public authority is subject to only limited obligations in relation to the award of such contracts. The Commission however, notes that a number of Member States, of which the UK is one, have introduced EU-wide open, transparent and non-discriminatory procedures for public transport services ([18]). Furthermore, statistical data show that where the markets have been accordingly opened, international operators have stepped in alongside national ones. By early 2000 at least nine companies, from the public and private sectors, were acting as public transport operators in more than one Member State ([19]).

Given the fact that transport undertakings in the passenger field show an increasing interest in entering domestic public transport markets, the Commission cannot exclude that the UK tax exemption for public transport is liable to affect trade between Member States. Accordingly, the Commission considers that the exemption for public transport from the climate change levy constitutes an aid within the meaning of Article 87(1) of the Treaty.

2. **Exemption for CHP**

The benefits and beneficiaries of the exemption are assessed by comparing (1) the treatment of a good quality CHP system, respectively the qualifying portions of it, with the electricity production from conventional sources, and (2) by comparing heat or steam production in good quality CHP with conventional heat or steam production.

([16]) See Commission's interpretative communication on concessions under Community law (OJ C 121, 29.4.2000).

([17]) European Court of Justice judgment of 7 December 2000, C 324/98 (TeleAustria).

([18]) Today 11 Member States have introduced legislation or administrative arrangements that provide for competition in at least part of the bus, coach or urban rail markets. See the Commission's proposal for a regulation on action by Member States concerning public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterway, COM(2000) 7 final.

([19]) 2000 data from the International Union of Public Transport (UITP). 1998 data from 'Major European players in public transport — new developments in the European Union, 1997', UITP-EuroTeam, 1998.

(1) ***Comparison of electricity production good quality CHP — conventional power station***

Conventional electricity generator:

Fuel input not taxed	**Conventional power generator**	
	Output taxed if used **on-site** or sold to a **known end-user**	Output sold to grid, **consumer** pays levy on electricity

Good quality CHP:

Fuel input not taxed	**CHP system**	
	Output not taxed if used **on-site** or sold to a **known end-user**	Output sold to grid, **consumer** pays levy on electricity

Operators of good quality CHP systems do not pay levy on the input fuel. This is in line with the general rule of the tax law, which does not tax the input fuel for electricity production in order to avoid double taxation.

I. **Operators of good quality CHP systems do not pay levy on the electricity they produce from a good quality CHP for their own use.**

II. **Known end-users do not pay levy on electricity they purchase from a good quality CHP for their own use.**

This gives operators of good quality CHP systems an advantage compared with conventional power generators who pay a levy on electricity used on site and gives known end-users an advantage compared with end-users who buy electricity from the grid for their own use. This relieves them of charges that are normally borne from their budgets and gives the recipient firms an advantage over other firms. The advantage is granted through state resources as the State suffers a loss of tax revenues. The recipients exercise an economic activity on markets on which there is or could be trade between Member States or on which firms from other Member States might wish to establish themselves. The scheme thereby distorts or threatens to distort competition and could affect trade between Member States.

The Commission assessed in particular if the exemption (a) is aid to certain undertakings, or (b) is aid to the production of certain goods.

I. **Operators of good quality CHP systems**

(a) *Does the exemption constitute aid to certain undertakings?*

The exemption is applied in all UK, granting automatic rights if objective quality criteria are fulfilled. The exemption for good quality CHP applies to all autogenerator CHP systems, independent of their type or size.

CHP is a technology to increase energy efficiency in the context of a wide variety of economic activities. It is strongly used in the manufacturing sectors, there in so different subsectors as refineries, chemical industry, paper and printing; food products, beverages and tobacco; metal products, machinery, equipment; mining and agglomeration of solid fuels; extraction of crude oil and natural gas; coke ovens; extraction and processing of nuclear fuels; iron and steel industry; non-ferrous metals; non-metallic mineral products extraction; textile, clothing and leather. It is also used in other industrial branches, in transport, in the service sector and for public supply (district heating).

While use in the service sector is by far not as developed as in manufacturing, CHP is also there increasingly used, e.g. for hotel (spa) facilities, and in the health sector. The exemption is even meant to have the effect to spread the use of CHP also in those sectors, where it is currently not that widely used, but which would have the potential to use it.

The application of CHP across different economic sectors

Output of CHP potential model from 1999 — capacity and sites

	Capacity		Sites	
	(MWe)	%	No	%
Chemicals	3 548	24,8 %	448	3,0 %
Food	1 834	12,8 %	742	4,9 %
Paper	1 349	9,4 %	107	0,7 %
Textiles	359	2,5 %	709	4,7 %
Other industry	466	3,3 %	634	4,2 %
Engineering	4 224	29,6 %	1 226	8,1 %
Warehouses	324	2,3 %	1 150	7,6 %
Retail	355	2,5 %	3 249	21,4 %
Public buildings	128	0,9 %	526	3,5 %
Offices	478	3,3 %	2 801	18,5 %
Hotels	119	0,8 %	659	4,3 %
District	291	2,0 %	400	2,6 %
Health	756	5,3 %	2 468	16,3 %
Education	54	0,4 %	50	0,3 %
	14 285	100 %	15 168	100 %

The following table shows the distribution of CHP systems in the UK in 1999 and the distribution of applications for good quality CHP certification:

	1999 UK CHP statistics				**6 March 2001 CHPQA applications**			
	Capacity		Sites		Capacity		Sites	
	MWe	%	No	%	MWe	%	No	%
Chemicals	1,180	28 %	52	4 %	1,301	38 %	38	6 %
Food	392	9 %	44	3 %	382	11 %	35	5 %
Paper	471	11 %	31	2 %	537	16 %	31	5 %
Textiles	2	0 %	3	0 %	—	0 %	0	0 %
Other industry	1,583	37 %	215	16 %	916	27 %	68	10 %
Engineering	302	7 %	16	1 %	71	2 %	3	0 %
Warehouses	—	0 %	0	0 %	—	0 %	0	0 %
Retail	6	0 %	6	0 %	14	0 %	1	0 %
Public buildings	68	2 %	350	27 %	31	1 %	181	27 %
Offices	16	0 %	40	3 %	66	2 %	23	3 %
Hotels	28	1 %	260	20 %	19	1 %	144	22 %
District heating	68	2 %	47	4 %	26	1 %	17	3 %
Health	99	2 %	204	16 %	64	2 %	111	17 %
Education	24	1 %	45	3 %	24	1 %	17	3 %
	4,239	100 %	1 313	100 %	3,451	100 %	669	100 %

The UK informed the Commission that the range of CHP applications is continuing to increase as new technology is commercialised. The electrical capacity of CHP schemes currently available ranges from 15 kWe to over 200 MWe, sized to meet the energy requirements of a very wide range of organisations. Schemes over 1 MWe are mainly found on larger industry sites, large commercial buildings, hospitals and district heating schemes, etc. These schemes are normally custom built, tailored to the energy needs of the host(s).

Schemes under 1 MWe are found in smaller industrial sites, commercial and public buildings, hotels, leisure centres, blocks of flats and residential homes etc. These schemes are manufactured as a package with standard equipment and control systems installed within an enclosure. Standard packaged units are available in the following electrical outputs: 15, 30, 38, 54, 60, 75, 95, 110, 145, 185, 206, 220, 300, 400, 600 and 800 kWe. There are 34 CHP schemes below 1 MWe on smaller industrial sites, with an average capacity 400 kWe.

There is no minimum size for CHP systems in order to be eligible as good quality CHP and the development of the use of small-scale CHP shows that the exemption will also be of interest for SMEs.

Thus all companies throughout a wide range of sectors of the economy are beneficiaries, independent of their size, location or economic activity. The criteria for defining 'good quality' CHP are objective and not designed in a way that would limit the benefit of the exemption to specific sectors. The majority of existing CHP systems already fulfil the standard. Stations not yet fulfilling the standard can upgrade to fulfil the criteria at least for a considerable portion of their production.

(b) *Is 'good quality CHP electricity' a specific product?*

The product 'good quality CHP electricity' can be produced by a large number of companies in various sectors. In most of these sectors, CHP is not used to produce electricity as a core product of the business, but the technology is used to produce the different products of the companies more efficiently, by increasing the energy efficiency of the production process. Insofar, in the case of most of the good quality CHP operators, 'good quality CHP electricity' is not a specific product.

This may be different for a certain type of CHP system operators, namely power stations, using CHP technology for producing electricity to feed into the grid ([20]). For such companies, the production of electricity is their core business, and the electricity produced is in direct competition with the same product from conventional electricity producers. However, electricity from CHP systems is not exempt, if it is sold via the grid. The exemption includes only good quality CHP electricity used on site. With respect to this electricity, CHP power stations are in the same situation as any other autogenerator in any other sector of the economy which produces good quality CHP for use on site.

Therefore, it can be concluded that the exemption for good quality CHP electricity used on site is not selective.

II. **Known end-users do not pay levy on electricity they purchase from a good quality CHP for their own use**

Known end-users are users, whose main business is not the production of heat or power. They could produce heat and power for use on their own site, but outsource this production (because it is not their core business) to a separate entity delivering mainly to a group of known end-users (closed system). Known end-users are not 'formally' producing their own power, but practically they are in the same situation as an autogenerator, who produces power for use on site. It should also be noted that such 'closed systems' are comparable to a 'use on site situation' as regards the energy efficiency of electricity transfer compared with electricity transfer via the grid.

([20]) In its decision on a temporary tax exemption for certain combined cycle power plants in the context of the continuation of the ecological tax reform in Germany (SG(2000) D109283 of 14.12.2000), the Commission argued that 'the relevant gas and steam turbine plants are being used quite predominantly to generate electricity for feeding into the grid. The technology (CHPs excluding heat extraction) is not one which can be used virtually indiscriminately in all sorts of firms in all branches of industry. Since it can accordingly be assumed that the effects of the tax exemption will be felt, if not exclusively, then at least quite predominantly in a certain sector, the measure favours certain undertakings or the production of certain goods within the meaning of Article 87(1)'. In fact there were only very few stations using this type of technology in Germany.

The Commission considers that the same arguments apply as under point 1 (use of CHP as technology available throughout the sectors) and that the measure is not selective.

(2) ***Consumption of a taxable commodity for heat production (without producing electricity from it first) by a good quality CHP***

Conventional production of heat:

Fuel input taxed	**Conventional production of heat or steam (= boiler)**
	Heat output not taxed (not a taxable commodity)

Good quality CHP:

Fuel input not taxed	**CHP system**
	Heat output not taxed (not a taxable commodity)

Operators of good quality CHP do not pay a levy on input fuels to produce heat. This favours them in comparison with the conventional production of heat, where the input fuel is taxed. Again, the measure does not favour certain undertakings, as CHP is a technology available in a wide range of sectors.

The Commission therefore concludes that the exemption on CHP does not constitute State aid according to Article 87(1) of the EC Treaty.

3. **Exemption for electricity generated from some energy sources**

Firms purchasing electricity generated from some energy sources as defined in the description are fully exempt from the levy on the electricity. This relieves them of charges that are normally borne from their budgets and gives the recipient firms an advantage over other firms. The advantage is granted through state resources as the State suffers a loss of tax revenues. The recipients exercise an economic activity on markets on which there is or could be trade between Member States or on which firms from other Member States might wish to establish themselves. The scheme thereby distorts or threatens to distort competition and could affect trade between Member States. However, any company in any sector of the economy is able to purchase electricity from these sources. Thus, the tax exemption does not favour certain undertakings or the production of certain goods and is therefore not selective.

But it has to be also considered that the exemption will favour at the same time the generators of electricity from these sources feeding the electricity into the grid. It thus favours this type of electricity producer compared with producer of conventional and CHP electricity. In this respect, the exemption is selective.

However, the preliminary objective of the tax is an environmental one, namely the reduction of CO_2. The levy is introduced to penalise the use of energies producing long-cycle CO_2, as these emissions are responsible for climate change.

A tax aiming at reducing CO_2 could have been structured in a way so that it reflects the *carbon content* of different fuels. However, there are good reasons to base the calculation of the levy rates on the energy content of different fuels: Firstly, targeting emissions via the energy content of fuels is an appropriate way to reduce them as this approach increases the energy efficiency of fuel use ([21]). Secondly, given the current structure of the electricity and distribution industries, it is only possible to determine the carbon content of electricity as a broad average. On that basis, the additional fuel switching that would be induced by such an approach is likely to be limited. Thirdly, structuring the levy with regard to the *energy content* of different fuels has the advantage of simplicity.

None of the sources of energy listed in the notification contributes negatively to long-cycle CO_2 emissions. They hence are not fuels for which a penalisation in form of the levy is intended.

However, the exemption is not extended to all energy sources which do not contribute negatively to long-cycle CO_2 emissions and in particular does not apply to nuclear power and to hydro power of more than 10 MW. This choice is justified for the following reasons: While nuclear power does not contribute to CO_2 emissions, it has a number of other effects which are not desirable from an environmental point of view. With regard to large hydro power, it should be considered that the CCL scheme is targeting environmentaly friendly energy sources with significant development potential. As the potential of large hydro plants has already been largely developed, it does not fall into the target group of the scheme. The Commission also notes that its proposal on a directive on the promotion of electricity from renewable sources also includes only hydroelectric installations below 10 MW ([22]).

The Commission therefore considers that as none of the exempted energy sources contributes to long-cycle CO_2 emissions, which is fully in line with the objective of the levy, the exemption for electricity from the energy sources notified by the UK Government is justified by the nature or general scheme of the tax system. The Commission considers that the exemption therefore does not constitute State aid within the meaning of Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement.

However, even if the exemption would constitute State aid, it could be declared compatible with Article 87(3) of the EC Treaty.

4. **Tax reduction for companies entering into climate change agreements**

Firms entering into climate change agreements are exempted for 80 % of the levy. This relieves them of charges that are normally borne from their budgets and gives the recipient firms an advantage over other firms. The advantage is granted through State resources as the State suffers a loss of tax revenues. The recipients exercise an economic activity on markets on which there is or could be trade between Member States or on which firms from other Member States might wish to establish themselves. The scheme thereby distorts or threatens to distort competition and could affect trade between Member States. Only companies fulfilling specifc criteria can enter into climate change agreements. Thus, the tax exemption favours certain undertakings or the production of certain goods and is therefore selective.

It is not a measure which would be in the nature of the tax law.

The levy reduction for companies entering into climate change agreements therefore constitutes State aid under Article 87(1) of the EC Treaty.

5. **Exemption for dual-use fuels**

The United Kingdom's position is that the dual-use exemption is a general measure that does not constitute State aid. They claim that the CCL is a tax imposed on the use of energy products used *as fuel* and that the exemption is in line with Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils ([23]) ('the Mineral Oils Directive') as well as the Proposal for a Council Directive restructuring the Community framework for the taxation of energy products ([24]) ('the proposal'), in so far as only the use of energy products for motor and heating purposes falls within its scope.

According to the United Kingdom authorities, the purpose of the extension of this exemption to mixed uses is to provide certainty and clarity for the taxpayer, who is the fuel supplier, as to whether or not, on the basis of scientific advice, any use of a commodity by the customer is exempt from the levy. The United Kingdom authorities do not consider it to be technically feasible to objectively apportion with sufficient accuracy the fuel and non-fuel uses of energy products within certain processes.

The Commission considers that the exemption gives the benefiting companies an advantage, which is financed through State resources. In assessing whether this exemption is a general measure, as the United Kingdom authorities claim, or whether it constitutes State aid, the Commission considers it necessary to assess whether the effects would favour certain undertakings or the production of certain goods. The Commission notes that, according to the information provided by the United Kingdom authorities, the exemption will favour the production of certain goods, namely some metals (including aluminium, iron, lead, copper and coke) as well as batteries and some chemicals. The Commission therefore has doubts that the exemption can be considered as a general measure.

The Commission notes that it falls to be assessed whether the exemption can be justified on the basis of the nature and logic of the tax system. The Commission notes the claim made by the United Kingdom authorities that the imposition of the levy solely on energy used for fuel is consistent with the provisions of the Mineral Oils Directive and the Proposal for a Council Directive restructuring the Community framework for the taxation of energy products.

([21]) The approach of taxing harmful emissions approximately via the energy content of fuel is, for example, also used for car emissions.

([22]) COM(2000) 279 final.

([23]) OJ L 316, 31.10.1992, p. 12.

([24]) OJ C 139, 6.5.1997, p. 14.

The Commission notes that the climate change levy is a tax on the non-domestic use of energy, which broadly covers use as heating fuel, lighting or for motive power. The levy will not apply to fuels used for other than these purposes. Such a definition of the scope of an energy tax, whereby not all uses of fuels are taxed, may be in the logic of a system such as that established in the Mineral Oils Directive and in the Proposal for a Council Directive restructuring the Community framework for the taxation of energy products.

However, the proposed exemption for dual-use fuels goes beyond such a definition of the scope of the levy.

Firstly, the exemption may not treat comparable situations equally, in so far as some dual-use processes are exempt from the levy, while other processes, which may also fall to be considered as dual-use, are not exempted.

Secondly, the UK exempts fuels entirely from the levy, even if they are only partially used for non-energy purposes as defined above.

1. The Commission notes that the Proposal for a Council Directive restructuring the Community framework for the taxation of energy products is not in force and cannot be automatically relied upon as a reference point to establish the logic and general nature of the tax system. However, it may provide some indication of whether the dual-use provision can be considered as a general measure, although Article 13(1) refers to fuels used *principally* for the purposes of chemical reduction. The Commission has doubts, however, that the exemption is fully consistent with the proposal, as it does not extend to energy used in all *metallurgical* processes, as would be required under Article 13(1)(a) of the proposal. The Commission notes that according to the United Kingdom authorities, a metallurgical process is a process which results in the production of metal, for example, from ore. The Commission has doubts that this interpretation is consistent with the notion of metallurgical process in the proposal. In order to be consistent with the proposal, it appears that energy used in all metallurgical processes, namely in any metal production process, would be exempt from the levy.

2. The Commission further notes the United Kingdom's claim that it is not possible to apportion the fuel/non-fuel use amounts of energy products in certain processes with accuracy; and that for reasons of clarity and certainty, a full exemption from the levy is necessary for mixed uses. The Commission has doubts, however, that the United Kingdom authorities cannot establish a mechanism whereby an estimation of fuel/non-fuel uses for certain processes can be made and levy imposed accordingly.

   The Commission further notes that, if the energy part in the dual-use were to be fully exempted, the result may be not in line with the objective of the levy to reduce CO_2.

For the reasons given above, the Commission has doubts that the exemption for energy products used for purposes other than as fuel can be considered as a general measure and not as State aid.

II. LEGALITY OF THE AID

By notifiying its intention to introduce the tax scheme, the UK has complied with its obligation under Article 88(3) of the EC Treaty to inform the Commission, in sufficient time to enable the latter to submit its comments, of any plans to grant or alter aid.

III. COMPATIBILITY OF THE AID

The aid's compatibility with the common market under Article 87(3)(c) of the EC Treaty has been assessed on the basis of the Community guidelines on State aid for environmental protection (OJ C 37, 3.2.2001, p. 3).

1. **Exemption for transport**

According to Article 87(3)(c) of the Treaty, aid may be considered compatible with the common market if the aid will facilitate the development of certain economic activities or certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

As described above, the UK has adopted a substantial transport plan, the aim of which is to improve the UK transport system by way of reducing road congestion and pollution and providing better and more reliable public transport. One key target of this plan is to increase the use of rail and to create a sustainable mobility. However, to meet the plan's target, substantial investments in rail infrastructure and rolling stock will be necessary. The UK Government has estimated that in addition to these investments, the cost of the climate change levy could add approximately GPB 15 million per year to rail operators' costs.

The Commission has for some time pursued a policy of achieving a sustainable mobility through a balanced intermodal transport system and a central aim of the Common Transport Policy is the promotion of a modal shift from road to other more environmentally friendly modes of transport.

For instance, the Commission communication on the future development of the common transport policy [25] proposes a Community framework for sustainable mobility which Member States, together with the Community, have to implement by measures ensuring that the development of transport system lead to a 'sustainable pattern of development by respecting environment and, in particular, by contributing to the solution of major environmental problems, such as the limitation of CO_2'. The communication also makes it clear that state aid does have a role to play, not only in modifying the cost relationship of modes, but also in rendering certain modes more competitive [26].

Moreover, a sustainable public transport system is liable to contribute to economic development and employment as it helps to clean up the environment by using less energy, making less noise and producing fewer pollutants. It also reduces social exclusion by allowing people without the use of a car to gain access to jobs, schools, shops, medical facilities, etc. [27].

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[25] Commission Communication COM(92) 494 final, 2 December 1992, 'The future development of the common transport policy'.

[26] See Commission Decision of 21 April 1999, Case N 588/98 (Environmental subsidy for the transport of goods by rail) (OJ C 166, 12.6.1999, p. 6.

[27] See Commission Communication COM(1998) 431 final of 10 July 1998, 'Developing the citizen's network'.

The Commission considers, that, although the levy is introduced for long-term environmental reasons, it could in the short or medium term jeopardise or hamper the overall UK transport strategy to promote rail as a mode of transport and to attain a sustainable and environmentally friendly transport system, a goal that is shared by the Community as a whole.

It is however also true that, in view of the climate change levy, the beneficiaries of the tax exemption will be relieved of expenditure that they normally would have to bear and which hence gives them a competitive advantage. However, the Commission also notes that the beneficiaries' main competitors, operators providing road transport service, will not be subject to the new levy. Therefore, the de facto effect of the aid will only be that the competitive situation between the beneficiaries and their main competitors will be maintained at the same level as it was before the levy was introduced.

The Commission notes that without the tax exemption, the beneficiaries are likely to suffer a loss of competitiveness since their main competitors — undertakings providing road transport services — will not be subject to the climate change levy. It is thus considered that the aid under scrutiny is likely to facilitate the development of a sustainable public transport and rail freight. As described above, the development of these sectors is in line with the policy pursued by the Community as a whole and is thus in the common interest. Furthermore, as the de facto result of the aid will only be that the competitive situation between the beneficiaries and their main competitors will be maintained at the same level as it was before the levy was introduced, the Commission finds — on balance — that the aid will not affect trading conditions to an extent contrary to the common interest.

In addition, according to Article 73 of the Treaty, aid shall be compatible with the Treaty if it meets the needs of coordination of transport. Article 3(1)(b) of Council Regulation (EEC) No 1107/70, which implements Article 73 of the Treaty, allows that, until the entry into force of common rules on the allocation of infrastructure costs, aid may be granted to undertakings that have to bear expenditure relating to the infrastructure used by them, while other undertakings are not subject to a like burden.

Different modes of transport impose different levels of external costs, which, in the absence of harmonised rules on infrastructure charging, are not adequately reflected in the price that users pay for the use of a particular infrastructure. This situation is further liable to distort competition between different transport modes with a negative environmental impact. It is, in particular noted that users of rail infrastructure do not fully benefit from the relatively low external costs they impose on society as compared with other modes with relatively higher external costs ([28]). The Commission considers, under such circumstances, that users of rail infrastructure are operating under conditions that need to be coordinated within the meaning of Article 73 of the Treaty, read in conjunction with Article 3(1)(b) of Regulation (EEC) No 1107/70 ([29]).

The Commission accordingly holds also the exemption provided for in Article 3(1)(b) of Regulation (EEC) No 1107/70 to be relevant for the tax exemption in question, in so far as the UK climate change levy for electricity, gas and coal used for rail freight and public transport may entail additional costs connected to the use of railway and light railway infrastructure as compared with, in particular, road transport.

In view of the foregoing considerations, the Commission concludes that the notified tax exemption for public transport and rail freight shall be deemed compatible with the common market.

2. **Exemption for electricity generated from some energy sources**

Even if, contrary to the assumption made above, the exemption for electricity generated from the sources notified by the UK Government is not justified by the nature or general scheme of the levy system, and therefore constitutes State aid, the Commission considers that such aid must be deemed compatible with the common market in accordance with Article 87(3)(c) of the EC Treaty.

By virtue of point 51(1)(a), second indent, of the environmental aid guidelines, when, for environmental reasons, a Member State introduces a new tax in a sector of activity or on production in respect of which no Community tax harmonisation has been carried out, exemption decisions covering a 10-year period may be justified where a Member State makes a tax reduction subject to conditions that have the same effect as agreements relating, among other things, to reduction in emissions.

The climate change levy is a new tax introduced in a sector which is not yet covered by Community tax harmonisation. As stated above, the UK authorities have undertaken to renotify or amend the relevant legislation after an initial period of 10 years. The tax exemption is only granted for electricity produced from the notified sources which do not contribute negatively to long-cycle CO_2 emissions. Therefore, in the present case, the exemption is subject to the condition that emissions are indeed avoided. The result of this exemption is thus actually better than what can possibly be achieved under a CCL agreement. The fact that the levy is charged on electricity produced from other sources which do not contribute to long-cycle CO_2 emissions is not relevant in this context, since the Member State may decide, for justified reasons linked i.a. to its environmental or energy policy, to reserve such a benefit to a particular category of energy sources.

For these reasons, the conditions set out in the environmental aid guidelines are fully met and, if the exemption in favour of electricity generated from the notified sources constitutes State aid, it must be considered compatible with the common market.

3. **Tax reduction for companies entering into climate change agreements**

The climate change levy is a new environmental tax on products in respect of which no Community tax harmonisation has been carried out.

([28]) Commission White Paper COM(1998) 466 final, 'Fair payment for infrastructure use: A phased approach to a common transport infrastructure charging framework in the EU'.

([29]) See Commission Decision . . . N 47/1999.

Although companies will have to make investments in order to achieve the targets of the agreements, the tax reduction is not directly linked to and expressed as a percentage of eligible investment costs. The tax reduction thus constitutes operating aid.

The UK introduces these tax reduction in order not to endanger the competitiveness of energy-intensive industrial sectors, for which the full rate of the levy would be a high increase of their costs and for which the levy is a competitive disadvantage in particular as there is not tax harmonisation on energy consumption at the Community level.

Points 47 and 48 of the environmental aid guidelines consider that when adopting taxes that are to be levied on certain activities for reasons of environmental protection, Member States may deem it necessary to make provision for temporary exemptions for certain firms notably because of the absence of harmonisation at European level or because of the temporary risks of a loss of international competitiveness.

If the tax is to be levied as the result of an autonomous decision on the part of a Member State, the firms affected may have some difficulty in adapting rapidly to the new tax burden. In such circumstances there may be justification for a temporary exemption enabling certain firms to adapt to the new situation.

In general, tax measures in question should make a significant contribution to protecting the environment. Care should be taken to ensure that the exemptions do not, by their very nature, undermine the general objective pursued (point 50 of the environmental aid guidelines).

The climate change levy taxes the energy consumption. By increasing the costs for energy, it will contribute to a more efficient use of energy, and thereby to the reduction of CO_2 emissions and will thus make an important contribution to environmental protection. The tax reduction are conditional on climate change agreements. These agreements establish emission reduction targets or energy efficiency targets, which will contribute to the same objective as the tax itself. They thus do not undermine the general objective of the tax pursued.

In this situation, tax exemptions may be justified for a 10-year period with no degressivity if the Member State concerned and the recipient firms or associations of firms undertake to achieve environmental protection objectives during the period for which the exemptions apply.

Such agreements may relate, among other things, to a reduction in energy consumption or a reduction in emissions (point 51(1)(a) of the environmental aid guidelines). The tax reductions are conditional on the associations of firms or companies entering into climate change agreements, which pursue the objectives required by the guidelines.

Point 51(1)(a) of the environmental aid guidelines allows such agreements to be concluded not only at the level of indivdual firms, but also at the level of associations of firms. The climate change agreements are firstly concluded at the level of associations, with underlying agreements setting targets for individual companies. As long as the sector target is achieved, underperforming companies within the same sector may also benefit from the levy reduction. However, any free-rider-benefit is most likely to be limited by sector discipline exercised internally in the associations. In any case, underperforming companies run the risk that the sector target will not be met, in which case only the underperforming companies of the sector will have to pay the levy.

The Commission assessed these agreements for the sectors concerned by this notification as required in point 51(1)(a) of the guidelines and concludes on the basis of the targets as they are set out in draft form, that they contribute considerably to increased energy efficiency and directly or indirectly to CO_2 reductions. This positive assessment is based on the most recent available information described above and on the appraisal of the UK authorities that these targets would not be lowered in the final phase of the negotiations. The Commission therefore reminds the UK authorities that in case the environmental benefit of the final targets would be lower than of the envisaged targets, the tax reduction for these agreements would not be covered by the present Commission decision.

For some sectors, the UK authorities were not yet in a position to provide even provisional information on targets. The Commission is therefore not in a position to assess the value of these agreements and cannot express an opinion on them. These agreements are therefore not covered by this decision.

The loss of levy reduction for the future while the company has at the same time to catch up on the targets is an efficient mechanism to keep companies in the agreement and to lead to the fulfillment of the targets. Together with the recuperation mechanism proportional to non-achieved targets at the end of the agreement period is a penalty mechanism which fulfils the requirements of the environmental aid guidelines.

The scheme allows carbon emission trading among entities committed to a climate change agreement. This will allow over-performing entities to sell carbon emission certificates to underperforming companies in order for them to meet their targets.

This may be seen as an allocation of a limited number of transferable emission permits to overperforming companies. The State thus provides them with an intangible asset, which can be sold on a market to be created. It can be assumed that the permits will actually have a value to an extent, as the underperforming companies would either have to invest themselves or would otherwise lose the levy reduction.

Having regard to these circumstances, to the fact the permits are allocated for free, and in line with points 69 to 71 of the Community guidelines on State aid for environmental protection, the Commission cannot exclude that the arrangements constitute aid granted by a Member State or through State resources in any form whatsoever.

Theoretically, a company able to sell its permits at a certain price may use the resulting cash-flow to improve its competitive position in the UK or in other Member States.

It cannot be excluded that there is a potential distortion of competition between companies covered under climate change agreements and other companies in other Member States. There may also be a potential effect on trade between Member States. In view of all this, the Commission cannot exclude that the possibility for carbon emission trading may constitute State aid in the meaning of Article 87(1).

According to point 71 of the abovementioned guidelines, the Commission has a large margin of discretion in order to assess emission trading systems. In the present case, the Commission considers any aid from this arrangement to be compatible with Article 87(3)(c) of the EC Treaty for the following reasons:

— trading is limited to entities committed to climate change agreements,

— trading is only allowed for verified surplus carbon,

— trading allows to achieve the targets in a cost-effective way and put sectors in a position to offer ambitious targets,

— the value of the permits will be limited by the alternatives open to the companies in the climate change agreements, thus, the potential distortion of competition must be considered to be limited,

— companies will have to invest beyond the investments needed to fulfil their own targets in order to obtain permits. Thus, there will be an effective and concrete counterpart from the benefiting companies.

A wider emission trading scheme, in which later on emission trading should also be possible with CCL companies, is going to be notified to the Commission soon.

In assessing the general terms of the agreements, the Commission did not find any element which, by itself, could cause participating undertakings or sector associations to restrict competition through emission trading in a way contrary to Articles 81 or 82. The UK undertook that it will keep under review the behaviour of participants in trading activity and note that competition rules apply to that behaviour.

4. **Exemption for dual-use fuels**

Assuming that the exemption for dual-use fuels constitutes State aid, the Commission has doubts on its compatibility with the environmental aid guidelines:

1. The provision exempts energy consumption for some processes causing considerable CO_2 emissions and thus may run counter to the objective of the tax to reduce CO_2 emissions.

2. The exemption is not temporary, and not granted with a view of enabling companies to adapt to the new tax (point 48 of the environmental aid guidelines).

3. The exemption is not made conditional on the conclusion of agreements in order to achieve environmental protection objectives, nor is the tax subject to conditions that have the same effect as agreements (point 51(1)(a) of the environmental aid guidelines).

4. The UK has not demonstrated that firms eligible for the exemption must nevertheless pay a significant proportion of the national tax (point 51(1)(b) of the environmental aid guidelines).

CONCLUSION

— The Commission therefore concludes that the levy reduction for companies covered by climate change agreements is compatible with the requirements of the environmental aid guidelines and Article 87(3)(c) of the EC Treaty,

— the Commission concludes that the tax exemption for public transport and rail freight is compatible with Article 87(3)(c) of the EC Treaty,

— in the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 88(2) of the EC Treaty, requests the United Kingdom to submit its comments and to provide all such information as may help to assess the **exemption on dual-use fuels**, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission wishes to remind the United Kingdom that Article 88(3) of the EC Treaty has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.'

STATE AID

Invitation to submit comments pursuant to Article 6(5) of Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry, concerning aid C 20/2001 (ex NN 77/2000) — Several companies in the Basque Country (Spain) — R & D — ECSC steel

(2001/C 185/04)

(Text with EEA relevance)

By means of the letter dated 28 March 2001, reproduced in the authentic language on the pages following this summary, the Commission notified Spain of its decision to initiate the procedure laid down in Article 6(5) of Commission Decision No 2496/96/ECSC concerning the abovementioned aid.

Interested parties may submit their comments on the aid within one month of the date of publication of this summary and the following letter, to:

European Commission
Directorate-General for Competition
State Aid Registry
Rue Joseph II/Jozef II-straat 70
B-1000 Brussels
Fax (32-2) 296 12 42.

These comments will be communicated to Spain. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

SUMMARY

I. PROCEDURE

By letter dated 31 July 2000, the Commission requested the Spanish authorities to provide information on the aids granted in 1999 by the Basque Government to ECSC companies for research and development and that had not been notified following the procedure established in Article 6.1 of the Steel Aid Code. By letter dated 4 October 2000, the Spanish authorities provided some information. By letter dated 20 November 2000 the Commission requested additional information. By letter dated 16 January 2001, the Spanish authorities provided some additional information.

II. DESCRIPTION OF THE AID

The aids consist of grants granted under the regime of aids for R & D authorised by the Commission under the EC Treaty.

The ECSC beneficiary undertakings, the details of the R & D projects as well as the amounts of the aids are the following:

1. **Acería de Álava SA**. Project: development of a new production line: finishing of bars in stainless steel. Stage of R & D: precompetitive development. Eligible costs: EUR 2 368 949. Grant (5,4 %): EUR 128 871.

2. **Acería Compacta de Bizcaia SA** and **Aceralia Corporación Siderúrgica SA**. Project: development of carbon and micro-alloyed steels through thin slab casting. Stage of R & D: precompetitive development. Eligible costs: EUR 527 388. Grant (40 %): EUR 210 955.

3. **Aceros Inoxidables Olarra SA**. Project: optimisation of hot conforming of austenitic steels through thermomechanical simulation. Stage of R & D: precompetitive development. Eligible costs: EUR 77 062. Grant (39,2 %): EUR 30 177.

4. **GSB Acero SA**. Project: optimisation of the metallurgical parameters in forging of micro-alloyed steels. Stage of R & D: precompetitive development. Eligible costs: EUR 117 696. Grant (40 %) EUR 47 077.

5. **Nervacero SA**. Project: recycling of dusts from the steel shop through briquetting and use in the furnace. Stage of R & D: precompetitive development. Eligible costs: EUR 48 832. Grant (41 %) EUR 20 014.

6. **Siderúrgica Aristrain Olaberría SL**. Project: development of the beam blanks technology for obtaining carbon and micro-alloyed structural steels. Stage of R & D: precompetitive development. Eligible costs: EUR 390 708. Grant (6 %): EUR 23 526.

7. **Esteban Orbegozo SA**. Project: optimisation of the melting of steel scrap in an electric arc furnace through the continuous control of the slag. Stage of R & D: industrial research. Eligible costs: EUR 168 283. Grant (6,6 %): EUR 11 030.

8. **Esteban Orbegozo SA**. Project: process control for the decrease of defaults in the hot rolling of billets. Stage of R & D: precompetitive development. Eligible costs EUR 317 839. Grant (7,3 %): EUR 23 145.

9. **Marcial Ucín Siderúrgica SL**. Project: improvement of the behaviour to fatigue of corrugated steels with anti-seismic proprieties. Stage of R & D: industrial research. Eligible costs EUR 220 788. Grant (6,3 %): EUR 13 951.

10. **Tubos Reunidos**. Project: optimisation and improvement of productivity in the steelworks. Stage of R & D: precompetitive development. Eligible costs EUR 622 782. Grant (4,2 %): EUR 26 338.

As to the incentive effect of the aid, the Spanish authorities have taken into account the following factors: that they are non-recoverable aids, that they are granted annually, that all kinds of companies can have access to them and that all the expenses incurred by the undertakings are eligible for aid. In their letter of 16 January 2001 in order to further justify the incentive effect they argued that the industrial sector in the Basque Country consists mostly of SMEs in traditional sectors, that as a consequence of the reduction of aids in the years 1992 and 1993, the R & D efforts of the undertakings were reduced in those years as well as in 1994 and, lastly, that the Basque government is now encouraging the projects presented by more than one undertaking.

III. **ASSESSMENT OF THE AID**

The abovementioned companies, being undertakings in the meaning of Article 80 of the ECSC Treaty, are subject to that Treaty and to the rules under the steel aid code. According to Article 2 of the code, aid granted to defray expenditure by steel undertakings on research and development projects may be deemed compatible with the common market if it is in compliance with the rules laid down in the Community framework for State aid for research and development (hereinafter referred to as the R & D framework).

According to the R & D framework, in order to assess if aid is compatible with the common market, the Commission must verify the stage of the research, the aid intensity and the eligible costs and make sure that the aid has an incentive effect.

As to the stage of the research, since the Spanish authorities did not provide the detailed information that the Commission requested in its letter of 20 November 2000, the Commission cannot assess whether the qualification made by the Spanish authorities is in conformity with the definitions of the R & D framework. They have not provided either details relating to the costs items nor, for some projects, have they identified the public research bodies and their role in the R & D activity. In these circumstances, the intensity of the aid and its conformity with the R & D framework cannot be accurately determined.

As for the incentive effect of the aids, according to the R & D framework, the Commission may assume that the aid provides a necessary incentive if the recipient is an SME. The Spanish authorities have acknowledged that ACB, Aceralia, Aceros Inoxidables Olarra, GSB Aceros and Nervacero are not SMEs. As for the others, the Commission notes that SMEs are not numerous in the steel sector and the Spanish authorities have not demonstrated that they are SMEs within the meaning of the current Community definitions. On the other hand, when the Commission approved the regime under the EC Treaty, it noted that the Spanish authorities would examine the incentive effect of the aids for large undertakings according to the following indicators: evolution of R & D spending, evolution of the number of people assigned to R & D activities, evolution of R & D spending as a proportion of total turnover. It appears that none of these factors has been taken into account and that they would be pertinent for the assessment of the incentive effect in the present case.

IV. **CONCLUSION**

The Commission has doubts as to the incentive effect of the aid. The Commission also has doubts as to the qualification of the activities as R & D or as to the stage of the research in relation to the definitions used in Annex I of the R & D framework. It also has doubts as to the amount of the eligible costs. As a consequence, at this stage, the intensity of the aid as defined in the R & D framework cannot be accurately determined.

TEXT OF THE LETTER

'Por la presente, la Comisión tiene el honor de comunicar a España que, tras haber examinado la información facilitada por sus autoridades sobre la ayuda arriba indicada, ha decidido incoar el procedimiento previsto en el apartado 5 del artículo 6 de la Decisión nº 2496/96/CECA de la Comisión, de 18 de diciembre de 1996, por la que se establecen normas comunitarias relativas a las ayudas estatales en favor de la siderurgia [1] (en lo sucesivo, el Código de ayudas a la siderurgia), con respecto a las ayudas concedidas por el Gobierno vasco a varias empresas siderúrgicas CECA.

I. **PROCEDIMIENTO**

1. Por carta de 31 de julio de 2000, la Comisión pidió a las autoridades españolas que facilitaran información sobre las ayudas concedidas en 1999 por el Gobierno vasco a empresas CECA para actividades de investigación y desarrollo, que no habían sido notificadas con arreglo al procedimiento establecido en el apartado 1 del artículo 6 del Código de ayudas a la siderurgia. Por carta de 4 de octubre de 2000, las autoridades españolas proporcionaron alguna información. Por carta de 20 de noviembre de 2000, la Comisión pidió datos complementarios. Por carta de 16 de enero de 2001, las autoridades españolas facilitaron algunos datos complementarios.

[1] DO L 338 de 28.12.1996, p. 42.

II. **DESCRIPCIÓN DE LA AYUDA**

2. Se trata de subvenciones concedidas en aplicación del régimen establecido por el Decreto 185/1997, de 29 de julio, por el que se establecen medidas de apoyo a las actividades de investigación, desarrollo e innovación tecnológica en la Comunidad Autónoma del País Vasco ([2]), régimen autorizado por la Comisión conforme al Tratado CE [carta SG(97) D/6942 de 12.8.1997].

3. Las empresas CECA beneficiarias, las características de los proyectos de I+D, así como el importe de las ayudas, son los siguientes:

4. **Acería de Álava, SA**. Proyecto: Desarrollo de una nueva línea de producción: acabado de redondos de acero inoxidable. Fase de I+D: desarrollo precompetitivo. Costes subvencionables: 2 368 949 euros. Subvención (5,4 %): 128 871 euros.

5. **Acería Compacta de Bizcaia, SA** y **Aceralia Corporación Siderúrgica, SA**. Proyecto: Desarrollo de aceros al carbono y microaleados mediante tecnología de colada (*thin slab casting*). Fase de I+D: desarrollo precompetitivo. Costes subvencionables: 527 388 euros. Subvención (40 %): 210 955 euros.

6. **Aceros Inoxidables Olarra, SA**. Proyecto: Optimización del conformado en caliente de aceros austenoferríticos mediante simulación termomecánica. Fase de I+D: desarrollo precompetitivo. Costes subvencionables: 77 062 euros. Subvención (39,2 %): 30 177 euros.

7. **GSB ACERO, SA**. Proyecto: Optimización de los parámetros metalúrgicos en la forja en tibio de aceros microaleados. Fase de I+D: desarrollo precompetitivo. Costes subvencionables: 117 696 euros. Subvención (40 %): 47 077 euros.

8. **Nervacero, SA**. Proyecto: Reciclado de polvos de acería mediante briquetado y posterior introducción en el horno. Fase de I+D: desarrollo precompetitivo. Costes subvencionables: 48 832 euros. Subvención (41 %): 20 014 euros.

9. **Siderúrgica Aristrain Olaberría, SL**. Proyecto: Aplicación y desarrollo de la tecnología de colada en formas semiacabadas (*beam blanks*) para la obtención de aceros estructurales al carbono y microaleados. Fase de I+D: desarrollo precompetitivo. Costes subvencionables: 390 708 euros. Subvención (6 %): 23 526 euros.

10. **Esteban Orbegozo, SA**. Proyecto: Optimización del proceso de fusión de chatarra en un horno eléctrico de arco, en función del control en continuo de la escoria. Fase de I+D: Investigación industrial. Costes subvencionables: 168 283 euros. Subvención (6,6 %): 11 030 euros.

11. **Esteban Orbegozo, SA**. Proyecto: Control del proceso para la disminución de defectos producidos en la laminación en caliente de palanquillas de acero. Fase de I+D: desarrollo precompetitivo. Costes subvencionables: 317 839 euros. Subvención (7,3 %): 23 145 euros.

12. **Marcial Ucín Siderúrgica, SL**. Proyecto: Mejora del comportamiento a fatiga ologocíclica de aceros corrugados con propiedades antisísmicas. Fase de I+D: Investigación industrial. Costes subvencionables: 220 788 euros. Subvención (6,3 %): 13 951 euros.

13. **Tubos Reunidos**. Proyecto: Optimización y mejora de la productividad en acería. Fase de I+D: desarrollo precompetitivo. Costes subvencionables: 622 782 euros. Subvención (4,2 %): 26 338 euros.

14. En cuanto al efecto de incentivación de las ayudas, las autoridades españolas han tenido en cuenta los siguientes factores: que se trata de ayudas a fondo perdido, que se conceden con carácter anual, que están a disposición de todo tipo de empresas y que todos los gastos en los que incurra la empresa son subvencionables. En su carta de 16 de enero de 2001, alegaron, para justificar más el efecto de incentivación, que el sector industrial del País Vasco se compone fundamentalmente de PYME que operan en sectores tradicionales, que, como consecuencia de la disminución de las ayudas en los años 1992 y 1993, los esfuerzos de I+D de las empresas se redujeron en esos años, así como en 1994, y, por último, que ahora el Gobierno vasco está fomentando los proyectos presentados por más de una empresa.

III. **EVALUACIÓN DE LA AYUDA**

15. Las empresas mencionadas son empresas según el artículo 80 del Tratado CECA, de modo que están sujetas a este Tratado y a las normas del Código de ayudas a la siderurgia. Con arreglo al artículo 2 del Código, las ayudas concedidas para sufragar los gastos de las empresas siderúrgicas en proyectos de investigación y desarrollo pueden considerarse compatibles con el mercado común siempre y cuando se ajusten a las normas fijadas en el Encuadramiento comunitario sobre ayudas de Estado de investigación y desarrollo, publicado en el DO C 45 de 17 de febrero de 1996 (en lo sucesivo, «el Encuadramiento de I+D»).

16. De conformidad con el Encuadramiento de I+D, la Comisión, cuando evalúa si una ayuda es compatible con el mercado común, debe verificar la fase de investigación, la intensidad de la ayuda y los costes subvencionables, además de asegurarse de que la ayuda tenga un efecto de incentivación.

17. En cuanto a la fase de investigación, como las autoridades españolas no han facilitado la información detallada que solicitó la Comisión en su carta de 20 de noviembre de 2000, ésta no puede determinar si los criterios empleados por las autoridades españolas se ajustan a las definiciones del Encuadramiento de I+D. No han proporcionado pormenores sobre los elementos de coste ni han indicado, en relación con algunos proyectos, cuáles son los organismos de investigación públicos que participan y qué papel desempeñan en las actividades de I+D. En estas circunstancias, no se pueden determinar con precisión la intensidad de las ayudas ni su conformidad con el Encuadramiento de I+D.

([2]) BOPV nº 1997/147 de 4.8.1997, p. 13174.

18. En cuanto al efecto de incentivación de las ayudas, la Comisión, con arreglo al Encuadramiento de I+D, puede presumir que la ayuda ofrece un incentivo necesario cuando el beneficiario es una PYME. Las autoridades españolas han reconocido que ACB, Aceralia, Aceros Inoxidables Olarra, GSB Aceros y Nervacero no son PYME. En cuanto a las demás empresas beneficiarias, la Comisión observa que no hay muchas PYME en el sector siderúrgico y que las autoridades españolas no han demostrado que estas empresas sean PYME en el sentido de las definiciones comunitarias actuales. Por otra parte, cuando la Comisión aprobó el régimen con arreglo al Tratado CE, tomó nota de que las autoridades españolas examinarían el efecto de incentivación de las ayudas a empresas grandes según los siguientes indicadores: evolución de los gastos asignados a I+D, evolución del número de personas dedicadas a las actividades de I+D, relación entre la ayuda concedida y los gastos totales en I+D de la empresa. En el presente caso, no parece (véase el punto 14) que se haya tenido en cuenta ninguno de estos factores y los mismos serían pertinentes para la evaluación del efecto de incentivación.

IV. **CONCLUSIÓN**

19. Habida cuenta de las consideraciones expuestas, la Comisión, en esta fase del procedimiento, tiene dudas de que las ayudas cumplan con las normas establecidas en el Encuadramiento comunitario sobre ayudas de Estado de investigación y desarrollo. Por tanto, ha decidido incoar el procedimiento previsto en el apartado 5 del artículo 6 de la Decisión nº 2496/96/CECA de la Comisión.

20. En consecuencia, la Comisión insta a España para que presente sus observaciones en un plazo de un mes a partir de la fecha de recepción de la presente. También insta a sus autoridades para que transmitan inmediatamente una copia de la presente a los beneficiarios de las ayudas.

21. Por otro lado, de acuerdo con la Jurisprudencia del Tribunal de Justicia ([3]), cuando la Comisión compruebe que unas ayudas han sido concedidas o modificadas sin haber sido notificadas, podrá ordenar al Estado miembro interesado, mediante una decisión provisional, después de haberle requerido a presentar sus observaciones al respecto, y en espera del resultado del examen de las ayudas, que facilite a la Comisión, en el plazo que ésta determine, todos los documentos, informaciones y datos precisos para examinar la compatibilidad de las ayudas con el mercado común. La Comisión ha decidido en consecuencia instar a las autoridades españolas a facilitar en el plazo de un mes a partir de la fecha de recepción de la presente, toda la información pertinente para la evaluación de la ayuda. Esta información deberá incluir, entre otros elementos, la descripción de las actividades reales de los proyectos, los resultados esperados y las perspectivas de su aplicación, el calendario, el estado actual de la técnica en cada sector y los riesgos técnicos y económicos que presentan los proyectos, así como datos pormenorizados sobre los elementos de coste y sobre los organismos públicos que participan en los proyectos de I+D y su función en los mismos. En su defecto, la Comisión adoptará una decisión sobre la base de los elementos de los que disponga.

22. La Comisión desea recordar a España que toda ayuda concedida ilegalmente podrá reclamarse a su beneficiario.'.

([3]) Sentencia de 13 de abril de 1994 en los asuntos acumulados C-324 y 342/90 Alemania y Pleuger: Worthington contra Comisión (Recopilación 1994, p. I-1173).

STATE AID

Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid measure C 62/2000 (ex NN 142/99) — Aid in favour of Kahla Porzellan GmbH and Kahla/Thüringen Porzellan GmbH — Germany

(2001/C 185/05)

(Text with EEA relevance)

By means of the letter dated 9 January 2001, reproduced in the authentic language on the pages following this summary, the Commission notified the Federal Republic of Germany of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the abovementioned aid measure.

Interested parties may submit their comments on the aid measure in respect of which the Commission is initiating the procedure within one month of the date of publication of this summary and the following letter, to:

European Commission
Directorate-General for Competition
Directorate H
Rue de la Loi/Wetstraat 200
B-1049 Brussels
(32-2) 299 27 58.

These comments will be communicated to the Federal Republic of Germany. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

SUMMARY

PROCEDURE

On 16 November 1998 and 24 March 1999, the Commission received complaints from competitors alleging State aid in favour of Kahla Porzellan GmbH and Kahla/Thüringen Porzellan GmbH. Information was requested on 6 January 1999. Incomplete information was submitted in April and May 1999. Further information was requested in October 1999. The information received on 5 November 1999 was still incomplete and the case was registered as non-notified aid NN 142/99. Information was again requested in November 1999. Partial information was received in January and March 2000.

DESCRIPTION

Kahla/Thüringen Porzellan GmbH (Kahla II) is the successor of Kahla Porzellan GmbH (Kahla I). Both legal entities are active in the production of porcelain dishes and china. They are located in a region eligible for aid under Article 87(3)(a) of the EC Treaty. Neither Kahla I nor Kahla II ever qualified as SME.

Kahla I was privatised in 1991 by sale for DEM 2 million to two private investors. Kahla I suffered losses as from the moment of its creation and filed for bankruptcy in September 1993.

Financial measures from the public hand to Kahla I until its bankruptcy in 1993 seem to total at least DEM 109,425 million. The information provided is however incomplete. Part of these measures were registered within the estate of bankruptcy.

Germany claims that in November 1993, a new company, Kahla II, was created by a private investor, Mr Raithel. In January 1994, Mr Raithel acquired the real estate, machinery, installations and supplies of KAHLA I in bankruptcy for DEM 7,4 million. Part of the workforce, list of clients and order book were also taken over. The use of ground and fixed assets was provided free of charge until 1997. In March 1994, the Thüringer Industriebeteiligungs GmbH & Co. KG (TIB) took over 49 % of the shares of Kahla II for DEM 1,975 million. This stake was increased in that same month by an equity loan of DEM 6 million. In December 1999 the TIB transferred its shares to Mr Raithel and his son for (. . .) (*).

Financial measures granted to the allegedly new Kahla II from the moment of its creation and until 1998 seem to total at least DEM 38,636 million, although the information provided is incomplete and even contradictory.

(*) Confidential information, between 30 and 40 % higher than the initial price paid by TIB.

ASSESSMENT

The financial measures in favour of Kahla I constitute aid in the sense of Article 87(1) of the EC Treaty. Germany claims that the measures in favour of Kahla II do not constitute aid because Kahla II is claimed to be a new company which, since its creation, is not in difficulties.

After a preliminary assessment of the available information it is unclear whether Kahla I and Kahla II are independent undertakings nor whether Kahla II may qualify as an ongoing concern or *Auffanglösung*. Since Kahla I did not seem to undergo a restructuring, it is not excluded that Kahla II inherited the same problems that led Kahla I to bankruptcy. The management reports show losses in 1994 and 1995 and just balanced results during 1996-1999. Finally the information submitted describes reorganisational measures undertaken by Kahla II, which could account for a restructuring, for which there would be no need should the company not have been in difficulties.

Consequently, there are serious doubts that a private investor would have awarded similar financial measures to the company. The assistance from the public authorities to Kahla II at least until 1996, when it first obtained a balanced operating result, is therefore to be assessed as aid in the sense of Article 87(1) of the EC Treaty. For a preliminary assessment Kahla I and II shall be treated independently. This view may be revised in the light of the information to be provided by Germany.

Aid purportedly covered by approved aid schemes

Germany has not alleged that the aid to Kahla I was granted under approved aid schemes. However, although measures of some DEM 70,6 million may have been awarded under approved aid schemes, the information submitted is not enough to clarify this point.

Aid of DEM 10,66 million to Kahla II is claimed to have been granted under approved aid schemes. While some DEM 1,13 million is effectively to be seen as existing aid, the information submitted is insufficient to determine whether the remaining DEM 9,53 million are effectively covered by approved aid schemes.

Thus, the Commission enjoins Germany, on the basis of Article 10(3) of Council Regulation (EC) No 659/1999, to submit all necessary information to determine whether this aid is effectively covered by approved aid schemes.

Ad-hoc aid

Aid of at least DEM 38,8 million in favour of Kahla I and aid of at least DEM 27,975 million in favour of Kahla II was not granted under approved aid schemes and therefore falls to be assessed as ad-hoc aid. This aid is to be assessed under Article 87(3)(c) of the EC Treaty and the 1994 Community guidelines on State aid for the rescue and restructuring of firms in difficulty.

Restoration of long-term viability

No restructuring plan was submitted in respect of Kahla I. There are grounds to believe that the aid was used to cover losses and develop market-distorting activities not linked to a reorganisation. It is noted that the complainants expressly refer to price dumping activities by the company. As concerns Kahla II, the documentation submitted describes reorganisational steps which allegedly formed part of a first business concept developed later on. Even though the financial reports of Kahla II show that the company is now generating modest profits, in order to establish the fulfilment of this criterion, the Commission needs to exactly know which restructuring steps were effectively undertaken.

No undue distortions of competition

The porcelain industry is saturated and suffers from overcapacity. However Germany has provided no information on capacity developments for Kahla I and the information submitted does not include any measure addressed to reduce capacity. As concerns Kahla II, Germany states that its production capacity of household china was reduced. However Kahla II started producing porcelain for hotels, although no data were provided on its production capacity for this sector. It cannot thus be excluded that production capacities were simply switched to a different sector.

Proportionality to restructuring costs and benefits

As concerns Kahla I, in the absence of a plan, the overall restructuring costs cannot be determined. It is therefore impossible to assess whether the aid received is proportional to the restructuring costs or whether it is restricted to the minimum. Regarding Kahla II, some details have been provided on the cost of a number of reorganisational measures. Since it is unclear which of these measures were actually implemented and an overall account of the restructuring costs has not been submitted, it cannot be determined whether the aid is restricted to the minimum. Finally, no indication of a contribution from an investor has been provided either in respect of Kahla I or in respect of Kahla II.

Therefore, the Commission initiates the formal investigation procedure under Article 88(2) of the EC Treaty with respect to all ad-hoc aid and enjoins Germany in virtue of Article 10 of Regulation (EC) No 659/1999 to provide all information needed to determine the exact amount of aid granted to Kahla I and to Kahla II as well as its compatibility with the common market. In accordance with Article 14 of Regulation (EC) No 659/1999, all unlawful aid can be subject to recovery from the recipient.

TEXT OF THE LETTER

'Die Kommission teilt der Bundesrepublik Deutschland mit, dass sie nach Prüfung der von den deutschen Behörden über die vorerwähnte Beihilfe übermittelten Angaben beschlossen hat, das Verfahren nach Artikel 88 Absatz 2 EG-Vertrag einzuleiten.

I. **VERFAHREN**

(1) Am 16. November 1998 und am 24. März 1999 gingen bei der Kommission Beschwerden von Wettbewerbern über den mutmaßlichen Missbrauch staatlicher Beihilfen ein, die das Land Thüringen zugunsten der Kahla Porzellan GmbH und der Kahla/Thüringen Porzellan GmbH in Thüringen, Deutschland, gewährt haben soll.

(2) Auf ein entsprechendes Auskunftsersuchen der Kommission vom 6. Januar 1999 hin übermittelte Deutschland nach Verlängerung der Stellungnahmefrist am 7. April 1999 ein förmliches Antwortschreiben. Weitere Angaben wurden am 3. und am 25. Mai 1999 übersandt. Nach zusätzlichen Informationen der Beschwerdeführer und einem Treffen zwischen den Dienststellen der Kommission und den deutschen Behörden am 23. September 1999 ersuchte die Kommission mit Schreiben vom 8. Oktober 1999 um Notifizierung des Falls. Mit Schreiben vom 5. November 1999 übersandte Deutschland weitere Informationen, lehnte eine Notifizierung der Beihilfe jedoch ab.

(3) Am 2. Dezember 1999 setzte die Kommission Deutschland davon in Kenntnis, dass der Fall am 8. November 1999 als nicht angemeldete Beihilfe Nr. NN 142/99 registriert worden sei und erbat weitere Auskünfte. Mit Schreiben vom 14. Januar 2000 übermittelte Deutschland einen Teil der erbetenen Informationen und beantragte eine Verlängerung der Frist für die Erteilung weiterer Angaben. Nachdem die Frist zunächst bis zum 31. Januar 2000 und dann nochmals bis zum 31. März 2000 verlängert worden war, wurden am 3. April 2000 schließlich zusätzliche Informationen übersandt.

II. **BESCHREIBUNG**

2.1 Das Unternehmen

(4) Bei der Kahla/Thüringen Porzellan GmbH (Kahla II) handelt es sich um den Nachfolger der Kahla Porzellan GmbH (Kahla I). Wie aus den Ausführungen in den nachfolgenden Abschnitten hervorgeht, ist unklar, ob Kahla I und Kahla II selbständige Unternehmen sind bzw. bis zu welchem Grad Kahla II als die unternehmerische Kontinuität fortführendes Unternehmen oder als Auffanglösung einzustufen ist. Beide Unternehmen stellen Geschirr aus Porzellan und Feinkeramik her. Ihre Standorte befinden sich in einem Fördergebiet nach Artikel 87 Absatz 3 Buchstabe a) EG-Vertrag [1].

2.1.1 *Kahla Porzellan GmbH (Kahla I)*

(5) Entsprechend der einschlägigen Verordnung [2] wurde die Gesellschaft am 1. März 1990 im Zuge der Umwandlung des VEB Vereinigte Porzellanwerke Kahla in zwei Gesellschaften mit beschränkter Haftung gegründet. Bei einer dieser Gesellschaften handelte es sich um Kahla I. Am 23. April 1991 privatisierte die Treuhandanstalt („THA") das Unternehmen Kahla I durch Verkauf an die Herren Hoffmann (75,1 % der Geschäftsanteile) und Ueing (24,9 % der Geschäftsanteile) gegen Entrichtung eines Kaufpreises in Höhe von 2 Mio. DEM. Die Privatisierung erfolgte nicht im Rahmen eines offenen und unbeschränkten Ausschreibungsverfahrens. Vielmehr hatte die THA die beabsichtigte Veräußerung im Verzeichnis der von ihr zum Verkauf angebotenen Betriebe (Hoppenstedt) veröffentlicht und Anfragen an den Verband der keramischen Industrie und an die Handelskammern gerichtet.

(6) Am 9. August 1993 meldete das Unternehmen Gesamtvollstreckung an. Über das Vermögen der Gesellschaft wurde am 29. September 1993 das Gesamtvollstreckungsverfahren eröffnet.

(7) Kahla I war zu keiner Zeit als KMU einzustufen. Deutschland stellte der Kommission folgende Daten über die Geschäftstätigkeit des Unternehmens zur Verfügung:

	1991	1992	1993
Beschäftigte	1 561	827	696
Umsatz (in Mio. DEM)	25,4	29,3	27,9
Betriebsergebnis (in Mio. DEM)	[. . .] (*)	[. . .] (*)	[. . .] (*)

(*) Betriebsgeheimnis, Verluste.

2.1.2 *Kahla/Thüringen Porzellan GmbH (Kahla II)*

(8) Im November 1993 gründete der private Investor G. Raithel mit dem Unternehmen Kahla II eine angeblich neue Gesellschaft. Im Januar 1994 veräußerte der Gesamtvollstreckungsverwalter die Grundstücke, Maschinen und Anlagen sowie das Vorratsvermögen des Unternehmens Kahla I i. GV für 7,4 Mio. DEM an G. Raithel. Darüber hinaus wurden ein Teil der Belegschaft, der Kundenstamm und der Auftragsbestand übernommen. Der Grundbesitz und das Anlagevermögen wurden zur unentgeltlichen Nutzung bis Ende 1997 überlassen. Der Kaufvertrag sah zudem eine Beteiligung der landeseigenen Thüringer Industriebeteiligungs GmbH & Co. KG („TIB") an dieser angeblich neu gegründeten Gesellschaft vor. Die Veräußerung wurde am 18. Juli 1994 von der THA und am 19. Oktober 1995 von der BvS genehmigt.

[1] ABl. L 114 vom 5.5.1994.

[2] „Verordnung zur Umwandlung von volkseigenen Kombinaten, Betrieben und Einrichtungen in Kapitalgesellschaften (UmwandVO)".

(9) Kahla II ist nicht als KMU einzustufen. Deutschland stellte der Kommission folgende Daten über die Geschäftstätigkeit des Unternehmens zur Verfügung:

	1994	1995	1996	1997	1998
Beschäftigte	380	369	327	323	307
Umsatz (in Mio. DEM)	23	29	32	39	34
Betriebsergebnis (in Mio. DEM)	[. . .] (*)	[. . .] (*)	[. . .] (*)	[. . .] (*)	[. . .] (*)

(*) Betriebsgeheimnis.

2.2 **Finanzierungsmaßnahmen**

2.2.1 *Finanzierungsmaßnahmen zugunsten von Kahla I*

(10) Im Zusammenhang mit der Privatisierung und auch danach wurden folgende Finanzierungsmaßnahmen zugunsten von Kahla I durchgeführt:

(11) Maßnahme A: Übernahme von Altschulden in Höhe von 68,8 Mio. DEM durch die THA. Der Kommission wurde nicht mitgeteilt, welche Schulden das betraf.

(12) Maßnahme B: Bürgschaften der THA in einer Gesamthöhe von bis zu 29,4 Mio. DEM. Der Kommission wurde nicht mitgeteilt, für welche Kredite diese Bürgschaften übernommen wurden. Zur Deckung dieser Bürgschaften leistete die Gesellschaft mehrere Sicherheiten, auf deren Inanspruchnahme — wie in den nachfolgenden Randnummern dargestellt — die THA nach der Einleitung des Gesamtvollstreckungsverfahrens verzichtete. Als zusätzliche Sicherheit wurde der THA das Recht eingeräumt, die nicht unmittelbar betriebsnotwendigen Grundstücke des Unternehmens zu verwerten. Diese Grundstücke wurden mit 13,3 Mio. DEM bewertet. Die zu erzielenden Erlöse sollten für die Tilgung der von der THA verbürgten Kredite eingesetzt werden. Zwar erhielt die Kommission keine Auskünfte über die Höhe dieser Erlöse, doch räumt Deutschland ein, dass Kahla I 1993 3,4 Mio. DEM aus diesen Erlösen zur Verfügung gestellt wurden. Ferner gibt Deutschland an, dass die mit diesen Bürgschaften besicherten Kredite mit Einverständnis der THA nie in voller Höhe zurückgezahlt wurden. Der Kommission ist weder mitgeteilt worden, in welcher Höhe diese Kredite getilgt wurden, noch ob diese Bürgschaften tatsächlich in Anspruch genommen wurden.

(13) Maßnahme C: Aus den vorliegenden Angaben ergibt sich, dass das Unternehmen im Zuge der Privatisierung finanzielle Unterstützung für die Beseitigung von Altlasten erhielt, und zwar vermutlich von der THA. Über Höhe und Art dieser Hilfe liegen keine gesicherten Erkenntnisse vor.

(14) Maßnahme D: Im Dezember 1991 gewährte das Land Thüringen der Gesellschaft Investitionszuschüsse in Höhe von 1,825 Mio. DEM.

(15) Maßnahme E: Am 5. Oktober 1992 bewilligte die THA ein Darlehen in Höhe von 4,2 Mio. DEM.

(16) Maßnahme F: Ein weiteres Darlehen in Höhe von 1,8 Mio. DEM stellte die THA am 1. Dezember 1992 bereit.

(17) Maßnahme G: Den übermittelten Angaben ist zu entnehmen, dass zugunsten der Kreis- und Stadtsparkasse Jena Grundschulden über 10 Mio. DEM eingetragen wurden. Dies lässt den Schluss zu, dass die Sparkasse als Anstalt des öffentlichen Rechts dem früheren Unternehmen Kahla I Kredite bewilligt hatte. Die Kommission wurde allerdings weder über die vermutlich ausgereichten Kredite noch darüber informiert, ob diese Grundschulden ausgelöst werden mussten.

(18) Angesichts dessen dürfte Kahla I von der öffentlichen Hand mindestens 109,425 Mio. DEM an finanzieller Unterstützung erhalten haben [3]. Die Kommission geht jedoch davon aus, dass die von Deutschland übermittelten Angaben über Finanzierungsmaßnahmen der öffentlichen Hand zugunsten von Kahla I unvollständig sind.

(19) Trotz dieser finanziellen Unterstützung wurde am 29. September 1993 das Gesamtvollstreckungsverfahren über das Vermögen der Gesellschaft eröffnet.

(20) Am 27. September 1993 entschied die THA, auf die Inanspruchnahme der von der Gesellschaft erbrachten Sicherungen für die im Zusammenhang mit Maßnahme B geleisteten Bürgschaften zu verzichten.

(21) Im Privatisierungsvertrag war festgelegt, dass im Falle der Veräußerung des Grundvermögens der Gesellschaft vor dem 31. Dezember 1996 die THA bzw. deren Nachfolger, die Bundesanstalt für vereinigungsbedingte Sonderaufgaben („BvS"), bis zu 50 % der aus dem Verkauf erzielten Erlöse erhalten würde. Am 18. Juli 1994 verzichtete die THA auf ihre diesbezüglichen Ansprüche.

(22) Deutschland erklärt, dass Kredite in Höhe von 41,2 Mio. DEM als Bestandteil der Konkursmasse gemeldet wurden. Der Kommission wurde nicht mitgeteilt, um welche Kredite es sich dabei handelt und ob sie getilgt wurden.

2.2.2 *Finanzierungsmaßnahmen zugunsten von Kahla II*

(23) Im Zusammenhang mit dem Verkauf an G. Raithel wurden ab 1994 und noch bis 1996 folgende Finanzierungsmaßnahmen zugunsten von Kahla II durchgeführt:

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[3] Die mutmaßlich von der Sparkasse im Zusammenhang mit Maßnahme G bewilligten Kredite bleiben unberücksichtigt, weil keine gesicherten Erkenntnisse über deren Höhe vorliegen und als einziger Anhaltspunkt nur die zur Kreditsicherung eingetragenen Hypotheken herangezogen werden können. Die aus der Verwertung des Grundbesitzes von Kahla I erzielten 3,4 Mio. DEM, die Kahla I von der THA aus den Erlösen zur Verfügung gestellt wurden, sind in dieser Summe enthalten.

(24) Maßnahme H: ein mutmaßlich im Rahmen eines Programms für KMU im Zusammenhang mit der Gründung der mutmaßlich neuen Gesellschaft gewährter Zuschuss in Höhe von 2,5 Mio. DEM.

(25) Maßnahme I: In den vorliegenden Auskünften wird auf ein Darlehen in Höhe von 2 Mio. DEM Bezug genommen, das mutmaßlich ebenfalls im Zuge der Gründung der mutmaßlich neuen Gesellschaft aus dem Europäischen Wiederaufbauprogramm („ERP-Kredit") gewährt wurde. Deutschland allerdings bezeichnet diese Maßnahme auch als Darlehen in Höhe von 1,8 Mio. DEM der Bayerischen Vereinsbank, das mit einem aus dem Europäischen Wiederaufbauprogramm bewilligten Darlehen refinanziert wurde. Dieses zweite Refinanzierungsdarlehen wurde mutmaßlich mittels einer Grundschuld auf das Grundvermögen der Gesellschaft besichert. Über die genaue Höhe dieses Darlehens herrscht Unklarheit, und es werden keine Angaben zu dem spezifischen Programm gemacht, in dessen Rahmen es angeblich bewilligt wurde.

(26) Maßnahme J: Ein Eigenkapitalhilfe-Darlehen („EKH-Darlehen") über 0,2 Mio. DEM, das im Zusammenhang mit der Gründung der mutmaßlich neuen Gesellschaft im Rahmen einer Beihilferegelung ausgereicht worden sein soll. Zu dem Programm, in dessen Rahmen das Darlehen mutmaßlich bewilligt wurde, werden keine Angaben gemacht.

(27) Maßnahme K: Laut Kaufvertrag übernahm die TIB im März 1994 gegen Entrichtung von 1,975 Mio. DEM 49 % der Anteile an Kahla II. Diese Beteiligung wurde offenbar noch im selben Monat durch ein partiarisches Darlehen erheblich aufgestockt (siehe Maßnahme L). Allerdings erhielt die Kommission keine Auskünfte über die Höhe der resultierende Anteile der TIB. Am 31. Dezember 1999 beendete die TIB ihre Beteiligung an dem Unternehmen und gab ihre Anteile an Kahla II an G. Raithel und dessen Sohn H. Raithel ab, die dafür [. . .] (*) entrichteten.

(28) Maßnahme L: Im März 1994 legte die TIB ein partiarisches Darlehen in Höhe von 6 Mio. DEM aus. Das lässt auf eine erhebliche Aufstockung der TIB-Beteiligung an Kahla II schließen, wobei Deutschland erklärt, dass der TIB trotz dieses Darlehens keine zusätzlichen Stimmrechte gewährt wurden. Das Darlehen war mit 12 % zu verzinsen, wobei die Höhe der Zinsen auf 50 % des Jahresüberschusses begrenzt war. Die Kommission nimmt zur Kenntnis, dass Kahla II erst ab 1996 bescheidene Gewinne zu erwirtschaften begann. Deutschland gibt an, dass das Darlehen am 29. Dezember 1999 zuzüglich Zinsen in Höhe von 1,631 Mio. DEM zurückgezahlt wurde.

(*) Betriebsgeheimnis, 30—40 % höher als der von der TIB zuerst bezahlte Preis.

(29) Maßnahme M: Im März 1994 reichte die landeseigene Bayerische Vereinsbank AG Erfurt Investitionskredite in einer Gesamthöhe von 20 Mio. DEM aus.

(30) Maßnahme N: Für die Investitionskredite von Maßnahme M übernahm das Land Thüringen eine 90-prozentige Ausfallbürgschaft [4], wobei das Bürgschaftsentgelt zunächst 0,75 % betrug und im Juni 1995 auf 0,5 % herabgesetzt wurde. Forderungen aus Ausfallbürgschaften können allerdings erst geltend gemacht werden, nachdem die von der Gesellschaft gestellten Sicherheiten verwertet und die Verbindlichkeiten in Höhe von 20 Mio. DEM beglichen sind.

(31) Maßnahme O: Im Oktober 1994 erhielt Kahla II Investitionszuschüsse in Höhe von 3,360 Mio. DEM vom Land Thüringen. Weitere Investitionszuschüsse in Höhe von 1,67 Mio. DEM wurden im Dezember 1996 gewährt.

(32) Maßnahme P: In den Jahren 1994 und 1996 erhielt das Unternehmen Investitionszulagen von 1,131 Mio. DEM.

(33) Angesichts dessen dürfte Kahla II wohl mindestens 38,636 Mio. DEM an finanzieller Unterstützung von der öffentlichen Hand erhalten haben [5].

2.3 **Der deutsche Standpunkt zur Notwendigkeit der Notifizierung**

(34) In ihrem Schreiben vom 11. November 1999 vertreten die deutschen Behörden die Auffassung, sie müssten der Kommission keine der vorstehenden Finanzierungsmaßnahmen notifizieren.

(35) Die deutschen Behörden machen geltend, dass Kahla II im Februar 1994 neu gegründet wurde und demzufolge nicht als Unternehmen in Schwierigkeiten einzustufen ist und dass die unternehmerische Kontinuität von Kahla I nicht fortgeführt wurde. Daher sollten die Finanzierungsmaßnahmen der TIB nicht als Beihilfe betrachtet werden, weil die staatlichen Behörden als marktwirtschaftlich orientierter Investor gehandelt hätten, als sie Kahla II finanzielle Hilfe zusagten. Die übrigen Finanzierungsmaßnahmen zugunsten von Kahla II sind den deutschen Behörden zufolge als De-minimis-Beihilfen anzusehen.

2.4 **Marktanalyse**

(36) Sowohl Kahla I als auch Kahla II produzieren Geschirr aus Feinkeramik und Porzellan für den Haushaltssektor. Kahla II expandierte und produziert heute auch für den gewerblichen Bereich, insbesondere für Hotels und für Dekorationszwecke. Die Erzeugnisse werden auch exportiert.

[4] „Richtlinie für die Übernahme von Bürgschaften und Garantien durch das Land Thüringen" vom 18. Juni 1992 (NN 25/95), genehmigt von der Kommission am 27.12.1996 (SG(96) D/11696).

[5] Die Ausfallbürgschaften des Landes gemäß Maßnahme N bleiben unberücksichtigt, um eine doppelte Anrechnung auszuschließen.

(37) Im Sektor Tafel- und Zierporzellan findet ein intensiver Warenaustausch zwischen Mitgliedstaaten statt. Neben einer Vielzahl kleiner und mittelständischer Hersteller in Europa gibt es auch eine Reihe großer Unternehmen. Zu den Letzteren gehören Villeroy & Boch (Deutschland/Luxemburg), Hutschenreuther und Rosenthal (Deutschland) sowie Royal Doulton und Wedgewood (Vereinigtes Königreich), auf die mehr als ein Drittel der Gesamtproduktion in der Gemeinschaft entfällt.

(38) In der Porzellanbranche bestehen Überkapazitäten. Fertigung und Verbrauch verzeichneten zwischen 1984 und 1991 ein anhaltendes Wachstum, dem in den Jahren 1992 und 1993 Rückschläge folgten. Eine für 1994 erwartete Erholung trat nicht ein. Die Handelsbilanz der letzten Jahre war positiv, doch nahm der Importanteil spürbar zu, besonders bei Haushaltsgeschirr. Der Exportzuwachs kann den Wettbewerbsdruck in diesem Sektor nicht ausgleichen. Vielmehr könnte sich die angespannte Wettbewerbslage in Verbindung mit dem Kapazitätsüberschuss durch Marktneueinsteiger aus Südostasien und Osteuropa (vor allem der Tschechischen Republik und Ungarn), die von ihren Handelsabkommen mit der Europäischen Union profitieren, noch weiter verschärfen ([6]).

III. WÜRDIGUNG

3.1 Das Unternehmen

(39) Den deutschen Behörden zufolge handelt es sich bei Kahla II um eine Neugründung, die die unternehmerische Kontinuität der früheren Gesellschaft Kahla I nicht fortgeführt hat. Allerdings kann die Kommission anhand der vorliegenden Angaben nicht feststellen, ob es sich bei Kahla I und Kahla II um selbständige Unternehmen handelt bzw. bis zu welchem Grad Kahla II als die unternehmerische Kontinuität fortführendes Unternehmen oder als Auffanglösung einzustufen ist.

(40) Unternehmerische Kontinuität beinhaltet den Erwerb der Vermögensgegenstände der zum Verkauf stehenden Gesellschaft mit dem Ziel, die Wirtschaftstätigkeit des Unternehmens fortzusetzen. Im vorliegenden Fall sind Kahla I und Kahla II auf demselben Produktmarkt und unter derselben Firma tätig und stellen die gleichen Produkte mit denselben Anlagen und Mitarbeitern her (auch wenn die Belegschaftsstärke reduziert wurde). Zudem geht aus den übermittelten Informationen hervor, dass Kahla II neben den Vermögensgegenständen auch die aus Verträgen erwachsenden Verbindlichkeiten übernommen hat.

(41) Eine zweite Möglichkeit würde darin bestehen, Kahla II als Auffanggesellschaft anzusehen, d. h. als neues Unternehmen, das gegründet wurde, um die Aktivitäten des in Gesamtvollstreckung befindlichen früheren Unternehmens fortzuführen und dessen Vermögen zu übernehmen, wohingegen die Verbindlichkeiten bei der alten, in Gesamtvollstreckung befindlichen Gesellschaft verbleiben. Obwohl sich Deutschland nicht auf diese Ausnahmeregelung beruft, sondern darauf beharrt, dass eine unternehmerische Kontinuität nicht gegeben ist und dass es sich nicht um ein Unternehmen in Schwierigkeiten handelt, gebieten die übermittelten Angaben vielfach die Einstufung von Kahla II als Auffanggesellschaft.

(42) Angesichts dessen behandelt die Kommission in ihrer vorläufigen Würdigung beide Gesellschaften als selbständige Unternehmen und mahnt bei den deutschen Behörden eindringlich die Übermittlung von Informationen an, die hinlänglich zur Klärung dieser Frage beitragen. Die zu übermittelnden Angaben werden in Randnummer (95) der vorliegenden Entscheidung spezifiziert. Diese Ansicht kann nach Überprüfung der durch Deutschland vorzulegenden Angaben revidiert werden.

3.2 Beihilfen im Sinne von Artikel 87 Absatz 1 EG-Vertrag

(43) In Artikel 87 Absatz 1 EG-Vertrag ist festgelegt, dass, soweit nicht etwas anderes bestimmt ist, Beihilfen, die durch die Begünstigung bestimmter Unternehmen oder Produktionszweige den Wettbewerb verfälschen oder zu verfälschen drohen, mit dem Gemeinsamen Markt unvereinbar sind, soweit sie den Handel zwischen Mitgliedstaaten beeinträchtigen.

(44) Kahla I und Kahla II wurden Finanzhilfen unterschiedlicher Art aus staatlichen Mitteln gewährt, die beiden Unternehmen Vorteile gegenüber ihren Mitbewerbern verschafften. Da die Unternehmen in einem europäischen Produktmarkt tätig sind, auf dem ein starker Wettbewerbsdruck herrscht, drohen finanzielle Vorteile, die den Unternehmen eine gegenüber den Mitbewerbern günstige Position verschaffen, den Wettbewerb zu verfälschen und beeinträchtigen den Handel zwischen Mitgliedstaaten.

(45) Da Kahla I ein Unternehmen in Schwierigkeiten war, kann die Kommission die Maßnahmen von Deutschland nicht als die eines marktwirtschaftlich handelnden Investors einstufen. Somit sind die Finanzierungsmaßnahmen der öffentlichen Hand als staatliche Beihilfen im Sinne von Artikel 87 Absatz 1 EG-Vertrag anzusehen.

(46) Die deutschen Behörden vertreten die Auffassung, dass die Maßnahmen zugunsten von Kahla II keine Beihilfen darstellen. Ihrer Ansicht nach handelt es sich bei Kahla II um ein neues Unternehmen, das sich seit seiner Gründung nicht in Schwierigkeiten befindet. Daher hätten die öffentlichen Stellen — und insbesondere die TIB — bei der Bereitstellung finanzieller Unterstützung als marktwirtschaftlich orientierter Investor gehandelt. Zur Untermauerung dieser Argumentation legte Deutschland eine Studie vor, in der es heißt, dass mit der Beteiligung der TIB die Sicherung von Arbeitsplätzen bei Kahla II angestrebt wur-

([6]) Panorama der EU-Industrie 9—22; NACE (Revision 1) 26.2 und 26.3. Siehe auch die Entscheidung der Kommission im Fall C 35/97, Triptis Porzellan GmbH (ABl. L 52 vom 27.2.1999).

de. Dies steht aber im Widerspruch zum Verhalten eines marktwirtschaftlich orientierten Investors. In der Studie wird festgestellt, dass Kahla II gute Chancen auf Wiederherstellung der Rentabilität hatte, was aber keinesfalls bedeutet, dass das Unternehmen zum Zeitpunkt der Beteiligung gesund war. Darüber hinaus wird in der Studie auf die hohen Risiken verwiesen, die sich für die TIB aus einem Engagement bei Kahla II ergaben. Die Kommission ist daher der Auffassung, dass diese Studie nicht belegt, dass die TIB als marktwirtschaftlich orientierter Investor handelte. Schließlich verweist die Kommission darauf, dass anzuzweifeln ist, ob die TIB — wenn sie denn als privater Investor gehandelt hätte — ihre Beteiligung ausgerechnet in dem Moment aufgegeben hätte, als das Unternehmen Gewinne zu erwirtschaften begann.

(47) Darüber hinaus nimmt die Kommission zur Kenntnis, dass sich die übermittelten Informationen auf Umstrukturierungsmaßnahmen beziehen, die durchgeführt werden mussten, um das in der vorstehend genannten Studie bewertete Unternehmenskonzept umsetzen zu können. Dabei handelt es sich um folgende Maßnahmen: Personalabbau; Ersatz für die alten Maschinen und Anlagen; Schließung von Produktionsstätten; Investitionen mit dem Ziel, technische Standards und Umweltnormen einhalten zu können, und Aufbau eines Vertriebsnetzes. Maßnahmen dieser Art könnten durchaus eine Umstrukturierung begründen, die aber nicht erforderlich wäre, wenn sich das Unternehmen nicht in Schwierigkeiten befinden würde. Zudem stellt die Kommission fest, dass aus den Bilanzen für die Jahre 1994 und 1995 eindeutig hervorgeht, dass Kahla II trotz Entschuldung und nachfolgender Kapitalspritzen des Landes 1994 bzw. 1995 Verluste in Höhe von [. . .] (*) erlitt. Erst 1996 wurde ein positives Betriebsergebnis von gerade einmal [. . .] (*) erwirtschaftet.

(48) Somit scheint festzustehen, dass Kahla II seit der Gründung und mindestens noch bis 1996 in finanziellen Schwierigkeiten war. Daher hegt die Kommission ernsthafte Zweifel, ob ein marktwirtschaftlich handelnder privater Investor dem Unternehmen ähnliche Finanzhilfen gewährt hätte. Folglich ist die Hilfe, die Kahla II von staatlichen Stellen erhielt, als Beihilfe im Sinne von Artikel 87 Absatz 1 EG-Vertrag zu beurteilen.

3.3 **Beihilfen, die angeblich durch genehmigte Beihilferegelungen abgedeckt sind**

(49) Bei der Überprüfung einer Beihilfe, die angeblich im Rahmen eines genehmigten Programms gewährt wurde, muss die Kommission, bevor sie das förmliche Prüfverfahren nach Artikel 88 Absatz 2 EG-Vertrag einleitet, überprüfen, ob die Beihilfe von dieser Regelung abgedeckt ist und alle Bedingungen erfüllt sind, die die Kommission in ihrer Genehmigungsentscheidung festgelegt hat [7]. Sollte die Kommission diesbezüglich Zweifel haben, fordert sie den entsprechenden Mitgliedstaat mittels einer Anordnung zur Auskunftserteilung gemäß Artikel 10 Absatz 3 der Verordnung (EG) Nr. 659/1999 auf, ihr alle zur Beurteilung notwendigen Unterlagen, Informationen und Angaben zu übermitteln.

3.3.1 *Beihilfen an Kahla I*

(50) Deutschland hat nicht behauptet, dass Beihilfemaßnahmen zugunsten von Kahla I im Rahmen genehmigter Beihilferegelungen durchgeführt wurden. Trotzdem prüft die Kommission, ob einige der Beihilfen möglicherweise unter eine genehmigte Beihilferegelung fielen.

(51) Maßnahme A, d. h. der Erlass von Altschulden in Höhe von 68,8 Mio. DEM durch die THA, könnte im Rahmen des einschlägigen THA-Regimes gewährt worden sein. Wegen fehlender Angaben zu den Schulden, auf die sich der Erlass bezieht, kann die Kommission nicht feststellen, ob die Maßnahme tatsächlich vom entsprechenden THA-Regime [8] abgedeckt ist.

(52) Maßnahme D, d. h. Investitionszuschüsse in Höhe von 1,825 Mio. DEM, könnte als Regionalbeihilfe eingestuft werden und im Rahmen von Regelungen gewährt worden sein, die von der Kommission genehmigt wurden. Allerdings sind die Regelungen, auf deren Grundlage diese Beihilfemaßnahmen gewährt wurden, nicht im Einzelnen genannt worden. Ohne Angaben zum genauen Zeitpunkt der Ausreichung, zu der Regelung, in deren Rahmen sie angeblich gewährt wurden, und ohne ausreichende Informationen, mit denen sich feststellen lässt, ob die Bedingungen einer genehmigten Beihilferegelung erfüllt sind, kann die Kommission die Vereinbarkeit dieser Beihilfemaßnahme mit dem Gemeinsamen Markt nicht beurteilen.

3.3.2 *Beihilfen an Kahla II*

(53) Deutschland macht geltend, dass die Maßnahmen H, I, J, N, O und P im Rahmen von genehmigten Beihilferegelungen gewährt wurden. Die Kommission muss demzufolge prüfen, ob diese Maßnahmen die Bedingungen der entsprechenden Regelungen erfüllen.

(54) Maßnahme H, d. h. ein Zuschuss in Höhe von 2,5 Mio. DEM, wurde angeblich im Rahmen einer Regelung für KMU [9] gewährt. Deutschland gibt an, dass Kahla II ab dem Zeitpunkt der Gründung durch G. Raithel die Kriterien für eine Einstufung als KMU erfüllte. Die Kommission stellt fest, dass Kahla II anhand der von Deutschland vorgelegten Daten nicht als KMU einzustufen war. Folglich hegt sie ernsthafte Zweifel, ob der fragliche Zuschuss durch die Regelung abgedeckt war, innerhalb derer

(*) Betriebsgeheimnis.

(7) Rechtssache C-47/91, Italien/Kommission, Slg. 1994, I-4635.

(8) Laut Punkt 3 des THA-Regimes NN 108/91, das zum Zeitpunkt der Privatisierung galt, stellt der Erlass von Altlasten oder Altschulden, deren Ursprung vor dem 1. Juli 1990 lag, keine Beihilfe dar. Jeder andere Schuldenerlass jedoch wäre eine Beihilfe und müsste der Kommission mitgeteilt werden (NN 108/91, SG(91) D/17825 vom 26.9.1991).

(9) N 480/94.

er angeblich gewährt wurde. Wenn zudem eine Mantelgesellschaft, die mit dem Ziel gegründet wird, die Vermögenswerte, die Beschäftigten und die Verbindlichkeiten eines in Gesamtvollstreckung befindlichen Unternehmens zu übernehmen, das die für KMU maßgeblichen Grenzwerte überschreitet, behauptet, dass sie als KMU einzustufen sei, muss die Kommission überprüfen, ob die Voraussetzungen der KMU-Definition erfüllt sind.

(55) Maßnahme I, d. h. ein Darlehen in Höhe von 2 Mio. DEM bzw. 1,8 Mio. DEM, wurde angeblich im Rahmen des Europäischen Wiederaufbauprogramms gewährt. Ohne genaue Angaben zur Höhe, zum Zeitpunkt der Ausreichung, zu dem Programm, in dessen Rahmen es angeblich gewährt wurde, und ohne ausreichende Informationen, mit denen sich feststellen lässt, ob die Bedingungen einer genehmigten Beihilferegelung erfüllt sind, kann die Kommission die Vereinbarkeit dieser Beihilfemaßnahme mit dem Gemeinsamen Markt nicht beurteilen.

(56) Maßnahme J, d. h. ein Darlehen in Höhe von 0,2 Mio. DEM, wurde angeblich im Rahmen eines Eigenkapitalhilfeprogramms bewilligt. Ohne Angaben zum Zeitpunkt der Bewilligung, zu dem Programm, in dessen Rahmen es angeblich gewährt wurde, und ohne ausreichende Informationen, mit denen sich feststellen lässt, ob die Bedingungen einer genehmigten Beihilferegelung erfüllt sind, kann die Kommission die Vereinbarkeit dieser Beihilfemaßnahme mit dem Gemeinsamen Markt nicht beurteilen.

(57) Maßnahme N, d. h. die Übernahme einer 90-prozentigen Bürgschaft durch den Freistaat Thüringen. Die Kommission erkennt an, dass diese Bürgschaft auf einer im Jahr 1996 genehmigten Beihilferegelung beruht ([10]). Trotzdem braucht die Kommission das genaue Datum der Gewährung dieser Bürgschaft, da diese Regelung erst seit 1. Juli 1994 in Kraft ist.

(58) Maßnahme O, d. h. Investitionszuschüsse in einer Gesamthöhe von 5,03 Mio. DEM, die angeblich im Rahmen eines deutschen Gesetzes zur Verbesserung der Wirtschaftsstruktur gewährt wurden. Um die Vereinbarkeit dieser Investitionszuschüsse mit dem Gemeinsamen Markt beurteilen zu können, benötigt die Kommission genaue Angaben über das Programm, innerhalb dessen sie angeblich gewährt wurden.

(59) Maßnahme P, d. h. Investitionszulagen in Höhe von 1,131 Mio. DEM. Die Kommission erkennt an, dass diese Investitionszulagen nach dem Investitionszulagengesetz von 1994 und 1996 ([11]) bewilligt wurden.

(60) Mithin muss die Kommission in Bezug auf die Maßnahmen A, D, H, I, J, N und O eine Anordnung zur Auskunftserteilung gemäß Artikel 10 Absatz 3 der Verordnung (EG) Nr. 659/1999 erlassen. In Randnummer (93) der vorliegenden Entscheidung sind die vorzulegenden Angaben im Einzelnen aufgeführt.

3.4 **Ad-hoc-Beihilfen**

3.4.1 *Beihilfen an Kahla I*

(61) Die Kommission weist zunächst darauf hin, dass angesichts des Fehlens einer offenen und unbeschränkten Ausschreibung nicht ausgeschlossen werden kann, dass die Privatisierung des Unternehmens Elemente einer staatlichen Beihilfe beinhaltete.

(62) Bezüglich der Finanzierungsmaßnahmen zugunsten von Kahla I kann keine der Beihilfen, die die THA/BvS nach der Privatisierung des Unternehmens gewährt hatte, d. h. keine der Maßnahmen B, C, E und F, als durch die einschlägigen THA-Regimes abgedeckte Beihilfe bewertet werden, denn diese Regelungen beziehen sich nicht auf Beihilfen, die nach der Privatisierung eines Unternehmens gewährt wurden ([12]). In Ermangelung einer Rechtsgrundlage sind die vorstehend genannten Maßnahmen und Maßnahme G als Ad-hoc-Beihilfen zu beurteilen.

3.4.2 *Beihilfen an Kahla II*

(63) Als entscheidendes Kriterium für den Ausschluss des Vorliegens von Beihilfeelementen im Zusammenhang mit dem Verkauf der Vermögenswerte und Verbindlichkeiten an Kahla II und der Übertragung von Beihilfen von Kahla I auf Kahla II gilt die Frage, ob der von Herrn Raithel entrichtete Kaufpreis ein marktüblicher Preis war, da ansonsten die Gefahr einer Beihilfe für den Käufer besteht. Genauso muss der Verkauf in jedem Fall bedingungsfrei erfolgen, weil ansonsten die Gefahr einer Beihilfe für das veräußerte Unternehmen besteht.

(64) Nach Angaben der deutschen Behörden wurde G. Raithel vom Gesamtvollstreckungsverwalter wegen seiner Erfahrungen auf dem Prozellanmarkt als bester Bieter ausgewählt. Offenbar beruhte die Auswahl in erster Linie darauf, dass der Bestand des Unternehmens gesichert wird, nicht jedoch auf der Erzielung des besten Verkaufspreises. Folglich kann nicht festgestellt werden, ob der Verkauf bedingungsfrei erfolgte. Zudem liegen der Kommission keine Angaben über die Angebote anderer potenzieller Erwerber vor, so dass nicht entschieden werden kann, ob der Kaufpreis von 7,391 Mio. DEM das beste Gebot war.

([10]) Die Bürgschaften des Landes Thüringen wurden im Rahmen der „Bürgschaftrichtlinie des Freistaates Thüringen“ vom 18. Juni 1992, geändert am 14. November 1994 (NN 25/95), gewährt, die von der Kommission am 16. Dezember 1996 genehmigt wurde.

([11]) NN 47/94 und N 494/A/1995.

([12]) Anliegen der THA-Regimes war es, die THA und ihre Nachfolgeeinrichtungen (BMGB, TLG, BVVG und BvS) bei der Privatisierung von bisher staatseigenen Unternehmen zu unterstützen. Daher decken sie bestimmte Beihilfemaßnahmen ab, die vor und während einer Privatisierung gewährt wurden, aber keine Beihilfen, die nach der Privatisierung eines Unternehmens gewährt wurden, abgesehen von einigen geringfügigen Nachträgen zu den Privatisierungsverträgen, die im Vertragsmanagement (D/52863 vom 16.6.1997) festgehalten sind.

(65) Darüber hinaus nimmt die Kommission zur Kenntnis, dass die THA und die BvS offenbar die Hauptkreditgeber von Kahla I waren, deren Interessen der Gesamtvollstreckungsverwalter hätte vertreten sollen. Ferner stellt die Kommission fest, dass die THA und die BvS den Verkauf genehmigten und dass der teilweise Verzicht beider Institutionen auf Ablösung der von ihnen ausgereichten Kredite offenbar finanzielle Vorteile für Kahla II bedeutete.

(66) Folglich kann nicht ausgeschlossen werden, dass der Verkauf Elemente einer staatlichen Beihilfe beinhaltete und dass Kahla II auch indirekt von staatlichen Beihilfen profitiert hat, die der Vorgänger Kahla I erhalten hatte. Zudem werden folgende Maßnahmen als Ad-hoc-Beihilfen beurteilt:

(67) Maßnahme K, d. h. die Kapitalbeteiligung der TIB in Höhe von 1,975 Mio. DEM, ist nach Meinung Deutschlands nicht als Beihilfe anzusehen. Die Kommission erinnert an dieser Stelle daran, dass Kahla II zum Zeitpunkt der Gründung als Unternehmen in Schwierigkeiten beurteilt wird und dass anhand der übermittelten Angaben davon auszugehen ist, dass das Engagement der TIB nicht auf dem Bestreben beruhte, eine Marktinvestition zu tätigen, sondern von anderen Erwägungen bestimmt war. Es ist fraglich, dass ein privater Investor diese finanziellen Mittel bereitgestellt hätte.

(68) Diese Beteiligung war möglicherweise durch eine genehmigte Beihilferegelung ([13]) abgedeckt. Die Kommission hat in Bezug auf diese Regelung das förmliche Prüfverfahren eingeleitet, da hier dem Anschein nach ein Missbrauch dieser Regelung vorliegt ([14]). Zwar ist die Kommission noch nicht zu einer Schlussfolgerung über die Vereinbarkeit dieser Regelung mit dem Gemeinsamen Markt gelangt, doch ist zu beachten, dass gemäß den Bedingungen der Genehmigung durch die Kommission in den Fällen, in denen Großunternehmen Beihilfen im Rahmen dieses Programms erhalten, Deutschland die jeweiligen Fälle einzeln bei der Kommission anmelden muss. Nach den vorliegenden Angaben war Kahla II zu keiner Zeit als KMU einzustufen. Dennoch wurde diese TIB-Beteiligung der Kommission nicht gesondert mitgeteilt. Darüber hinaus sieht die Regelung grundsätzlich Minderheitsbeteiligungen an Unternehmen in Schwierigkeiten vor. Erhalten Unternehmen in Schwierigkeiten Beihilfen im Rahmen dieses Programms, muss Deutschland die jeweiligen Fälle einzeln bei der Kommission anmelden. Es wurde bereits an anderer Stelle festgestellt, dass die Kommission nunmehr davon ausgeht, dass Kahla II mindestens bis 1996 in Schwierigkeiten war. Dennoch wurde diese Beihilfe zu keiner Zeit notifiziert. Darüber hinaus lässt die Gewährung eines partiarischen Darlehens von 6 Mio. DEM durch die TIB darauf schließen, dass diese eine Mehrheitsbeteiligung an dem Unternehmen übernommen hatte, obwohl Deutschland erklärt, dass der TIB keine weiteren Stimmrechte gewährt wurden.

([13]) „Thüringer Industriebeteiligungsfonds“ (N 183/94), SG(94) D/11661 vom 9. August 1994.

([14]) C 17/99, ex NN 120/98 und N 804/97, SG(99) D/1972 vom 15.3.1999.

(69) Angesichts dessen erfüllte die Beteiligung der TIB unabhängig von der möglicherweise gegebenen Vereinbarkeit der Regelung mit dem Gemeinsamen Markt nicht die im Programm verankerten Bedingungen und ist demzufolge als Ad-hoc-Beihilfe zu beurteilen.

(70) Maßnahme L, d. h. das Darlehen in Höhe von 6 Mio. DEM, das Kahla II von der TIB gewährt wurde, und Maßnahme M, d. h. die von der Bayerischen Vereinsbank Erfurt ausgereichten Kredite in Höhe von 20 Mio. DEM, fußten nicht auf einer genehmigten Rechtsgrundlage. Diese Darlehen müssen ebenfalls als Beihilfen gewürdigt werden, da sie aus staatlichen Mitteln stammen und dem Unternehmen möglicherweise Vorteile verschafft haben, die ein Unternehmen in Schwierigkeiten von einem privaten Investor nicht erlangt hätte. In Ermangelung einer genehmigten Rechtsgrundlage sind sie als Ad-hoc-Beihilfen zu beurteilen.

(71) Schließlich kann die Kommission nicht ausschließen, dass die TIB de facto Kahla II kontrollierte, und nimmt zur Kenntnis, dass die Übertragung der früher von der TIB gehaltenen Geschäftsanteile auf G. Raithel und dessen Sohn eine Beihilfe beinhaltet haben könnte, falls es sich bei dem für die Geschäftsanteile entrichteten Preis nicht um einen marktüblichen Preis handelte.

3.5 **Ausnahmen gemäß Artikel 87 Absatz 3 Buchstabe c) EG-Vertrag**

(72) Ausgehend von den obigen Ausführungen sind Beihilfen in Höhe von mindestens 38,8 Mio. DEM zugunsten von Kahla I und Beihilfen in Höhe von mindestens 27,795 Mio. DEM zugunsten von Kahla II von der Kommission als Ad-hoc-Beihilfen zu beurteilen. In Artikel 87 Absätze 2 und 3 EG-Vertrag sind Ausnahmen von der allgemeinen Unvereinbarkeit nach Absatz 1 geregelt.

(73) Die Ausnahmeregelung des Artikels 87 Absatz 2 EG-Vertrag greift im vorliegenden Fall nicht, da die Beihilfemaßnahmen weder sozialer Art sind noch an einzelne Verbraucher gewährt werden oder der Beseitigung von Schäden dienen, die durch Naturkatastrophen oder sonstige außergewöhnliche Ereignisse entstanden sind und auch nicht für die Wirtschaft bestimmter Gebiete der Bundesrepublik gewährt werden.

(74) Weitere Ausnahmen sind in Artikel 87 Absatz 3 Buchstaben a) und c) EG-Vertrag geregelt. Da die Hauptzielsetzung der Beihilfen nicht die regionale Entwicklung ist, sondern die Wiederherstellung der langfristigen Rentabilität eines Unternehmens in Schwierigkeiten, gelten lediglich die Ausnahmebestimmungen von Artikel 87 Absatz 3 Buchstabe c) EG-Vertrag. Artikel 87 Absatz 3 Buchstabe c) sieht die Genehmigung staatlicher Beihilfen vor, die der Förderung der Entwicklung bestimmter Wirtschaftszweige dienen, soweit sie die Handelsbedingungen nicht in einer Weise verändern, die dem gemeinsamen Interesse zuwiderläuft.

(75) In den Leitlinien der Gemeinschaft für staatliche Beihilfen zur Rettung und Umstrukturierung von Unternehmen in Schwierigkeiten ([15]) („Leitlinien") hat die Kommission die Voraussetzungen für die Genehmigung von Beihilfen festgelegt. Die Kommission geht davon aus, dass keine der anderen Gemeinschaftsleitlinien, z. B. für Forschungs- und Entwicklungs-, Umwelt-, KMU- oder Beschäftigungs- und Ausbildungsbeihilfen, auf den vorliegenden Fall anwendbar ist.

(76) Da sämtliche Beihilfemaßnahmen vor Inkrafttreten der überarbeiteten Fassung der Leitlinien gewährt wurden, gelten die Leitlinien vom 23. Dezember 1994 ([16]). Dementsprechend wird die Erfüllung der in diesen Leitlinien festgelegten wichtigsten Bedingungen gewürdigt.

3.5.1 *Beihilfefähigkeit des Unternehmens*

(77) Wie bereits dargelegt, war Kahla I ein Unternehmen in Schwierigkeiten und ging in Konkurs. Ferner vertritt die Kommission den Standpunkt, dass die Neugründung Kahla II entgegen den vorgebrachten Behauptungen von Beginn an und zumindest noch bis 1996, also in dem Zeitraum, in dem die genannten Beihilfemaßnahmen gewährt wurden, ebenfalls ein Unternehmen in Schwierigkeiten war. Staatliche Finanzierungsmaßnahmen an Unternehmen in Schwierigkeiten bergen das Risiko, dass der Hauptbetrag im Fall eines späteren Konkurses verloren geht ([17]).

3.5.2 *Wiederherstellung der Rentabilität*

(78) Die Gewährung von Umstrukturierungsbeihilfen erfordert einen realistischen, zusammenhängenden und weitreichenden Umstrukturierungsplan zur Wiederherstellung der langfristigen Rentabilität des Unternehmens innerhalb eines angemessenen Zeitraums und auf der Grundlage realistischer Annahmen. Dabei gilt es den genauen Zeitraum zu prüfen.

(79) Die Kommission stellt fest, dass für Kahla I kein Umstrukturierungsplan vorgelegt wurde. Daher kann die Kommission nicht davon ausgehen, dass dieses in den Leitlinien festgelegte Kriterium erfüllt ist, und sie kann nicht ausschließen, dass die Beihilfen verwendet worden sind, um über die Jahre aufgelaufene Verluste zu decken oder ein marktverzerrendes Verhalten in Geschäftsbereichen zu entwickeln, die nicht von einer Umstrukturierung und Rationalisierung des Unternehmens betroffen sind. Die Kommission nimmt zur Kenntnis, dass die Mitbewerber nachdrücklich behaupteten, dass die Beihilfen für Zwecke des Preisdumpings verwendet wurden.

(80) In mehreren Dokumenten, die Kahla II betreffen und der Kommission vorgelegt wurden, werden Umstrukturierungsmaßnahmen beschrieben, die als Umstrukturierungsplan eingestuft werden könnten. Deutschland gibt an, dass die Maßnahmen ein Bestandteil des ersten Unternehmenskonzept waren, das zu einem späteren Zeitpunkt erarbeitet wurde. Aus den genannten Gründen kann nicht geklärt werden, inwieweit diese Maßnahmen tatsächlich durchgeführt wurden. Die Kommission erkennt jedoch an, dass aus den ihr vorliegenden Jahresabschlüssen von Kahla II eindeutig hervorgeht, dass das Unternehmen nunmehr bescheidene Gewinne erwirtschaftet. Um die Erfüllung dieses Kriteriums feststellen zu können, muss die Kommission jedoch genau wissen, welche Umstrukturierungsmaßnahmen zur Wiederherstellung der langfristigen Rentabilität des Unternehmens ergriffen wurden.

3.5.3 *Keine unzumutbare Verfälschung des Wettbewerbs*

(81) Der Umstrukturierungsplan muss Maßnahmen enthalten, die ergriffen werden, um nachteilige Auswirkungen auf Konkurrenten nach Möglichkeit auszugleichen, da die im Zusammenhang mit der Privatisierung gewährten Beihilfen sonst dem gemeinsamen Interesse zuwiderlaufen und nicht gemäß Artikel 87 Absatz 3 Buchstabe c) EG-Vertrag freigestellt werden können.

(82) Zeigt also eine objektive Beurteilung von Nachfrage und Angebot strukturelle Überkapazitäten auf einem relevanten Markt innerhalb der EU, auf dem das Unternehmen tätig ist, so muss der Umstrukturierungsplan einen im Verhältnis zur Beihilfe stehenden Beitrag zur Umstrukturierung der Branche in dem betreffenden Markt durch eine endgültige Reduzierung oder Stilllegung von Kapazitäten leisten.

(83) Die Kommission nimmt zur Kenntnis, dass der Porzellanmarkt gesättigt ist und dass die Porzellanbranche an Überkapazitäten leidet. Die deutschen Behörden haben jedoch keine Angaben zur Kapazitätsentwicklung von Kahla I vorgelegt. Die übermittelten Informationen enthielten auch keine Maßnahmen für einen Kapazitätsabbau. Daher kann die Kommission nicht beurteilen, ob Maßnahmen ergriffen wurden, die ausreichend sind, um nachteilige Auswirkungen auf Konkurrenten nach Möglichkeit auszugleichen.

(84) In Bezug auf Kahla II gibt Deutschland an, dass die Fertigungskapazität bei Haushaltskeramik um 44 % zurückgefahren wurde. Die Kommission nimmt aber zur Kenntnis, dass Kahla II in die Produktion von Hotelporzellan eingestiegen ist, wobei Deutschland allerdings keine Angaben über seine Fertigungskapazität in diesem Sektor übermittelt hat. Folglich kann nicht ausgeschlossen werden, dass Fertigungskapazitäten einfach in einen anderen Sektor verlagert wurden. Es lässt sich also nicht feststellen, ob Maßnahmen ergriffen wurden, die ausreichend sind, um nachteilige Auswirkungen auf Konkurrenten auszugleichen.

([15]) ABl. C 368 vom 23.12.1994, S. 12.

([16]) In Punkt 7.5 der Leitlinien von 1999 (ABl. C 288 vom 9.10.1999) heißt es: „Alle Rettungs- und Umstrukturierungsbeihilfen, die ohne Genehmigung der Kommission und somit in Widerspruch zu Artikel 88 Absatz 3 EG-Vertrag gewährt werden, wird die Kommission wie folgt auf ihre Vereinbarkeit mit dem Gemeinsamen Markt hin prüfen: (. . .) auf Grundlage der Leitlinien, die zum Zeitpunkt der Beihilfegewährung galten".

([17]) Mitteilung der Kommission über die Anwendung der Artikel 87 und 88 EG-Vertrag auf staatliche Beihilfen in Form von Haftungsverpflichtungen und Bürgschaften, von der Kommission angenommen am 24. November 1999.

(85) Schließlich stellt die Kommission fest, dass es in der von Deutschland als Begründung für die TIB-Beteiligung vorgelegten Studie heißt, dass das mit einer solchen Beteiligung verbundene hohe Risiko ausgeglichen werden sollte, indem verhindert wird, dass Mitbewerber aus der Porzellanbranche in Thüringen Beihilfen erhalten. Wäre diese Linie konsequent verfolgt worden — wie die Beschwerdeführer behaupten —, könnte diese Beihilfe für Kahla II zusätzliche nachteilige Auswirkungen auf Konkurrenten gehabt haben.

3.5.4 *Verhältnis zu den Kosten und Nutzen der Umstrukturierung*

(86) Umfang und Intensität der Beihilfe müssen sich auf das für die Umstrukturierung notwendige Mindestmaß beschränken und in einem Verhältnis zu dem aus Gemeinschaftssicht erwarteten Nutzen stehen. Deswegen wird von den Investoren ein Beitrag zum Umstrukturierungsplan aus eigenen Mitteln verlangt. Außerdem muss die Beihilfe in einer solchen Form gewährt werden, dass dem Unternehmen keine überschüssige Liquidität zufließt, die es zu einem aggressiven und marktverzerrenden Verhalten in Geschäftsbereichen verwenden könnte, die von dem Umstrukturierungsplan nicht betroffen sind.

(87) Da für Kahla I kein Plan vorliegt, können die Gesamtkosten der Umstrukturierung nicht ermittelt werden. Es ist daher nicht möglich zu beurteilen, ob die empfangene Beihilfe in einem Verhältnis zu den Umstrukturierungskosten steht bzw. auf das für die Umstrukturierung notwendige Mindestmaß beschränkt ist.

(88) Die für Kahla II übermittelten Unterlagen beziehen sich auf Umstrukturierungsmaßnahmen, wobei zwar für einige dieser Maßnahmen Einzelheiten zu den Kosten angegeben werden, aber keine umfassende Kostenaufschlüsselung erfolgt. Da unklar ist, welche dieser Maßnahmen tatsächlich umgesetzt wurden, und eine Gesamtübersicht über die Umstrukturierungskosten nicht vorgelegt wurde, kann die Kommission nicht feststellen, ob die Beihilfe auf das Mindestmaß beschränkt ist.

(89) Ferner stellt die Kommission fest, dass weder zu Kahla I noch zu Kahla II Angaben über einen Beitrag eines Investors vorgelegt wurden.

(90) Der Umstand, dass sich ein erheblicher Teil der erhaltenen Maßnahmen auf die Liquidität auswirkt, veranlasst dazu, die Möglichkeit zu erwägen, dass dem Unternehmen möglicherweise durch die Beihilfe zusätzliche liquide Mittel zugeflossen sind, die es zu einem agressiven und marktverzerrenden Verhalten verwenden könnte, so etwa für Kampfpreise oder den Erwerb von Mehrheitsbeteiligungen an konkurrierenden Unternehmen. Die Kommission stellt insbesondere fest, dass die Beschwerdeführer speziell diese beiden letzteren Möglichkeiten vorgebracht haben.

(91) Demzufolge kann die Kommission nicht ermitteln, ob die Beihilfen in dem gewährten Umfang in einem Verhältnis zu den Kosten und Nutzen der Umstrukturierung stehen.

3.5.5 *Vollständige Durchführung des Umstrukturierungsplans*

(92) Das Unternehmen muss den der Kommission vorgelegten Umstrukturierungsplan vollständig durchführen. Da kein Umstrukturierungsplan vorliegt, kann die Kommission nicht prüfen, ob diese Voraussetzung der Leitlinien erfüllt ist.

SCHLUSSFOLGERUNGEN

(93) Gemäß Artikel 10 Absatz 3 der Verordnung (EG) Nr. 659/1999 fordert die Kommission Deutschland auf, ihr innerhalb eines Monats nach Eingang dieses Schreibens alle Unterlagen, Angaben und Daten zu übermitteln, die sie benötigt, um festzustellen, ob die Beihilfen zugunsten von Kahla I und Kahla II, die angeblich im Rahmen genehmigter Beihilferegelungen (Maßnahmen A, D, H, I, J, N und O) gewährt wurden, durch diese Regelungen abgedeckt sind und ob sie die Bedingungen erfüllen, die in den Genehmigungsentscheidungen festgelegt sind. Dies betrifft insbesondere:

a) Angaben dazu, ob bei der Privatisierung von Kahla I der beste Bieter den Zuschlag erhielt; einen Beleg dafür, dass es sich bei dem Preis um einen marktüblichen Preis handelte;

b) den genauen Betrag sämtlicher an Kahla I und Kahla II gewährten Beihilfemaßnahmen, die angeblich durch genehmigte Beihilferegelungen abgedeckt waren;

c) den Zeitpunkt der Gewährung sämtlicher an Kahla I und Kahla II gewährten Beihilfemaßnahmen, die angeblich durch genehmigte Beihilferegelungen abgedeckt waren;

d) die einzelnen, von der Kommission genehmigten Programme, in deren Rahmen sämtliche angeblich von genehmigten Beihilferegelungen abgedeckten Beihilfemaßnahmen an Kahla I und Kahla II gewährt wurden;

e) Angaben dazu, ob die an Kahla I und Kahla II gewährten Beihilfen bis zu den für KMU festgelegten Höchstgrenzen gewährt wurden. Informationen, die ausreichen, um festzustellen, ob Kahla II während eines Teilabschnitts der Firmengeschichte als KMU einzustufen war;

f) zur Maßnahme A Angaben über die vorherigen Finanzierungsmaßnahmen, auf die sie sich bezieht.

(94) Anhand der Angaben muss sich feststellen lassen, ob die angeblich im Rahmen genehmigter Beihilferegelungen gewährten Beihilfen die Bedingungen jener Regelungen erfüllen, auf deren Grundlage sie vorgeblich gewährt wurden. Die Kommission behält sich das Recht vor, das förmliche Prüfverfahren bei den Maßnahmen einzuleiten, die im Ergebnis der Würdigung der von den deutschen Behörden auf die vorliegende Anordnung zur Auskunftserteilung hin übermittelten Angaben als neue Beihilfen einzustufen sind.

(95) Die Kommission hat ebenfalls beschlossen, bezüglich der an Kahla I und Kahla II gewährten Ad-hoc-Beihilfen (Maßnahmen B, C, E, F, G, K, L und M) das Verfahren nach Artikel 88 Absatz 2 EG-Vertrag sowie nach Artikel 6 und 16 der Verordnung (EG) Nr. 659/1999 des Rates einzuleiten.

(96) Im Hinblick darauf und gemäß Artikel 10 der Verordnung (EG) Nr. 659/1999 des Rates fordert die Kommission die Bundesrepublik Deutschland auf, ihr innerhalb eines Monats nach Eingang dieses Schreibens alle für die Würdigung der Vereinbarkeit der vorerwähnten Ad-hoc-Beihilfen notwendigen Unterlagen, Angaben und Daten zu übermitteln. Dies betrifft insbesondere:

a) alle Angaben, die notwendig sind, um zu ermitteln, ob mit Kahla II die Geschäftstätigkeit von Kahla I fortgeführt wurde oder ob beide als verschiedene Rechts- und Wirtschaftseinheiten zu betrachten sind. Dazu gehört auch eine ausführliche Darstellung aller Vorgänge im Zusammenhang mit der Gründung von Kahla II und der Übernahme von Grundstücken, Maschinen, Anlagen, Beschäftigten, Kundenstamm und Auftragsbestand von Kahla I im Jahr 1994, einschließlich aller sachdienlichen rechtlichen und vertraglichen Vereinbarungen, die bisher noch nicht übermittelt wurden.

b) den Nachweis, dass es sich bei dem für die Vermögenswerte von Kahla II entrichtenen Preis um einen marktüblichen Preis handelte und dass der Verkauf bedingungsfrei erfolgte;

c) alle Informationen, die notwendig sind, um feststellen zu können, ob Kahla II als Auffanglösung zu betrachten ist;

d) die Frage, ob Kahla II als Tochterunternehmen von Kahla I gegründet wurde;

e) die genaue Größenordnung aller an Kahla I und Kahla II gewährten Ad-hoc-Beihilfen unter Angabe des Zeitpunkts der Gewährung, der Höhe und des Zwecks;

f) zur Maßnahme G Angaben über die vorherigen Finanzierungsmaßnahmen, auf die sich die Grundschulden beziehen;

g) alle vorhandenen Umstrukturierungspläne, die bis jetzt für Kahla I und II eine Rolle gespielt haben könnten. Darzulegen sind Notwendigkeit und Zweck der Beihilfen. Dazu gehören eine Beschreibung der durchgeführten bzw. geplanten Investitionen und alle anderen Umstrukturierungskosten, für die staatliche Beihilfen verwendet wurden, Bilanzen, Gewinn- und Verlustrechnungen (für Kahla I), Kapazitätsentwicklungen und Angaben dazu, ob der Investor einen Beitrag geleistet hat bzw. leistet;

h) den Nachweis, dass die Gewährung eines Darlehens über 6 Mio. DEM im Rahmen von Maßnahme K nicht dazu führte, dass die TIB das Unternehmen kontrollierte; die Frage, welchen Umfang die TIB-Beteiligung nach der Gewährung des Darlehens hatte, und den Nachweis, dass es sich bei dem von der TIB für die Beteiligung an Kahla II entrichteten Preis um einen marktüblichen Preis handelte.

(97) Anderenfalls wird die Kommission gemäß Artikel 13 der Verordnung (EG) Nr. 659/1999 des Rates eine Entscheidung auf der Grundlage der ihr vorliegenden Elemente erlassen. Sie bittet die deutschen Behörden, dem etwaigen Empfänger der Beihilfe unmittelbar eine Kopie dieses Schreibens zuzuleiten.

(98) Die Kommission erinnert die Bundesrepublik Deutschland an die Sperrwirkung des Artikels 88 Absatz 3 EG-Vertrag und verweist auf Artikel 14 der Verordnung (EG) Nr. 659/1999 des Rates, wonach alle rechtswidrigen Beihilfen von den Empfängern zurückgefordert werden können.'

Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty

Cases where the Commission raises no objections

(2001/C 185/06)

(Text with EEA relevance)

Date of adoption of the decision: 28.3.2001

Member State: Denmark

Aid No: N 121/2000

Title: The Fur Sector Fund

Objective: To improve the quality of fur and develop new uses

Legal basis:

Lov nr. 414 af 13. juni 1990 om administration af Det Europæiske Fællesskabs forordninger om markedsordninger for landbrugsvarer m.v. med ændringer, jf. lovbekendtgørelse nr. 818 af 3. november 1999

Bekendtgørelse nr. 956 af 10. december 1993 om produktionsafgift på pelsskind

Budget:

Total budget: DKK 16,45 million (approximately EUR 2,2 million)

— Workshops: DKK 2,50 million (approximately EUR 335 000)

— R & D: DKK 6,050 million (approximately EUR 810 000)

Aid intensity or amount:

— Workshops: measure not constituting an aid

— R & D: up to 100 %

Duration: 2000-2009

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 28.3.2001

Member State: Spain (Rioja)

Aid No: N 625/2000

Title: Aid for the non-profit sector

Objective: Job creation and consolidation; strengthening of the non-profit sector

Legal basis: Bases reguladoras de la concesión de ayudas al Programa de Fomento de la Economía Social

Budget: ESP 36 million (EUR 216 364) for 2000

Aid intensity or amount:

Between ESP 800 000 (EUR 4 808) and ESP 2 million (EUR 12 020) per job created. For investment aid: 7,5 % (medium-sized firms) or 15 % (small firms); in assisted areas, regional intensity plus a bonus of 10 percentage points for SMEs

For technical assistance: 50 %, subject to a ceiling of ESP 3 million (EUR 18 080)

Duration: 2000-2006

Other information: Annual report

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 28.3.2001

Member State: Germany

Aid No: N 784/2000

Title: R & D programme 'Microelectronics'

Objective: To support R & D projects in the field of microelectronics

Legal basis: Haushaltsgesetz; Einzelplan 30, Kapitel 06, Titel 68317 Elektronik

Budget: On average DEM 28 million (approximately EUR 14 million) per year (total programme budget: DEM 140 million (approximately EUR 70 million) over five years), of which roughly two-thirds is deemed as aid to enterprises and one-third as financing of public research by public research institutes

Aid intensity or amount: Up to 50 % for industrial research, plus 10 % regional (Article 87(3)(a)), and/or 10 % SME, and/or 10 % cooperation bonus where appropriate

Duration: Until 1 March 2005

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 11.4.2001

Member State: The Netherlands (all Article 87(3)(c) regions)

Aid No: N 627/2000

Title: Free depreciation scheme for regional aid areas (2000-2006)

Objective: Regional

Legal basis:

Artikel 10 van de Wet op de Inkomstenbelasting 1964

Artikel 8 van de Wet op de Inkomstenbelasting 1969, „Uitvoeringsregeling willekeurige afschrijving"

Budget: NLG 20 million (EUR 9,1 million)

Aid intensity or amount: 2,6 % nge/gge

Duration: 2000-2006

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 11.4.2001

Member State: Spain

Aid No: N 750/2000

Title: SME consolidation and competitiveness plan

Objective: Investment and advisory aid for SMEs

Legal basis: Real Decreto por el que se establecen el régimen de ayudas y el sistema de gestión del Plan de Consolidación y Competitividad de las PYME

Budget: ESP 6 000 million (EUR 36,06 million) per year

Aid intensity or amount: Investment aid: 15 % (small firms) and 7,5 % (medium-sized firms) in non-assisted areas; regional ceiling plus bonus of 15 percentage points for assisted areas under Article 87(3)(a), and regional ceiling plus bonus of 10 percentage points for assisted areas under Article 87(3)(c). Advisory aid: 50 %

Duration: 2000-2006

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 11.4.2001

Member State: Germany (Bavaria)

Aid No: N 124/01

Title: R & D programme 'High technologies for the 21st century'

Objective: To support R & D projects in different fields of high technology

Legal basis: Bayerische Haushaltsordnung i.V.m. Gesetz über die Errichtung der Bayerischen Forschungsstiftung und Satzung der Bayerischen Forschungsstiftung

Budget: On average DEM 60 million (approximately EUR 30 million) per year, of which roughly EUR 12 million is deemed as aid to enterprises and EUR 18 million as financing of public research by public reserarch institutes

Aid intensity or amount: For fundamental reserarch: maximum 100 %; for feasibility studies: maximum 75 %/50 % for industrial research: maximum 50 %; for precompetitive development: maximum 25 %; plus additional 10 % points for SMEs; plus additional 10 % points pursuant to point 5(10)(4)(a) or (b) R & D framework; altogether, including bonuses, not exceeding 75 % for industrial reserarch and 50 % for precompetitive development

Duration: Until 31 December 2005

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 25.4.2001

Member State: France

Aid No: N 316/A/2000

Title: Réunion 2000-2006 — Activity areas and strategic areas

Objective: Regional — Operating aid in the form of rent reduction

Legal basis: Article L 1511-5 du Code Général des Collectivités Territoriales

Budget: Approximately EUR 6,34 million per year

Duration: Until end of 2006

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 25.4.2001

Member State: Germany

Aid No: N 694/2000

Title: Health reserarch — Research for people

Objective: R & D

Legal basis: Haushaltsgesetz der Bundesregierung, Einzelplan 30 für den Geschäftsbereich des Bundesministeriums für Bildung und Forschung, Kapitel 3005, Titel 68503 sowie Titel 68504, Dispo DF2GF0037

Budget: DEM 1 800 million (approximately EUR 900 million), of which approximately 10 % are State aid

Aid intensity or amount: For fundamental research up to 100 %, for industrial research up to 50 %, for precompetitive development up to 25 %. In addition, bonuses can be granted for SMEs, projects in assisted areas and cooperation projects

Duration: Eight years

Other information: An annual report will be submitted

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty

Cases where the Commission raises no objections

(2001/C 185/07)

Date of adoption of the decision: 27.4.2001

Member State: Germany (Brandenburg)

Aid No: N 561/2000

Title: Promotion of performance examinations and further measures in cattle breeding

Objective: Support for the livestock sector

Legal basis: Richtlinie für die Gewährung von Zuwendungen für die Förderung von Leistungsprüfungen und weiteren Maßnahmen in der Tierzucht

Budget: DEM 1,2 million per annum from the budget of Brandenburg

Duration: Until the year 2006

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 27.4.2001

Member State: Germany (Mecklenburg-Vorpommern)

Aid No: N 566/2000

Title: Construction and improvement of irrigation and drainage systems

Objective: Measures for water regulation to protect soil and the conditions on arable land

Legal basis: Richtlinie für die Gewährung von Zuschüssen für die Modernisierung und den Neubau von Beregnungs- und Dränanlagen

Budget: DEM 1,4 million per annum from budget of Mecklenburg-Vorpommern

Duration: Unlimited

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 27.4.2001

Member State: Spain (Andalusia)

Aid No: N 609/2000

Title: Aid to cooperatives

Objective: To carry out investments in agricultural product processing and marketing and create jobs directly linked to that investment

Legal basis: Proyecto de Decreto que regula las ayudas al sector agrario

Budget: 2000 to 2001: ESP 8 000 million (EUR 48 million)

Aid intensity or amount: Up to 50 %

Duration: Unspecified

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 27.4.2001

Member State: Italy

Aid No: N 742/2000

Title: Amendment of the RIBS project — Salvi Services

Objective: To improve productive structures

Legal basis: Articolo 23 della legge 7 de agosto 1997, N. 266

Budget: ITL 48 900 million (EUR 25 254 742)

Aid intensity or amount: 25,3 %

Duration: One-off aid

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty

Cases where the Commission raises no objections

(2001/C 185/08)

Date of adoption of the decision:	23.6.2000
Member State:	Italy (Toscana)
Aid No:	N 826/2000
Title:	Programme of economic promotion of agricultural activities for the year 2001
Objective:	Promotion of the agricultural productions of the region and of agrotourism
Legal basis:	Legge Regionale 14.4.1997 n. 28 come modificata ed integrata dalla legge Regionale 20.3.2000 n. 35
Budget:	Indeterminate
Aid intensity or amount:	Variable depending on the measure
Duration:	One year
Other information:	Italian authorities have engaged to submit to the Commission copies of the promotional and advertising materials covered by the scheme

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Notification of a joint venture

(Case COMP/E-2/38.176 — DuBay)

(2001/C 185/09)

(Text with EEA relevance)

1. On 21 June 2001 the Commission received from Bayer AG and DuPont Deutschland Holding GmbH and Co. KG an application for negative clearance and a notification for exemption under Article 81(3) of the EC Treaty of an agreement establishing a joint venture, DuBay Polymer GmbH, to build, own, maintain and operate a plant that will convert raw materials into polybutylene terephthalate polymer (PBT polymer) for independent use by each company in its downstream PBT compounding business. Each company will separately purchase raw materials and supply them to the joint venture. The PBT polymer produced by the joint venture will be supplied only to Bayer, DuPont and their designated affiliates.

2. On preliminary examination, the Commission finds that the notified joint venture could fall within the scope of Regulation No 17.

3. The Commission invites interested third parties to submit their possible observations on the proposed operation.

4. Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 299 24 64) or by post, under reference COMP/E-2/38.176 — DuBay, to:

European Commission,
Directorate-General for Competition,
Directorate E,
Office 1/223,
Rue Josef II/Jozef II-straat 70,
B-1000 Brussels.