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Information and Notices

(1) Text with EEA relevance

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(1) Text with EEA relevance

I

(Information)

COMMISSION

Ecu ([1])

9 December 1998

(98/C 384/01)

Currency amount for one unit:

Belgian and Luxembourg franc	40,3322	Finnish markka	5,94430
Danish krone	7,43688	Swedish krona	9,42355
German mark	1,95538	Pound sterling	0,706838
Greek drachma	328,013	United States dollar	1,17194
Spanish peseta	166,356	Canadian dollar	1,81064
French franc	6,55711	Japanese yen	138,101
Irish pound	0,787328	Swiss franc	1,59442
Italian lira	1936,18	Norwegian krone	8,85281
Dutch guilder	2,20371	Icelandic krona	82,0356
Austrian schilling	13,7574	Australian dollar	1,90034
Portuguese escudo	200,518	New Zealand dollar	2,26944
		South African rand	7,06678

([1]) Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ L 379, 30.12.1978, p. 1), as last amended by Regulation (EEC) No 1971/89 (OJ L 189, 4.7.1989, p. 1).
Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ L 349, 23.12.1980, p. 34).
Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ L 349, 23.12.1980, p. 27).
Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ L 345, 20.12.1980, p. 23).
Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ L 345, 20.12.1980, p. 1).
Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ L 311, 30.10.1981, p. 1).

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

(98/C 384/02)

(Established on 8 December 1998 for the application of Article 30(1) of Regulation (EEC) No 822/87)

Type of wine and the various marketing centres	ECU per % vol/hl	% of GP °
R I Guide price *	3,828	
Heraklion	No quotation	
Patras	No quotation	
Requena	No quotation	
Reus	No quotation	
Villafranca del Bierzo	No quotation (1)	
Bastia	No quotation	
Béziers	4,187	109 %
Montpellier	4,456	116 %
Narbonne	4,635	121 %
Nîmes	4,561	119 %
Perpignan	3,968	104 %
Asti	No quotation	
Florence	No quotation	
Lecce	No quotation (1)	
Pescara	No quotation (1)	
Reggio Emilia	No quotation	
Treviso	4,053	106 %
Verona (for local wines)	4,559	119 %
Representative price	4,393	115 %
R II Guide price *	3,828	
Heraklion	No quotation	
Patras	No quotation	
Calatayud	No quotation	
Falset	No quotation	
Jumilla	No quotation	
Navalcarnero	No quotation	
Requena	No quotation	
Toro	No quotation	
Villena	No quotation (1)	
Bastia	No quotation	
Brignoles	No quotation	
Bari	3,546	93 %
Barletta	3,293	86 %
Cagliari	No quotation	
Lecce	3,800	99 %
Taranto	No quotation	
Representative price	3,544	93 %
	ECU/hl	
R III Guide price *	62,150	
Rheinpfalz-Rheinhessen (Hügelland)	No quotation	

Type of wine and the various marketing centres	ECU per % vol/hl	% of GP °
A I Guide price *	3,828	
Athens	No quotation	
Heraklion	No quotation	
Patras	No quotation	
Alcázar de San Juan	No quotation	
Almendralejo	2,750	72 %
Medina del Campo	No quotation (1)	
Ribadavia	No quotation	
Villafranca del Penedés	No quotation	
Villar del Arzobispo	No quotation (1)	
Villarrobledo	2,738	72 %
Bordeaux	No quotation	
Nantes	No quotation	
Bari	No quotation (1)	
Cagliari	No quotation	
Chieti	No quotation	
Ravenna (Lugo, Faenze)	2,736	71 %
Trapani (Alcamo)	2,356	62 %
Treviso	3,420	89 %
Representative price	2,720	71 %
	ECU/hl	
A II Guide price *	82,810	
Rheinpfalz (Oberhaardt)	45,365	55 %
Rheinhessen (Hügelland)	50,405	61 %
The wine-growing region of the Luxembourg Moselle	No quotation	
Representative price	46,587	56 %
A III Guide price *	94,570	
Mosel-Rheingau	No quotation	
The wine-growing region of the Luxembourg Moselle	No quotation	
Representative price	No quotation	

(1) Quotation not taken into account in accordance with Article 10 of Regulation (EEC) No 2682/77.
* Applicable from 1.2.1995.
° GP = Guide price.

Commission notice on the application of the State aid rules to measures relating to direct business taxation

(98/C 384/03)

(Text with EEA relevance)

Introduction

1. On 1 December 1997, following a wide-ranging discussion on the need for coordinated action at Community level to tackle harmful tax competition, the Council (Ecofin) adopted a series of conclusions and agreed a resolution on a code of conduct for business taxation (hereinafter 'code of conduct') [1]. On that occasion, the Commission undertook to draw up guidelines on the application of Articles 92 and 93 of the Treaty to measures relating to direct business taxation and committed itself 'to the strict application of the aid rules concerned'. The code of conduct aims to improve transparency in the tax area through a system of information exchanges between Member States and of assessment of any tax measures that may be covered by it. For their part, the State aid provisions of the Treaty will also contribute through their own mechanism to the objective of tackling harmful tax competition.

2. The Commission's undertaking regarding State aid in the form of tax measures forms part of the wider objective of clarifying and reinforcing the application of the State aid rules in order to reduce distortions of competition in the single market. The principle of incompatibility with the common market and the derogations from that principle apply to aid 'in any form whatsoever', including certain tax measures. However, the question whether a tax measure can be qualified as aid under Article 92(1) of the Treaty calls for clarification which this notice proposes to provide. Such clarification is particularly important in view of the procedural requirements that stem from designation as aid and of the consequences where Member States fail to comply with such requirements.

3. Following the completion of the single market and the liberalisation of capital movements, it has also become apparent that there is a need to examine the particular effects of aid granted in the form of tax measures and to spell out the consequences as regards assessment of the aid's compatibility with the common market [2]. The establishment of economic and monetary union and the consolidation of national budgets which it entails will make it even more essential to have strict control of State aid in whatever form it may take. Similarly, account must also be taken, in the common interest, of the major repercussions which some aid granted through tax systems may have on the revenue of other Member States.

4. In addition to the objective of ensuring that Commission decisions are transparent and predictable, this notice also aims to ensure consistency and equality of treatment between Member States. The Commission intends, as the code of conduct notes, to examine or re-examine case by case, on the basis of this notice, the tax arrangements in force in the Member States.

A. Community powers of action

5. The Treaty empowers the Community to take measures to eliminate various types of distortion that harm the proper functioning of the common market. It is thus essential to distinguish between the different types of distortion.

6. Some general tax measures may impede the proper functioning of the internal market. In the case of such measures, the Treaty provides, on the one hand, for the possibility of harmonising Member States' tax provisions on the basis of Article 100 (Council directives, adopted unanimously). On the other, some disparities between planned or existing general provisions in Member States may distort competition and create distortions that need to be eliminated on the basis of Articles 101 and 102 (consultation of the relevant Member States by the Commission; if necessary, Council directives adopted by a qualified majority).

[1] OJ C 2, 6.1.1998, p. 1.

[2] See action plan for the single market, CSE(97) 1, 4 June 1997, strategic target 2, action 1.

7. The distortions of competition deriving from State aid fall under a system of prior Commission authorisation, subject to review by the Community judicature. Pursuant to Article 93(3), State aid measures must be notified to the Commission. Member States may not put their proposed aid measures into effect until the Commission has approved them. The Commission examines the compatibility of aid not in terms of the form which it may take, but in terms of its effect. It may decide that the Member State must amend or abolish aid which the Commission finds to be incompatible with the common market. Where aid has already been implemented in breach of the procedural rules, the Member State must in principle recover it from the recipient(s).

B. **Application of Article 92(1) of the EC Treaty to tax measures**

8. Article 92(1) states 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'. In applying the Community rules on State aid, it is irrelevant whether the measure is a tax measure, since Article 92 applies to aid measures 'in any form whatsoever'. To be termed aid, within the meaning of Article 92, a measure must meet the cumulative criteria described below.

9. Firstly, the measure must confer on recipients an advantage which relieves them of charges that are normally borne from their budgets. The advantage may be provided through a reduction in the firm's tax burden in various ways, including:

— a reduction in the tax base (such as special deductions, special or accelerated depreciation arrangements or the entering of reserves on the balance sheet),

— a total or partial reduction in the amount of tax (such as exemption or a tax credit),

— deferment, cancellation or even special rescheduling of tax debt.

10. Secondly, the advantage must be granted by the State or through State resources. A loss of tax revenue is equivalent to consumption of State resources in the form of fiscal expenditure. This criterion also applies to aid granted by regional or local bodies in the Member States ([3]). Furthermore, State support may be provided just as much through tax provisions of a legislative, regulatory or administrative nature as through the practices of the tax authorities.

11. Thirdly, the measure must affect competition and trade between Member States. This criterion presupposes that the beneficiary of the measure exercises an economic activity, regardless of the beneficiary's legal status or means of financing. Under settled case-law, for the purposes of this provision, the criterion of trade being affected is met if the recipient firm carries on an economic activity involving trade between Member States. The mere fact that the aid strengthens the firm's position compared with that of other firms which are competitors in intra-Community trade is enough to allow the conclusion to be drawn that intra-Community trade is affected. Neither the fact that aid is relatively small in amount ([4]), nor the fact that the recipient is moderate in size or its share of the Community market very small ([5]), nor indeed the fact that the recipient does not carry out exports ([6]) or exports virtually all its production outside the Community ([7]) do anything to alter this conclusion.

12. Lastly, the measure must be specific or selective in that it favours 'certain undertakings or the production of certain goods'. The selective advantage involved here may derive from an exception to the tax provisions of a legislative, regulatory or administrative nature or from a discretionary practice on the part of the tax authorities. However, the selective nature of a measure may be justified by 'the nature or general scheme of the system' ([8]). If so, the measure is not considered to be aid within the meaning of Article 92(1) of the Treaty. These various aspects are looked at below.

([3]) Judgment of the Court of Justice in Case 248/84 Germany v. Commission [1987] ECR 4013.

([4]) With the exception, however, of aid meeting the tests of the *de minimis* rule. See the Commission notice published in OJ C 68, 6.3.1996, p. 9.

([5]) Joined Cases C-278/92, C-279/92 and C-280/92 Spain v. Commission [1994] ECR I-4103.

([6]) Case 102/87 France v. Commission [1998] ECR 4067.

([7]) Case C-142/87 Belgium v. Commission [1990] ECR I-959.

([8]) Case 173/73 Italy v. Commission [1974] ECR 709.

Distinction between State aid and general measures

13. Tax measures which are open to all economic agents operating within a Member State are in principle general measures. They must be effectively open to all firms on an equal access basis, and they may not *de facto* be reduced in scope through, for example, the discretionary power of the State to grant them or through other factors that restrict their practical effect. However, this condition does not restrict the power of Member States to decide on the economic policy which they consider most appropriate and, in particular, to spread the tax burden as they see fit across the different factors of production. Provided that they apply without distinction to all firms and to the production of all goods, the following measures do not constitute State aid:

— tax measures of a purely technical nature (for example, setting the rate of taxation, depreciation rules and rules on loss carry-overs; provisions to prevent double taxation or tax avoidance),

— measures pursuing general economic policy objectives through a reduction of the tax burden related to certain production costs (research and development (R&D), the environment, training, employment).

14. The fact that some firms or some sectors benefit more than others from some of these tax measures does not necessarily mean that they are caught by the competition rules governing State aid. Thus, measures designed to reduce the taxation of labour for all firms have a relatively greater effect on labour-intensive industries than on capital-intensive industries, without necessarily constituting State aid. Similarly, tax incentives for environmental, R&D or training investment favour only the firms which undertake such investment, but again do not necessarily constitute State aid.

15. In a judgment delivered in 1974 (9), the Court of Justice held that any measure intended partially or wholly to exempt firms in a particular sector from the charges arising from the normal application of the general system 'without there being any justification for this exemption on the basis of the nature or general scheme of this system' constituted State aid. The judgment also states that 'Article 92 does not distinguish between the measures of State intervention concerned by reference to their causes or aims but defines them in relation to their effects'. The judgment also points out that the fact that the measure brings charges in the relevant sector more into line with those of its competitors in other Member States does not alter the fact that it is aid. Such divergences between tax systems, which, as pointed out above, are covered by Articles 100 to 102, cannot be corrected by unilateral measures that target the firms which are most affected by the disparities between tax systems.

16. The main criterion in applying Article 92(1) to a tax measure is therefore that the measure provides in favour of certain undertakings in the Member State an exception to the application of the tax system. The common system applicable should thus first be determined. It must then be examined whether the exception to the system or differentiations within that system are justified 'by the nature or general scheme' of the tax system, that is to say, whether they derive directly from the basic or guiding principles of the tax system in the Member State concerned. If this is not the case, then State aid is involved.

The selectivity or specificity criterion

17. The Commission's decision-making practice so far shows that only measures whose scope extends to the entire territory of the State escape the specificity criterion laid down in Article 92(1). Measures which are regional or local in scope may favour certain undertakings, subject to the principles outlined in paragraph 16. The Treaty itself qualifies as aid measures which are intended to promote the economic development of a region. Article 92(3)(a) and (c) explicitly provides, in the case of this type of aid, for possible derogations from the general principle of incompatibility laid down in Article 92(1).

18. The Treaty clearly provides that a measure which is sectorally specific is caught by Article 92(1). Article 92(1) expressly includes the phrase 'the production of certain goods' among the criteria determining whether there is aid that is subject to Commission

(9) See footnote 8.

monitoring. According to well-established practice and case-law, a tax measure whose main effect is to promote one or more sectors of activity constitutes aid. The same applies to a measure that favours only national products which are exported ([10]). Furthermore, the Commission has taken the view that a measure which targets all of the sectors that are subject to international competition constitutes aid ([11]). A derogation from the base rate of corporation tax for an entire section of the economy therefore constitutes, except for certain cases ([12]), State aid, as the Commission decided for a measure concerning the whole of the manufacturing sector ([13]).

19. In several Member States, different tax rules apply depending on the status of the undertakings. Some public undertakings, for example, are exempt from local taxes or from company taxes. Such rules, which accord preferential treatment to undertakings having the legal status of public undertaking and carrying out an economic activity, may constitute State aid within the meaning of Article 92 of the Treaty.

20. Some tax benefits are on occasion restricted to certain types of undertaking, to some of their functions (intra-group services, intermediation or coordination) or to the production of certain goods. In so far as they favour certain undertakings or the production of certain goods, they may constitute State aid as referred to in Article 92(1).

Discretionary administrative practices

21. The discretionary practices of some tax authorities may also give rise to measures that are caught by Article 92. The Court of Justice acknowledges that treating economic agents on a discretionary basis may mean that the individual application of a general measure takes on the features of a selective measure, in particular where exercise of the discretionary power goes beyond the simple management of tax revenue by reference to objective criteria ([14]).

22. If in daily practice tax rules need to be interpreted, they cannot leave room for a discretionary treatment of undertakings. Every decision of the administration that departs from the general tax rules to the benefit of individual undertakings in principle leads to a presumption of State aid and must be analysed in detail. As far as administrative rulings merely contain an interpretation of general rules, they do not give rise to a presumption of aid. However, the opacity of the decisions taken by the authorities and the room for manoeuvre which they sometimes enjoy support the presumption that such is at any rate their effect in some instances. This does not make Member States any less able to provide their taxpayers with legal certainty and predictability on the application of general tax rules.

Justification of a derogation by 'the nature or general scheme of the system'

23. The differential nature of some measures does not necessarily mean that they must be considered to be State aid. This is the case with measures whose economic rationale makes them necessary to the functioning and effectiveness of the tax system ([15]). However, it is up to the Member State to provide such justification.

24. The progressive nature of an income tax scale or profit tax scale is justified by the redistributive purpose of the tax. Calculation of asset depreciation and stock valuation methods vary from one Member State to another, but such methods may be inherent in the tax systems to which they belong. In the same way, the arrangements for the collection of fiscal debts can differ from one Member State to the other. Lastly, some conditions may be justified by objective differences between taxpayers. However, if the tax authority has discretionary freedom

([10]) Joined Cases 6 and 11/69 Commission v. France [1969] ECR 561.

([11]) Commission Decision 97/239/EC of 4 December 1996 in the 'Maribel bis/ter' case (OJ L 95, 10.4.1997, p. 25) (currently *sub judice*, Case C-75/97).

([12]) In particular, agriculture and fisheries, see paragraph 27.

([13]) Commission decision of 22 July 1998 in the 'Irish corporation tax' case (SG(98) D/7209) not yet published.

([14]) Case C-241/94 France v. Commission (Kimberly Clark Sopalin) [1996] ECR I-4551.

([15]) Commission decision 96/369/EC of 13 March 1996 concerning fiscal aid given to German airlines in the form of a depreciation facility (OJ L 146, 20.6.1996, p. 42).

to set different depreciation periods or different valuation methods, firm by firm, sector by sector, there is a presumption of aid. Such a presumption also exists when the fiscal administration handles fiscal debts on a case by case basis with an objective different from the objective of optimising the recovery of tax debts from the enterprise concerned.

25. Obviously, profit tax cannot be levied if no profit is earned. It may thus be justified by the nature of the tax system that non-profit-making undertakings, such as foundations or associations, are specifically exempt from the taxes on profits if they cannot actually earn any profits. Furthermore, it may also be justified by the nature of the tax system that cooperatives which distribute all their profits to their members are not taxed at the level of the cooperative when tax is levied at the level of their members.

26. A distinction must be made between, on the one hand, the external objectives assigned to a particular tax scheme (in particular, social or regional objectives) and, on the other, the objectives which are inherent in the tax system itself. The whole purpose of the tax system is to collect revenue to finance State expenditure. Each firm is supposed to pay tax once only. It is therefore inherent in the logic of the tax system that taxes paid in the State in which the firm is resident for tax purposes should be taken into account. Certain exceptions to the tax rules are, however, difficult to justify by the logic of a tax system. This is, for example, the case if non-resident companies are treated more favourably than resident ones or if tax benefits are granted to head offices or to firms providing certain services (for example, financial services) within a group.

27. Specific provisions that do not contain discretionary elements, allowing for example tax to be determined on a fixed basis (for example, in the agriculture or fisheries sectors), may be justified by the nature and general scheme of the system where, for example, they take account of specific accounting requirements or of the importance of land in assets which are specific to certain sectors; such provisions do not therefore constitute State aid. Lastly, the logic underlying certain specific provisions on the taxation of small and medium-sized enterprises (including small agricultural enterprises [16]) is comparable to that underlying the progressiveness of a tax scale.

[16] Operators in the agricultural sector with no more than 10 annual work units.

C. **Compatibility with the common market of State aid in the form of tax measures**

28. If a tax measure constitutes aid that is caught by Article 92(1), it can nevertheless, like aid granted in other forms, qualify for one of the derogations from the principle of incompatibility with the common market provided for in Article 92(2) and (3). Furthermore, where the recipient, whether a private or public undertaking, has been entrusted by the State with the operation of services of general economic interest, the aid may also qualify for application of the provisions of Article 90 of the Treaty [17].

29. The Commission could not, however, authorise aid which proved to be in breach both of the rules laid down in the Treaty, particularly those relating to the ban on discrimination and to the right of establishment, and of the provisions of secondary law on taxation [18]. Such aspects may, in parallel, be the object of a separate procedure on the basis of Article 169. As is clear from case-law, those aspects of aid which are indissolubly linked to the object of the aid and which contravene specific provisions of the Treaty other than Articles 92 and 93 must however be examined in the light of the procedure under Article 93 as part of an overall examination of the compatibility or the incompatibility of the aid.

30. The qualification of a tax measure as harmful under the code of conduct does not affect its possible qualification as a State aid. However the assessment of the compatibility of fiscal aid with the common market will have to be made, taking into account, *inter alia*, the effects of aid that are brought to light in the application of the code of conduct.

31. Where a fiscal aid is granted in order to provide an incentive for firms to embark on certain specific projects (investment in particular) and where its intensity is limited with respect to the costs of carrying out the project, it is no different from a subsidy and may be accorded the same treatment. Nevertheless, such arrangements must lay down sufficiently transparent rules to enable the benefit conferred to be quantified.

[17] Judgment of the Court of First Instance in Case T-106/95 FFSA and others v. Commission [1997] ECR II-229. Order of the Court of Justice in Case C-174/97 P [1998] I-1303.

[18] Case 74/76 Iannelli v. Meroni [1977] ECR 557. See also Cases 73/79 'Sovraprezzo' [1980] ECR 1533, T-49/93 'SIDE' [1995] ECR II-2501 and Joined Cases C 142 and 143/80 'Salengo' [1981] ECR 1413.

32. In most cases, however, tax relief provisions are general in nature: they are not linked to the carrying-out of specific projects and reduce a firm's current expenditure without it being possible to assess the precise volume involved when the Commission carries out its *ex ante* examination. Such measures constitute 'operating aid'. Operating aid is in principle prohibited. The Commission authorises it at present only in exceptional cases and subject to certain conditions, for example in shipbuilding, certain types of environmental protection aid ([19]) and in regions, including ultra-peripheral regions, covered by the Article 92(3)(a) aid derogation provided that they are duly justified and their level is proportional to the handicaps they are intended to offset ([20]). It must in principle (with the exception of the two categories of aid mentioned below) be degressive and limited in time. At present, operating aid can also be authorised in the form of transport aid in ultra-peripheral regions and in certain Nordic regions that are sparsely populated and are seriously handicapped in terms of accessibility. Operating aid may not be authorised where it represents aid for exports between Member States. As for State aid in favour of the maritime transport sector the specific rules for that sector apply ([21]).

33. If it is to be considered by the Commission to be compatible with the common market, State aid intended to promote the economic development of particular areas must be 'in proportion to, and targeted at, the aims sought'. For the examination of regional aid the criteria allow account to be taken of other possible effects, in particular of certain effects brought to light by the code of conduct. Where a derogation is granted on the basis of regional criteria, the Commission must ensure in particular that the relevant measures:

— contribute to regional development and relate to activities having a local impact. The establishment of off-shore activities does not, to the extent that their externalities on the local economy are low, normally provide satisfactory support for the local economy,

— relate to real regional handicaps. It is open to question whether there are any real regional handicaps for activities for which the additional costs have little incidence, such as for example the transport costs for financing activities, which lend themselves to tax avoidance,

— are examined in a Community context ([22]). The Commission must in this respect take account of any negative effects which such measures may have on other Member States.

D. **Procedures**

34. Article 93(3) requires Member States to notify the Commission of all their 'plans to grant or alter aid' and provides that any proposed measures may not be put into effect without the Commission's prior approval. This procedure applies to all aid, including tax aid.

35. If the Commission finds that State aid which has been put into effect in breach of this rule does not qualify for any of the exemptions provided for in the Treaty and is therefore incompatible with the common market, it requires the Member State to recover it, except where that would be contrary to a general principle of Community law, in particular legitimate expectations to which the Commission's behaviour can give rise. In the case of State aid in the form of tax measures, the amount to be covered is calculated on the basis of a comparison between the tax actually paid and the amount which should have been paid if the generally applicable rule had been applied. Interest is added to this basic amount. The interest rate to be applied is equivalent to the reference rate used to calculate the grant equivalent of regional aid.

36. Article 93(1) states that the Commission 'shall in cooperation with Member States, keep under constant review all systems of aid existing in those States'. Such review extends to State aid in the form of tax measures. So as to allow such review to be carried out, the Member States are required to submit to the Commission every year reports on their existing State aid systems. In the case of tax relief or full or partial tax exemption, the reports must provide an estimate of budgetary revenue lost. Following its review, the Commission may, if it

([19]) Community guidelines on State aid for environmental protection (OJ C 72, 10.3.1994, p. 3).

([20]) Guidelines on national regional aid (OJ C 74, 10.3.1998, p. 9).

([21]) Community guidelines on State aid to maritime transport (OJ C 205, 5.7.1997, p. 5).

([22]) Case 730/79 Philip Morris v. Commission [1980] ECR 2671.

considers that the scheme is not or is no longer compatible with the common market, propose that the Member State amend or abolish it.

E. **Implementation**

37. The Commission will, on the basis of the guidelines set out in this notice and as from the time of its publication, examine the plans for tax aid notified to it and tax aid illegally implemented in the Member States and will review existing systems. This notice is published for guidance purposes and is not exhaustive. The Commission will take account of all the specific circumstances in each individual case.

38. The Commission will review the application of this notice two years after its publication.

Non-opposition to a notified concentration

(Case No IV/M.1202 — Renault/Iveco)

(98/C 384/04)

(Text with EEA relevance)

On 22 October 1998, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in French and will be made public after it is cleared of any business secrets it may contain. It will be available:

— as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),

— in electronic form in the 'CFR' version of the CELEX database, under document number 398M1202. CELEX is the computerised documentation system of European Community law; for more information concerning subscriptions please contact:

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2, rue Mercier,
L-2985 Luxembourg.
Tel. (352) 29 29-42455, fax (352) 29 29-42763.

Withdrawal of notification of a concentration

(Case No IV/M.1246 — LHZ/Carl Zeiss)

(98/C 384/05)

(Text with EEA relevance)

On 24 September 1998, the European Commission received notification of a proposed concentration between LH Systems and Carl Zeiss Stiftung. On 1 December 1998, the notifying parties informed the Commission that they withdrew their notification.

Prior notification of a concentration

(Case No IV/M.1370 — Peugeot/Credipar)

(98/C 384/06)

(Text with EEA relevance)

1. On 1 December 1998, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 [1], as last amended by Regulation (EC) No 1310/97 [2], by which Peugeot SA acquires within the meaning of Article 3(1)(b) of the Regulation control of the whole of the undertaking Credipar, a joint venture controlled 50/50 with Sovac (General Electric Group) by purchase of shares.

2. The business activities of the undertakings concerned are:

— Peugeot SA: car manufacturer, car equipment, vehicule financing,

— Credipar: credit, leasing, operating lease of cars sold through the Peugeot and Citroën network.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved.

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

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) 296 43 01 or 296 72 44) or by post, under reference IV/M.1370 — Peugeot/Credipar, to the following address:

European Commission,
Directorate-General for Competition (DG IV),
Directorate B — Merger Task Force,
Avenue de Cortenberg/Kortenberglaan 150,
B-1040 Brussels.

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(1) OJ L 395, 30.12.1989, p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.
(2) OJ L 180, 9.7.1997, p. 1; corrigendum: OJ L 40, 13.2.1998, p. 17.

STATE AID

C 49/98 (ex NN 75/98 and NN 164/97)

Italy

(98/C 384/07)

(Text with EEA relevance)

(Articles 92, 93 and 94 of the Treaty establishing the European Community)

Commission notice pursuant to Article 93(2) of the EC Treaty to other Member States and interested parties concerning various laws containing measures to promote employment

The Commission has sent the Italian Government the following letter, informing it that it has decided to initiate proceedings under Article 93(2) of the EC Treaty.

'I

1. By letter No 3081 dated 7 May 1997 from the Permanent Representative's Office, the Italian authorities notified the Commission, in accordance with Article 93(3) of the EC Treaty, of draft Law No 196/97 containing measures on employment. As this was a draft law, it was entered in the register of notified aid under the number N 338/97. The Commission requested further information by letter No 52270 of 4 June 1997, to which the Italian authorities replied by letter dated 11 September 1997 from the Prime Minister's Office and letter No 7224 dated 28 October 1997 from the Permanent Representative's Office. Following the information received, the investigation was extended to other aid schemes connected with this package, i.e. Laws No 863/84, No 407/90, No 169/91 and No 451/94, which govern training and work experience contracts. This aid has already been granted and was therefore entered in the register of non-notified aid, under the number NN 164/97.

2. Investigation of the case was pursued by further exchanges of letters and meetings. The Commission sent letters No 55050 of 6 November 1997 and No 51980 of 11 May 1998; the Italian authorities sent letters No 2476 of 10 April 1998 and No 3656 of 5 June 1998. Meetings were held in Rome on 27 November 1997, 3 March 1998 and 8 April 1998.

3. Law No 196/97 comprises various schemes, including:

— Article 13(4): aid for reducing working hours,

— Article 14(1): aid to small and medium-sized enterprises (SMEs) and craft firms which employ researchers,

— Article 14(2): measures concerning the temporary secondment of researchers from public bodies to SMEs who so request,

— Article 23: measures concerning realignment,

— Article 25(2): establishment of a guarantee fund for aid granted under the law to promote youth enterprise (Law No 95/95).

4. The Italian authorities have stated that these schemes are not yet in operation, as the implementing provisions have not yet been adopted. They have promised to notify the implementing provisions at the draft stage as soon as they are available. Investigation of these schemes is therefore suspended and the Commission will give its decision as soon as it has all the information necessary to assess whether the schemes are compatible with Community competition rules.

5. Law No 196/97 also provides for the following measures:

— Article 15: aid for converting training and work experience contracts into open-ended contracts,

— Article 26: aid for work experience grants.

These measures, which are directly applicable, have been transferred to the register of non-notified aid under the number NN 75/98.

6. This decision concerns the following aid:

— aid NN 164/97: training and work experience contracts governed by Laws No 863/84, No 407/90, No 169/91 and No 451/94,

— aid for the employment of the long-term unemployed provided for in Article 8(9) of Law No 407/90,

— aid NN 75/98: aid for converting training and work experience contracts into open-ended contracts under Article 15 of Law No 196/97 and aid for work experience grants under Article 26 of Law No 196/97.

II

7. TRAINING AND WORK EXPERIENCE CONTRACTS

7.1. The training and work experience contract was introduced in 1984 by Law No 863/84. This was a fixed-term contract, including a training period, for the employment of unemployed persons of up to 29 years of age. Employers were exempt from paying social security contributions for two years in respect of persons employed under this type of contract. This reduction was applied in a generalised, automatic, indiscriminate and uniform manner throughout the country.

7.2. The implementation arrangements for this type of contract were changed in 1990 by Law No 407/90, which introduced a regional variation in the aid, Law No 169/91, which raised the maximum age of employees to 32, and Law No 451/94, which introduced the training and work experience contract limited to one year and set a compulsory minimum number of training hours.

7.3. Under these laws, the training and work experience contract is a fixed-term contract for the employment of young people aged between 16 and 32. The age limit may be raised at the discretion of the regional authorities. There are two types of training and work experience contract:

1. the first type concerns activities requiring a high level of training. The contract has a maximum duration of 24 months and must provide for at least 80-130 hours training to be given at the workplace for the full period of the contract;

2. the second type concerns less skilled activities. The contract must last no more than 12 months and includes 20 hours of training.

7.4. The main feature of the training and work experience contract is that it provides the employee with a training programme aimed at giving him a specific qualification. Training programmes are usually drawn up by consortia of firms or trade associations and approved by the employment office, which checks whether, at the end of the training period, the employee has actually received the training required.

7.5. Employers who take people on using training and work experience contracts benefit from reductions in social security contributions. The reductions allowed for the period of the contract are:

— 25 % of contributions normally due, for firms located in areas other than the Mezzogiorno,

— 40 % for firms in the commercial and tourism sector, with fewer than 15 employees, established in areas other than the Mezzogiorno,

— craft firms and firms in areas where the level of unemployment is above the national average enjoy total exemption from contributions.

7.6. In order to qualify for these reductions the employer must not have reduced staff numbers in the previous 12 months, except where he is taking on employees with a different qualification. The employer must also have kept on (with an open-ended contract) at least 60 % of employees whose training and work experience contract expired in the previous 24 months.

7.7. For training and work experience contracts of the second type (lasting one year) reductions are also subject to the condition that the contract is converted into an open-ended contract. The reductions apply only after the conversion and for a period equal to the period of the training and work experience contract.

7.8. The Italian authorities maintain that this is an aid scheme to promote youth employment. In their view the Italian market has particular features which make it necessary to increase the age limit usually applied for this category, i.e. 25, to 32.

7.9. In defence of its failure to notify the scheme, pursuant to Article 93(3) of the Treaty, the Italian Government explained that because of the mixed nature of the measure, i.e. including a "training" element, it was not clear that there was any need to notify. The Italian Government takes the view that, on grounds of equal treatment, it would be unreasonable to analyse this scheme in the light of rules which are more restrictive than the Commission's practice at the time.

7.10. The annual budget for this aid is around ITL 8 000 billion (around ECU 4 100 million).

8. CONVERSION OF TRAINING AND WORK EXPERIENCE CONTRACTS INTO OPEN-ENDED CONTRACTS

8.1. Article 15 of Law No 196/97 stipulates that firms in Objective 1 areas which, on their expiry, convert training and work experience contracts of the first type (two-year) into open-ended contracts, enjoy exemption from social security contributions for a further year. They must return any aid received if they dismiss the employee within 12 months of the end of the assisted period.

8.2. The budget for this aid is ITL 50 billion (around ECU 26 million) for 1997, ITL 75 billion (around ECU 37 million) for 1998 and ITL 100 billion (around ECU 52 million) for 1999 and 2000.

9. WORK EXPERIENCE GRANTS

9.1. Under Article 26 of Law No 196/97, firms with up to 100 employees established in areas where the unemployment rate is higher than the national average (Sicily, Sardinia, Calabria, Basilicata and Campania (Article 92(3)(a) areas), Molise and Abruzzi and the cities of Massa Carrara, Viterbo, Latina, Frosinone (Article 92(3)(c) areas) and Rome) may employ young unemployed persons for a period of 12 months under the work experience grant system. Firms must belong to the following sectors: commerce, repair, manufacturing, hotel and restaurant trade, transport, finance, rental, information technology, research and the professions.

9.2. Applicants for work experience grants must have been unemployed for at least 30 months and must be aged between 21 and 31. Successful applicants receive a work experience grant from the state of ECU 400 per month. They must not work for more than 20 hours per week.

9.3. The firm must train the trainee, pay for his insurance and provide theoretical and general training (labour law and prevention of accidents) of at least 40 hours. Work experience grants cannot be used in firms which have dismissed staff over the previous 12 months. Work experience grants cannot be used to replace work done by employees.

9.4. Young persons taken on with a work experience grant must not be engaged in posts over and above the average number of employees in the firm over the previous 12 months. Employees with fixed-term contracts are not included in the calculation of the number of employees.

9.5. Firms which at the end of the period of the work experience grant then employ the trainee under an open-ended contract receive aid in the form of a reduction in social security contributions. The reduction is 50 % of contributions normally due for a period of 36 months. Firms in areas which form part of the Mezzogiorno [1] enjoy total exemption for 36 months.

The average aid per trainee is ITL 21 million (around ECU 11 000) in the Mezzogiorno and ITL 10,5 million (around ECU 6 000) in the other regions.

9.6. The budget for this aid is ITL 300 billion (around ECU 160 million) for 1997 and ITL 700 billion (around ECU 365 million) for 1998.

10. AID FOR EMPLOYMENT OF THE LONG-TERM UNEMPLOYED

10.1. Article 8(9) of Law No 407/90 provides for aid to firms which employ under open-ended contracts persons who have been unemployed for at least 24 months or have been drawing from the Earnings Supplement Fund (Cassa Integrazione Guadagni) for at least two years. The aid is in the form of a reduction in social security contributions:

— for firms in the Mezzogiorno [1], total exemption from contributions for a period of 36 months,

— for firms in other areas, a reduction of 50 % of contributions for a period of 36 months.

10.2. The aid is granted only on condition that the firm has not dismissed any staff within the previous 12 months.

The average amount of the reduction per person employed is ITL 21 million (around ECU 11 000) in the Mezzogiorno and ITL 10,5 million (around ECU 6 000) in the other regions.

[1] In this case the definition of Mezzogiorno is the same as Objective 1.

III

11. TRAINING AND WORK EXPERIENCE CONTRACTS

11.1. Training and work experience contracts governed by Law 863/84 did not constitute aid within the meaning of Article 92(1) of the Treaty, but a general measure. The aid was applicable in a uniform, automatic and non-discretionary manner and on the basis of objective criteria to all firms.

11.2. The amendments made in 1990 by Law No 407/90 modified the nature of the measures. The new provisions varied the reductions on the basis of the location of the recipient firm and the sector it belonged to. This meant that some firms had greater reductions than those granted to their competitors.

11.3. Selective reductions which favour certain firms rather than others in the same Member State, whether the selectivity operates at individual, regional or sectoral level, constitute, for the differential part of the redcution, State aid within the meaning of Article 92(1) of the Treaty, which distorts competition and could affect trade between the Member States.

11.4. This differential benefits firms which operate in particular areas of Italy. It favours these firms in so far as it is not granted to firms in other areas.

11.5. The aid distorts competition in so far as it strengthens the financial position and opportunities of the recipient firms with respect to competitors who do not receive the aid. It also affects intra-Community trade whenever this effect occurs in that context.

11.6. In particular, it distorts competition and affects trade between Member States where the recipient firms export some of their products to other Member States; equally, even where such firms do not export their goods, national production is favoured because firms established in other Member States have less chance of exporting their products to the Italian market [2].

11.7. For the above reasons, the measures under examination are normally prohibited under Article 92(1) of the EC Treaty and Article 62(1) of the EEA Agreement and may be deemed compatible with the common market only if they qualify for one of the derogations provided for by those instruments.

11.8. As to form, the scheme should have been notified to the Commission at the draft stage, in accordance with Article 93(3) of the EC Treaty. In the absence of such notification by the Italian Government, the aid is illegal under Community law, on grounds of failure to comply with the provisions of Article 93(3) of the Treaty.

11.9. In the absence of guidelines in this area the Commission had, prior to November 1995, adopted various decisions on aid to promote employment. At this time, the Commission had established certain parameters for assessing the compatibility of aid in this field. These were less restrictive criteria than those laid down in the guidelines now in force; for example the net creation of new jobs was not always required [3]. The scheme under investigation has certain features (i.e. it concerns recruitment and not simply maintaining jobs, it is not possible to use it to replace dismissed employees and the employee must be trained) which mean that it met the criteria the Commission normally took into consideration at the time it was implemented. The Commission therefore does not consider it necessary to assess compatibility of the scheme until after 21 November 1995, i.e. the date when the Italian Government was notified of the Community guidelines on aid to employment [4], which established the new rules applicable in this field.

12. ASSESSMENT OF THE COMPATIBILITY OF TRAINING AND WORK EXPERIENCE CONTRACTS

12.1. The guidelines on aid to employment specify that the Commission is normally favourably disposed towards aid:

— for the unemployed,

and

— to create new jobs (net creation) in SMEs and in regions eligible for regional aid,

[2] Judgment in Case 102/87 [1988] ECR 4067.

[3] See aid N 199/89 which provided for aid for maintaining jobs in a central region; aid N 413/88 — in this case of aid for youth employment there was no condition of not replacing employees who had been dismissed.

[4] Letter SG D/14435 of 21 November 1995.

or

— to encourage firms to take on certain groups of workers experiencing difficulties entering or re-entering the labour market; in this case there is no need for net job creation, provided that the post falls vacant following voluntary departure and not redundancy.

The guidelines also stipulate that the Commission must make sure that "the level of aid does not exceed that which is necessary to provide an incentive to create jobs" and that the job is a stable one.

12.2. The Community guidelines also stipulate that the Commission may approve aid to maintain jobs, provided that it is limited to areas eligible for the derogation under Article 92(3)(a) of the EC Treaty and meets with the conditions laid down for operating aid. These rules specify that this type of aid must be limited in time, degressive and designed to overcome structural handicaps and to promote lasting development, in accordance with the rules governing sensitive sectors.

12.3. Aid for employment under training and work experience contracts clearly has the following features:

— it does not necessarily concern recruitment of the unemployed, as this is not required by the Italian law,

— it is not aimed at the net creation of new jobs in the sense meant by the Community guidelines, since there is no obligation to increase the workforce, even though the firm must not have dismissed any staff over the preceding period,

— it is not aimed at encouraging firms to take on certain groups of workers experencing difficulties entering or re-entering the labour market. In fact, given the very high age limit (32), which can even be raised further by the regional authorities, the aid is not aimed at "young people" as the Italian authorities claim. The authorities have not put forward any significant evidence to support this claim. According to the Commission's information, measures in favour of young people both at Community and Member State level concern young people under the age of 25 ([5]).

12.4. The Commission notes, however, that the Italian law expressly stipulates that firms must not have dismissed any employees.

12.5. It must therefore be concluded that this aid appears to be to maintain jobs and is therefore operating aid. The Commission must therefore ascertain whether it meets the conditions laid down for operating aid, referred to in point 12.2 above.

12.6. The Commission notes in the first place that the aid is not restricted to the areas eligible for the derogation under Article 92(3)(a) of the Treaty, as it applies to the country as a whole. It is not degressive or limited in time. As to whether it is likely to help firms overcome structural handicaps and promote lasting development, the Commission has repeatedly warned the Italian Government of the risks of such generalised measures. Its negative position is based on its conviction that this type of measure has very harmful effects on competition and on trade, which are not really counterbalanced by the Community interest in terms of sustainable development or the removal of structural handicaps.

12.7. Since the conditions laid down by the relevant Community guidelines do not appear to have been met, the Commission takes the view, on the basis of the information it has received, that the aid does not conform to Community guidelines and does not therefore qualify for the derogation laid down for this type of aid.

12.8. With regard to applicability of the other derogations provided for in the Treaty, the

([5]) See *Employment Observatory — Tableau de bord 1996*, Office for Official Publications of the European Communities.

Commission takes the view, on the basis of the information it has received, that the aid does not qualify for the regional derogations under Article 92(3)(a) and (c), as it is not investment aid. It does not qualify for the derogations under Article 92(2) of the Treaty, because it does not have a social character within the meaning of Article 92(2)(a), nor is it intended to make good the damage caused by natural disasters or exceptional occurrences within the meaning of Article 92(2)(b), nor is it covered by the provisions of Article 92(2)(c). For obvious reasons, the derogations under Article 92(3)(b) and (d) are not applicable either.

12.9. For these reasons the Commission has doubts as to the compatibility of the reduction differentials provided for by the measures in question with Articles 92 *et seq.*, of the Treaty and is therefore initiating proceedings pursuant to Article 93(2) of the Treaty.

13. AID FOR THE CONVERSION OF TRAINING AND WORK EXPERIENCE CONTRACTS INTO OPEN-ENDED CONTRACTS

13.1. Since this concerns the extension by one year of the aid granted for the training and work experience contract and since this aid is even more selective, being restricted to Objective 1 areas only, analysis of the nature of the aid within the meaning of Article 92(1) of the EC Treaty, as developed in points 11.3 to 11.7 above, is all the more pertinent.

13.2. Neither the aid for recruiting employees under training and work experience contracts nor the aid for converting such contracts appears to meet all the conditions laid down by the Community guidelines on aid to employment. If the employees to be taken on can be regarded as unemployed because their contract has come to an end, then the net job creation requirement is not met. In fact, no additional new jobs are created, since the aid concerns existing employees. The effect of new job creation cannot even be achieved in the period before recruitment under training and work experience contracts, since net job creation is not required in order to qualify for aid for this type of contract. Finally, for obvious reasons, the groups of workers involved cannot be said to be experiencing particular problems re-entering the labour market.

13.3. It is true that in some cases the Commission has been favourably disposed towards aid for converting fixed-term jobs into open-ended ones [6]. However, this favourable approach is, generally speaking, subject to the following conditions:

— the firm must not have dismissed any employees in the 12 months preceding the conversion,

— the number of jobs must be increased compared with the number of employees in the firm in the six months prior to the conversion, not including the jobs being converted.

13.4. This enables the Commission to ascertain that the aid, besides stabilising precarious jobs, brings the added value of the net creation of stable jobs which did not previously exist, and therefore to verify that it is not simply a matter of replacing employees who have been dismissed or who have retired.

13.5. In the present case these conditions (no dismissals and no replacement of staff who have left the firm) are not imposed. The Commission must therefore take the view that the requirements made of the firm are rather slight, especially as the jobs involved have been the subject of fairly substantial aid (exemption from social security contributions for one year) under the scheme of aid for training and work experience contracts.

13.6. Under these circumstances, the Commission is forced to take the view, at this stage and on the basis of the information it has received, that the aid is for maintaining jobs. As stipulated in the Community guidelines on aid to employment, such aid constitutes operating aid. It must therefore be examined in the light of the rules applicable, which are laid down in the Community guidelines on regional aid. The latter guidelines rule out the possibility of granting this type of aid outside those regions eligible for the derogation under Article 92(3)(a) of the Treaty. Application of this scheme to the region of Molise (an Article 92(3)(c) area) is therefore clearly incompatible. The measure is also incompatible in the other Objective 1 areas in Italy, which are also eligible for the derogation under Article 92(3)(a) of the Treaty, for the reasons already given for training and work experience contracts, i.e. the Commission considers that, at present, the aid does not meet the conditions laid down for the granting of operating aid.

[6] See aid N 692/97.

13.7. With regard to applicability of the other derogations provided for in the Treaty, the observations under point 12.8. above also pertain in this case, as this is the same type of aid.

13.8. At present, for the reasons given above, the Commission has doubts as to whether the aid to convert training and work experience contracts into open-ended contracts is compatible with Articles 92 *et seq*., of the EC Treaty, and is therefore initiating proceedings pursuant to Article 93(2) of the Treaty.

14. WORK EXPERIENCE GRANTS

14.1. The provisions governing work experience grants (i.e. stipulating that grants must not be used to replace employees, compulsory training) mean that this measure essentially benefits those receiving the grant. The aim is to give people who have been looking for a job for at least 30 months, who are in very poor financial circumstances, on-the-job training which may help them to enter the labour market.

14.2. However, as this measure also brings advantages for firms in that it enables them to take on young people with work experience grants paid by the state, the Commission must point out the selective nature of the measure, since it is limited to firms situated in certain parts of Italy. It favours these firms in so far as it is not available to firms outside these areas. The same observations must be made for the reduction in social security contributions where trainees are taken on at the end of the training period.

14.3. Given that this measure could distort competition, in that it strengthens the financial position and opportunities of the firms which benefit from it as compared with competitors who do not, the Commission takes the view that it constitutes aid within the meaning of Article 92(1) of the EC Treaty.

14.4. In considering the compatibility of the aid in the form of grants, it should be emphasised that this concerns the specific training (on the job) of particular groups of workers (the long-term unemployed) and that it will for the most part involve SMEs. The regions which benefit are almost all eligible for the regional derogations (except for Rome which is only partly eligible).

14.5. The Commission is sympathetic to training aid for SMEs, as expressly laid down in the Community guidelines on SMEs. With regard to the aid for young people who may be taken on by large firms, given also that these are particular groups of workers, a sympathetic approach is justified by the Commission's pratice in this field ([7]) and by the guidelines on aid to employment which confirm such an approach. In fact, given the way in which this measure is implemented, it is likely that it will have many positive repercussions for the beneficiaries, who are long-term unemployed, and could make a significant contribution to the fight against unemployment and the creation of jobs.

14.6. On the subject of aid intensity, the Commission notes that while the State is responsible for remuneration, firms bear the entire cost of training the grant holder. This is a significant cost which the firm bears without being certain that it will be able to make use of the skills acquired by the young person, since he or she is not obliged to stay with the firm once the grant has come to an end. The participation of the firm must therefore be regarded as extremely important.

14.7. Finally the Commission takes the view that, given that the amount of aid is not very high, it is unlikely that this measure will have any effect on trade to an extent contrary to the common interest.

14.8. On the basis of these considerations, the Commission takes the view that the measure must be considered compatible with the common market in accordance with Article 92(3)(c) of the Treaty, as training aid.

14.9. The reductions in social security contributions granted to firms which take on young persons at the end of their training period must be examined in the light of the criteria laid down by the guidelines on aid to employment referred to in point 12.1 above.

14.10. In this regard it should be pointed out that the young people to be taken on have been unem-

([7]) N 906/96, Philips; NN 36/96, Auoto europa; N 376/97, Rover.

ployed for at least 30 months and may therefore be considered as among the groups of workers experiencing particular difficulties entering or re-entering the labour market; the intensity of the aid does not appear to exceed that which is necessary to provide an incentive to create jobs, given the groups of workers and the regions involved (eligible for the regional derogations) and is below that which the Commission has already approved in similar cases ([8]); the stability of the jobs is guaranteed as these are open-ended contracts.

14.11. The aid may therefore be justified on the basis of the provisions laid down in the Community guidelines on aid to employment concerning specific groups of workers, as the conditions that firms must not have dismissed staff in the period before recruitment is also met.

For these reasons the Commission considers that this aid is compatible with the common market under the derogation provided for in Article 92(3)(c) of the Treaty.

15. AID FOR EMPLOYMENT OF THE LONG-TERM UNEMPLOYED

15.1. As the Commission has already reiterated, when some firms enjoy reductions greater than those granted to their competitors in the same Member State, such measures constitute, for the differential part of the reduction, State aid within the meaning of Article 92(1) of the Treaty, which distorts competition and could affect trade between the Member States.

15.2. In fact the aid is granted to firms operating in certain areas of Italy. It favours these firms in so far as it is not granted to firms in other areas.

15.3. The aid distorts competition in so far as it strengthens the financial position and opportunities of the recipient firms as compared with competitors who do not receive the aid. It also affects intra-Community trade whenever this effect occurs in that context.

15.4. For the above reasons, the measures under examination are normally prohibited under Article 92(1) of the EC Treaty and Article 62(1) of the EEA Agreement and may be deemed compatible with the common market only if they qualify for one of the derogations provided for by those instruments.

15.5. As to form, the scheme should have been notified to the Commission at the draft stage, in accordance with Article 93(3) of the EC Treaty. Since the Italian Government failed to send notification, the aid is illegal under Community law, on grounds of failure to comply with the provisions of Article 93(3) of the Treaty.

15.6. As indicated in the Community guidelines on aid to employment, the Commission is normally favourably disposed towards aid to promote the employment of persons experiencing difficulties entering or re-entering the labour market. As has been stated, the guidelines nevertheless stipulate that the workers involved must be unemployed, the job must be stable, the post to be filled must have fallen vacant as a result of voluntary departure and not redundancy, "the level of aid must not exceed that which is necessary to provide an incentive to create jobs" and the job created must be a stable one.

15.7. With regard to recruitment of the long-term unemployed, the Commission notes that this measure clearly concerns a group of workers at risk of marginalisation.

15.8. With regard to aid for recruitment of workers registered with the Earnings Supplement Fund for at least 24 months, the Commission notes that, although such workers are technically not unemployed in the legal sense, as required by the Community guidelines, they are to all intents and purposes in the same position as those who are actually unemployed. In fact, since the Earnings Supplement Fund is mostly used in restructuring operations requiring a reduction in the workforce, it is very likely that the workers who have been drawing from the Fund for more than 24 months will be the first to be made redundant. For this reason, virtual unemployment under the Earnings Supplement Fund, in the case of a worker who has been in this position for more than 24 months, must be regarded as equivalent to actual unemployment ([9]). Since the virtual unemployment has lasted over 24 months, the workers involved must be considered long-term unemployed.

([8]) See N 381/96, aid to employment, and N 692/97, Regional Law No 30/97 to promote employment.

([9]) The Commission has on several occasions pointed out that being registered with the Earnings Supplement Fund is equivalent to being unemployed (see aid N 381/96 and N 692/97).

15.9. The intensity of the aid does not appear to exceed that which is necessary to provide an incentive to create jobs, given the groups of workers and the regions involved (eligible for the regional derogations) and is below that which the Commission has already approved in similar cases ([10]); the stability of the jobs is guaranteed as these are open-ended contracts. Finally, firms must not be replacing staff who have been dismissed.

15.10. For these reasons the Commission considers that this aid is compatible with the common market under the derogation provided for in Article 92(3)(c) of the Treaty, since it meets the requirements laid down in the Community guidelines concerning aid for the recruitment of workers experiencing difficulties entering or re-entering the labour market.

IV

16. In the light of the above considerations, the Commission hereby informs the Italian Government that it has decided:

— not to raise any objection to the aid provided for in Article 26 of Law No 196/97 for work experience grants,

— not to raise any objection to the aid provided for in Article 8(9) of Law No 407/90 for recruitment of the long-term unemployed and workers who have been drawing from the Earnings Supplement Fund (Cassa Integrazione Guadagni) for at least two years,

— to initiate proceedings pursuant to Article 93(2) of the Treaty in respect of aid for employment under training and work experience contracts provided for in Laws No 863/84, No 407/90, No 169/91 and No 451/94, granted since November 1995,

— to initiate proceedings pursuant to Article 93(2) of the Treaty in respect of aid for converting training and work experience contracts into open-ended contracts, provided for in Article 15 of Law No 196/97.

17. The Commission therefore calls upon the Italian Government to forward its comments, within one month of notification of this letter, together with any information concerning the aid which could assist the Commission in its investigation pursuant to Articles 92 *et seq.* of the EC Treaty.

18. The Commission would remind the Italian Government of the suspensory effect of Article 93(3) of the EC Treaty and would draw its attention to the communication ist published in *Official Journal of the European Communities* C 318 of 24 November 1983 which stipulated that any aid granted unlawfully, i.e. without prior notification or without awaiting the Commission's final decision, may have to be recovered from the recipient firms.

19. The Commission requests the Italian authorities to inform the recipient firms forthwith of the initiation of the proceedings and of the fact that they may have to repay any aid improperly received.

20. The Commission hereby informs the Italian Government that it will be publishing this letter in the *Official Journal of the European Communities*, calling on the other Member States and interested parties to submit their comments.'

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

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

The comments will be communicated to the Italian Government.

([10]) See aid N 381/96, aid to employment, and N 692/97, Regional Law No 30/97 to promote employment.

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

Cases where the Commission raises no objections

(98/C 384/08)

(Text with EEA relevance)

Date of adoption: 30.9.1998

Member State: Italy (Lazio)

Aid No: N 163/98

Title: Novalis Fibres Srl

Objective: Polyamide yarn

Legal basis: Legge 488/92

Budget: ITL 21,3 billion

Aid intensity: ITL 1,86 billion (5 % nge)

Duration: 1994 to 1998

Date of adoption: 30.9.1998

Member State: Portugal (Paredes)

Aid No: N 203/98

Title: Verto Portugal

Objective: Synthetic fibres

Legal basis: Programa IMIT (Iniciativa para a modernização da indústria têxtil)

Budget: ECU 1 604 726

Aid intensity: Approximately ECU 413 000 (25,7 %)

Duration: 1995 to 1997

Date of adoption: 30.9.1998

Member State: Belgium

Aid No: N 205/98

Title: Restructuring aid for Sunparks International NV

Objective: To restore the economic viability of Sunparks International by contributing to the financial restructuring of the company

Legal basis:

— Loi du 30 décembre 1970 relative à l'expansion économique

— Wet van 30 december 1970 op de economische expansie

Budget: ECU 9,2 million

Aid intensity: ECU 1,3 million

Duration: 10 and 15 years

Conditions: An annual report has to be made. The Belgian authorities have confirmed that this is the last time they will support the company

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Date of adoption: 30.9.1998

Member State: United Kingdom

Aid No: N 210/98

Title: 'Seagate strategic research programme'

Objective: To support R&D on key technologies for magnetic heads for hard disk, tape and sensor devices

Legal basis: The Industrial Development (Northern Ireland) Order 1982, Part III, Article 9

Budget: GBP 7 004 400 (approximately ECU 10,5 million)

Aid intensity: 30 % for a mix of industrial research and precompetitive development

Duration: 42 months, from start of the project

Date of adoption: 30.9.1998

Member State: Belgium

Aid No: N 240/98

Title: Directive B 6 laying down the conditions for implementing the Economic Reorientation Law of 4 August 1978 (Belgian Official Gazette of 17 August 1978)

Objective: To support business investment in the Brussels-capital region

Legal basis:

— Loi de réorientation économique du 4 août 1978 (*Moniteur belge* du 17 août 1978)

— Wet van 4 augustus 1978 tot economische heroriëntering (Belgisch Staatsblad van 17 augustus 1978)

Budget: 1997: 295 BEF million (some ECU 7,2 million)

Aid intensity: Variable, depending on beneficiary and type of investment; in line with Community guidelines for SMEs and disadvantaged urban areas and within the *de minimis* ceiling

Duration: Indefinite

Date of adoption: 30.9.1998

Member State: United Kingdom

Aid No: N 374/98

Title: 'New Deal'

Objective: Job creation for young unemployed aged 18 to 24 and long-term unemployed aged 25 and over

Legal basis: Employment and Training Act 1973 as amended by the Employment Act 1988 and Jobseeker's Allowance Regulations 1996

Budget: GBP 3,5 billion (ECU 5,2 billion)

Duration: Until 2002

Conditions: Considered as a general measure

Date of adoption: 30.9.1998

Member State: Germany (Lower Saxony)

Aid No: N 394/98

Title: Rawe GmbH & Co.

Objective: Restructuring aid (textiles)

Legal basis: Richtlinien für die Übernahme von Bürgschaften des Landes Niedersachsen vom 15.5.1990

Aid intensity: Guarantee covering a loan of DEM 15,4 million (ECU 7,7 million)

Duration: Until 15 December 1999

Date of adoption: 8.10.1998

Member State: Germany (Bremen)

Aid No: N 254/98

Title: Promotion of SMEs

Objective: To promote SMEs

Legal basis: Landesinvestitionsprogramm (LIP) der Freien und Hansestadt Bremen

Budget: DEM 26 million p.a. (approximately ECU 13 million)

Aid intensity: Not exceeding the aid intensities foreseenunder the SME guidelines and the environmental guidelines

Duration: Until 2003

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Regulation (EC) amending Regulation (EEC) No 2262/84 laying down special measures in respect of olive oil

(98/C 384/09)

COM(1998) 631 final — 98/0308(CNS)

(Submitted by the Commission on 6 November 1998)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and, in particular Article 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas, in accordance with Article 1(5) of Council Regulation (EEC) No 2262/84 [1], at last amended by Regulation (EC) No 2599/97 [2], the Council, acting by a qualified majority on a proposal from the Commission, is to adopt before 1 January 1999 the method for financing actual expenditure of agencies as from the 1999/2000 marketing year;

Whereas a 3 year transitional period referring to the reform on the market organisation of the olive oil sector has been decided as from the marketing year 1998/99; whereas, work customarily entrusted to the agencies must be carried out during the transitional period as well as during the first marketing year following the said period; whereas, as a result, provision should be made for a Community contribution to the agencies' expenditure for that period in order to ensure they can operate effectively and in accordance with the rules within the framework of the administrative autonomy provided for in Regulation (EEC) No 2262/84,

HAS ADOPTED THIS REGULATION:

Article 1

The last two subparagraphs of Article 1(5) of Regulation (EEC) No 2262/84 are hereby replaced by the following:

'50 % of the agencies actual expenditure over a period of three years starting from the 1999/2000 marketing year shall be covered by the general budget of the European Communities.

Before 1 October 2001, the Commission shall consider the need to maintain the Community contribution to the agencies expenditure and, where appropriate, shall present a proposal to the Council. In accordance with the procedure provided for in Article 43(2) of the Treaty, the Council shall decide before 1 January 2002 on any financing of the expenditure in question.'

Article 2

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Communities.*

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

[1] OJ L 208, 3.8.1984, p. 11.
[2] OJ L 351, 23.12.1997, p. 17.

Amended proposal for a Council Directive on conditions for the operation of regular ro-roferry and high speed passenger craft services in the Community [1]

(98/C 384/10)

(Text with EEA relevance)

COM(1998) 636 final — 98/0064(SYN)

(Submitted by the Commission pursuant to Article 189a(2) of the EC Treaty on 10 November 1998)

[1] OJ C 108, 7.4.1998, p. 122.

ORIGINAL TEXT	AMENDED TEXT
Article 1	
Purpose	
The purpose of this Directive is to lay down conditions for the safe operation of regular ro-ro ferry and high speed passenger craft services to or from ports in the Member States of the Community and to provide the right for Member States to conduct, participate in or cooperate with any investigation of maritime casualties or incidents on these services.	The purpose of this Directive is to lay down a system of mandatory surveys which will provide a greater assurance of safe operation of regular ro-ro ferry and high speed passenger craft services to or from ports in the Member States of the Community and to provide the right for Member States to conduct, participate in or cooperate with any investigation of maritime casualties or incidents on these services.
Article 2	
Definitions	
	(ba) 'passenger' is every person other than:
	(i) the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship; and
	(ii) a child under one year of age;
	(fa) 'port area' shall mean an area other than a sea area, as defined by the Member States, extending to the outermost permanent harbour works forming an integral part of the harbour system, or to the limits defined by natural geographical features protecting an estuary or similiar sheltered area;
(j) 'host State' shall mean a Member State to or from whose ports a ro-ro ferry or a high speed passenger craft is engaged on a regular service;	(j) 'host State' shall mean a Member State to or from whose port(s) a ro-ro ferry or a high speed passenger craft is engaged on a regular service;

ORIGINAL TEXT	AMENDED TEXT
Article 6.3	
Companies shall inform the host States that for ships or craft, flying a flag other than that of a Member State, the administration of that flag State has accepted the company's commitment to fulfil the requirements imposed by the host States as a condition to provide a regular service to or from one or more of their ports.	Delete
Article 7.2a (new)	
	Prior to the start of operation by a ro-ro ferry or high speed passenger craft on a regular service, or within twelve months of the date referred to in Article 15(1) for a ro-ro ferry or high speed passenger craft already operating a regular service, Host States shall check for ships or craft flying a flag other than that of a Member State, the concurrence of that flag State that it has accepted the company's commitment to meet the requirements of this Directive.
Article 8	
Procedures related to specific surveys	
3. Host States, in planning an initial survey, shall take due account of the operational and maintenance schedule of the ship or craft	3. Host States, in planning an initial specific survey, shall set a time-limit of maximum one month for this survey to be completed and shall take due account of the operational and maintenance schedule of the ship or craft.
4. The findings of the specific surveys shall be recorded in a report of which the format shall be established in accordance with the procedure laid down in Article 12.	4. The findings of the specific surveys shall be recorded in a report of which the format shall be established in accordance with the procedure laid down in Article 12. These findings shall also be communicated to the flag State, if different from the host State.
	7. Should the specific surveys confirm or reveal deficiencies in relation to the requirements of this Directive warranting a prevention of operation, all costs related to the surveys in any normal accounting period shall be covered by the company.
Article 15a (new)	
	Three years after the implementation date of this Directive the Commission shall assess on the basis of information to be provided by the Member States the implementation of this Directive and propose any appropriate measure.