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<u>Número de información</u>	Sumario	Página
------------------------------	---------	--------

II Comunicaciones

COMUNICACIONES PROCEDENTES DE LAS INSTITUCIONES, ÓRGANOS Y ORGANISMOS DE LA UNIÓN EUROPEA

Comisión Europea

2011/C 245/01	No oposición a una concentración notificada (Asunto COMP/M.6298 — Schneider Electric/Telvent) ⁽¹⁾	1
---------------	--	---

IV Información

INFORMACIÓN PROCEDENTE DE LAS INSTITUCIONES, ÓRGANOS Y ORGANISMOS DE LA UNIÓN EUROPEA

Consejo

2011/C 245/02	Anuncio dirigido a las personas y entidades a las que se aplican las medidas restrictivas previstas en la Decisión 2011/273/PESC del Consejo, que se aplica en virtud de la Decisión de Ejecución 2011/515/PESC, y en el Reglamento (UE) n° 442/2011 del Consejo, que se aplica en virtud del Reglamento de Ejecución (UE) n° 843/2011 del Consejo, relativo a la adopción de medidas restrictivas contra Siria	2
---------------	---	---

ES

Precio:
3 EUR

⁽¹⁾ Texto pertinente a efectos del EEE

(continúa al dorso)

Comisión Europea

2011/C 245/03	Tipo de cambio del euro	3
---------------	-------------------------------	---

INFORMACIÓN PROCEDENTE DE LOS ESTADOS MIEMBROS

2011/C 245/04	Información comunicada por los Estados miembros en relación con el cierre de pesquerías	4
2011/C 245/05	Información comunicada por los Estados miembros en relación con el cierre de pesquerías	5
2011/C 245/06	Información comunicada por los Estados miembros en relación con el cierre de pesquerías	6
2011/C 245/07	Información comunicada por los Estados miembros en relación con el cierre de pesquerías	7

V *Anuncios*

PROCEDIMIENTOS ADMINISTRATIVOS

Comisión Europea

2011/C 245/08	Convocatoria de propuestas — Programa ESPON 2013	8
---------------	--	---

PROCEDIMIENTOS RELATIVOS A LA APLICACIÓN DE LA POLÍTICA DE COMPETENCIA

Comisión Europea

2011/C 245/09	Ayuda estatal — Reino Unido — Ayuda estatal SA.18859 — 11/C (ex NN 65/10) — Exoneración del impuesto sobre los áridos en Irlanda del Norte (ex N 2/04) — Invitación a presentar observaciones en aplicación del artículo 108, apartado 2, del TFUE ⁽¹⁾	10
2011/C 245/10	Ayuda estatal — Alemania (Artículos 107 a 109 del Tratado de Funcionamiento de la Unión Europea) — Ayuda estatal MC 15/09 — Venta de Deka por LBBW ⁽¹⁾	21



⁽¹⁾ Texto pertinente a efectos del EEE

II

(Comunicaciones)

COMUNICACIONES PROCEDENTES DE LAS INSTITUCIONES, ÓRGANOS Y ORGANISMOS DE LA UNIÓN EUROPEA

COMISIÓN EUROPEA

No oposición a una concentración notificada**(Asunto COMP/M.6298 — Schneider Electric/Telvent)****(Texto pertinente a efectos del EEE)**

(2011/C 245/01)

El 9 de agosto de 2011, la Comisión decidió no oponerse a la concentración notificada que se cita en el encabezamiento y declararla compatible con el mercado común. Esta decisión se basa en el artículo 6, apartado 1, letra b) del Reglamento (CE) n° 139/2004 del Consejo. El texto íntegro de la decisión solo está disponible en inglés y se hará público una vez que se elimine cualquier secreto comercial que pueda contener. Estará disponible:

- en la sección de concentraciones del sitio web de competencia de la Comisión (<http://ec.europa.eu/competition/mergers/cases/>). Este sitio web permite localizar las decisiones sobre concentraciones mediante criterios de búsqueda tales como el nombre de la empresa, el número de asunto, la fecha o el sector de actividad,
 - en formato electrónico en el sitio web EUR-Lex (<http://eur-lex.europa.eu/en/index.htm>) con el número de documento 32011M6298. EUR-Lex da acceso al Derecho comunitario en línea.
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IV

(Información)

INFORMACIÓN PROCEDENTE DE LAS INSTITUCIONES, ÓRGANOS Y ORGANISMOS DE LA UNIÓN EUROPEA

CONSEJO

Anuncio dirigido a las personas y entidades a las que se aplican las medidas restrictivas previstas en la Decisión 2011/273/PESC del Consejo, que se aplica en virtud de la Decisión de Ejecución 2011/515/PESC, y en el Reglamento (UE) n° 442/2011 del Consejo, que se aplica en virtud del Reglamento de Ejecución (UE) n° 843/2011 del Consejo, relativo a la adopción de medidas restrictivas contra Siria

(2011/C 245/02)

EL CONSEJO DE LA UNIÓN EUROPEA,

La presente información se pone en conocimiento de las personas y entidades que figuran en el anexo de la Decisión 2011/273/PESC del Consejo, que se aplica en virtud de la Decisión de Ejecución 2011/515/PESC ⁽¹⁾, y en el anexo II del Reglamento (UE) n° 442/2011 del Consejo, que se aplica en virtud del Reglamento de Ejecución (UE) n° 843/2011 ⁽²⁾ relativo a la adopción de medidas restrictivas contra Siria.

El Consejo de la Unión Europea ha determinado que las personas y entidades que figuran en los citados anexos deben incluirse en la lista de personas y entidades objeto de las medidas restrictivas establecidas por la Decisión 2011/273/PESC y por el Reglamento (UE) n° 442/2011 relativo a las medidas restrictivas habida cuenta de la situación en Siria. Los motivos de la inclusión de dichas personas y entidades en las listas se recogen en las entradas correspondientes que figuran en los anexos.

Se pone en conocimiento de las personas y entidades afectadas que tienen la posibilidad de cursar una solicitud a las autoridades competentes de los Estados miembros correspondientes que se mencionan en los sitios web indicados en el anexo III del Reglamento (UE) n° 442/2011, a fin de obtener autorización para utilizar fondos inmovilizados por motivos de necesidades básicas o pagos concretos (véase el artículo 6 del Reglamento).

Las personas y entidades afectadas pueden presentar una solicitud al Consejo, acompañada de la documentación probatoria correspondiente, para que se reconsidere la decisión de incluirlas en la citada lista. La solicitud debe remitirse a la dirección siguiente:

Consejo de la Unión Europea
Secretaría General
Coordinación DG K
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË

Por último, se comunica a las personas y entidades afectadas que pueden recurrir la decisión del Consejo ante el Tribunal General de la Unión Europea, con arreglo a las condiciones establecidas en el artículo 275, párrafo segundo, y en el artículo 263, párrafos cuarto y sexto, del Tratado de Funcionamiento de la Unión Europea.

⁽¹⁾ DO L 218 de 24.8.2011.

⁽²⁾ DO L 218 de 24.8.2011, p. 1.

COMISIÓN EUROPEA

Tipo de cambio del euro ⁽¹⁾

23 de agosto de 2011

(2011/C 245/03)

1 euro =

Moneda	Tipo de cambio	Moneda	Tipo de cambio		
USD	dólar estadounidense	1,4462	AUD	dólar australiano	1,3771
JPY	yen japonés	110,72	CAD	dólar canadiense	1,4260
DKK	corona danesa	7,4498	HKD	dólar de Hong Kong	11,2766
GBP	libra esterlina	0,87600	NZD	dólar neozelandés	1,7360
SEK	corona sueca	9,1046	SGD	dólar de Singapur	1,7414
CHF	franco suizo	1,1410	KRW	won de Corea del Sur	1 558,38
ISK	corona islandesa		ZAR	rand sudafricano	10,3816
NOK	corona noruega	7,8080	CNY	yuan renminbi	9,2513
BGN	lev búlgaro	1,9558	HRK	kuna croata	7,4740
CZK	corona checa	24,417	IDR	rupia indonesia	12 355,53
HUF	forint húngaro	271,78	MYR	ringgit malayo	4,2894
LTL	litas lituana	3,4528	PHP	peso filipino	61,206
LVL	lats letón	0,7095	RUB	rublo ruso	41,8255
PLN	zloty polaco	4,1499	THB	baht tailandés	43,140
RON	leu rumano	4,2574	BRL	real brasileño	2,3111
TRY	lira turca	2,5783	MXN	peso mexicano	17,7768
			INR	rupia india	65,9830

⁽¹⁾ Fuente: tipo de cambio de referencia publicado por el Banco Central Europeo.

INFORMACIÓN PROCEDENTE DE LOS ESTADOS MIEMBROS

Información comunicada por los Estados miembros en relación con el cierre de pesquerías

(2011/C 245/04)

De conformidad con el artículo 35, apartado 3, del Reglamento (CE) n° 1224/2009 del Consejo, de 20 de noviembre de 2009, por el que se establece un régimen comunitario de control para garantizar el cumplimiento de las normas de la política pesquera común ⁽¹⁾, se ha decidido el cierre de la pesquería contemplada en el siguiente cuadro:

Fecha y hora del cierre	18.7.2011
Duración	18.7.2011-31.12.2011
Estado miembro	Países Bajos
Población o grupo de poblaciones	HKE/571214
Especie	Merluza (<i>Merluccius merluccius</i>)
Zona	VI y VII; aguas de la UE y aguas internacionales de la zona Vb; aguas internacionales de las zonas XII y XIV
Tipos de buques pesqueros	—
Número de referencia	—

Enlace a la página web de la decisión del Estado miembro:

http://ec.europa.eu/fisheries/cfp/fishing_rules/tacs/index_es.htm

⁽¹⁾ DO L 343 de 22.12.2009, p. 1.

Información comunicada por los Estados miembros en relación con el cierre de pesquerías

(2011/C 245/05)

De conformidad con el artículo 35, apartado 3, del Reglamento (CE) n° 1224/2009 del Consejo, de 20 de noviembre de 2009, por el que se establece un régimen comunitario de control para garantizar el cumplimiento de las normas de la política pesquera común ⁽¹⁾, se ha decidido el cierre de la pesquería contemplada en el siguiente cuadro:

Fecha y hora del cierre	18.7.2011
Duración	18.7.2011-31.12.2011
Estado miembro	Países Bajos
Población o grupo de poblaciones	HKE/2AC4-C
Especie	Merluza (<i>Merluccius merluccius</i>)
Zona	Aguas de la UE de las zonas IIa y IV
Tipos de buques pesqueros	—
Número de referencia	—

Enlace a la página web de la decisión del Estado miembro:

http://ec.europa.eu/fisheries/cfp/fishing_rules/tacs/index_es.htm

(1) DO L 343 de 22.12.2009, p. 1.

Información comunicada por los Estados miembros en relación con el cierre de pesquerías

(2011/C 245/06)

De conformidad con el artículo 35, apartado 3, del Reglamento (CE) nº 1224/2009 del Consejo, de 20 de noviembre de 2009, por el que se establece un régimen comunitario de control para garantizar el cumplimiento de las normas de la política pesquera común ⁽¹⁾, se ha decidido el cierre de la pesquería contemplada en el siguiente cuadro:

Fecha y hora del cierre	9.7.2011
Duración	9.7.2011-31.12.2011
Estado miembro	Francia
Población o grupo de poblaciones	COD/5BE6A
Especie	Bacalao (<i>Gadus morhua</i>)
Zona	Vla; aguas de la UE y aguas internacionales de la zona Vb al este del meridiano 12° 00' O
Tipos de buques pesqueros	—
Número de referencia	792761

Enlace a la página web de la decisión del Estado miembro:

http://ec.europa.eu/fisheries/cfp/fishing_rules/tacs/index_es.htm

⁽¹⁾ DO L 343 de 22.12.2009, p. 1.

Información comunicada por los Estados miembros en relación con el cierre de pesquerías

(2011/C 245/07)

De conformidad con el artículo 35, apartado 3, del Reglamento (CE) n° 1224/2009 del Consejo, de 20 de noviembre de 2009, por el que se establece un régimen comunitario de control para garantizar el cumplimiento de las normas de la política pesquera común ⁽¹⁾, se ha decidido el cierre de la pesquería contemplada en el siguiente cuadro:

Fecha y hora del cierre	2.8.2011
Duración	2.8.2011-31.12.2011
Estado miembro	Portugal
Población o grupo de poblaciones	WHB/8C3411
Especie	Bacaladilla (<i>Micromesistius poutassou</i>)
Zona	VIIIc, IX y X; aguas de la UE del CPACO 34.1.1
Tipos de buques pesqueros	—
Número de referencia	—

Enlace a la página web de la decisión del Estado miembro:

http://ec.europa.eu/fisheries/cfp/fishing_rules/tacs/index_es.htm

⁽¹⁾ DO L 343 de 22.12.2009, p. 1.

V

(Anuncios)

PROCEDIMIENTOS ADMINISTRATIVOS

COMISIÓN EUROPEA

Convocatoria de propuestas — Programa ESPON 2013

(2011/C 245/08)

ESPON es la Red Europea de Observación del Desarrollo y la Cohesión Territorial. Apoya el desarrollo de políticas relacionadas con la política de cohesión de la UE. Está cofinanciado por el Fondo Europeo de Desarrollo Regional en virtud del objetivo nº 3 de cooperación territorial europea y por treinta y un países (veintisiete Estados miembros de la UE, Islandia, Liechtenstein, Noruega y Suiza).

En el marco del programa ESPON 2013, se abre una serie de convocatorias de propuestas. Los posibles beneficiarios son los organismos públicos y privados de treinta y un países (veintisiete Estados miembros de la UE, Islandia, Liechtenstein, Noruega y Suiza). Se invita a investigadores e instituciones de investigación, universidades, científicos, expertos, equipos universitarios, etc. a presentar sus propuestas. La convocatoria para actividades transnacionales de creación de redes va destinada a las instituciones confirmadas como puntos de contacto nacionales de ESPON.

1. Convocatoria de propuestas para proyectos de investigación aplicada:
 - Regiones vecinas europeas (presupuesto 750 000 EUR)
 - Pequeñas y medianas ciudades en su contexto territorial funcional (presupuesto 650 000 EUR)
 - Dimensión territorial de la pobreza y exclusión social en Europa (presupuesto 750 000 EUR)
 - Crisis económicas: solidez de las Regiones (presupuesto 759 153 EUR)
2. Convocatoria de propuestas para análisis específicos basados en las manifestaciones de interés de las partes interesadas:
 - Polos de crecimiento en el sudeste de Europa (presupuesto 360 000 EUR)
 - Principales indicadores de la cohesión territorial y la planificación espacial (presupuesto 360 000 EUR)
 - Paisajes habitables para un desarrollo territorial sostenible (presupuesto 379 796,09 EUR)
 - Política paisajística para el Parque de los tres países (presupuesto 360 000 EUR)
 - Mar del Norte — Difusión de los resultados transnacionales (presupuesto 340 000 EUR)

Los temas mencionados para los análisis específicos figurarán en la convocatoria, a condición de que se haya firmado un acuerdo con las partes interesadas que respaldan las ideas de los proyectos. Por lo tanto, los temas no se confirmarán hasta la fecha de lanzamiento de la convocatoria, el 24 de agosto de 2011. Los temas de la convocatoria podrán consultarse en el sitio web de ESPON: <http://www.espon.eu>

3. Convocatoria de propuestas en el marco de la Plataforma Científica de ESPON:

- Vigilancia territorial e información de la UE (presupuesto: 598 000 EUR)
- Atlas de la ESPON sobre la dinámica y las estructuras territoriales europeas (presupuesto de 150 000 EUR)
- Detección de los retos y del potencial de los territorios (presupuesto 350 000 EUR)
- Paquete de resultados territoriales de los programas del FEDER (presupuesto de 500 000 EUR)
- Instrumento cartográfico en línea de ESPON (presupuesto de 150 000 EUR)
- Control territorial en una macrozona europea: una prueba para la región del Mar Báltico (presupuesto 360 000 EUR)

4. Convocatoria de propuestas para actividades transnacionales de creación de redes por parte de la red de puntos de contacto de ESPON:

- Actividades de capitalización a escala transnacional por parte de la red de puntos de contacto de ESPON (presupuesto: 600 227 EUR)

El plazo de presentación de las solicitudes expira el 20 de octubre de 2011.

El 13 de septiembre de 2011 tendrán lugar en Bruselas una jornada informativa (Info Day) y un foro Partner Café para posibles beneficiarios.

Toda la documentación relacionada con la convocatoria, incluido el procedimiento de solicitud, las normas de admisibilidad, los criterios de evaluación y el formulario de solicitud, está disponible en el sitio web de ESPON: <http://www.espon.eu>

PROCEDIMIENTOS RELATIVOS A LA APLICACIÓN DE LA POLÍTICA DE COMPETENCIA

COMISIÓN EUROPEA

AYUDA ESTATAL — REINO UNIDO

Ayuda estatal SA.18859 — 11/C (ex NN 65/10)

Exoneración del impuesto sobre los áridos en Irlanda del Norte (ex N 2/04)

Invitación a presentar observaciones en aplicación del artículo 108, apartado 2, del TFUE

(Texto pertinente a efectos del EEE)

(2011/C 245/09)

Por carta de 13 de julio de 2011, reproducida en la versión lingüística auténtica en las páginas siguientes al presente resumen, la Comisión notificó al Reino Unido su decisión de incoar el procedimiento previsto en el artículo 108, apartado 2, del TFUE con respecto a la ayuda antes citada. La Comisión también invitó al Reino Unido, de conformidad con el artículo 11, apartado 1, del Reglamento (CE) n° 659/1999 a presentar observaciones sobre la intención de la Comisión de incoar el procedimiento de investigación formal.

Los interesados podrán presentar sus observaciones sobre la medida en un plazo de un mes a partir de la fecha de publicación del presente resumen y de la carta siguiente, enviándolas a:

Comisión Europea
Dirección General de Competencia
Registro de Ayudas Estatales
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Fax +32 22951242

Dichas observaciones serán comunicadas al Reino Unido. Los interesados que presenten observaciones podrán solicitar por escrito, exponiendo los motivos de su solicitud, que su identidad sea tratada de forma confidencial.

RESUMEN

PROCEDIMIENTO

El Reino Unido notificó una medida de exoneración del impuesto sobre los áridos en Irlanda del Norte (*Relief from the Aggregates Levy*) por carta de 5 de enero de 2004, registrada el 9 de enero de 2004. La medida se notificó en tanto que modificación de la exoneración inicial del impuesto sobre los áridos en Irlanda del Norte (introducción por etapas del impuesto) aprobada por la Comisión en su decisión N 863/01. El 7 de mayo de 2004, la Comisión adoptó una decisión de no plantear objeciones con respecto a la medida. El 30 de agosto de 2004, la British Aggregates Association, Healy Bros. Ltd y David K. Trotter & Sons Ltd (en lo sucesivo los «solicitantes») presentaron un recurso contra la decisión de la Comisión antes mencionada de no plantear objeciones.

El 9 de septiembre de 2010, el Tribunal anuló la decisión de la Comisión. Según la sentencia, la Comisión no estaba en posición de adoptar legalmente la decisión de no plantear objeciones, ya que no había examinado la cuestión de una posible discriminación fiscal entre los productos nacionales en cuestión y los productos importados de Irlanda. La Comisión no recurrió la sentencia.

Las autoridades del Reino Unido suspendieron la ejecución de la medida a partir del 1 de diciembre de 2010 derogando los «Aggregates Levy (Northern Ireland Tax Credit) Regulations 2004».

DESCRIPCIÓN DE LA MEDIDA

La exoneración del 80 % del impuesto sobre los áridos («Aggregates Levy», en lo sucesivo «AGL») se aplicaba a los áridos vírgenes extraídos y explotados comercialmente en Irlanda del Norte y a los productos transformados a partir de áridos extraídos en Irlanda del Norte y explotados comercialmente también en Irlanda del Norte.

El AGL en sí mismo es un impuesto medioambiental sobre la explotación comercial de los áridos y se aplica a la roca, la arena y la grava. Fue introducido por el Reino Unido con efecto a partir del 1 de abril de 2002 con fines medioambientales: el objetivo es maximizar el uso de áridos reciclados y otros productos de sustitución de los áridos vírgenes y favorecer una extracción y utilización racionales de los áridos vírgenes, que constituyen un recurso natural no renovable.

Con el fin de lograr de forma más eficaz los objetivos medioambientales perseguidos, que el AGL no inducía, las autoridades británicas subordinaron la exoneración a la condición de que las empresas solicitantes se comprometieran formalmente a cumplir acuerdos negociados con dichas autoridades y que les obligaban a seguir un programa de mejoras de los resultados medioambientales a lo largo del periodo de duración de la exoneración.

EVALUACIÓN

En primer lugar, a la luz de la sentencia del Tribunal, la Comisión ha examinado si existía un vínculo intrínseco entre la medida de ayuda en sí misma, concedida en forma de exoneración del impuesto, y el trato fiscal discriminatorio de los productos importados. Dado que en el presente caso pudo establecerse el vínculo, la Comisión tuvo que valorar si la medida de ayuda no implicaba una imposición interna discriminatoria en contra de lo dispuesto en el artículo 110 del TFUE (antiguo artículo 90 CE). La Comisión evoca principalmente la jurisprudencia relativa a la legislación nacional que otorga ventajas fiscales a los productos nacionales producidos siguiendo determinadas normas medioambientales. Esta imposición interna no se considera compatible con el artículo 110 del TFUE si la ventaja no se extiende a los productos importados fabricados según las mismas normas. Dado que este no era el caso por lo que se refiere a la exoneración del AGL en Irlanda del Norte, la Comisión plantea sus dudas sobre la compatibilidad de la exoneración modificada del AGL en Irlanda del Norte con el Tratado, y en particular con el artículo 110 TFUE.

Estas dudas sobre el cumplimiento del artículo 110 del TFUE impiden a la Comisión establecer, en esta fase, la compatibilidad de la medida con el mercado interior. Teniendo presentes estas dudas por lo que se refiere a la conformidad de la medida con las normas en materia de ayuda estatal, la Comisión evaluó la medida en cuestión a la luz de las Directrices sobre ayudas estatales en favor del medio ambiente, en particular las reglas relativas a las ayudas en forma de exoneración o de reducciones de los impuestos medioambientales. Teniendo en cuenta el carácter ilegal de la ayuda concedida con arreglo a la exoneración modificada del AGL en Irlanda del Norte en razón de la anulación por el Tribunal del carácter compatible de la medida, la Comisión ha evaluado la medida citada a la luz de las Direc-

trices sobre ayudas en favor del medio ambiente de 2001 y, desde el 2 de abril de 2008 (es decir, desde la fecha en que son aplicables), a la luz de las líneas Directrices sobre ayudas en favor del medio ambiente de 2008.

Por lo que se refiere de forma específica a la evaluación de acuerdo con las Directrices sobre ayudas en favor del medio ambiente de 2001, la Comisión llegó a la conclusión de que se cumplen las condiciones, recordando una vez más que las dudas sobre el cumplimiento del artículo 110 TFUE le impiden, en esta fase, establecer la compatibilidad de la medida con el mercado interior.

Por lo que se refiere a las Directrices sobre ayudas en favor del medio ambiente de 2008, la Comisión llegó a la conclusión preliminar de que existen dudas sobre el cumplimiento de la condición de necesidad de la ayuda, en particular, sobre si el aumento sustancial de los costes de producción no se repercutirá en los consumidores finales sin provocar importantes reducciones de las ventas. En este contexto, la Comisión señala que, aunque la información facilitada por las autoridades del Reino Unido indica un aumento muy importante de los costes de producción debido al AGL, que hace probable que tal aumento no se repercuta en el consumidor sin provocar una importante reducción de las ventas, a falta de información suficientemente detallada la Comisión no puede concluir, en esta fase, que se cumpla la condición de compatibilidad.

Por consiguiente, y sobre la base del análisis preliminar, la Comisión tiene dudas sobre la conformidad de la medida de «Exoneración del impuesto sobre los áridos en Irlanda del Norte (ex N 2/04)» con el Tratado, así como sobre su compatibilidad con el mercado interior. De acuerdo con el artículo 4, apartado 4, del Reglamento (CE) nº 659/1999, la Comisión ha decidido incoar un procedimiento de investigación formal e invita a las terceras partes a presentar sus observaciones.

TEXTO DE LA CARTA

«The Commission wishes to inform the UK authorities that, having examined the information supplied by them on the aid referred to above, it has decided to open the formal investigation procedure under Article 108(2) of the Treaty on the Functioning of the European Union (TFEU).

1. PROCEDURE

1. The United Kingdom notified the measure at hand by letter of 5 January 2004, registered on 9 January 2004.
2. The measure was notified as a modification of the original relief from the aggregates levy in the Northern Ireland ⁽¹⁾ which was approved by the Commission in its Decision of 24 April 2002 in case N 863/01 ⁽²⁾.
3. On 7 May 2004, the Commission adopted a no objections decision with respect to this measure ⁽³⁾.
4. On 30 August 2004, the British Aggregates Association, Healy Bros. Ltd and David K. Trotter & Sons Ltd launched an appeal against the abovementioned Commission Decision (the action was registered under Case T-359/04).

⁽¹⁾ The phased introduction of the AGL.

⁽²⁾ OJ C 133, 5.6.2002, p.11.

⁽³⁾ OJ C 81, 2.4.2005, p. 4.

5. On 9 September 2010, the General Court annulled the abovementioned Commission Decision⁽¹⁾. According to the judgment, the Commission was not entitled to adopt lawfully the decision not to raise objections as it had not examined the question of a possible tax discrimination between the domestic products in question and imported products originating from Ireland. The Commission did not appeal this judgment.
6. On 15 December 2010 and 21 December 2011, the UK authorities submitted additional information concerning the measure at hand, including documents concerning the suspension of the implementation of the measure as from 1 December 2010 by revoking the Aggregates Levy (Northern Ireland Tax Credit) Regulations 2004 (S.I. 2004/1959).
7. The Commission requested additional information by letter of 2 February 2011. The UK authorities submitted further information by letters of 7 March 2011 and 10 June 2011.

2. DESCRIPTION

2.1. The aggregates levy

8. The aggregates levy (hereinafter the "AGL") is an environmental tax on the commercial exploitation of aggregates and is applied to rock, sand or gravel. It was introduced by the United Kingdom with effect from 1 April 2002 for environmental purposes in order to maximise the use of recycled aggregate and other alternatives to virgin aggregate and to promote the efficient extraction and use of virgin aggregate, which is a non-renewable natural resource. The environmental costs of aggregate extraction being addressed through the AGL include noise, dust, damage to biodiversity and to visual amenity.
9. The AGL is applied to virgin aggregate extracted in the United Kingdom and to imported virgin aggregate on its first use or sale in the United Kingdom⁽²⁾. The rate at the time of the original notification was GBP 1,60 per tonne⁽³⁾. It does not apply to secondary and recycled aggregates and to virgin aggregates exported from the United Kingdom.

2.2. The original AGL relief in Northern Ireland

10. In its Decision of 24 April 2002 (N 863/01), the Commission considered that the phased introduction of the AGL in Northern Ireland was compatible with Section E.3.2 of the Community Guidelines on State aid for environmental protection⁽⁴⁾ ("the 2001 Environmental Aid Guidelines"). The approved aid took the form of a five-year degressive scheme of tax relief, starting in 2002 and ending in 2007. The original AGL relief in Northern Ireland covered only the commercial exploitation of aggregate used in the manufacture of processed products.

⁽¹⁾ Case T-359/04 *British Aggregates a. o. v Commission*, judgment of 9 September 2010, not yet reported.

⁽²⁾ The AGL is applied to imported raw aggregate, but not to aggregate contained in imported processed products.

⁽³⁾ On 2 April 2008, i.e. the day from which the 2008 Environmental Aid Guidelines were applicable, the level of AGL was GBP 1,95/tonne.

⁽⁴⁾ OJ C 37, 3.2.2001, p. 3.

2.3. The modified AGL relief in Northern Ireland

11. The present Decision concerns exclusively the modified AGL relief in Northern Ireland, which was applied to virgin aggregate extracted in Northern Ireland and commercially exploited there and processed products from aggregate extracted in Northern Ireland commercially exploited there.

2.3.1. Background

12. The UK authorities explained that, since the introduction of the scheme in 2002, the levy put firms in the Northern Ireland aggregates industry in a more difficult competitive position than initially anticipated. After the gradual introduction of the levy in Northern Ireland, there has been an increase in illegal quarrying, and an increase in undeclared imports of aggregate into Northern Ireland from the Republic of Ireland. No aggregates levy was paid in either case. Consequently, the legitimate quarries paying the levy are being undercut by illegal sources operating outside the levy and therefore losing sales to these illegal sources. The findings in a report commissioned by the UK authorities from the Symonds' Group (specialist consultants in the quarrying/construction sectors) and other evidence available to the UK Customs and Excise authorities, who were responsible for enforcing the levy, confirmed this development.

13. According to the UK authorities at the time of the original notification, the Quarry Products Association Northern Ireland indicated over 38 quarries which they considered to be operating illegally. There was also evidence, as set out in the Symonds Report, of a significant volume of unrecorded imports of aggregate from the Republic of Ireland, on which the levy was being evaded.

14. Furthermore, the UK authorities explained that, while the AGL is having an appreciable positive environmental effect in Great Britain (details below in points 32-36), it has not been working as intended in Northern Ireland, where the availability of levy-free recycled and alternative materials is very limited and localised, and the infrastructure of collecting and processing such materials is almost non-existent.

2.3.2. Modification

15. In order to provide additional time to the aggregate industry in Northern Ireland to adapt and to achieve the intended environmental effects, the original relief scheme (phased introduction of the AGL) was modified. The relief applied to all types of virgin aggregate, i.e. not only to aggregates used in the manufacturing of processed products, as it was the case for the original relief in case N 863/01, but also to virgin aggregates used directly in the raw state⁽⁵⁾.

⁽⁵⁾ The aggregates extracted in Northern Ireland and shipped to any destination in Great Britain were liable to the AGL at the full rate. This was also the case for aggregate extracted in Northern Ireland that was used in the manufacturing of processed products shipped to Great Britain. This ensured that aggregates and processed products from Northern Ireland did not enjoy a competitive advantage in the market of Great Britain.

16. The relief was set at 80 % of the AGL level otherwise payable, and was intended to be a transitional arrangement. It came into effect on 1 April 2004 and was supposed to continue until 31 March 2011 (i.e. nine years from the start of the AGL on 1 April 2002) ⁽¹⁾.

2.3.3. Environmental agreements

17. In order to more effectively achieve the intended environmental objectives, the UK authorities made the relief conditional upon claimants formally entering into and complying with negotiated agreements with the UK authorities, committing the claimants to a programme of environmental performance improvements over the duration of the relief.

18. The key criteria for entry into the scheme were that:

- the requisite planning permission(s) and environmental regulatory permits etc. had to be in place for each eligible site; and
- the site operator was required to "sign-up" to a regime of environmental audits. The first audit had to be commissioned and submitted within 12 months of the date of entry to the scheme and updated every two years thereafter.

19. Each agreement was individually tailored to the circumstances of the quarry, taking into account, for example, current standards and scope for improvement. The areas of performance covered were: air quality; archaeology and geodiversity; biodiversity; blasting; community responsibility; dust; energy efficiency; groundwater; landscape and visual intrusion; noise; oil and chemical storage and handling; restoration and aftercare; use of alternatives to primary aggregates; surface water; off-site effects of transport; and waste management.

20. The Department of Environment in Northern Ireland was responsible for monitoring these agreements, and the relief is withdrawn for those firms which have significant shortcomings.

2.3.4. Aggregates production costs, selling price and price elasticity of demand

21. As regards the aggregates production costs, the UK authorities explained that they vary significantly from quarry to quarry and that the same is valid for the prices ⁽²⁾. The average selling price ex-quarry for different classes of aggregates is summarised in Table 1 below ⁽³⁾. Profit margins are again variable, but the industry estimates that 2 % to 5 % is a typical level.

Table 1

Selling price

Type of rock	Price ex-quarry before tax (GBP/tonne)
Basalt	4,21
Sandstone	4,37
Limestone	3,72
Sand and gravel	4,80
Other	5,57
Weighted average price	4,42

22. As regards in general the difference in price levels between Northern Ireland and Great Britain, the UK authorities explain that suppliers in Northern Ireland have never been able to charge the same price as in Great Britain. The UK authorities illustrated this by the information presented in Table 2 below. The levy at the full rate would therefore represent a much higher proportion of the selling price in an already suppressed market. This inability to pass on costs to customers has been a significant historic factor in the lack of investment in environmental improvement and is explained by economic (fragmentation of the market) and geological factors.

Table 2

	2001	2002	2003	2004	2005	2006	2007	2008
NI aggregates cost GBP/tonne	2,9	3,1	3,5	3,4	3,9	3,6	4,3	4,3
GB aggregates cost GBP/tonne	7,9	8,4	9,0	7,7	8,8	9,7	9,2	10,9

23. As regards the price elasticity of demand, the UK authorities explained, based on a survey of research literature ⁽⁴⁾, that the price elasticity of demand for aggregates ranges from 0,2 to 0,5. The UK authorities' examination of aggregates quantity and price data for Great Britain and Northern Ireland suggests that for most types of aggregates the price elasticity ranges from close to zero to about 0,52. The UK authorities could therefore conclude tentatively that the demand for aggregates in Northern Ireland is relatively inelastic.

⁽¹⁾ As referred to above, the implementation of the AGL relief in Northern Ireland was suspended as from 1 December 2010.

⁽⁴⁾ Ecotec (1998) Report; EEA Report (No 2/2008) effectiveness of environmental taxes and charges for managing sand, gravel and rock extraction in selected EU countries; British Geological Survey (2008): The need for indigenous aggregates production in England.

⁽²⁾ The information was submitted by the UK authorities for the purposes of an assessment of the measure on the basis of the 2008 Environmental Aid Guidelines. DETI Minerals Statement 2009.

⁽³⁾ Distribution costs depend on haulage distances, with haulage costs in the range of 15 to 20 pence per tonne per mile, with aggregate being delivered within 10 to 15 miles, depending on local circumstances.

2.3.5. Pass-on and sales reductions

24. As regards the pass-on of increased production costs to final customers and potential sales reductions, the UK authorities referred to the abovementioned Symonds Report. According to the UK authorities, the report demonstrates that, following the introduction of the levy in 2002, the average price of aggregate in Northern Ireland had increased by much less than would have been expected if the AGL had been passed on in full, and that this was linked to a fall in legitimate sales, which was proportionally much larger than the fall recorded in Great Britain.
25. Furthermore, the UK authorities explained that the Symonds Report confirmed that the sales of aggregate, and in particular the sales of low-grade aggregate and fill, fell in the year ending 31 March 2003 compared with the levels experienced in the two pre-AGL years. The Symonds Report showed (see Table 3 below) that the production from legitimate quarries in calendar year 2002 was significantly below the established trend in aggregate sales (generally, over the last 30 years, there had been a rising trend in aggregate sales in Northern Ireland). In Great Britain aggregate production fell in 2002 by 5,7 %, compared with a slight increase the previous year (however, trend analysis showed that in Great Britain the production had generally been in a declining trend over the previous 10 years).

Table 3

A summary of Symonds' assessment of the fall in sales by legitimate quarries in Northern Ireland

Product	2000-2001 (million tonnes)	2001-2002 (million tonnes)	2002-2003 (million tonnes)	Fall, 2001-2003 (%)	Fall, 2002-2003 (%)
Sand and gravel	2,35	2,34	1,91	- 18,7	- 8,4
Crushed rock	7,86	7,88	7,27	- 7,5	- 7,7
Fill material	3,00	3,89	1,71	- 43,0	- 56,0
Total	13,21	14,11	10,89	- 17,6	- 22,8

26. The UK authorities explained in this context that the data provided by Symonds indicated that once the levy had been introduced at GBP/tonne 1,60, the average price of aggregates in Northern Ireland had risen by about 25-30 pence/tonne in 2002 compared with 2001, whereas in Great Britain the price had risen by GBP 1-1,40/tonne. Even allowing for the fact that aggregate used in processed products, which benefited from an 80 % relief under the original 2002 degressive credit scheme in Northern Ireland, is included in that average, that implies that quarry operators in Northern Ireland were having to absorb a substantial proportion of the levy. On the assumption that processed products used half of the aggregate production in Northern Ireland, and that their price was unaffected by the levy in 2002, that still implies according to the UK authorities that, on average, over GBP 1/tonne of the levy had to be absorbed on each tonne of aggregate sold for use in its raw state.
27. As regards specifically the manufacturers using aggregates in their processed products, the UK authorities explained in this context that, because of the original relief for aggregate used in processed products (N 863/01), the additional costs fell very largely on Northern Ireland producers of aggregate for use in its raw state. But importantly the original relief (phased introduction of the AGL) was to be withdrawn by stages. Therefore, if the original relief had not been modified in 2004, the processed products sector too would have begun to suffer from the same economic difficulties of loss of demand and inability to pass on the extra levy costs to its customers.

2.3.6. Other information

28. The estimated annual budget (State resources foregone) varied at the time of the original notification between GBP 15 million (2004-2005) and GBP 35 million (2010-2011).
29. As regards the number of beneficiaries, it was estimated that approximately 170 quarry operators would be eligible.
30. The granting authority of the AGL relief in Northern Ireland was Her Majesty's Revenue & Customs.

2.4. Position of third parties, appreciable positive effects

31. In the context of the assessment by the Commission of the original notification of the modified AGL relief in Northern Ireland, the British Aggregates Association (BAA), other associations of producers and individual undertakings contested in their letters that the AGL has an appreciable positive impact in terms of environmental protection. The Commission therefore asked the UK authorities to submit additional information concerning this issue.
32. The UK authorities provided in this context empirical information based on the initial assessment of the AGL's environmental impact using all available data. The submitted information suggested that in Great Britain the aggregates levy had appreciable effects.

33. As regards the aggregate production, the UK authorities explained that the amount of virgin material extracted fell significantly in 2002 compared to earlier years and by 5,7 % compared to 2001. In 2002 the production of sand and gravel decreased by 6 % compared to 2001. The production of marine sand and gravel output fell by 5,9 % in 2002 compared to 2001. There was also a gradual decline in the production of crushed rock.
34. As for the aggregate costs, it was explained by the UK authorities that the costs of aggregates subject to the levy were significantly higher than the costs of aggregates that were not subject to the levy — by about GBP 1,40 per tonne for crushed rock and just over GBP 1 per tonne for sand and gravel. It therefore appeared that the environmental costs of the supply of aggregates were passed on, to a large extent, to the consumers. This is consistent with the objective of incorporating the negative environmental externalities of the quarrying the aggregates into the cost of those aggregates.
35. With respect to the substitution by recycled and alternative materials, the UK authorities mentioned that the scope of the levy is encouraging the substitution of virgin aggregate by recycled or secondary aggregate products. In particular, the sales of slate waste and china clay waste increased, reducing both the demand for virgin aggregates and the tipping of such alternative materials. Aggregates recycling companies reported sales increases for 2002 and 2003.
36. Finally, as regards the investments in recycling, the UK authorities mentioned that the AGL had an effect in reinforcing and supporting the active considerations by the construction industry of recycled aggregates in the construction market. A new recycling plant was opened in South Yorkshire and an East Midlands road construction company also opened a new recycling facility.

3. ASSESSMENT

3.1. State aid within the meaning of Article 107(1) of the TFEU (ex Article 87(1) EC) ⁽¹⁾

37. State aid is defined in Article 107(1) of the TFEU as 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 in so far as it affects trade between Member States.
38. The AGL relief was granted through State resources, in the form of a tax rate reduction, to companies situated in a defined part of the territory of the UK (Northern Ireland), favouring them by reducing the costs that they would normally have to bear. The recipients of the aid are involved in the extraction of aggregates or in the manufacturing of processed products, which are economic activities involving trade between Member States.
39. Accordingly, the Commission concludes that the notified measure constitutes State aid within the meaning of Article 107(1) of the TFEU (ex Article 87(1) EC).

⁽¹⁾ The definition of State aid laid down in Article 107(1) of the TFEU did not change from the one contained in Article 87(1) EC which was in force when the original notification was submitted in 2004.

3.2. Lawfulness of the aid

40. Despite the fact that the measure at hand was notified to the Commission and put into effect only after the Commission adopted a positive decision, the recipients of the aid cannot entertain any legitimate expectations as to the lawfulness of the implementation of the aid, since the Commission's decision was challenged in due time before the General Court ⁽²⁾. Following the annulment by the General Court of the Commission's no objections decision, that decision must be considered void with regard to all persons as from the date of its adoption. Since the annulment of the Commission's decision put a stop, retroactively, to the application of the presumption of lawfulness, the implementation of the aid in question must be regarded as unlawful ⁽³⁾.

3.3. Compatibility of the aid

41. It is a matter of settled case law that although Articles 107 and 108 of the TFEU leave a margin of discretion to the Commission for assessing the compatibility of an aid scheme with the requirements of the internal market, this assessment procedure must not produce a result which is contrary to the specific provisions of the TFEU. The Commission is obliged to ensure that Articles 107 and 108 of the TFEU are applied consistently with other provisions of the TFEU. This is according to the General Court all the more necessary where those other provisions also pursue the objective of undistorted competition in the internal market ⁽⁴⁾.
42. Furthermore, the General Court recalled that the power to use certain forms of tax relief, particularly when they are aimed at enabling the maintenance of forms of production or undertakings which, without those specific tax privileges, would not be profitable due to high production costs, is subject to the condition that the Member States using that power extend the benefit thereof in a non-discriminatory and non-protective manner to imported products in the same situation ⁽⁵⁾.
43. The Commission refers in this context to the fact that Article 110 of the TFEU ⁽⁶⁾ ⁽⁷⁾ ensures the free movement of goods between the Member States in normal conditions of competition by the elimination of all forms of protection that may result from the application of internal taxation that discriminates against products from other Member States.

⁽²⁾ See Case C-199/06 *CELF* [2008] ECR I-469, paragraphs 63 and 66 to 68.

⁽³⁾ See Case C-199/06 *CELF*, cited above, paragraphs 61 and 64.

⁽⁴⁾ Case T-359/04 *British Aggregates a. o. v Commission*, cited above, paragraph 91.

⁽⁵⁾ Case T-359/04 *British Aggregates a. o. v Commission*, cited above, paragraph 93.

⁽⁶⁾ "No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products."

⁽⁷⁾ The rules for national internal taxation as laid down in Article 110 of the TFEU did not change from those contained in Article 90 EC which was in force when the original notification was submitted in 2004.

44. As set out above, the aid is provided in the form of a tax rate reduction from an environmental tax, the AGL, to companies established in Northern Ireland which have entered into environmental agreements. This provides these companies with an advantage by reducing the costs that they would normally have to bear. The relief was introduced to provide additional time to the aggregate industry of Northern Ireland to adapt, as the introduction of the AGL had put firms in Northern Ireland in a more difficult competitive situation than initially anticipated.
45. Aggregate producers established in Ireland may not, under the United Kingdom legislation, enter into an environmental agreement and are not otherwise eligible to benefit from the AGL exemption scheme by showing, for example, that their activities comply with the environmental agreements which aggregates producers in Northern Ireland may conclude. Since aggregate products imported from Ireland are therefore taxed at the full AGL rate, and this differentiated taxation of the same product results from the AGL scheme itself, there is an intrinsic link between the aid measure, granted by way of a tax relief, and the discriminatory tax treatment of imported products.
46. Therefore, in the present case, the Commission considers that it must also assess whether the aid measure complies with the rule laid down in Article 110 of the TFEU. In these circumstances, a violation of Article 110 of the TFEU would preclude the Commission from finding the measure compatible with the internal market. As the General Court stated in its judgment of 9 September 2010 in relation to the present case, aid cannot be implemented or approved in the form of tax discrimination in respect of products originating from other Member States ⁽¹⁾.
- 3.3.1. *Compliance with Article 110 of the TFEU*
47. According to settled case-law, charges resulting from a general system of internal taxation applied systematically, in accordance with the same objective criteria, to categories of products irrespective of their origin or destination fall within the scope Article 110 of the TFEU. It should therefore be ascertained whether a levy such as the AGL constitutes internal taxation within the meaning of Article 110 of the TFEU. In this respect, the Commission notes that the AGL, which is of a fiscal nature, is levied on virgin aggregate extracted in the United Kingdom and to imported virgin aggregate on its first use or sale in the United Kingdom. It applies to imported aggregates in the same way as it applies to aggregates extracted in the United Kingdom. Consequently, a levy such as the AGL amounts to internal taxation, for the purposes of Article 110 of the TFEU.
48. According to settled case-law, the first paragraph of Article 110 of the TFEU is infringed where the tax levied on the imported product and that levied on the similar domestic product are calculated in a different manner on the basis of different criteria which lead, if only in certain cases, to higher taxation being imposed on the imported product. It follows that a system of taxation is compatible with Article 110 of the TFEU only if it is so arranged as to exclude any possibility of imported products being taxed more heavily than domestic products and, therefore, only if it cannot under any circumstances have a discriminatory effect.
49. Under the AGL relief applicable in Northern Ireland, a reduced rate is levied on virgin aggregates extracted there by producers having entered into environmental agreements.
50. Virgin aggregates extracted in other Member States are not eligible to benefit from the AGL relief, since aggregate producers established in other Member States may not, under the United Kingdom legislation, enter into an environmental agreement. Producers of such aggregates do not even have the possibility to show, for example, that their activities comply with the environmental agreements that aggregate producers in Northern Ireland may conclude. Accordingly, identical products imported from other Member States are taxed at the full AGL rate.
51. Such distinction cannot in the Commission's view be justified on the grounds that the UK authorities cannot conclude environmental agreements with producers of aggregates established outside the United Kingdom, because those authorities have jurisdiction in the United Kingdom only. The UK legislation might have for example given importers the opportunity to demonstrate that the aggregates imported into Northern Ireland had been produced in a way that they comply with the environmental requirements imposed on beneficiaries in Northern Ireland in the agreements.
52. Furthermore in this context, the Commission recalls the case-law concerning national legislation providing tax advantages to domestic products in case they are produced under certain environmental standards. Such internal taxation is not considered compatible with Article 110 of the TFEU if the advantage is not extended to imported products manufactured under the same standards ⁽²⁾.
53. Finally, the Commission points out that Article 110 of the TFEU targets the level of taxation imposed directly or indirectly on the products concerned ⁽³⁾, i.e. the tax burden each of the products has to bear. Thus, the focus is on the fact that the tax forms a cost element relevant to the formation of the price, and thus to the competitive position of the product vis-à-vis similar products ⁽⁴⁾. It follows that the identity of the taxpayer is not at the core of the assessment.
54. Accordingly, the Commission doubts whether the modified AGL relief applicable in Northern Ireland complies with the Treaty, in particular Article 110 of the TFEU. These doubts preclude the Commission from finding the measure compatible with the internal market at this stage.

⁽¹⁾ Case T-359/04 *British Aggregates a. o. v Commission*, cited above, paragraph 92.

⁽²⁾ Case 21/79 *Commission v Italy* [1980] ECR p. 1, paragraphs 23 to 26; and in particular Case C-213/96 *Outokumpu* [1998] ECR I-1777, paragraphs 30 et seq.

⁽³⁾ The identity of the taxpayer as such is therefore of limited importance.

⁽⁴⁾ "Thus [Article 110] must guarantee the complete neutrality of internal taxation as regards competition between domestic products and imported products." (Case 252/86 *Bergandi* [1988] ECR p. 1343, paragraph 24).

3.3.2. *Compatibility of the measure under the Environmental Aid Guidelines*

55. Considering the environmental objective of the measure and notwithstanding the doubts expressed above (point 54), the Commission has assessed the compatibility of the measure at hand according to Article 107(3)(c) of the TFEU and in the light of the Guidelines on State Aid for Environmental Protection.

56. The Commission originally assessed the measure under the 2001 Environmental Aid Guidelines. In the meantime, the 2008 Environmental Aid Guidelines have been adopted. As noted in point 40 above, the result of the annulment of the Commission Decision of 7 May 2004 is that the measure as it has been applied since that date (and until its suspension on 1 December 2010) must be considered as being unlawful. The Commission has stated that it will always assess the compatibility of unlawful State aid with the internal market in accordance with the substantive criteria set out in any instrument in force at the time when the aid was granted⁽¹⁾. Nothing in the 2008 Environmental Aid Guidelines suggests that this rule should not be applied to the present case. Those Guidelines specify, in point 204, that Commission decisions on notifications taken after the publication of the Guidelines in the *Official Journal of the European Union* will be based exclusively on that text, even if the notification predates that publication. And point 205 simply restates the position set out in the notice as regards aid that has not been notified (and is therefore unlawful).

57. Considering that the aid was granted during the period covering the applicability of the 2001 Environmental Aid Guidelines as well as after the publication of the 2008 Environmental Aid Guidelines, the Commission will assess the measure at hand pursuant to:

- (a) the 2001 Environmental Aid Guidelines; and
- (b) the 2008 Environmental Aid Guidelines as from 2 April 2008.

Ad (a) Compatibility of the measure under the 2001 Environmental Aid Guidelines

58. Section E.3.2 of the 2001 Environmental Aid Guidelines concerns rules applicable to all operating aid in the form of tax reductions or exemptions.

59. The AGL was introduced in April 2002. That the rate effectively applicable was not 100 % for all operators across all of the United Kingdom does not alter this fact or the principle that the new tax should apply to the entire territory. The Commission will therefore treat the AGL as an existing tax in the sense of the distinction made in the abovementioned section between new and existing taxes. Furthermore, there is no harmonisation at EU level of this type of tax.

60. Point 51(2) provides that:

“The provisions in point 51.1 may be applied to existing taxes if the following two conditions are satisfied at the same time:

(a) the tax in question must have an appreciable positive impact in terms of environmental protection;

(b) the derogations for the firms concerned must have been decided on when the tax was adopted or must have become necessary as a result of a significant change in economic conditions that placed the firms in a particularly difficult competitive situation. In the latter instance, the amount of the reduction may not exceed the increase in costs resulting from the change in economic conditions. Once there is no longer any increase in costs, the reduction must no longer apply.”.

61. Point 51(1) provides that:

“These exemptions can constitute operating aid which may be authorised on the following conditions:

1. When, for environmental reasons, a Member State introduces a new tax in a sector of activity or on products in respect of which no Community tax harmonisation has been carried out or when the tax envisaged by the Member State exceeds that laid down by Community legislation, the Commission takes the view that exemption decisions covering a 10-year period with no degressivity may be justified in two cases:

- (a) these exemptions are conditional on the conclusion of agreements between the Member State concerned and the recipient firms whereby the firms or associations of firms undertake to achieve environmental protection objectives during the period for which the exemptions apply or when firms conclude voluntary agreements which have the same effect. Such agreements or undertakings may relate, among other things, to a reduction in energy consumption, a reduction in emissions or any other environmental measure. The substance of the agreements must be negotiated by each Member State and will be assessed by the Commission when the aid projects are notified to it. Member States must ensure strict monitoring of the commitments entered into by the firms or associations of firms. The agreements concluded between a Member State and the firms concerned must stipulate the penalty arrangements applicable if the commitments are not met.

These provisions also apply where a Member State makes a tax reduction subject to conditions that have the same effect as the agreements or commitments referred to above;

- (b) these exemptions need not be conditional on the conclusion of agreements between the Member State concerned and the recipient firms if the following alternative conditions are satisfied:

— where the reduction concerns a Community tax, the amount effectively paid by the firms after the reduction must remain higher than the Community minimum in order to provide the firms with an incentive to improve environmental protection,

⁽¹⁾ Commission Notice on the determination of the applicable rules for the assessment of unlawful State aid, OJ C 119, 22.5.2002, p. 22.

— where the reduction concerns a domestic tax imposed in the absence of a Community tax, the firms eligible for the reduction must nevertheless pay a significant proportion of the national tax.”.

62. With respect, first, to point 51(2), the Commission notes that the tax is levied on activities for reasons of environmental protection. Its aim is to protect the environment by contributing to reducing the extraction of virgin aggregates and encouraging the use of alternative materials (point 51(2)(a)).
63. Given that, at the time of the notification of the amendment in 2004, the measure had already been in operation for two years, the UK was able to provide empirical information on the effects of the AGL (described above in points 32-36). It is therefore clear that the AGL has appreciable positive environmental effects in the majority of the territory of the UK in line with the requirement of point 51(2)(a) of the 2001 Environmental Aid Guidelines. What is more, the environmental agreements concluded with aggregates companies in Northern Ireland benefiting from 80 % AGL relief clearly have positive environmental effects and do not in any way undermine the objectives pursued by the AGL. On the contrary, they aim to encourage those companies to pay at least a part of the tax and contribute to improving environmental performance, rather than becoming a part of the illegal aggregates market.
64. The Commission also notes that the fundamental decision to relieve certain firms in Northern Ireland from the AGL was already taken when the tax was introduced on 1 April 2002 (point 51(2)(b), first sentence).
65. In the light of the above, the Commission considers that the conditions of point 51(2) of the 2001 Environmental Aid Guidelines have been fulfilled.
66. In relation to point 51(1), tax exemption decisions covering a 10-year period with no degressivity may be justified in two cases. The UK authorities submitted that both grounds for justification were fulfilled. That said, despite the introduction of compulsory environmental agreements in 2004 (point 51(1)(a)), the arguments of the UK authorities submit focus on the other scenario: the reduction concerns a domestic tax imposed in the absence of a Community tax and the firms eligible for the reduction nevertheless pay a significant proportion of the national tax (point 51(1)(b), second indent).
67. In the present case, the relief does indeed concern a domestic tax imposed in the absence of a Community tax. The UK authorities proposed to maintain the tax at the level of 20 % of the full rate, which the Commission considers significant ⁽¹⁾.
68. For these reasons, the compatibility conditions laid down in the 2001 Environmental Aid Guidelines may be considered

as being fulfilled. However, it is recalled that in view of the doubts expressed in point 54 in relation to Article 110 of the TFEU, the Commission is precluded from finding the measure compatible with the internal market on the basis of the 2001 Environmental Aid Guidelines at this stage.

Ad (b) Compatibility of the measure under the 2008 Environmental Aid Guidelines

69. Considering the form of the aid (tax rate reduction) granted under the measure at hand, the compatibility assessment basis of the 2008 Environmental Aid Guidelines is Chapter 4 regarding “Aid in the form of reductions or of exemptions from environmental taxes” (points 151-159).
70. As there is no EU harmonisation for taxes such as the AGL, the measure at hand has been assessed pursuant to the rules for non-harmonised environmental taxes.

Environmental benefit

71. Pursuant to point 151 of the 2008 Environmental Aid Guidelines, aid in the form of reductions or exemptions from environmental taxes will be considered compatible with the common market provided that it contributes at least indirectly to an improvement in the level of environmental protection and that the tax reductions and exemptions do not undermine the general objective pursued.
72. As regards the direct effect of the AGL, the Commission notes, as in the case of the assessment under the 2001 Environmental Aid Guidelines, that the tax is levied on activities for reasons of environmental protection. Its aim is to protect the environment by contributing to reducing the extraction of virgin aggregates and encouraging the use of alternative materials.
73. Furthermore, with respect to the presence of at least an indirect contribution of the AGL relief to an improvement in the level of environmental protection, the Commission notes that the UK authorities decided to grant the 80 % AGL relief to companies from the aggregates industry in Northern Ireland as due to several factors described above the AGL failed to deliver the planned environmental benefits in Northern Ireland. The UK authorities therefore opted for an alternative approach for Northern Ireland in the form of the conclusion of environmental agreements with the beneficiaries while the AGL continued to be fully applicable in Great Britain. It can be therefore concluded that the AGL relief in Northern Ireland contributes at least indirectly to an improvement in environmental protection and that it does not undermine the general objective pursued by the AGL.

Necessity of the aid

74. According to point 158 of the 2008 Environmental Aid Guidelines, the three following cumulative criteria should be fulfilled to ensure that the aid is necessary.

(1) Objective and transparent criteria

75. Firstly, the choice of beneficiaries must be based on objective and transparent criteria and aid should be

⁽¹⁾ See for instance Commission Decision on case N 449/01 (Germany) — Continuation of the ecological tax reform (OJ C 137, 8.6.2002, p. 34). Furthermore, this position was confirmed in the 2008 Environmental Aid Guidelines where the payment of 20 % of the tax was explicitly “codified” as a proportionality condition of the aid granted in the form of exemption or reduction from environmental taxes (point 159(b)).

- granted in the same way for all competitors in the same sector if they are in a similar factual situation, in line with point 158(a) of the 2008 Environmental Aid Guidelines.
76. The eligibility for relief is based on certain types of activity (extraction of aggregates and production of processed products from aggregates) and is pre-defined by legislation. The Commission finds that the beneficiaries of the relief are defined using criteria that are objective and transparent.
- (2) *Substantial increase in production costs*
77. Secondly, the tax without reduction must lead to a substantial increase in production costs, in line with point 158(b) of the 2008 Environmental Aid Guidelines.
78. The UK authorities did not provide information on the production costs, but rather on the levels of the ex-quarry selling price for different types of aggregates. Considering that the levels of profit margin was provided, the Commission is able to make an approximate calculation and conclude that the lowest possible share of the full AGL in relation to the production costs is almost 30 % ⁽¹⁾.
79. Even these approximate calculations allow the Commission to conclude that the tax without reduction leads to the substantial increase in production costs required by point 158(b) of the 2008 Environmental Aid Guidelines.
- (3) *Impossibility to pass on the substantial increase in production costs*
80. Thirdly, according to point 158(c) of the 2008 Environmental Aid Guidelines, compliance with the necessity criteria requires that the abovementioned substantial increase in production costs cannot be passed on to customers without leading to important sales reductions. In this respect, the Member State may provide estimations of inter alia the product price elasticity of the sector concerned in the relevant geographic market, as well as estimates of lost sales and/or reduced profits for the companies in the sector or category concerned.
81. The Commission notes in this context that the arguments of the UK authorities that the increase in production costs cannot be passed on without leading to important sales reductions are based on a comparison between the increase in price due to the introduction of the AGL (about 25 to 30 pence/tonne in 2002 compared with 2001 in Northern Ireland, whereas in Great Britain the price had risen by GBP 1-1,40/tonne). As regards the reduction in (legitimate) sales in Northern Ireland, the Commission notes that they varied in total for all types of aggregates between - 17,6 % (2001-2003) and - 22,8 % (2002-2003) and are proportionally much larger than those recorded in Great Britain. The Commission considers that these arguments can be considered as an indication of the difficulties encountered in passing on the increased production costs in Northern Ireland.
82. The Commission nevertheless points out in this context that the UK authorities did not provide sufficiently detailed data demonstrating/quantifying the impact on these arguments of the fact that the manufacturers of processed products from aggregates had never paid the full AGL as its introduction in the Northern Ireland was phased.
83. Furthermore, with respect to the demonstration of sales reductions, the UK authorities did not provide explanations concerning the development of the aggregates markets in Northern Ireland after 2002. Figure 2 of the QPA Northern Ireland Report to the OFT Market Study into the UK aggregates sector as submitted by the UK authorities shows increase in production as from 2004 to 2007.
84. In this context, the UK authorities also stated in their submission that the "costs increase affected operators' turnover and reduced their profits". Nevertheless no data supporting that statement were provided.
85. With respect to the demonstration of compliance with this compatibility condition, the UK authorities submitted only data on the overall industry level, no representative samples of individual beneficiaries based e.g. on their size were provided.
86. Finally, the Commission notes that the UK authorities' observations suggest that for most types of aggregates the price elasticity ranges from close to zero to about 0,52, i.e. seems to be relatively inelastic, what would in principle mean that the increase in production costs can be passed on to final customers. The UK authorities did not provide any further explanations/calculations concerning specifically the impact of the relative inelasticity as concluded on the arguments provided with respect to (the inability to) pass on the production costs increase to final customers.
87. Although the information provided by the UK authorities shows a very significant increase of the production costs due to the AGL, which would normally make it likely that such increase cannot be passed on without important sales reductions, in the light of the above, in particular the insufficiently detailed information, the Commission at this stage cannot conclude that this compatibility condition is met.

Proportionality of the aid

88. With respect to the proportionality of the aid, each beneficiary must according to point 159 of the 2008 Environmental Aid Guidelines fulfil one of the following criteria:
- (a) it must pay a proportion of the national tax which is broadly equivalent to the environmental performance of each individual beneficiary compared to the performance related to the best performing technique within the EEA. The beneficiaries can benefit at most from a reduction corresponding to the increase in production costs from the tax, using the best performing technique and which cannot be passed on to customers;
- (b) it must pay at least 20 % of the national tax unless a lower rate can be justified;

⁽¹⁾ The highest selling price (GBP 5,57/tonne), the lowest profit margin (2 %) and the level of the AGL as originally notified in 2004 (GBP 1,6/tonne) are assumed. If the AGL level on 1 April 2008 (GBP 1,95/tonne) is applied, the share increases to approximately 36 %. Any other combination of price and profit margin necessarily results in the AGL presenting more than 30 % of the production costs.

(c) it can enter into agreements with the Member State whereby they commit themselves to achieve environmental objectives with the same effect as what would be achieved under points 1 or 2 or if the Community minima were applied.

89. The condition of proportionality of the aid is complied with as the beneficiaries of the AGL relief in Northern Ireland still pay 20 % of the tax.

3.4. Conclusions

90. On the basis of this preliminary analysis, the Commission has doubts as to whether the measure "Relief from aggregates levy in Northern Ireland (ex N 2/04)" complies with the Treaty, in particular Article 110 thereof. These doubts preclude the Commission from finding the measure compatible with the internal market.

91. The Commission also has doubts as to whether the measure complies with the necessity condition of the 2008 Environmental Aid Guidelines, in particular that the substantial increase in production costs cannot be passed on to customers without leading to important sales reductions, as required by point 158.

92. Consequently, in accordance with Article 4(4) of Council Regulation (EC) No 659/1999⁽¹⁾ the Commission has decided to open the formal investigation procedure and invites the United Kingdom to submit its comments on that decision.

4. DECISION

93. In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the TFEU, requests the United Kingdom to submit their comments and to provide all such information which may help to assess the measure, within one month of the date of receipt of this letter. It requests that your authorities forward a copy of this letter to the potential recipients of the aid immediately.

94. The Commission notes that the United Kingdom has already suspended the implementation of the measure by revoking the Aggregates Levy (Northern Ireland Tax Credit) Regulations 2004. The Commission would draw your attention to Article 14 of Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

95. The Commission warns the United Kingdom that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month from the date of such publication.»

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

AYUDA ESTATAL — ALEMANIA

(Artículos 107 a 109 del Tratado de Funcionamiento de la Unión Europea)

Ayuda estatal MC 15/09 — Venta de Deka por LBBW

(Texto pertinente a efectos del EEE)

(2011/C 245/10)

La Comisión notificó a Alemania por carta de 14 de enero de 2011 su decisión *sui generis* relativa a la ayuda MC 15/09.

TEXTO DE LA CARTA

«I. PROCEDIMIENTO

- (1) Mediante Decisión de 15 de diciembre de 2009, la Comisión aprobó una inyección de capital de 5 000 millones EUR y una protección de activos deteriorados por un importe de 12 700 millones EUR para una cartera estructurada que cubría 35 000 millones EUR de activos en beneficio del *Landesbank Baden-Württemberg* (denominado en lo sucesivo “LBBW”) en el asunto C 17/09 (denominada en lo sucesivo “la Decisión LBBW”) ⁽¹⁾. Esta aprobación estaba sujeta a una serie de compromisos adquiridos por Alemania. Uno de ellos consistía en que el LBBW vendería su participación en *Deka Bank Deutsche Girozentrale* (denominado en lo sucesivo “Deka”) a más tardar el (*) [...].
- (2) El 13 de diciembre de 2010, Alemania presentó una carta del LBBW que destacaba que la venta de Deka no podía efectuarse antes del [...]. El 21 de diciembre de 2010, Alemania afirmó que el administrador ⁽²⁾ y el Ministerio de Hacienda de Baden-Württemberg habían confirmado que el LBBW había hecho todo cuanto podía para concluir el procedimiento de venta dentro del plazo citado. El 22 de diciembre de 2010, Alemania notificó una solicitud de prórroga del plazo para la venta hasta el [...]. El 5 de enero de 2011, Alemania presentó información adicional.
- (3) El 22 de diciembre de 2010, Alemania informó a la Comisión de que, por motivos de urgencia, aceptaba excepcionalmente que la presente Decisión se adoptase en lengua inglesa.

II. HECHOS

- (4) La Decisión LBBW se basa en varios compromisos. La letra c) de su considerando 38 establece el compromiso de Alemania de que el LBBW vendería su participación en Deka a más tardar el [...]. La Decisión no autoriza de forma explícita una prórroga de dicho plazo.
- (5) Deka es una institución de derecho público (*Rechtsfähige Anstalt des öffentlichen Rechts*) que desarrolla, a través de

filiales, el negocio de los fondos privados de inversión de las cajas de ahorro alemanas. La mitad es propiedad de la Asociación de cajas de ahorros alemanas (DSGV) y la otra mitad es propiedad de los bancos regionales (*Landesbanken*) a través de una empresa holding (denominada en lo sucesivo “la empresa holding”). La participación indirecta de LBBW en Deka es del 14,8 %. Los respectivos propietarios tienen un derecho preferente en caso de que una de las partes desee vender su participación.

- (6) Inicialmente, la DSGV presentó una oferta por la participación del LBBW en Deka cuya validez terminaba el [...]. Para que la venta se llevase a efecto, tenía que ser aceptada por todos los demás *Landesbanken* que tuviesen una participación en Deka y por la propia Deka en su Asamblea General.
- (7) Alemania ha informado a la Comisión de que todos los *Landesbanken* propietarios de la empresa holding tienen intención de vender su participación a la DSGV, con lo que esta última sería el propietario único de Deka. Se espera que se tome una decisión vinculante relativa a estas ventas en un plazo de [...], aunque no cabe excluir que se produzca un nuevo aplazamiento hasta el [...] debido a la complejidad del proceso decisorio necesario. Según Alemania, si los *Landesbanken* venden sus participaciones en la empresa holding, los acuerdos necesarios para la venta de la participación del LBBW en Deka se obtendrían con mayor facilidad, lo que agilizaría el procedimiento de venta.
- (8) Alemania ha informado además a la Comisión de que la DSGV ha ampliado el plazo de validez de su oferta para la compra de la participación del LBBW en Deka hasta el [...].
- (9) A pesar de la solicitud de prórroga del plazo para la venta de Deka, Alemania sostiene que el LBBW ha hecho todo lo posible para velar por que se llevase a cabo la venta. El administrador encargado de la supervisión de las ventas del LBBW a las que se comprometió a Alemania en el marco de la Decisión LBBW ha confirmado esta afirmación.

III. EVALUACIÓN

- (10) La presente Decisión se refiere a la puesta en práctica del plan de reestructuración aprobado en la Decisión LBBW. Alemania solicita una prórroga de tres meses del plazo para la venta de Deka, [...].

⁽¹⁾ DO L 188 de 21.7.2010, p. 1.

(*) Se han omitido partes de este texto para evitar que se revelara información confidencial. Dichas partes van entre corchetes y están señaladas por un asterisco.

⁽²⁾ Nombrado de conformidad con la Decisión LBBW para supervisar la ejecución plena y correcta de los compromisos adquiridos relativos a las ventas.

- (11) La Comisión puede prorrogar los plazos para las ventas. Aunque no esté explícitamente contemplado en el Reglamento (CE) n° 659/1999, la Comisión tiene poder discrecional para autorizar una prórroga siempre que ello no impida la ejecución de la Decisión LBBW ⁽¹⁾.
- (12) La Comisión observa que el LBBW ya ha iniciado activamente el procedimiento de venta de Deka obteniendo una oferta de la DGSV. A este respecto, la Comisión toma nota de que tanto Alemania como el administrador afirman que el LBBW ha hecho todo lo posible para llevar a buen puerto el procedimiento de venta.
- (13) Además, según Alemania, parece que existe una elevada probabilidad de que los *Landesbanken* que tienen una participación en la empresa holding puedan vender también su participación lo que facilitaría el proceso general de la venta de la participación de LBBW en Deka.
- (14) Por último, existen argumentos convincentes de que el procedimiento de venta tendrá éxito dentro del plazo propuesto, a más tardar el [...]. Concretamente, parece que [...]. La presente Decisión permite al LBBW vender su participación en Deka, aun cuando el proceso decisorio de los *Landesbanken* que venden sus participaciones en Deka requiera más tiempo del previsto.
- (15) Una prórroga de tres meses del plazo para la venta no constituye un obstáculo para la aplicación global del plan de reestructuración aprobado en la Decisión LBBW, que se prolongará hasta 2014. Asimismo, ayudará al LBBW a lograr los acuerdos necesarios de los otros *Landesbanken* con objeto de facilitar una venta, ya sea conjunta o individual. Por consiguiente, la prórroga, por tiempo limitado, debería permitir al LBBW vender su participación en Deka antes de [...]. Así pues, hace posible que el LBBW supere las dificultades antes mencionadas, principalmente exógenas, y lleve a cabo la venta de Deka conforme a lo previsto en la Decisión LBBW. Por lo tanto, la Comisión considera que la prórroga solicitada, relativamente breve, hasta el [...] está justificada, especialmente teniendo en cuenta las peculiaridades de la estructura jurídica de Deka. Dadas las circunstancias del asunto, esta prórroga no se considera un aplazamiento del calendario previsto inicialmente que requiera una reducción consiguiente del importe de la ayuda ⁽²⁾.

IV. CONCLUSIÓN

- (16) Por los motivos antes expuestos, la Comisión concluye que la prórroga por tres meses en el caso de Deka es necesaria para hacer posible, sin impedirla, una adecuada ejecución del plan de reestructuración del LBBW.

V. DECISIÓN

La Comisión amplía el plazo para la venta de Deka hasta el 31 de marzo de 2011.»

⁽¹⁾ Véase la Decisión de 21 de diciembre de 2010 en el asunto MC 8/09 *WestImmo*.

⁽²⁾ Véase la Comunicación de la Comisión — Directrices comunitarias sobre ayudas estatales de salvamento y de reestructuración de empresas en crisis, DO C 244 de 1.10.2004, p. 2, punto 52, letra d).

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