

Official Journal

of the European Communities

ISSN 0378-6978

L 227

Volume 42

28 August 1999

English edition

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(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 22 December 1998

on aid granted by the Republic of Austria to Ergee Textilwerk GmbH

(notified under document number C(1998) 4568)

(Only the German text is authentic)

(Text with EEA relevance)

(1999/589/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93(2) thereof,

Having regard to the Agreement establishing the European Economic Area, and in particular Article 62(1)(a) thereof,

Having given notice to the parties concerned, in accordance with Article 93(2) of the EC Treaty, to submit their comments, and having regard to those comments,

Whereas:

17 December 1997, the Commission approved the rescue aid under number NN 181/97 (ex N 455/97) for the period from July 1997 to the end of 1997. The Austrian Government was informed of the Commission's decision by letter dated 22 January 1998. A notice to that effect was published in the *Official Journal of the European Communities* ⁽¹⁾.

By letter dated 19 December 1997, the Austrian authorities notified restructuring aid. By letter dated 26 January 1998, the Commission requested additional information, which the Austrian authorities provided by letter dated 10 March 1998. By letter dated 20 April 1998, the Commission again requested information, which it should have received within the usual period of 20 working days. On 9 June 1998, Commission officials discussed the matter in Brussels with representatives of the Austrian authorities. By letter dated 23 June, the Austrian authorities provided background information on the GBI. However, the additional information which was requested on 20 April 1998 has not been received. Instead, Austria informed the Commission by fax on 3 July 1998 of some changes to the notification.

1. PROCEDURE

By letter dated 30 June 1997, the Austrian authorities notified the Commission of rescue aid for Ergee Textilwerk GmbH, Schrems, Austria ('Ergee'). The proposed aid was in the form of a guarantee from the Federal Government and the Province of Lower Austria for an operating loan of up to ATS 150 million (ECU 10,8 million). By letter dated 18 November 1997, Austria also notified a capital injection by a new shareholder of ATS 25 million (ECU 1,8 million) which was to be converted into equity capital. The new shareholder is the State-owned Gesellschaft des Bundes für Industriepolitische Maßnahmen GmbH, Vienna ('GBI'). Since GBI carried out the capital injection before the Commission had taken a decision, and the Commission first took the view that the capital injection possibly constituted State aid, since there was no restructuring plan, the case was classified as unnotified aid. On

By letter dated 4 August 1998 the Commission informed Austria of its decision to initiate proceedings under Article 93(2) of the EC Treaty. It had reached the conclusion that to date Austria had not proved that all the restructuring measures were absolutely necessary or that the State aid was limited to the strict minimum required. The Commission also wanted to know whether Ergee had already received restructuring aid in 1994. Moreover, it found that the GBI capital injection of ATS 25 million (ECU 1,8 million) during the six months' duration of the rescue measures possibly constituted an extension of rescue aid and that perhaps other GBI measures needed to be examined more closely.

⁽¹⁾ OJ C 70, 6.3.1998, p. 8.

In accordance with the judgment of the Court of Justice of the European Communities of 13 April 1994 in Joined Cases C-324/90 and C-342/90 (*Federal Republic of Germany and Pleuger Worthington v. Commission*)⁽²⁾, the Commission issued an interim decision requiring Austria to provide all such documentation, information and data as are necessary in order to examine the compatibility of the aid with the common market.

The Commission decision was published in the *Official Journal of the European Communities* ⁽³⁾. It requested all interested parties to submit their comments. One comment was received.

2. DETAILED DESCRIPTION OF THE AID MEASURES

The following restructuring measures were notified by the Austrian authorities:

- (1) the Federal Government and the Province of Lower Austria are planning to provide, from 1998 to the end of the year 2000, a guarantee for an operating loan of up to ATS 90 million (ECU 6,5 million). The Federal Government and the Province of Lower Austria intend to share this guarantee in the proportion two thirds/one third. The guarantee is free of charge to Ergee;
- (2) the Federal Government and the Province of Lower Austria are planning to provide a loan of ATS 40 million (ECU 2,9 million), which they are sharing in the proportion of two thirds/one third. The loan has an interest- and redemption-free grace period of one year; that is followed by a period of six years in which the loan is repaid. The repayment terms and conditions and the interest rate are in line with the ERP Fund guidelines for 1996/97;
- (3) As regards the loan of ATS 42 million (ECU 3,0 million) granted to Ergee on 30 December 1994, both the Ministry of Labour, Health and Social Affairs and the Province of Lower Austria intend to waive interest payments. If the firm can prove a workforce of at least 370 employees in the period 1997 to 1999, they will also waive repayment of one third of the amount of the loan annually, i.e. ATS 14 million (ECU 1,0 million) per annum.

Austria confirmed that no other firms within the group have received any aid.

Austria also informed the Commission that the GBI wished to increase the payment on account in respect of a subsequent equity capital increase from ATS 25 million (ECU 1,8 million) to ATS 50 million (ECU 3,6 million). Austria did not notify this measure pursuant to Article 93(3) of the EC Treaty, since in its view the activities of the GBI were not caught by Article 92 of the EC Treaty.

3. OPINION OF INTERESTED PARTIES

By letter dated 20 October 1998, the British Apparel & Textile Confederation fully agreed with the Commission's measures.

4. AUSTRIA'S POSITION

By letter dated 17 September 1998, Austria communicated the information on the restructuring measures in question which had been requested in the Commission decision initiating proceedings.

Austria supplemented the restructuring plan which had already been sent.

Austria provided information on the equity capital and the other liabilities in 1997 and the balance sheet forecast for 1998 to 2000. This information was explained in detail.

Austria also provided information on the investment carried out in 1997 and planned from 1998 to 2000. The individual investment projects were described in detail and were related to the development of the fixed assets and to Ergee's production capacity. Austria took the view that the individual investment projects were necessary to restore the firm's viability.

Austria provided an up-to-date list of all restructuring costs, including the operational and financial restructuring measures, and an updated list of all restructuring measures.

Austria also presented cash flow calculations which in its view showed that the total amount of aid was limited to the amount necessary to restore Ergee's viability.

Austria provided evidence that the 1994 subsidised loan of ATS 42 million (ECU 3 million) from the Federal Ministry of Labour, Health and Social Affairs and the Province of Lower Austria had been planned as investment aid. The investment costs were substantiated in detail.

Austria described the measures of the GBI in the present case and its general approach. It took the view that the GBI was acting in the same way as a private investor and its activities therefore did not constitute State aid within the meaning of Article 92 of the EC Treaty.

Lastly, Austria communicated the calculations on which the GBI based its decision to take over Ergee. In Austria's view these calculations, which took into account the high risk of the participation concerned, proved that the GBI could expect huge advantages from this investment.

⁽²⁾ [1994] ECR I p. 1173.

⁽³⁾ OJ C 298, 26.9.1998, p. 2.

5. ASSESSMENT

The Commission examined the case on the basis of the information provided by Austria by letter of 17 September 1998.

5.1. The aid recipient

The Ergee group was established in 1960 by Edwin E. Rössler KG, Sonthofen, Germany. Ergee is located in the Waldviertel Region which, in accordance with a decision by the EFTA Surveillance Authority⁽⁴⁾, is an assisted area within the meaning of Article 92(3)(c) of the EC Treaty.

On 1 September 1994, Rössler KG applied for the initiation of bankruptcy proceedings. Ergee was not involved in any insolvency proceedings. Subsequently, the managing director of Ergee Textilwerk GmbH took over the German parent company's shares and part of its assets. The management buy out, which was largely financed with borrowed funds, was unsuccessful. In July 1997, the State-owned GBI took over the Ergee shares for ATS 1.

In 1997 Ergee employed on average 417 persons, its turnover was ATS 495,8 million (ECU 35,8 million) and its balance-sheet total was ATS 428 million (ECU 30,9 million). The firm has a 69,7% stake in Loana a.s., Roznov, Czech Republic, which operates at four different sites with a workforce of 926 (1997 figures). Ergee also holds 100% of the shares in the marketing company Ergee GmbH, Germany (190 employees) and in Ergee AG, Kronbühl, Switzerland (seven employees). According to the Commission recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises (SMEs)⁽⁵⁾, Ergee is a large enterprise which cannot be classified as an SME.

Ergee and its subsidiaries operate in the textile industry. In Austria, Ergee produces stockings and knitwear. The Czech subsidiary produces socks, stockings, medical rubberised stockings and children's clothing.

In 1996, Ergee registered a loss on normal business activity of ATS 214,2 million (ECU 15,5 million) with a turnover of ATS 600,1 million (ECU 43,3 million). At the end of 1996, the negative equity capital amounted to ATS 168,3 million (ECU 12,2 million). At the time when Austria notified the restructuring and rescue aid, Ergee was a company in difficulties.

5.2. The activities of GBI

The GBI was established in 1983 by the Federal Government with public money and therefore operates with State resources. Under the terms of the Austrian Law on companies with limited liability, the acquisition of subsidiaries, e.g. the acquisition of Ergee, requires the agreement of the GBI's supervisory board. As the owner of the GBI, the Federal

Government appointed the members of the supervisory board. There is therefore a clear influence on the part of the State on the GBI's decision-making. Furthermore, Ergee operates on a market which apparently suffers from overcapacity. Lastly, the GBI participation in Ergee was accompanied by notified rescue and reconstruction aid. In accordance with its many years of investigation practice, the Commission must therefore examine whether the GBI's activities constitute State aid⁽⁶⁾.

The GBI's main task is to take over ailing firms, restore them to long-term viability and then sell them. The GBI emphasised that projects were examined in the greatest detail not only by its restructuring experts, but also by recognised audit firms and independent consultancies. According to the information provided by Austria, the GBI only takes over a firm if it can expect to turn it round within two to three years. Since 1983 the GBI has examined some 90 firms and has taken a participation in only nine cases.

Up to now, the GBI has been extremely successful in restoring ailing companies to health. In 1983 it acquired four companies. It took over Austria Haustechnik GmbH, Rottenmann, Glanzstoff Austria GmbH, St. Pölten, Austria Antriebstechnik G. Bauknecht GmbH, Spielberg, and IFE Industrie-einrichtungen Fertigungs AG, Waidhofen/Ybbs. The GBI sold all these firms at a profit in 1988 and 1989 after successful restructuring. In 1993, the GBI took over the Austrian firms Schmid Schrauben Hainfeld GmbH and Assmann Ladenbau Leibnitz GmbH. In both cases, recipient companies were established which bought up the stocks of the ailing companies and leased their fixed assets. The fixed assets were not bought until the success of the restructuring measures was assured. Schmid Schrauben Hainfeld GmbH was sold at a profit in 1996. For Assmann Ladenbau Leibnitz GmbH a stock exchange launch is being considered. In 1997 the GBI acquired Ergee, ATB Austria Antriebstechnik AG, Spielberg, and ATB Antriebstechnik AG, Weinheim, Germany.

The Commission has examined the GBI's financial situation and established that this is an extremely profitable company. Its revenue sources include fees for consultancy services for subsidiaries, dividends paid and profits transferred from such subsidiaries, returns on investment and proceeds from the sale of firms. In 1983 the GBI was provided with equity capital of ATS 44 million (ECU 3,2 million), which it increased to ATS 241 million (ECU 17,4 million) by 1996 from profits and without any further State participation.

As regards Ergee, Austria stated that it was not until the GBI had carried out a due diligence examination that the supervisory board decided to take over the firm in difficulties. Production at Ergee was continued on the basis of the result of this examination. According to this, Ergee was an extremely well-known brand in central Europe (Germany, the Czech Republic, Switzerland, Slovakia and Austria). The firm possessed considerable restructuring potential not only in terms of staff, organisation, logistics, and reduction in the number of company locations, but also in terms of an optimum division of labour in the remaining production plants and of the reorganisation of the operating network. According to the information provided by Austria, the GBI

⁽⁴⁾ OJ C 199, 11.5.1994, p. 7.

⁽⁵⁾ OJ L 107, 30.4.1996, p. 4.

⁽⁶⁾ Bull. EC 9-1984.

was also interested in another of Ergee's Austrian competitors, but decided against its takeover. Following this, the GBI injected capital amounting to ATS 25 million (ECU 1,8 million) into Ergee and incorporated it into the cash management of the group, in order to bridge Ergee's short-term need for finance. In 1998 the GBI will provide Ergee with a further capital injection of ATS 25 million (ECU 1,8 million). It also sent Ergee two of its marketing and financial control experts to strengthen its management.

Austria submitted a detailed calculation of the return on investment. The GBI wishes to maintain its holding in Ergee until 2003.[...](*)).

Taking into account all the facts mentioned above, the Commission reaches the conclusion that the GBI's activities are to be equated with those of a private investor and therefore do not constitute State aid within the meaning of Article 92 of the EC Treaty.

5.3. The notified State aid measures

The guarantee, the new State loan and the waiving of interest and possibly of repayment of the earlier loan are measures by State bodies. The notified measures are therefore granted from State resources. The purpose of these measures was to enable the ailing Ergee to continue in business and to restore its viability. In this way Ergee was favoured in relation to its competitors. Furthermore, the company is active in the textiles sector on which several competitors are present within the EEA. The firm's main competitors are the two Austrian companies, Palmers Textil AG and Wolford AG, and the two German businesses, Falke Group and Kunert VertriebsgmbH, all of which operate internationally. The notified measures are therefore capable of affecting the business position of these competitors in other Member States. Accordingly, these measures distort or threaten to distort trade between Member States and constitute State aid within the meaning of Article 92(1) of the EC Treaty and Article 61(1) of the EEA Agreement.

The abovementioned aid does not fall under any other approved or already existing system of aid and must therefore be notified individually under Article 93(3) of the EC Treaty. Austria complied with this notification requirement.

5.4. Derogations

Article 92(1) of the EC Treaty and Article 61(1) of the EEA Agreement established the principle that aid having the characteristics set out therein are incompatible with the common market. Article 92(2) and (3) of the EC Treaty and Article 61(2) and (3) of the EEA Agreement specify which

types of aid may exceptionally be considered to be compatible with the common market.

The Commission has examined whether the measures notified fall within one of these derogations from the aid prohibition.

The derogations provided for in Article 92(2) of the EC Treaty and Article 61(2) of the EEA Agreement are not applicable here, because the aid in question is neither aid having a social character, aid granted to individual consumers, nor aid to make good the damage caused by natural disasters nor aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany.

The derogations provided for in Article 92(3)(a) of the EC Treaty and Article 61 (3)(a) of the EEA Agreement as well as the regional aspect of the derogation in Article 92(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement are not relevant, since the aid is not granted to promote the economic development of areas where the standard of living is abnormally low or to facilitate the development of certain economic areas.

As regards the derogations provided for in Article 92(3)(b) of the EC Treaty and Article 61(3)(b) of the EEA Agreement, the Commission was compelled to establish that the project concerned did not fulfil the criteria which usually apply for 'projects of common European interest', nor does it serve to remedy a serious disturbance in the economy of a Member State.

The derogations provided for in Article 92(3)(d) of the EC Treaty and Article 61(3)(d) of the EEA Agreement are not applicable either, because the aid is not intended to promote culture or heritage conservation.

Accordingly, only the first part of the derogation provided for in Article 92(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement could be applicable, if the aid facilitates the development of certain economic activities and at the same time does not adversely affect trading conditions to an extent contrary to the common interest.

5.5. Community guidelines

Ergee is a firm in difficulties. The notified measures represent restructuring aid. The Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽⁷⁾ (hereinafter referred to as 'the guidelines') set out the conditions in which restructuring aid may be considered to be compatible with the common market.

According to the guidelines, restructuring must form part of a realistic, coherent and far-reaching plan that will restore the

(*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

⁽⁷⁾ OJ C 368, 23.12.1994, p. 12.

long-term viability and health of the firm within a reasonable time scale and on the basis of realistic assumptions as to its future operating conditions. The restructuring plan must take account of the circumstances which led to the firm's difficulties, the supply and demand situation on the relevant product markets and the way it is likely to develop, and the specific strengths and weaknesses of the firm. The plan should enable the firm to make a smooth transition to a new structure that is viable in the long term and will enable it to remain in existence on its own merits without any further State support.

Restructuring is normally accompanied by reorganisation and rationalisation of the firm's activities so as to create a more efficient base. This usually means giving up activities that are no longer profitable or are already loss-making, the restructuring of activities that can be made competitive again and possibly the development of, or diversification into, new profitable activities. Such physical restructuring must normally be paralleled by financial restructuring.

Under section 3 of the guidelines, the Commission must in particular examine whether the restructuring satisfies the following conditions: first, restructuring must restore the viability of the firm within a reasonable time scale; secondly, the aid must avoid undue distortion of competition; and thirdly, the aid must be in proportion to the restructuring costs and benefits.

The guidelines also provide that the firm must fully implement the restructuring plan that was submitted to and accepted by the Commission and must discharge any other obligations laid down by the Commission decision.

The Community guidelines also require the Commission to monitor the implementation, progress and success of the restructuring plan.

5.6. Restoration of long-term viability

Austria has submitted a realistic, coherent and far-reaching restructuring plan. To begin with, the Commission establishes that the firm is obliged to implement the restructuring plan.

The restructuring plan takes account of the circumstances which led to the firm's difficulties. These difficulties can be attributed to three main areas.

First, Ergee suffered from a bad financial structure. At the end of 1996, the group showed negative equity capital of ATS 122 million (ECU 8,8 million).

Secondly, it is clear that insufficient control was exercised over the group's manufacturing plants in Austria and in the Czech Republic, there was no proper cost management and the group had clearly not adapted its production process to the changing market conditions. In addition, the firm did not pursue a proper brand and product strategy.

The third problem area arises from Ergee's inadequate investment in recent years.

Accordingly the Ergee restructuring measures, which are summarised in the following table, concentrate on these three main areas.

Restructuring costs	ATS (million)	ECU (million)	%
Making good negative equity capital	121,0	8,8	18,7
Injection of sufficient equity capital	165,0	12,0	25,3
Operating losses 1997 and 1998	148,0	10,7	22,7
Extraordinary depreciation of stocks and receivables	56,0	4,1	8,9
Total financial restructuring costs	491,0	35,6	75,4
Redundancy programme	[...] (*)	[...] (*)	[...] (*)
Transfer of storage facilities and offices	[...] (*)	[...] (*)	[...] (*)
Organisational changes	[...] (*)	[...] (*)	[...] (*)
Consultants	[...] (*)	[...] (*)	[...] (*)
Extraordinary marketing measures	[...] (*)	[...] (*)	[...] (*)
Total operational restructuring costs	84,1	6,1	12,9
Investment 1997 to 1999	76,0	5,5	11,7
Total restructuring costs	651,1	47,2	100,0

5.6.1. Financial restructuring measures

The total cost of financial restructuring is some ATS 491 million (ECU 35,6 million). In order to restore the group's finances, it was necessary to offset its negative capital of ATS 121 million (ECU 8,8 million) to provide the group with sufficient equity capital of some ATS 165 million (ECU 12,0 million), equivalent to around 25% of the group's balance-sheet total, to cover the losses of ATS 148 million (ECU 10,7 million) forecast for 1997 and 1998 and to make good an extraordinary depreciation of stocks and receivables of ATS 56 million (ECU 4,1 million).

The Commission takes the view that the financial restructuring measures are necessary in order to restore Ergee's financial situation.

The main element in bringing the group's financial situation back to health was the waiver by Ergee's house banks of unsecured loans of ATS 338 million (ECU 24,5 million) in 1997. The following Austrian banks were involved: Bank Austria AG, the Erste Bank der österreichischen Sparkassen AG and the Raiffeisenbank Oberes Waldviertel registrierte Genossenschaft mit beschränkter Haftung. By letters dated 28 May 1998 and 8 June 1998, these banks confirmed that they had agreed to the waiver, since their losses would be far higher if Ergee were to go bankrupt. The Commission takes the view that Bank Austria AG is a public enterprise, although more than 50% of the shares are held by private investors, since it is controlled by the State as largest individual shareholder. The other two banks are private banks. By far, the largest contribution was made by the private Erste Bank der österreichischen Sparkassen AG. The banks established a consortium and took decisions unanimously. The Commission concludes from this that the public Bank Austria AG acted as a private investor.

The GBI provided funds amounting to ATS 25 million (ECU 1,8 million) to increase the capital and undertook to make available a further ATS 25 million, as soon as the Commission adopted a decision on the case.

The State wishes to waive the existing unsecured loan of ATS 42 million (ECU 3,0 million) if the Commission approves this and Ergee satisfies the conditions regarding the number of persons employed in production plants in Austria. In addition, the firm itself intends to make a contribution with the sale of assets[...] (*) and with profits [...] (*) expected for 1999 and 2000.

Altogether, funds total ATS 494 million (ECU 35,8 million) and so ensure that the firm will return to a healthy financial situation.

5.6.2. Operational restructuring measures

The total cost of the operational restructuring measures is ATS 84,1 million (ECU 6,1 million). The group's main task is to shed labour, in order to improve its cost structure. This is why

numbers employed had already been cut from 1 966 in 1996 to 1 397 in 1998. This is equivalent to a 29% reduction. The necessary redundancy programme (mainly for Germany) will cost ATS 55,5 million (ECU 4,0 million).

The following table gives the employment figures.

Reduction in numbers employed	1996	1997	1998
Austria	521	417	390
Czech Republic	1 215	926	921
Germany	225	197	78
Switzerland	5	8	8
Total	1 966	1 548	1 397
Total percentage compared with 1996	100,0	78,7	71,1

Labour shedding is chiefly the result of organisational changes within the group. The group will exercise better control over its production plants in Austria and the Czech Republic. It will also relinquish its storage facilities in Germany and concentrate its storage activity on the Austrian location. The German subsidiary will be converted into a marketing company. [...] (*) The organisational changes at the Austrian location will cost ATS 1 million (ECU 0,1 million).

After GBI's takeover of Ergee, the Ergee and Loana a.s., board members were replaced by experienced reorganisation managers. The GBI also sent Ergee two of its marketing and financial control experts to strengthen the firm's management capacity. The Ergee supervisory board was also replaced by experienced reorganisation managers and textile experts. The changes at management level were necessary in order to achieve cost-cutting measures so as to make production more efficient and shorten product throughput times in the factories in Austria and the Czech Republic. Consultants are also responsible for implementing the restructuring measures. [...] (*)

In order to guarantee long-term profitability, the group must also redefine its market position and improve its brand and product strategy. [...] (*)

The operational restructuring measures are to be financed mainly by a State-guaranteed operating loan of up to ATS 90 million (ECU 6,5 million).

5.6.3. Restructuring measures associated with investment

Austria has indicated that the group must invest in order to return to long-term profitability. The group is planning investment of ATS 76 million (ECU 5,5 million) for the period 1997 to 1999, which an average is equivalent to [...] (*) of turnover.

The bulk of the investment will be devoted to the expansion and technical modernisation of the central storage facilities at the Austrian location — since the central storage facilities in Germany are to be closed — and the provision of software and hardware or its adaptation to the state of the art.

A smaller proportion of investment will be devoted to the stock of machinery: old, written-off machines are to be replaced so that a high standard of quality can be maintained,

new fibres and more ambitious designs can be processed and material costs can be cut substantially. Austria has stated that in recent years the group had reduced its tangible assets.

The following figures show that the value of the machinery newly acquired — either by purchase or by leasing — was lower than the depreciation and leasing costs of the machinery used by the group, although much of it had already been completely written off.

Changes in the value of machinery	1996		1997		1998	
	ATS (million)	ECU (million)	ATS (million)	ECU (million)	ATS (million)	ECU (million)
Acquisition of new machines (purchase and leasing)	24,0	1,7	19,3	1,4	15,6	1,1
Depreciation and leasing costs	- 30,7	- 2,2	- 31,6	- 2,3	- 21,4	- 1,6
New acquisitions as percentage of depreciation and leasing costs	78 %		61 %		73 %	

The investment is to be financed by the new ATS 40 million (ECU 2,9 million) State loan and further bank loans.

The Commission takes the view that the investment is limited to the minimum necessary to permit the restructuring of the group.

5.6.4. Estimated accounts

The Commission has examined the estimated balance sheets, profit and loss accounts and cash flow figures up to the year 2000 in order to determine whether the restructuring measures will restore the firm's viability. It finds that the estimated accounts were presented in full and the underlying assumptions were explained in detail.

As a result of the strategy of reducing the product range, shedding labour and trimming production capacity, the group will reduce its output. In the year 2000 this will still be below the 1997 figures.

The Commission notes that — despite a considerable decrease in output in 1998 as compared with the previous year (– 6%) — the operating result will be positive as early as 1998. This

improvement will be achieved mainly by a substantial cut in employee expenditure as a proportion of output from 41,7% in 1997 to 34,0% in 1998. Because of the continuing high expenditure on interest the result for usual business activity will, however, remain in the negative area. According to the plan the group will make a profit in 1999. [...](*). The improvement is based on further cost-cutting measures and a more efficient production process. According to the estimated accounts, in the year 2000, the group will increase its profits to [...](*), i.e. [...](*)% of output. This figure makes it clear that although the group must continue to manage its costs, it is quite capable of being restored to viability.

Mainly as a result of the waived repayment of the bank loan and the capital injection from the GBI, the group registered positive capital of 15,2% of the balance-sheet total as early as 1997. With the help of a further capital injection from GBI and retained profits for 1999 and 2000, equity capital will amount to 27,8% of the balance-sheet total in the year 2000. In the Commission's judgment, the group will be in a healthy financial situation in the year 2000.

Therefore, the Commission feels that the projections prove that the group has the prospect of long-term viability and is in a position to operate on its own merits and without further State support.

The following table summarises the most important figures of the Commission's analysis:

Profit and loss account (Group)	1997		1998		1999		2000	
	ATS (million)	ECU (million)	ATS (million)	ECU (million)	ATS (million)	ECU (million)	ATS (million)	ECU (million)
Output	949,8	68,8	893,7	64,8	[...] (*)	[...] (*)	[...] (*)	[...] (*)
Operating result	- 97,2	- 7,0	6,2	0,4	[...] (*)	[...] (*)	[...] (*)	[...] (*)
Financial result	- 37,4	- 2,7	- 19,7	- 1,4	[...] (*)	[...] (*)	[...] (*)	[...] (*)
Result for usual business activity	- 134,6	- 9,8	- 13,5	- 1,0	[...] (*)	[...] (*)	[...] (*)	[...] (*)
Balance sheet (Group)	1997		1998		1999		2000	
	ATS (million)	ECU (million)	ATS (million)	ECU (million)	ATS (million)	ECU (million)	ATS (million)	ECU (million)
Equity capital	113,0	8,2	117,3	8,5	149,9	10,9	185,0	13,4
Liabilities	550,8	39,9	506,0	36,7	476,2	34,5	440,5	31,9
Balance-sheet total	663,8	48,1	623,3	45,2	624,1	45,2	625,5	45,3

5.7. Avoidance of undue distortions of competition through the aid

The Commission has examined whether measures have been taken to offset adverse effects of the restructuring aid on competitors.

5.7.1. Reduction of production capacity

The Commission notes that external factors have also contributed to the group's difficulties. According to the results of a survey⁽⁸⁾, 40% of consumers wishing to cut back on their expenditure do so by reducing their expenditure on purchases of clothing. In addition, textile demand is declining by 5% to 7% annually in Europe. At the same time, imports from the Far East are increasing. These factors resulted in downward pressure on prices, predatory competition and structural overcapacity. The Commission also notes that Austria does not dispute the existence of structural overcapacity on the relevant market.

In accordance with point 3.2.2 (ii) of the guidelines, the restructuring plan must make a contribution, proportionate to

the amount of aid received, to the restructuring of the industry serving the relevant market in the Community by irreversibly reducing or closing capacity. A reduction or closure is irreversible when the relevant assets are scrapped, rendered permanently incapable of producing at the previous rate, or permanently converted to another use.

The Commission notes that the firm must replace old written-off machines as part of the restructuring measures, in order to be able to maintain a high standard of quality, to process new fibres and more ambitious designs and to improve its efficiency, so that the group's long-term viability is secured. The replacement of machines does not, however, lead to any increase in total machinery or in capacity. Austria has proved that at group level and taking into account not only its own machines, but those which have been leased, not only is the number of machines diminished, but also potential production capacity, expressed in units per day, is irrevocably reduced. Thus, the group will reduce knitting capacity by 11%, the toe-closing capacity by 23,9% and flat-knitting capacity by 51,2%. These are the relevant capacities for the manufacture of the group's products. The proportion of leased machines in relation to own machines is small.

The following table gives an overview of changes in the group's production capacities.

⁽⁸⁾ Carried out by the magazine 'TV Hören und Sehen', March 1995.

... (*)

The Commission also notes that the reduction of production capacities was accompanied by a 28,9% cut in the workforce, together with a reduction in the group's storage area from 24 000 m² to 13 000 m² and a 15% reduction in the product range. In addition the Commission again points out that the group will not have increased its output above the 1997 level by the year 2000.

According to the information provided by Austria, Ergee has a market share of 10,9% and 6% in the largest markets, Austria and Germany. Ergee's market shares are not significant in the other EEA countries. Ergee is therefore a comparatively small competitor on the EEA market.

5.7.2. *The competition-distorting effect of State aid measures*

As regards the planned waiver of the existing, unsecured State loan of ATS 42 million (ECU 3,0 million), the Commission takes the view that this contribution is necessary to ensure that the group has sufficient liquid funds. The Commission has also borne in mind that, according to the information provided by Austria, the State would lose the entire amount if Ergee were to go bankrupt. Furthermore, the State is acting in the same way as Ergee's banks, which are also waiving 100% of their unsecured loans. Also, the waiver of the loan is conditional on the number of employees which are employed by Ergee by the year 2000.

As regards the new State loan of ATS 40 million (ECU 2,9 million), the Commission has reached the conclusion that

the loan is necessary to guarantee the financing of the necessary investment. The Commission has also taken into account the fact that in accordance with the EFTA Surveillance Authority decision of 11 May 1994, the firm is situated in an assisted area under Article 92(3)(c) of the EC Treaty with a permissible maximum aid intensity of 20% net.

With the help of the guarantee of ATS 90 million (ECU 6,5 million), Ergee can procure enough liquid funds to finance its restructuring measures.

The Commission points out, however, that Ergee does not have to make any payment for this guarantee. Since the group has the prospect of long-term viability and its financial position has already been corrected, it is not necessary to waive the guarantee charge in order to restore the firm's viability. In addition the group's financial expenditure is only some 2% of output. So it can be shown that a free-of-charge guarantee is not justified. Failure to make a charge would reduce the firm's financial burden up to the year 2000 to an unjustified extent. The Commission consequently takes the view that the guarantee constitutes State aid, since Ergee does not have to pay for it on normal market terms, and as such is not compatible with the common market.

5.8. **Aid in proportion to the restructuring costs and benefits**

The Commission has examined whether the aid is limited to the strict minimum needed for the restructuring of the firm.

In the following table the contributions to the group's restructuring are again summarised.

Contributions to restructuring	ATS (million)	ECU (million)	%
Waiving of State loan	42,0	3,0	6,5
New loan	40,0	2,9	6,1
State-guaranteed loans	90,0	6,5	13,8
Total State aid	172,0	12,5	26,4
Contribution by parent company	50,0	3,6	7,7
Retained profits in 1999 and 2000	[...] (*)	[...] (*)	[...] (*)
Sale of capital assets	[...] (*)	[...] (*)	[...] (*)
Total company contribution	63,5	4,6	9,8
Waiving of bank loans	338,0	24,5	51,9
Further necessary bank financing	23,8	1,7	4,2
Total bank contribution	365,6	26,5	56,2
Total of all contributions	651,1	47,2	100,0

The table shows that the restructuring of the firm is mainly financed by the banks (56,2%). The State contribution amounts to 26,4% of restructuring costs, the firm's contribution to 9,8% and that of the parent company, GBI, to 7,7%.

The above percentages show that State aid is in an appropriate proportion to the restructuring costs and to the contributions of the other parties involved. The Commission, however, again points out that provision of the guarantee without charge is not necessary to restore the viability of the firm. This guarantee is therefore not compatible with the common market.

5.9. The nature of the existing State loan

Austria has established that the existing loan of ATS 42 million (ECU 3,0 million) was intended for investment of ATS 92,7 million (ECU 6,7 million) in 1994 and 1995. A detailed breakdown of the investment costs was provided.

The existing loan was provided in accordance with Article 35a of the Law to promote the labour market; this Law was entered by the EFTA Surveillance Authority as number 93-359 in the list of existing regional aid schemes. The Commission therefore takes the view that this aid is covered by an existing aid scheme.

The Commission also finds that according to the information provided by Austria, Ergee was not involved in the bankruptcy proceedings of the German parent company and was not in difficulties when the loan was granted.

The Commission has therefore reached the conclusion that this loan is an investment aid.

The Commission finds that Ergee is applying for restructuring aid for the first time.

5.10. No extension of rescue aid

On 17 December 1997 the Commission approved rescue aid in the form of a guarantee and a payment on account by GBI in respect of a subsequent increase in equity capital for the period July 1997 to the end of 1997. According to the information provided by Austria, the guarantee was granted only until the end of 1997. However, Ergee still has the funds of ATS 25 million (ECU 1,8 million) made available by the GBI.

In its decision on the rescue aid, the Commission ruled that without a soundly based restructuring plan it could be neither proved nor expected that a normal return on investment could be achieved within an appropriate period of time. The

Commission therefore reached the conclusion that the measures of the GBI, at the time when the rescue measures were carried out, may have comprised State aid. But since the Commission has already found that the measures of the GBI since the restructuring phase are based on business principles and do not constitute State aid within the meaning of Article 92 of the EC Treaty, there is in fact no reason to regard the capital injection from GBI as an extension of rescue aid.

6. CONCLUSIONS

The Commission concludes that the activities of the GBI are to be equated with those of a private investor and do not constitute State aid within the meaning of Article 92 of the EC Treaty.

The Commission takes the view that Austria has submitted a realistic, coherent and far-ranging restructuring plan and has shown that the group has the potential for long-term viability and is in a position to operate on its own merits without further State support. The reduction in production capacity is considerable and is sufficient to prevent unjustified market distortions. The State aid is in an appropriate proportion to the restructuring costs and the contributions of the other parties involved. The Commission also takes the view that Ergee has applied for restructuring aid for the first time. Lastly, there is in fact no longer any reason to regard the capital injection from GBI as an extension of rescue aid. The Commission does, however, take the view that the provision of the guarantee without charge is not necessary to restore the firm's viability. This would give the group an unjustified advantage.

The Commission therefore approves only the provision of a new State loan of ATS 40 million (ECU 2,9 million) and the waiving of the interest on and repayment of the existing State loan of ATS 42 million (ECU 3,0 million).

The Commission, however, takes the view that State aid in the form of a guarantee of ATS 90 million (ECU 6,5 million) to Ergee free of charge is not compatible with the common market.

The Commission has therefore reached the conclusion that the provision of a new State loan of ATS 40 million (ECU 2,9 million) and the waiving of the interest on and repayment of the existing State loan of ATS 42 million (ECU 3,0 million) contributes to the development of certain economic activities without adversely affecting trading conditions to an extent contrary to the common interest. The Commission therefore decides that the State aid measures can be considered to be compatible with the common market in accordance with the first part of Article 92(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement. However, the State aid in the form of a guarantee of ATS 90 million (ECU 6,5 million), free of charge, does adversely affect trading conditions to an extent contrary to the common interest and is therefore not compatible with the common market.

The Commission requests Austria to inform it within two months of publication of this decision of the measures it has taken to comply with it.

Article 2

Austria shall submit detailed annual reports in order to prove that the restructuring plan is being properly implemented.

In accordance with section 3 of the Commission guidelines, the Commission requests Austria to submit detailed annual reports in order to prove that the restructuring plan is being properly implemented,

Article 3

HAS ADOPTED THIS DECISION:

Austria shall inform the Commission within two months of notification of this Decision of the measures it has taken to comply with it.

Article 1

The State aid which Austria wishes to grant the Ergee Textilwerk GmbH, Schrems, in the form of a waiver of interest on and repayment of a State loan of ATS 42 million (ECU 3,0 million) and of a new State loan of ATS 40 million (ECU 2,9 million), is compatible with the common market.

Article 4

This Decision is addressed to the Republic of Austria.

The State aid which Austria wishes to grant the Ergee Textilwerk GmbH, Schrems, in the form of a guarantee of up to ATS 90 million (ECU 6,5 million), free of charge, is not compatible with the common market. This aid must not therefore be granted.

Done at Brussels, 22 December 1998.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION**of 4 May 1999****on the measures for the restructuring of road haulage and the development of intermodality (Law No 454 of 23 December 1997) which Italy intends to implement***(notified under document number C(1999) 1267)***(Only the Italian version is authentic)****(Text with EEA relevance)**

(1999/590/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular to the first subparagraph of Article 88(2) thereof

Having regard to the agreement on the European Economic Area, in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to that provision⁽¹⁾, and having regard to their comments,

Whereas:

November 1997. At bilateral meetings held in October and November 1997 and by letter of 11 November 1997, the Commission emphasised the problems of compatibility with Community law which the planned measures continued to pose despite the amendments made to the notified text.

(4) The Italian authorities replied to the Commission's letter of 11 November 1997 by note from the Permanent Representation No 8392 of 12 December 1997. During a further bilateral meeting on 17 December 1997, the Italian authorities gave the Commission the text of the law adopted by the Chamber of Deputies. Following its adoption by the Senate, this text finally became Law No 454 of 23 December 1997⁽²⁾, forwarded to the Commission by note No 794 of 30 January 1998 from the Permanent Representation.

I. PROCEDURE

- (1) By note from its Permanent Representation No 2725 of 24 April 1997, registered at the Secretariat-General under number N 403/97, the Italian Government notified the Commission of draft Law No 3270 on the restructuring of road haulage and the development of intermodality.
- (2) Two requests for additional information were sent to the Italian authorities on 23 May 1997 and 16 June 1997. A bilateral meeting took place in Brussels on 11 July 1997 to clarify the aims of the Law and examine the issues raised with regard to Community legislation by the various measures proposed. Following this meeting, the Italian authorities were asked to send the Commission, as soon as possible, an amended draft Law taking account of Commission's comments.
- (3) Subsequently, two revised versions of the draft Law were sent to the Commission in September and then in

(5) By letter of 28 April 1998, the Commission informed the Italian Government of its decision to initiate the procedure laid down in Article 88(2) (formerly, Article 93(2)) of the EC Treaty in respect of the measures set by Law No 454. The main issues raised in the decision to initiate the procedure were further discussed at bilateral meetings held in May and June 1998.

(6) Following these discussions, the Italian authorities proposed a substantial revision of the planned scheme in order to ensure its compatibility with Community law. By note No 4757 of 16 July 1998 from the Permanent Representation, the Italian Government provided the Commission with its observations on the decision to initiate the procedure, along with an outline of the proposed amendments to Law 454/97 and the related ministerial implementing decrees (or draft decrees). The text of the proposed amendments to the Law was then forwarded to the Commission by letter No 5142 of 30 July 1998 from the Permanent Representation.

⁽¹⁾ OJ C 211, 7.7.1998, p. 5.

⁽²⁾ Official Gazette of the Italian Republic, General series, No 303, 31.12.1997, p. 4.

- (7) The decision to initiate the procedure was published on 7 July 1998⁽³⁾. As part of the proceedings, the Commission invited other Member States and interested third parties to submit their comments.

II. DESCRIPTION OF THE MEASURE

A. Background

- (8) The Commission received comments from interested third parties in August 1998. By letter of 8 September 1998, it passed the comments on to the Italian Government, which was given the opportunity to react. The Italian reply was received by letter No 6566 dated 7 October 1998 from its Permanent Representation.
- (9) In its fax of 24 November 1998, the Italian Permanent Representation informed the Commission that the Italian Council of Ministers had, on 19 November 1998, approved the text of the amendments to Law 454/97.
- (10) At bilateral meetings held in Brussels in December 1998 and January 1999 the Italian authorities were then asked to provide further clarifications on some of the proposed measures. In a letter from the Italian Ministry of Transport No 370 dated 22 January 1999, forwarded via the Permanent Representation on 29 January 1999, the Commission received the requested clarification and was informed that the Italian authorities withdrew the notification as to the capacity reduction measure contained in Article 3(7) and (8) of Law 454/97.
- (11) Furthermore, on 15 February 1999 the Commission received the text of draft Law No 5527 of 17 December 1998⁽⁴⁾, setting out amendments to Law 454/97. By the following letters No 854 of 15 February 1999 from the Ministry of Transport and No 3296 of 18 February 1999 from the Permanent Representation, the Italian authorities informed the Commission of their intention to further amend some provisions of draft Law 5527 and one of the ministerial implementing decrees, the Decree on incentives for investments in innovation and training, the amended text of which they annexed to letter No 3296.
- (12) By letter No 1234 of 8 March 1999 from the Ministry of Transport, the Italian authorities finally provided the Commission with the revised text of the draft Decree on Incentives for Groupings. However, by letter No 221/GA of 29 April 1999 the Italian authorities withdrew the notification as to the subsidy measures on incentives for mergers and associations between road haulage firms contained in Law 454/97.

- (13) The aim of the Italian scheme is to reduce the economic and structural difficulties facing the road haulage sector and to promote intermodality and combined transport. To this end, Law 454/97 contains subsidy measures designed to improve the situation of road hauliers and to increase the use of combined transport. Such measures are implemented by ministerial decrees in which detailed rules and conditions are set out. This concerns the following regulatory texts: 1. Ministry of Transport Decree on incentives for early retirement for single-vehicle hauliers of 10 June 1998⁽⁵⁾; 2. Ministry of Transport Decree on incentives for investments in innovation and training of 14 October 1998⁽⁶⁾, as amended by the draft Ministry of Transport Decree sent by the Italian Government on 18 February 1998 (see point 11 above); 3. Ministry of Transport Decree on incentives for combined transport of 14 October 1998⁽⁷⁾. On 8 March 1999 the Italian Government also sent a draft Ministerial Decree on incentives for capacity reduction; no account is taken of the draft, however, for the purposes of this decision, following the withdrawal, on 29 April 1999, of the notification of the measures in question (see point 12).

However, the enforcement of the scheme has been suspended until the final decision on its compatibility with the common market to be adopted by the Commission under Article 88 of the Treaty. Subject to this decision, the scheme is intended to apply until the year 2000.

- (14) Under Law 454/97, subsidies may take different forms. Depending on the various measures, either cash grants or interest relief on mid-term loans is possible. Interest relief — whenever applicable — is based on a 'reference rate' whose method of calculation is set out in the Decree of the Italian Minister for the Treasury of 21 December 1994⁽⁸⁾. As confirmed by the Italian authorities in their letter of 22 January 1999, the current reference rate for the purposes of Law No 454 varies from 5% to 5,3% depending on the size of the

⁽³⁾ See note 1.

⁽⁴⁾ Published in *Acts of Parliament, XIIIth legislature*, as draft Law No 5527, Acts of the Chamber of Deputies.

⁽⁵⁾ *Official Gazette of the Italian Republic*, General series, No 137, 15.6.1998, p. 47.

⁽⁶⁾ *Official Gazette of the Italian Republic*, General series, No 263, 10.11.1998, p. 25.

⁽⁷⁾ *Official Gazette of the Italian Republic*, General series, No 263, 10.11.1998, p. 29.

⁽⁸⁾ *Official Gazette of the Italian Republic*, General series, No 304, 30.12.1994, p. 29.

firms concerned⁽⁹⁾. According to Article 2(2) of the Law, an interest rate of one third of the reference rate will be applied to subsidised loan operations.

- (15) Funding is paid by the Italian Government through banks which have entered into a specific agreement with the Ministry of Transport for this purpose. In the said letter of 22 January 1999, the Italian authorities stated that the banks which at that date had signed such an agreement were 'Mediocredito Centrale SpA' and 'Artigiancassa SpA'. Under this agreement, the banks apply the reduced interest rate to the borrowers and are in turn compensated up to the reference rate by the Government.

Under Article 6(1) of Law 454/97, Mediocredito Centrale SpA and Artigiancassa SpA are also entrusted with the preparatory examination of all applications for subsidies provided for in the Law. Subsidies are then granted by the Committee for Road Haulage and Intermodality referred to in Article 8 of the Law.

- (16) The subsidy measures established by Law 454/97 are described in detail herein. However, no description is given of the measures provided for in Article 3(7) and (8) of the Law on incentives for capacity reduction and in Article 4 of the Law on incentives for mergers and associations, since the notification as to the measures in question has been withdrawn by the Italian Government (see points 10 and 12).

B. Aid to combined transport activities

- (17) Article 1(2)(f) and 1(3)(d), Article 2(1)(c) and Article 5 of Law 454/97, as amended by draft Law 5527, deal with specific aid measures to combined transport. These measures are implemented by the Decree on Incentives for Combined Transport of 14 October 1998 (hereinafter referred to as 'the Combined Transport Decree'), as amended. Article 2(1)(e) of Law 454/97, as amended, covers aspects of training aid also for combined transport activities. These aspects are dealt with under points 62 and 27 and 82 to 86 of this decision relating to aid for training.
- (18) Article 1(2)(f) of the Law defines the notion of combined transport, as used in the Law. The definition

is closely aligned to the Community definition found in Article 1 of Council Directive 92/106 of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States⁽¹⁰⁾. Article 1(3)(d) states that the aid under Law 454/97 should be given to finance combined transport equipment, and that up to 17% of the overall resources should be spent for this aid. Article 2(1)(c) of the Law empowers the Government to give aid for the 'acquisition of combined transport units, in particular those which are specifically designed for combined transport under the ADR/RID rules for the carriage of dangerous goods, and under the ATP rules for the carriage of perishable goods'.

- (19) Article 5(1) of the Law states that five-year loans may be given for up to 60% of the total investment in the equipment mentioned under Article 1(3)(d), up to a maximum limit of ITL 1,5 billion. Article 5(2) defines more specifically what the financial benefits referred to in Article 5(1) are intended for: (a) construction of combined transport terminals including depots and transshipment equipment; (b) purchase of equipment dedicated to monitoring the combined transport chain; (c) purchase of combined transport units. Article 5(3) states as a further condition that projects funded under Article 5(2) must comply with national and Community rules on fair competition and must be in line with a rational development of combined transport.
- (20) The Decree on combined transport implements these provisions as follows: First, it defines the notion of combined transport, following the definition in Article 1 of Directive 92/106. In Article 2 of the decree, the types of allowed investment are further defined in accordance with Article 5(1) and specific conditions are attached. Article 3 of the Decree then states the conditions and procedure for obtaining the loan. Article 3(6) of the Decree confirms that none of the subsidies provided for may be granted unless the Commission has declared them to be compatible with the provisions of the Treaty.

C. Aid to road terminals

- (21) Article 2(1)(b) and 2(2)(b) of Law 454/97, as amended by draft Law 5527, provide for subsidies to road haulage firms for the acquisition of road terminals also including plants for the assistance and repair of vehicles, waste treatment and storage of goods. The measure is implemented by Articles 2(1)(c) and (d), 2(2), 2(3) and 4(a) of the Decree on incentives for investments in

⁽⁹⁾ The reference rate referred to in the Ministerial Decree of 1994 is currently 5% per annum in the industrial sector and 5,3% per annum in the craft trades sector. Smaller firms are covered by the craft trades sector.

⁽¹⁰⁾ OJ L 368, 7.12.1992, p. 32.

innovation and training of 14 October 1998 (hereinafter the 'Decree on innovation and training'), as amended by the draft Ministerial Decree forwarded by the Italian authorities on 18 February 1999.

on innovation and training, introduces an aid measure for training activities in order to help operators and their staff to adapt to new business models and new technologies. Access to this measure is open to both national and non-resident hauliers (holding the Community licence).

- (22) Terminals which tie in with national and regional transport planning may be subsidised through low interest loans up to 60% of investment costs up to a maximum amount of ITL 1 billion (approximately EUR 516 457). Funding is conditional upon a substantial financial contribution by the recipient to the proposed investment. Non-resident hauliers holding the Community authorisation provided for in Council Regulation (EEC) No 881/92 of 26 March 1992, on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States, may also benefit from the measure⁽¹⁾.

- (27) The aid is intended as a contribution of up to 50% of the eligible costs, mainly defined by the ministerial decree as the costs of participation in training sessions and courses and the financing of training projects involving both transport undertakings and university institutes. The possible use of EU resources for co-financing activities is allowed.

D. Aid for purchase and adaptation of vehicles

F. Aid for the purchase of computer systems and equipment

- (23) The first sentence of Article 2(1)(c) and 2(1)(d) of Law 454/97, as amended by draft Law 5527, set up a subsidy measure for the purchase and adaptation of vehicles with the general objective to renew and improve the vehicle fleet, thereby reducing overall exhaust emissions and increasing safety. The measure is implemented by Articles 3 and 4(b) of the Decree on innovation and training, as amended (see point 12).
- (24) Aid may accordingly be granted to road haulage firms (both national and non-resident, when holding the Community licence) for the replacement of their vehicles that are at least five years old. The purchase is financed through low-interest loans covering up to 70% of total investment costs up to ITL 1 billion (approximately EUR 516 457).
- (25) Adaptation of the existing vehicle fleet in order to reduce polluting noise and exhaust emissions may be subsidised up to 25% of such adaptation costs, as duly proved by documents.

- (28) An aid measure for the purchase of computer equipment is introduced by Article 2(1)(a) of the Law, as amended, and is implemented by Article 2(1)(a) of the Decree on innovation and training, as amended. The subsidies are designed to facilitate the purchase of computer systems and equipment for use in the training activities provided for in Article 5 of the same Decree for innovation in general management methods and in data interchange.
- (29) Low-interest loans up to 75% of investment costs within the limit of ITL 550 million (approximately EUR 284 051) may be granted for this purpose to both national and non-resident hauliers (holding a Community licence). Beneficiaries are required to make a substantial financial contribution to the planned investments.

E. Aid to training

G. Aid for early retirement

- (26) Article 2(1)(e) of Law 454/97, as amended by draft Law 5527 and implemented by Article 5 of the Decree

- (30) This measure is established by Article 3(1) to (5) of Law 454/97 and implemented by the Decree on Early Retirement of Single-Vehicle Hauliers of 10 June 1998. An early retirement premium is provided for national hauliers owning only one vehicle of more than 11,5 tonnes who, on the day of entry into force of the law, have been holding an operating licence for at least ten years. Applicants must agree to be deleted from the road hauliers register and terminate haulage activities for at least 10 years. Access to the measure is allowed for only six months following the entry into force of

⁽¹⁾ OJ L 95, 9.4.1992, p. 1.

the law. However, according to Article 3(3) of draft Law 5527, this period may be extended until 31 December 1999.

- (31) The amounts of the premium are fixed at ITL 60 million (approximately EUR 30 987) and ITL 110 million (approximately EUR 56 810) per haulier owning a vehicle up to 26 tonnes or up to 44 tonnes respectively.

III. COMMENTS FROM THE ITALIAN GOVERNMENT

- (32) Following the opening of the procedure, the Italian Government submitted to the Commission comments and observations on the compatibility with the Community law of the measures envisaged by letter of 16 July 1998 from the Permanent Representation.
- (33) The Italian letter underlines that the planned scheme has a general objective of rationalising the goods transport sector by means of specific support measures for the restructuring of road haulage and the development of combined transport. In fact the measures under discussion are intended to foster innovation of their plant, equipment and organisational systems, in order to encourage restructuring of the supply of road haulage services and to improve efficiency in the sector. Moreover, the scheme provides for measures to develop combined and intermodal transport, so as to favour the shift from road to other modes.

The further overall objectives of the scheme under discussion are environmental protection and road safety. According to the Italian authorities, the envisaged measures will improve environmental protection and increase road safety, either directly by favouring the purchase of less polluting vehicles and the adaptation of the existing fleet to higher environmental standards, or indirectly by reducing empty running in relation to the rationalisation of logistic services and the increase in combined transport techniques.

- (34) Within this general framework, the law also introduces the bases for new rules on access to the occupation of road haulier and on liberalisation of road haulage operations. In this context, the Italian Government issued *inter alia* Legislative Decree No 85/98⁽¹²⁾ of 14 March 1998 and the Decree of the Minister of Transport No 212⁽¹³⁾ of 22 May 1998, providing for a

phase-out of the existing system of authorisations based on load capacity. Under those provisions, only one authorisation with no load limit will be needed for each operator of road haulage for hire or reward as from 1 January 2001. Specific rules are established for the transitional period.

- (35) The Italian authorities subsequently proposed a substantial revision of the legal bases of the planned measures, in order to ensure their compatibility with the Community rules on State aids. According to the Italian Government, this revision now takes account of all the remarks and observations made by the Commission in examining the subsidy scheme.

The revised legal instruments now include the amended text of Law 454/97 as well as rules of implementation, introduced by the ministerial decrees referred to above.

IV. COMMENTS FROM INTERESTED PARTIES

- (36) Further to the publication of the decision to initiate the procedure, the Commission received the following comments from interested third parties:

A. Comments from FNTR and Premat-STP

- (37) By means of different letters both dated 31 July 1998, 'FNTR' and 'Premat-STP' forwarded to the Commission their observations on the opening of the procedure in respect of the Italian aid scheme. FNTR is a French trade association in the road haulage sector; 'Premat-STP' is a French road haulage company. Both their letters point out that, although the planned aid to mergers and associations is not conditional upon any capacity reduction by the firms concerned, the Commission seems to consider the measure compatible with Community law. This conclusion is reportedly in contrast with previous Commission practice. In its decision N 773/A/94⁽¹⁴⁾ the Commission imposed such a condition when approving a French scheme of aid to groupings between road haulage firms. It is underlined, moreover, that under the Italian rules on access to the road haulage market, beneficiaries of aid to groupings are allowed to further increase their load capacity in the transitional period leading to the final abolition of quantitative restrictions on the load capacities of Italian hauliers. This allegedly will lead not only to an

⁽¹²⁾ Official Gazette of the Italian Republic, General series, No 83, 9.4.1998, p. 42.

⁽¹³⁾ Official Gazette of the Italian Republic, General series, No 156, 7.7.1998, p. 11.

⁽¹⁴⁾ Commission Decision of 18 October 1995 in case N 773/A/94 — France (OJ C 335, 13.12.1995, p. 10).

unreasonable discrimination against French hauliers, but also to a significant distortion of competition.

Early retirement

B. Comments from UNA, Unatras and ANCST

- (38) By letter of 4 August 1998, the Italian trade associations 'Unione Associativa' (UNA) 'Unione delle Associazioni dei Trasportatori in conto terzi' (UNATRAS) and 'Associazione Nazionale delle Cooperative Servizi e Turismo' (ANCST) submitted their comments on that decision. The Italian associations are of the opinion that, taking account of the changes proposed in July 1998 (see point 6), Law 454/97 and the administrative rules provided for in the ministerial decrees of implementation both comply with the Community rules on State aids. Measures established under the planned scheme are, for various reasons, not liable to distort competition and to affect intra-Community trade. Subsidies are, in general, available to all Community road haulage firms and intended to attain objectives of common European interest.

V. ASSESSMENT

A. Article 87(1)

- (39) According to Article 87(1) of the EC Treaty, 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 is, in so far as it affects trade between Member States, incompatible with the common market.
- (40) Under the proposed scheme, beneficiary undertakings receive contributions to costs arising from the transport of goods while other undertakings, national or from other Member States, do not receive such contributions. To that extent the scheme entails a distortion of competition and affects intra-Community trade and is therefore, in principle, incompatible with Article 87(1).
- (41) Some of the planned measures, however, appear by their particular features not to be likely to distort competition nor to affect intra-Community trade. As far as they concern road transport, these measures are accordingly assessed under Article 87(1) as follows.

- (42) A State contribution to a self-employed individual who terminates all business activities does not benefit an undertaking operating in the market and, therefore, does not in itself have any impact on competition or trade between Member States. The Commission considers in the present case that, if it is ensured that such funds do not reenter the road haulage sector either directly or indirectly, the measure does not fall, in principle, under Article 87(1) of the Treaty.

- (43) When initiating the procedure under Article 88(2), the Commission emphasised the need for efficient procedures to ensure that the use of funds is not misdirected and that the beneficiary of the aid, together with his vehicle, does not continue to be active in the sector, even if not in a self-employed capacity.

- (44) The Commission takes note in this respect that detailed administrative rules have been provided by the Ministerial Decree of 10 June 1998. Essential conditions for obtaining the retirement premium are the commitment to irrevocably terminate road haulage activity, with the deletion from the road hauliers' register (the related authorisation being revoked). Furthermore, beneficiaries are forbidden to practise road haulage activity for hire or reward, directly or indirectly, and to be partners or shareholders in road haulage companies, for at least 10 years. According to Article 6(4) of the Law, in case of breach of the prohibition to practise road haulage activity, beneficiaries have to repay the amounts received with interest at a rate determined by law.

- (45) The Commission considers that the foregoing provisions provide a sufficient guarantee that the planned contributions will neither be misused nor re-enter the road haulage sector, even indirectly. It therefore concludes that contributions provided by the measure at issue do not constitute State aid within the meaning of Article 87(1) of the Treaty.

Terminal

- (46) A State subsidy to road haulage firms for the acquisition of real estate and equipment for the repair and maintenance of vehicles and for treatment of polluting waste, if intended to favour certain undertakings operating in a specific sector, falls in principle under Article 87(1) of the Treaty.

(47) However, for several reasons subsidies for the acquisition of road terminals under the Italian measure do not appear to threaten intra-Community competition. The Italian measure is designed to facilitate the development of a road transport infrastructure system, with the general aim of improving efficiency, environmental protection and safety in road transport operations, whether carried out by Italian hauliers or not. Terminals are intended as structures providing services to all hauliers on a market basis as a part of a 'network' of such facilities covering the whole national territory. Article 2(2) of the Decree on innovation and training does in fact stipulate that terminals eligible for funding must be located in line with national and regional transport planning and their sites must be chosen in order to minimise environmental impact. Article 2(2)(a) furthermore guarantees that only facilities which are open to all potential users, subject to fair conditions and transparent charges which allow a proper return on investment, are eligible for subsidies.

constitute a sufficient safeguard to ensure that no distortive effect on intra-Community competition will be caused by the measure at issue. In addition, the Commission will be able to monitor the fulfilment of such requirements through the Italian authorities' periodical reports on the implementation of the whole aid scheme.

The Commission accordingly concludes that the subsidies provided for in the present measure do not constitute State aid for the purposes of Article 87(1) of the Treaty.

B. Article 73 (formerly Article 77) of the EC Treaty

(48) There is also provision for a safeguard clause to prevent any negative impact on competition: under Article 2(2)(a), last sentence, and (b), of the Decree no contribution can be granted where the new terminals in question distort or are liable to distort competition in a given area or in the relevant market.

(53) According to Article 73, aids are compatible with the Treaty if they meet, *inter alia*, the needs of coordination of transport. The second exception provided for by Article 73 refers to aid considered as reimbursement for the provision of public service obligations, which is not relevant in the present case.

(49) Any aid under the Decree will be granted only if the applicant has shown, to the satisfaction of the Committee referred to in Article 8 of Law 454/97, that the above conditions are satisfied. In this respect the Commission also notes that the Italian system does not discriminate against non-resident carriers as, according to Article 1(1) in conjunction with Article 2(1)(c) of the Decree, every EC haulier holding a Community licence may apply directly for the planned contributions.

(54) While Article 71 (formerly Article 75) of the EC Treaty provides the legal basis for liberalising the transport markets, the liberalisation itself is, contrary to other sectors, based on legislative acts of the Council. The Treaty acknowledges the special position of the transport sector as a regulated industry, largely partitioned into national markets.

(50) In addition, the subsidies at issue may not be accumulated with any other contribution received for the same reasons from public bodies nor with any subsidy provided for in the other decrees implementing Law 454/97 (last sentence of Article 2(3) of the Decree).

(55) Regulation (EC) No 1107/70 of the Council of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway⁽¹⁵⁾, as last amended by Council Regulation (EC) No 543/97⁽¹⁶⁾, reduces the Commission's power of discretion and leaves the Member States with a greater possibility to grant State aid restricting competition than under the general rules laid down by Article 87. That Regulation sets out the scope of Article 73 and in its Article 3(1)(a) to (f) defines aids which fulfil the coordination requirements of transport.

(51) Finally, Article 6(3) of the Law, in conjunction with Article 7(1) of the Decree, provides that, in the event of misuse of the funds received, beneficiaries must repay the sums received with interest at the rate laid down by law and are liable to be struck off the road hauliers' register.

(56) Until 31 December 1997, Article 3(1)(e) of Regulation (EEC) No 1107/70, as amended, provided for a specific framework for aid to combined transport. Under Article 3(1)(e), aid for investment in infrastructure or the fixed and movable facilities necessary for

(52) The Commission holds the view that the above prior conditions and restrictions, together with the penalties provided for by the Law and in the relevant Decree

⁽¹⁵⁾ OJ L 130, 15.6.1970, p. 1.

⁽¹⁶⁾ OJ L 84, 26.3.1997, p. 6.

transhipment was allowed. However, this Regulation is no longer applicable. The market for providing combined transport services has been fully liberalised since 1 July 1993 through Articles 2 and 4 of Directive 92/106. Any Community legal person is free, under the general rules of the Treaty on freedom of establishment and freedom to provide services, to offer combined transport services anywhere in the Community. Any aid to combined transport from 1 January 1998 onwards has, therefore, to be assessed under the relevant Treaty provisions⁽¹⁷⁾.

may be covered by the scope of Article 73. As liberalisation of combined and road transport has already been decided and to a very high extent achieved, the application of Article 73 in these sectors is consequently very limited. The measures proposed by Law 454/97, as its title indicates, clearly aim at promoting the development of the economic prospects of a sector, which is dealt with by another provision of the Treaty. The measures are not based on defined objectives as regards the co-ordination of transport in the public interest.

(57) In the past, Article 3(1)(d) of Regulation (EEC) No 1107/70 provided an exception for certain measures on the restructuring of transport markets under certain conditions. However, the scope of the provision was restricted in time until the entry into force of Community rules on access to the transport market. The relevant legislation which opened up national road transport markets to intra-Community competition entered into force on 1 July 1990 following the approval of Council Regulation (EEC) No 4059/89 of 21 December 1989 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State⁽¹⁸⁾.

In this advanced state of liberalisation, State subsidies may still be granted, in particular, when serving the purpose of the development of a sector. With regard to the present case, the proposed measures are, therefore, assessed under the relevant articles of the Treaty.

C. Article 87(2) and (3)

(58) The concept of aid meeting transport coordination needs implies government intervention in the transport sector. The further a sector is liberalised, the less there is a need for coordinating activities to be undertaken by the Member States. Indeed, in a liberalised transport market coordination may be achieved to a certain extent by the market itself, within the limits of the framework conditions set by the Member States in accordance with Community law enacted under Article 71 of the Treaty. This interpretation is confirmed by the wording of Article 3(1)(d) of Regulation (EEC) No 1107/70, which links the application of the exception to the entry into force of Community measures liberalising the market.

(61) In the case at issue, the exceptions provided for in Article 87(2) are not applicable because the aid scheme is not directed towards the attainment of the objectives set out. According to those objectives aid is 'compatible with the common market' if it is granted either to individuals for social purposes, or to compensate for damages caused by natural disasters or exceptional occurrences, or for effects of the division of Germany.

(59) In conclusion, in the present case Regulation (EEC) No 1107/70 does not provide for any specific exceptions applicable to the proposed measures.

(62) Under Article 87(3) such aid may therefore be considered compatible with the common market. In order to ensure the proper functioning of the common market and having regard to the principles in competition matters established by the Treaty, the exceptions provided for in that provision must be construed narrowly when aid measures are assessed.

(60) As stated above, the direct application of Article 73 of the Treaty has to be seen in close connection with the status of liberalisation in the sector. The higher the degree of liberalisation already achieved, the less State intervention to 'coordinate' transport is necessary and

Article 87(3)(a) exempts aid which promotes the development of areas with economic difficulties and a special need for assistance. The exception cannot be considered relevant for aid schemes without a regional element — in this case the whole territory of the Member State is covered — and with a clear sectoral objective.

⁽¹⁷⁾ In this connection, see Commission Decisions of 27.3.1996, case NN 97/95 (OJ C 123, 26.4.1996, p. 9), and of 22.10.1997, case N 79/97, (OJ C 377, 12.12.1997, p. 3).

⁽¹⁸⁾ OJ L 390, 30.12.1989, p. 3. This Regulation was repealed by the Court of Justice of the European Communities for reasons of form, but remained in force until the entry into force of Regulation (EEC) No 3118/93 (OJ L 279, 12.11.1993, p. 1).

With regard to the exceptions provided for in Article 87(3)(b), the aid at issue is not intended to promote the execution of a project of common European interest or to remedy a serious disturbance in

the Italian economy, nor does it have any features of such projects.

Article 87(3)(c) provides for an exception relating to aid granted to facilitate the development of certain economic activities and where the aid measures do not adversely affect trading conditions to an extent contrary to the common interest.

- (63) In conclusion, the Commission considers that the State aid measures notified in the given case, except for the measures already examined above, should be assessed under Article 87(3)(c).

Combined transport

- (64) The Law in conjunction with the Ministerial Decree on incentives for combined transport provides for several measures to foster combined transport, which are assessed below.
- (65) The Law and the Decree now provide for a definition of combined transport in line with Article 1 of Directive 92/106. There is no further generic mention, in the Law or in the Decree, of terms such as 'intermodality' or 'multimodal'. Therefore, the Commission is able to assess whether these measures contribute to the goals of Community combined transport policy.
- (66) The Community has for some time pursued a policy of achieving a balanced intermodal transport system, and fostering the competitiveness of combined *vis-à-vis* road transport is part and parcel of this policy. The central aim of the EC combined transport policy is to promote a shift from road to other transport modes. Community instruments such as Directive 92/106 aim at fostering the development of combined transport. Article 1 of Council Regulation 2196/98 of 1 October 1998 concerning the granting of Community financial assistance for actions of an innovative nature to promote combined transport⁽¹⁹⁾ states that its objective is fostering actions leading to increased use of combined transport. The Commission Green Paper on Fair and Efficient Pricing and the Commission White Paper on Fair Payment for Infrastructure Use also advocate a

more balanced modal split⁽²⁰⁾. The development of combined transport is thus in the common interest within the meaning of Article 87(3)(c)⁽²¹⁾.

- (67) Any aid under the Decree will be granted only if the applicant has shown, to the satisfaction of the Committee referred to in Article 8 of the Law, that the investment will contribute to efficient and economically viable combined transport operations. Further, the applicant is required to provide a substantial financial contribution to the investment (Article 3(2) in conjunction with Article 3(5) of the Decree). The substantial financial contribution of applicants for a low-interest loan under Article 2(1) of the Decree is as a rule ensured by the low aid intensity: under Article 5(1) of the Law, low-interest loans covering up to 60% of the overall investment costs may not exceed ITL 1,5 billion (approximately EUR 774 700). According to Article 2(4) of the Decree, this aid cannot be accumulated with other aid received in the same capacity from public authorities. Nor may it be accumulated with similar types of subsidy provided for by other provisions of the Law.
- (68) Aid to purchase transport units for combined transport under Article 2(1)(c) of the Law and Article 2(1)(a) of the Decree is to be qualified as investment aid within the meaning of Article 87(1) of the Treaty. Maritime containers (ISO series 1) may not be funded under the decree. As Article 3(3) of the Decree states, the funding for equipment may not exceed the difference in cost between a combined transport unit and a corresponding road transport unit, and may not, in any event, exceed 30% of the total costs of investment.

The Commission considers that this aid complies with Article 87(3)(c) of the Treaty. As the Commission has already pointed out on another occasion⁽²²⁾, investment aid for combined transport units may be allowed under certain conditions, which are fulfilled by the Decree. The aid is designed for combined transport units only, and not standard maritime containers, which are mostly used in operations not to be defined as combined transport. Overfunding and misuse of funding is excluded by the fact that, even with the subsidy, a combined transport unit will not be cheaper than a corresponding road unit. Further, the Commission notes that Article 5(1)(a) of Regulation (EC) No 2196/98 allows a Community contribution of up to 30% of total eligible costs regarding, *inter alia*, the leasing or

⁽²⁰⁾ COM(95) 691, 20.12.1995; COM(98) 466, 22.7.1998.

⁽²¹⁾ In this connection, see Commission Decisions of 25.3.1998 (OJ C 211, 7.7.1998 — see Note 1 above), and of 21.1.1997, case C 2/97 — Netherlands (OJ C 93, 22.3.1997, p. 11).

⁽²²⁾ Commission Decision of 22.10.1997, case N 79/97 — Netherlands (OJ C 377, 12.12.1997, p. 3).

⁽¹⁹⁾ OJ L 277, 14.10.1998, p. 1.

depreciation of intermodal transport units. For these reasons, the Commission considers that this measure contributes to the development of the sector of combined transport activities and does not, because of the safeguards included, affect trading conditions contrary to the common interest. It is thus covered by Article 87(3)(c).

- (69) Article 2(1)(b) of the Decree provides for the investment aid within the meaning of Article 87(1) concerning transshipment equipment for intermodal transport units. Article 3(4) of the Decree limits the aid intensity to 30% of total eligible investment costs. Transshipment equipment is essential for the smooth functioning of the combined transport chain. On the other hand, 30% of the costs of the intermodal transport chain is linked to costs arising in transshipment. Therefore, State aid to transshipment equipment helps to reduce the system costs of combined transport and thus improves its competitiveness in relation to road transport.

The general selection criteria mentioned in Article 3(2) in conjunction with Article 3(5) of the Decree ensure that only transshipment equipment contributing to viable terminal operations will be funded. Further, Article 5(3) of the Law states that investments funded under the Law must comply with the relevant competition laws of Italy and the Community. This reference ensures that only such transshipment equipment will be funded which does not cause distortions of competition contrary to the common interest vis-à-vis other terminals. Furthermore, concerning transshipment equipment investment related to newly constructed terminals, Article 2(3) of the Decree will apply and thus ensure that State aid will not be given to investment which distorts competition. The Commission also notes that the maximum aid intensity is similar to that provided for in Article 5(1)(c) of Council Regulation 2196/98 concerning the granting of Community financial assistance for actions of an innovative nature to promote combined transport. Article 5(1)(c) of that Regulation limits Community financial assistance to a maximum of 30%, notably investment expenditure on combined transport transshipment equipment. For these reasons, the Commission considers that this measure contributes to the development of the sector of combined transport activities and does not, because of the safeguards included, affect trading conditions contrary to the common interest. It is thus covered by Article 87(3)(c) ⁽²³⁾.

- (70) Under Article 2(1)(c) of the Decree, low interest loans may also be given for the construction and purchase of terminals for combined transport. The Commission considers that these loans do not constitute State aid under Article 87(1).

First, Article 2(3)(a) of the Decree states that all terminal construction projects benefiting from low-interest loans must be open to all operators on equal terms and at transparent rates which allow cost recovery. The terminals are thus open to all potential users under non-discriminatory conditions, and therefore do not raise State aid issues. Second, low-interest loans may not be granted under Article 2(3)(a) and (b) of the Decree if the terminal has a negative impact on competition with other terminals. This condition ensures that loans will not affect trade between Member States within the meaning of Article 87(1).

- (71) Finally, Article 2(1)(d) of the Decree allows low-interest loans for the purchase of electronic and computer systems and equipment for use, control, monitoring and sales in the combined transport chain. Such loans count as aid within the meaning of Article 87(1). Electronic information systems for monitoring the combined transport chain are essential for the success of combined transport. A road haulier can easily track, via the truck driver and his mobile phone, a long-haul road operation throughout Europe. An equivalent combined transport operation would have to track the container and possibly the rail wagon. This tracking operation has to be performed taking into account various, sometimes hardly compatible, information systems used by several operators in different Member States. The up-front investment in such electronic systems for combined transport is much higher than the investment needed for a comparable road operation.

Therefore, the Commission would consider State investment aid for such systems compatible with the common market under Article 87(3)(c). However, it must be ensured that the aid is used only for information systems relating to the combined transport chain, and not for general business information or for other transport operations. The Decree states that the

⁽²³⁾ See also Commission Decision of 22 December 1998, case N 598/98 — Netherlands (OJ C 29, 4.2.1999, p. 13).

electronic equipment described in Article 2(1)(d) must serve the combined transport chain, and the term 'combined transport' is explicitly and correctly defined in Article 1(1)(a) of the Decree. For these reasons, the Commission considers that this measure contributes to the development of the sector of combined transport activities and does not, because of the conditions mentioned and the low funding intensity, affect trading conditions in a way which is contrary to the common interest. It is thus covered by Article 87(3)(c).

Purchase and adaptation of vehicles

(72) The Commission considers that in sectors with overcapacity, such as road freight transport, no aid can in principle be granted on any grounds for the purchase of transport vehicles. The negative effect of such aid on competition would under no circumstances be proportionate to any benefit therefrom.

(73) Nevertheless, certain alternatives are compatible with the overall objectives of environmental protection and safety. The only possibility for granting aid in connection with the purchase of new vehicles is as compensation for the costs of higher technical standards on emissions and safety. Those standards have to be clearly higher than those laid down by national or Community legislation with which vehicles have to comply by law in any case. This general principle is established by the Community guidelines on State aid for environmental protection⁽²⁴⁾ with regard to environmental standards and may be developed for safety standards on the basis of Article 87(3)(c) by analogy.

(74) When initiating the procedure under Article 88(2), the Commission therefore pointed out that the Italian measure designed to subsidise the purchase or adaptation of vehicles on the basis of a simple percentage of the general investment costs could not be considered compatible with the common market.

(75) The Commission takes note, however, of the announced amendments to Article 2(1)(c) of Law 454/97 (by means

of an amendment to Article 1(2)(a) of draft Law 5527 and to Article 3(1) of the Decree on innovation and training, as reported by the Italian letters of 15 and 18 February 1999. Amendments to these provisions are planned in order to stipulate explicitly that aid for the purchase of new vehicles and the adaptation of existing vehicles is intended to attain higher standards of environmental protection than those in force under national and EC law⁽²⁵⁾. Provided that the proposed amendments of Law 454/97 and of the Decree on innovation and training are approved, the Italian measure appears to be consistent with the principles set out in the Community Guidelines referred to in point 73.

The Guidelines provide in this respect that aid granted to firms located outside assisted areas and not exceeding 30% of gross eligible investment (40% for SMEs) may be considered compatible with the common market.

(76) Under the measure discussed here, low-interest loans for the purchase of new vehicles are granted at an interest rate of one third of the reference rate, as defined by the Italian authorities (Article 2(2)(c) of the Law), i. e. from around 1,66 to 1,76%⁽²⁶⁾. In their letter of 29 January 1999, the Italian authorities contended that, whenever aid takes the form of interest relief, the aid amount must be determined on the basis of two thirds of the above-mentioned reference rate. In order to determine the concrete advantage for the borrower from a State aid viewpoint, however, reference must be made to the interest rate it would have paid under normal market conditions. In its Notice of 9 September 1997⁽²⁷⁾, the

⁽²⁵⁾ Article 3(1) of the Italian Decree refers to higher standards regarding environmental protection than national or European standards in force 'on the date of the Decree'. Reference should therefore be made to the limit values for emissions laid down by Council Directive 70/220/EEC of 20 March 1970 on the approximation of the laws of the Member States relating to measures to be taken against air pollution by gases from positive-ignition engines of motor vehicles (OJ L 76, 6.4.1970, p. 1), as amended by Directive 96/69/EC (OJ L 282, 1.11.1996, p. 64), and Council Directive 88/77/EEC of 3 December 1987 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous pollutants from diesel engines for use in vehicles (OJ L 36, 9.2.1988, p. 33), as amended by Directive 91/542/EEC (OJ L 295, 25.10.1991, p. 1). In this connection it should be noted that the more stringent emissions limits introduced by Directive 98/69/EC of the European Parliament and of the Council of 13 October 1998 relating to measures to be taken against air pollution by emissions from motor vehicles and amending Council Directive 70/220/EEC (OJ L 350, 28.12.1998, p. 1) are to be applied gradually upon the registration, sale or entry into service of new vehicles from 1 January 2001.

⁽²⁶⁾ Depending on the reference rate applied. In the industrial sector, where the reference rate is currently 5%, the low-interest rate will be around 1,66%. In the craft-trades sector, where the reference rate is currently 5,3%, the low-interest rate will be around 1,76%. See also point 14 and note 9 above.

⁽²⁷⁾ See Commission notice on the method for setting the reference rates (OJ C 273, 9.9.1997, p. 3).

⁽²⁴⁾ OJ C 72, 10.3.1994, p. 3.

Commission set out the method to calculate a reference rate reflecting the average level of interest rates on medium and long-term loans (five to 10 years) in the different Member States. In the present case the advantage for the recipients may therefore be estimated, by way of comparison between the interest rate actually paid and the current reference rate for Italy determined on the basis of the above criteria, at some 4,4 to 4,5 percentage points⁽²⁸⁾. This advantage has to be referred to loans covering up to 70% of overall investment costs (Article 2(2)(c) of Law 454/97 and Article 4(1)(b), first sentence of the Decree). In this respect the last sentence of Article 4(1)(b) of the Decree explicitly refers to the Community Guidelines mentioned in point 73 in stipulating that the aid granted for the purchase of new vehicles can never exceed the ceiling established therein.

In so far as this latter provision confines aid for the purchase of new vehicles to the extra environmental costs⁽²⁹⁾ to be borne by the recipients, within the intensities allowed by the Guidelines, the Commission may find acceptable the aid amounts as determined above.

(77) Article 2(1)(d) of the Law in conjunction with Article 4(1)(c) of the Decree stipulates that maximum aid intensity may attain 25% of adaptation costs, as duly proved by documents. However, Article 2(2)(d) of the Law seems to allow a higher intensity to be attained. The Commission notes in this respect that by letter of 15 February 1999, the Italian Government undertook to amend Article 2(2)(d) of Law 454/97 in order to make it consistent with the 25% ceiling. Provided that the proposed amendment to Law 454/97 is approved, the Commission can accept that aid for adaptation of vehicles also complies with the intensity ceiling set by the Guidelines.

(78) The Commission takes note that, in case of purchase of new vehicles, the Ministerial Decree provides for safeguard rules in order to prevent abandoned transport capacity re-entering the market. Article 3(2) of the Decree introduces the obligation to scrap the replaced

vehicles or sell them outside the ECMT area⁽³⁰⁾. Beneficiaries must give evidence of the scrapping or sale of the old vehicle before receiving the subsidised loan.

(79) The Commission also takes note that Article 1(1) in conjunction with Article 3(1) of the Decree allows both national and non-resident haulage firms to benefit from the measure at issue. The Commission accordingly considers that the present measure does not imply any potential discrimination against carriers from other Member States.

(80) Overfunding is excluded by the first sentence of Article 3(1) of the Decree, stipulating that the subsidies in question may not be accumulated with any other contribution received for the same reasons from public bodies nor with any subsidy provided for in the other implementing decrees of Law 454/97. In addition (Article 6(3) of the Law in conjunction with Article 7(1) of the Decree), in case of misuse of the funds received, beneficiaries are obliged to repay the overall contribution with interest at a rate defined by law and may be struck off the road hauliers' register.

(81) For all the above reasons, the Commission can accept that in achieving environmental protection objectives the aid measure at issue, in its latest version, is designed to promote the development of transport activities to an extent compatible with the common market. The Commission therefore concludes that the measure may benefit from the exception provided for in Article 87(3)(c).

Training

(82) Aid compensating for training costs to be borne by enterprises to adapt to a changing economic environment may be regarded as one of several means of improving the employment situation and, therefore, the Commission may consider it compatible with the common market on the basis of Article 87(3)(c).

(83) When initiating the procedure, however, the Commission pointed out that, apart from aid intensity,

⁽²⁸⁾ The reference rate as defined in the 1997 notice is periodically revised in accordance with the methods set out therein. The five-year reference rate (relevant to the present case) currently applicable in Italy is 6,18% from 1 January 1999, in accordance with the latest update of 3 March 1999.

⁽²⁹⁾ The Guidelines define such costs as 'additional investment costs for attaining the objectives of environmental protection' and further specify that costs eligible for environmental protection aid 'exclude costs of general investments not attributable to environmental protection' (see point 3.2.1 of the Guidelines).

⁽³⁰⁾ The European Conference of Ministers of Transport (ECMT) is an intergovernmental body set up by an agreement signed in Brussels on 17 October 1953. The current members of the ECMT comprise all 15 EU countries and many other central and east European countries.

the Italian law failed to provide any further specification on the measure at issue, and consequently the measure itself appeared insufficiently clear to assess its compatibility with the common market. In this respect, the Commission notes that detailed rules and conditions have been subsequently planned by the Italian Government in the implementing decrees.

- (84) Eligible training activities listed in Article 5(1) of the Decree on innovation and training appear not only linked to the organisational restructuring operations of the concerned firm and to its adaptation to new technologies, but also intended to acquire general skills and qualifications in the transport business. In this light, it can be accepted that the measure involves general training projects intended to facilitate the development of the transport sector within the meaning of Article 87(3)(c) of the Treaty.
- (85) The measures in question cover up to 50% of training costs. When initiating the procedure, the Commission noted that an aid intensity of 50% for all undertakings seemed too high to be considered compatible with the common market. Nevertheless, the Community framework on training aid which has meanwhile entered into force⁽³¹⁾ lays down in this respect a maximum aid intensity for general training expenditure outside assisted areas of 50% of the eligible costs for large firms and of 70% for SMEs. In fact, information supplied by the Italian authorities in their letter of 16 July 1998 as well as official transport statistics show that, at least among national hauliers, potential recipients are in most cases small or even very small enterprises⁽³²⁾. As for aid intensity, a maximum ceiling of 50% of eligible costs therefore seems reasonable to the Commission in the light of the above-mentioned circumstances.
- (86) In conclusion, the Commission holds the view that the measure in question is compatible with the common market under Article 87(3)(c).

Purchase of computer systems and equipment

- (87) With reference to this measure, the Commission considers that an investment-linked aid designed to

assist undertakings in carrying out training activities may, in principle, be considered to serve the development of a specific sector, and therefore be compatible with the common market under Article 87(3)(c).

- (88) However, the wording of the relevant legal texts, and especially of Article 2(1)(a) and (b) of the Decree on innovation and training, was too general to allow the Commission to conclude that the related aid provisions were intended to support specific training activities.
- (89) In their letter of 29 January 1999, the Italian authorities stressed that the aid measure at issue has the sole aim of encouraging road haulage firms whose staff is involved in training activities to purchase equipment to study and practice new technologies in the field. In this light, the Italian Government announced the revision of Article 2(1)(a) and (b) in order to clarify the breadth and scope of the aid provisions concerned.

The Commission takes note in this respect of the draft Ministerial Decree amending the Decree on innovation and training, forwarded by note of 18 February 1999 from the Italian Permanent Representation. On the basis of the proposed amendments, support for the purchase of computers under the Italian measure can now be seen in direct connection with the provisions on aid to training examined above. In fact the new text of Article 2(1)(a) of the Decree on innovation and training only allows aid for the purchase of 'computer systems and hardware for use in the training activities provided for by Article 5 [of the Decree] for innovation in business management methods and in computerised data interchange systems', whereas Article 2(1)(b) will be repealed.

- (90) Provided that the above amendments are approved, the Commission accepts that the Italian measure under discussion, in favouring the purchase of equipment for use in training activities, may help the firms concerned to adapt to innovative technologies and to make the necessary organisational changes. The measure contains an essential training component and has accordingly to be assessed under the criteria laid down in the Framework on training aid currently in force⁽³³⁾.
- (91) The Framework allows aid for general training projects up to 50% of eligible costs, plus a further 20 percentage points for SMEs. In so far as it is intended for use in training activities, computer equipment may be eligible for aid under the Framework.

⁽³¹⁾ OJ C 343, 11.11.1998, p. 10.

⁽³²⁾ According to the Italian authorities some 60% of Italian hauliers have no more than two vehicles and some 20% have three to five vehicles.

⁽³³⁾ See point 85 and footnote 31.

(92) As for aid intensity, the Commission notes that the Italian measure provides for low-interest loans at one third of the reference interest rate, as defined by the Italian authorities (Article 2(2)(a) of the Law and Article 2(1)(a) of the Decree), namely approximately 1,66 to 1,76%⁽³⁴⁾. Following the criteria stated in the 1997 Notice on reference and discount rates⁽³⁵⁾, the concrete advantage for the borrower in comparison with interest rates applied in normal market conditions may be estimated at some 4,4 to 4,5 percentage points. The Commission holds the view that such advantage, referred to loans covering up to 75% of the overall investment costs (Article 2(2)(a) of Law 454/97 and Article 4(1)(a), part two, of the Decree), can never attain the ceiling established by the Framework.

Capacity reduction measure

(97) The Commission takes note in this respect that by letter of 22 January 1998 the Italian Government withdrew the notification of Article 3(7) and (8) of Law 454/97 containing incentives for capacity reduction in the road haulage sector.

The Commission therefore concludes that no decision is required in this connection.

Mergers and associations

(93) The substantial financial contribution by the applicant of a low-interest loan under Article 2(3) of the Decree is as a rule ensured by the low aid intensity. Overfunding is excluded by Article 2(3) of the Decree, stipulating that the subsidies in question cannot be accumulated with any other contribution received for the same reasons from public bodies nor with any subsidy provided for in the other implementing decrees of Law 454/97. In addition, Article 6(3) of the Law in conjunction with Article 7(1) of the Decree stipulates that, in case of misuse of the funds received, beneficiaries are obliged to repay the overall contribution plus interest at a rate laid down by law and are liable to be struck off the road hauliers' register.

(98) The Commission takes note in this respect that by letter of 29 April 1999 the Italian authorities withdrew the notification of the measures providing for incentives for mergers and associations between road haulage firms contained in Law 454/97.

The Commission therefore concludes that no decision is required in this connection.

VI. CONCLUSIONS

(94) In the light of the above, the Commission takes the view that the Italian safeguard rules for granting the contributions are sufficient to ensure a proper use of the funds and are likely to keep any distortion of competition at a reasonably low level.

(99) In the light of all the above considerations, the measures established by the Italian scheme under discussion either appear not to constitute State aid within the meaning of Article 87(1) of the Treaty or can be declared compatible with the common market pursuant to Article 87(3) of the Treaty,

HAS ADOPTED THIS DECISION:

(95) Finally, the Commission notes that Article 1(1) in conjunction with Article 2(1)(a) of the Decree allows both national and non-resident haulage firms to benefit from the measure at issue. It accordingly considers that the present measure does not imply any potential discrimination against carriers from other Member States.

Article 1

1. Contributions provided for in Article 3(1) to (5) of Italian Law No 454/97 of 23 December 1997, as amended, and in the Italian Decree of 10 June 1998 for the early retirement of single-vehicle road hauliers do not constitute State aids within the meaning of Article 87(1) of the EC Treaty or Article 61(1) of the EEA Agreement.

(96) In conclusion, the Commission is of the opinion that the measure may benefit from the exemption laid down in Article 87(3)(c).

2. Subsidies for the construction of road terminals according to Article 2(1)(b) of the Italian Law No 454 of 23 December 1997, as amended, and Article 2(1)(c) and (d), 2(2), 2(3) and 4(1)(a) of the Italian Decree of 14 October 1998 on incentives for investments in innovation and training, as

⁽³⁴⁾ See footnote 26.

⁽³⁵⁾ See point 76 and footnote 27.

amended, do not constitute State aids within the meaning of Article 87(1) of the Treaty or Article 61(1) of the EEA Agreement.

Article 2

1. Subsidies to road haulage firms for the purchase of combined transport units, the purchase of combined transport equipment and the purchase of electronic equipment dedicated to monitoring, control, use and sales in the combined transport chain according to Article 2(1)(b) and 5 of Italian Law No 454/97 of 23 December 1997, as amended, and according to Article 2(1)(a), (b) and (d) of the Italian Decree of 14 October 1998 are compatible with the common market according to Article 87(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement.

2. Contributions for the construction of combined transport terminals under Article 5 of Italian Law No 454/97 of 23 December 1997, as amended, and under Article 2(1)(c) of the Italian Decree of 14 October 1998 on incentives for combined transport do not constitute State aid within the meaning of Article 87(1) of the EC Treaty or Article 61(1) of the EEA Agreement.

Article 3

1. Subsidies for the purchase and adaptation of vehicles under Article 2(1)(c) of Italian Law No 454 of 23 December 1997, as amended, and Articles 3 and 4(1)(b) of the Italian Decree of 14 October 1998 on incentives for investments in innovation and training, as amended, are compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement.

2. Aid to training activities under Article 2(1)(e) of Italian Law No 454 of 23 December 1997, as amended, and Article 5 of the Italian Decree of 14 October 1998 on incentives for investments in innovation and training, as amended, is

compatible with the common market under Article 87(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement.

3. Subsidies for the purchase of computer systems and equipment under Article 2(1)(a) of Italian Law No 454 of 23 December 1997, as amended, and Articles 2(1)(a) and 4(1)(a) of the Italian Decree of 14 October 1998 on incentives for investments in innovation and training, as amended, are compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement.

Article 4

1. Italy informs the Commission that it has approved the amendments to Law No 454 of 23 December 1997 set out in draft Law No 5527 of 17 December 1998, further amended according to the letter from the Italian authorities of 15 February 1999, and the amendments to the Decree of 14 October 1998 on incentives for investments in innovation and training set out in the draft Ministerial Decree forwarded on 18 February 1999.

2. Italy shall provide the Commission with annual reports on the implementation of the measures established by Law No 454 of 23 December 1997, as amended, and the related Ministerial Decrees, as amended. The first report shall be updated to 31 December 1999 and be furnished by 31 January 2000.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 4 May 1999.

For the Commission

Neil KINNOCK

Member of the Commission

COMMISSION DECISION**of 9 June 1999****on the aid scheme implemented by the United Kingdom in favour of pig producers in Northern Ireland***(notified under document number C(1999) 1602)***(Only the English version is authentic)**

(1999/591/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities, and in particular the first subparagraph of Article 88(2) thereof,

Having called on interested parties to submit their comments pursuant to the provision cited above⁽¹⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) By letter of 13 August 1998, registered on 14 August 1998, the United Kingdom notified the Commission of a new State aid scheme, the pig welfare slaughter scheme. This scheme provided for the payment of aid to pig producers in Northern Ireland of GBP 18 per pig to cover the cost of the slaughter and rendering of surplus pigs for which no normal market outlet can be found. Since it appeared that the United Kingdom had put this aid scheme into effect without awaiting approval by the Commission, this aid scheme was entered in the register of non-notified aid under the number NN 96/98.
- (2) By letter of 1 September 1998, registered on 2 September 1998, the United Kingdom informed the Commission that owing to a lack of response from farmers, the pig welfare slaughter scheme would be replaced by a new aid scheme, the pig welfare slaughter compensation scheme. In addition to the aid payments for slaughter and rendering of surplus pigs envisaged under the previous scheme, the new scheme provided for compensation payments for producers of overweight clean pigs (that is to say, pigs of a minimum live weight of 110 kg excluding in-pig gilts and breeding sows and boars) of up to GBP 30 per head. Since it appeared that the United Kingdom had put this aid scheme into effect without awaiting approval by the Commission, this aid

scheme was entered in the register of non-notified aid under the number NN 95/98.

- (3) Since in their letter of 27 October 1998, the United Kingdom authorities had confirmed that no aid payments had been made under the pig welfare slaughter scheme, and since that scheme had been entirely replaced by the pig welfare slaughter compensation scheme, the Commission decided to close the file on aid NN 96/98, concluding that this measure had been withdrawn by the United Kingdom.
- (4) By letter dated 21 January 1999, the Commission informed the United Kingdom of its decision to initiate the procedure under Article 88(2) of the EC Treaty in respect of the payment of compensation of up to GBP 30 per animal slaughtered. In the same letter, the Commission informed the United Kingdom of its decision not to raise objections to the payments for slaughtering and rendering surplus pigs. Comments from the United Kingdom were received by letter dated 23 February 1999.
- (5) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities*⁽²⁾. The Commission invited interested parties to submit their comments on the aid.

The Commission has received comments from the Ulster Farmers' Union, the North of Ireland Veterinary Association, Ulster Pork and Bacon Forum and the Northern Ireland Grain Trade Association. It has forwarded them to the United Kingdom, which was given the opportunity to react; by letter of 3 May 1999, the United Kingdom informed the Commission that it did not wish to submit any further comments.

II. DESCRIPTION OF THE MEASURE

- (6) Following an accidental fire on 20 June 1998, the major pig slaughtering plant in Ballymoney, Northern Ireland, was destroyed, leading to the loss of an estimated 40%

⁽¹⁾ OJ C 67, 10.3.1999, p. 6.

⁽²⁾ See footnote 1.

of the slaughtering and butchering capacity for pigs in the region. This led to severe financial and practical difficulties for pig producers in Northern Ireland. Many producers were left with nowhere to take their animals for slaughter and butchering. By the middle of August 1998 the situation had become critical, with some 20 000 to 30 000 pigs awaiting slaughter, and the position was deteriorating by the day. Consideration was given to the possibility of transporting these animals to slaughterhouses in Great Britain or the Republic of Ireland, but the overall depressed market situation and disease control restrictions militated against this. Thus producers were left with an increasing number of animals which were basically unsaleable. Furthermore, as a result of the increasing backlog of pigs on the farms, serious animal welfare problems had arisen due to overcrowding and feeding difficulties. The animals were faced with overcrowding, heat stress and tail-biting, causing them unnecessary suffering.

- (7) Under the pig welfare slaughter compensation scheme producers were given one week, commencing on 1 September 1998, to submit applications to have overweight pigs entered for the scheme. The Northern Ireland authorities arranged for, and met, the costs of the slaughtering and rendering of the animals (about GBP 15 per animal). In addition, the producers were to receive GBP 30 per animal, or 60% of the adjusted Eurospec price for Great Britain/Northern Ireland, whichever was the lesser. In total 15 571 overweight pigs were slaughtered, and attracted compensation of GBP 30 each, leading to a total compensation bill of GBP 467 130. To this were added slaughter and disposal costs of about GBP 232 800, bringing the total cost of the scheme to about GBP 700 000. The scheme was open for one week only, and the animals were slaughtered within 10 days and subsequently destroyed.
- (8) In its decision to open the procedure, the Commission considered that the payment of compensation of GBP 30 per pig slaughtered clearly constituted aid within the meaning of Article 87(1) of the Treaty. The payments in question were granted in favour of certain pig producers in Northern Ireland. The withdrawal from a market, which according to the United Kingdom authorities themselves was seriously depressed, of over 15 000 pigs may threaten to distort competition and affect trade between Member States. Furthermore, the Commission noted that the effect, and indeed the objective, of the aid payments was to provide financial support for the worst-affected pig farmers in Northern Ireland. A unilateral decision by a Member State to grant financial support to certain producers in a market which is highly integrated at Community level, and where substantial intra-Community trade takes place must be considered to threaten to distort competition.
- (9) Although the United Kingdom referred to Article 87(2)(b) of the Treaty, and suggested that measure should be regarded as aid to make good the damage caused by an exceptional occurrence, the Commission doubted that the aid measure could be considered to fall

within the scope of that provision. In particular, the Commission doubted that a fire occurring at a single processing facility could be considered to constitute an exceptional occurrence, and noted that no aid was being paid to the owner of the facility. Furthermore, the fire had not caused any material damage to producers, who were being compensated for economic losses alone.

- (10) Nevertheless, the Commission accepted that at the relevant time the Northern Ireland pig market was beset by a very unusual combination of circumstances, and the Commission therefore considered whether the aid might fall within the scope of the derogation provided for by Article 87(3)(c) of the Treaty. In view of the very specific problems caused by the fire, including a build up of animals which had become virtually unsaleable, and the resultant animal welfare problems, the Commission accepted that a one-off measure to remove surplus animals could be considered to contribute to the economic development of the sector. Accordingly, the Commission decided to consider the aid of GBP 15 per animal to cover slaughter and rendering costs to be compatible with the common market in accordance with Article 87(3)(c) of the Treaty.
- (11) However, the Commission doubted whether the same considerations applied to the compensatory payment of GBP 30 per animal slaughtered. In particular, the Commission noted that in principle aids in the agricultural sector which are paid per unit of production are regarded as operating aids which are transitory and which, in the absence of a counterpart from the beneficiary, in no way benefit the development of the sector concerned. Furthermore, by paying compensation for production which was otherwise unsaleable, the aid at least threatened to distort the conditions of competition by reinforcing the competitive position of the traders concerned. In this context, the Commission also expressed doubts as to the extent to which the particular situation arising in Northern Ireland was due to the fire, and to what extent it was due to the generally depressed state of the pig market at that time.
- (12) The Commission also noted that the aid was notified on 1 September 1998, the same day that the scheme was brought into effect. The Commission therefore considered that the aid had been granted by the United Kingdom in breach of its obligations under Article 88(3) of the Treaty, since the Commission had not been informed of the scheme in sufficient time to enable it to submit its comments.

III. COMMENTS FROM INTERESTED PARTIES

- (13) The Commission has received comments from the Ulster Farmers' Union (UFU), the North of Ireland Veterinary Association (NIVA), Ulster Pork and Bacon Forum and

the Northern Ireland Grain Trade Association (NIGTA), all of which express support for the payment of the aid and the arguments advanced by the United Kingdom. The respondents contest the view, expressed by the Commission at the opening of the procedure, that the fire should not be considered an exceptional event. One respondent, whilst accepting that the fire represented a normal entrepreneurial risk from the standpoint of the owner of the facility, argued that it should be looked at from the perspective of the pig producers, who lost 40 % of processing capacity in Northern Ireland overnight. From the producers' perspective, the fire cannot be considered a normal entrepreneurial risk but should be considered an exceptional occurrence.

- (14) All four respondents emphasise the gravity of the welfare problem which had developed on pig farms in Northern Ireland as a result of the fire and the necessity of rapid remedial action on the part of the authorities. The lack of market outlets for the pigs led to a build-up of animals on the farms, leading to overcrowding, which resulted in outbreaks of pneumonia, tail-biting, rectal prolapse and other consequent diseases. As the pigs gained weight, they became unsaleable, because pig processing and slaughter lines are not built to accommodate animals exceeding 110 kg liveweight. The NIVA describes the welfare situation as intolerable. The NIVA and the UFU both consider that the payment of compensation was justified, while the NIGTA considers that the government had no option but to pay compensation in order to secure the cooperation of farmers with emergency slaughter arrangements.
- (15) Furthermore, the respondents argue that the scheme did not distort competition or affect trade between Member States. In this context the UFU submitted detailed information about the movement of pig prices in Northern Ireland before and after the fire, together with evidence to suggest that the difficulties confronting the producers were due to the fire and not to the general depression in the pig industry.

IV. COMMENTS FROM THE UNITED KINGDOM

- (16) In their comments, the United Kingdom authorities emphasise the importance of animal welfare, and their belief that the actions undertaken were essential to end the severe suffering of animals.
- (17) In the first instance, the United Kingdom authorities welcome the Commission's decision not to raise objections to the payment of aid of approximately GBP 15 to cover the slaughter and disposal costs of the animals concerned. They note that the decision is based on the derogation provided for by Article 87(3)(c) of the Treaty and accept and support the Commission's view

that the removal from farms in Northern Ireland of excess numbers of overweight pigs with no normal market outlet, in order to prevent suffering, is a measure that can be considered to facilitate the development of certain economic activities. They agree that there was a common interest in arranging for the humane slaughter of animals for which no normal market outlet could be found and with the description of the steps taken to ensure that the animals were destroyed and not used for human consumption. They therefore support the Commission's view that the payment of the aid did not affect trading interests to an extent contrary to the common interest.

- (18) Nevertheless, the United Kingdom authorities also maintain as a matter of principle their opinion that the fire at the Ballymoney processing plant did constitute an exceptional occurrence within the meaning of Article 87(2)(b) of the Treaty. They do not accept that the sudden total inability of a producer to sell a product in his usual market at any price, owing to circumstances unrelated to the market situation, and without any change in levels of consumer demand, coupled with the almost total inability to transport this product for sale at any price in other markets, due to restrictions on animal movements, can be considered to fall within the normal parameters of entrepreneurial risk.
- (19) However, the United Kingdom authorities limit their substantive comments to the doubts expressed by the Commission about the compensatory payment of GBP 30 per animal which accompanied the payment of slaughter and disposal costs.
- (20) They accept that this measure constitutes an aid within the meaning of Article 87(1) of the Treaty.
- (21) In view of the doubts expressed by the Commission that this payment may constitute an operating aid and that the aid measure at least threatens to distort competition, the United Kingdom authorities seek to prove that the measure in question can be considered to facilitate the development of certain economic activities, that it has not adversely affected trading conditions to an extent contrary to the common interest, and that it can therefore qualify for the derogation in Article 87(3)(c) of the Treaty.
- (22) The rationale for the intervention of the United Kingdom authorities was the exceptional animal welfare problem developing on farms. Large numbers of animals were suffering to an unacceptable degree. In support of this contention, the United Kingdom authorities provide extracts from the reports of field visits of official veterinarians to pig farms in Northern Ireland which describe instances of animals being housed in

overcrowded, unsuitable and uncomfortable accommodation, animals not being properly fed, piglets being drowned at birth, neck and tail-biting and fighting, traumatisation and cannibalism. The existence of these problems was confirmed by representations received from farmers themselves, from the farm Animal Welfare Council, and from the Association of Veterinary Surgeons for Northern Ireland. A threefold increase in the number of carcasses being rejected for neck lesions, which is indicative of overcrowding, was also noted at slaughterhouses. These problems were widely reported in the news media in Northern Ireland. In view of these concerns, the Department of Agriculture Northern Ireland (DANI) issued a press release to remind farmers of their welfare obligations on 6 August 1998. However action to alleviate the welfare problem was also considered necessary.

- (23) The United Kingdom authorities explain that during July and August several options were considered to remove the affected animals from the farms.
- (24) The first option considered was the forcible removal of the affected animals from farms using statutory powers under the Welfare of Animals Act (Northern Ireland) 1972 and the Police and Criminal Evidence Order (Northern Ireland) 1989. These give the competent authorities powers of entry onto farms, powers to seize and detain animals which are being treated cruelly, and powers to prosecute offenders. However, no powers are granted to destroy or otherwise dispose of the animals concerned. After careful consideration it was decided that the practical difficulties involved in the seizure and storage of a large number of animals, estimated at the time at about 28 000 animals spread over 2 000 farms were insuperable. Visits to each farm by official veterinarians, accompanied by police officers, would have been necessary, and arrangements would have had to be made to transport and store any animal suffering from welfare problems. Furthermore, even if such an operation had been put into effect, it would not have provided a long-term solution to the problem, since the animals would ultimately have had to be returned to the owners.
- (25) In the circumstances, the United Kingdom authorities decided that a solution to the problem would have to be sought in cooperation with the owners of the animals. They therefore introduced a scheme which would provide for payment by the State of the costs of slaughtering and disposing of pigs which had become overweight since the fire, and whose retention was giving rise to welfare problems. This was the pig welfare scheme, notified to the Commission on 13 August 1998 and entered in the register of non-notified aid under aid number NN 96/98. There was no response to this scheme by producers.
- (26) Given the urgency of the situation, the United Kingdom authorities were then forced to consider the possibility

of offering token compensation in order to secure the cooperation of the producers for the removal of the affected animals. This offer was made with the sole aim of removing the affected animals, and not with the aim of providing any hidden support for the pig sector. The United Kingdom authorities therefore consider that the compensation payments were analogous to the payment of GBP 15 for the slaughter and disposal of the animals, and should be considered for application of the derogation under Article 87(3)(c) of the Treaty in the same way.

- (27) As to the question of whether the compensation payments adversely affected trading conditions to an extent contrary to the common interest, the United Kingdom authorities point out that the level of compensation was fixed in such a way as to avoid the risk of overcompensation. Pig prices were monitored during the week preceding the introduction of the scheme. The level of compensation chosen of GBP 30 per pig was in fact GBP 9,54 less than the average market price in Northern Ireland during the previous week, GBP 16,25 less than the market price in Great Britain, and GBP 20,09 less than the price in the Republic of Ireland during the same period. The United Kingdom authorities consider that this is clear proof that the compensatory payments did not exceed the market price which would have been paid for the animals had the Ballymoney plant still been in operation. This, together with the destruction of the animals, so that they were not used for human consumption, minimised any direct distortion of the market in favour of the beneficiaries.
- (28) Whilst recognising that in theory the payment of compensation to producers might be argued to threaten to distort competition by reinforcing the competitive position of the producers concerned, and thereby affect trade between Member States, the United Kingdom authorities consider that such distortion was minimal and in any case did not affect trading conditions to an extent contrary to the common interest. They base this on a detailed comparison of the evolution of pig prices in Northern Ireland, Great Britain and the Republic of Ireland in the weeks following the implementation of the aid. They also cite the continued depressed state of the Northern Ireland pig market which means that there were some 300 fewer pig producers in December 1998 than in June 1998.
- (29) In addition, the United Kingdom authorities note that before the fire at the Ballymoney plant, the Northern Ireland pig market had been very substantially self-contained, with only a very limited number of shipments to Great Britain in May and June 1998 (1 214 animals in total) and none at all to the Republic of Ireland. Following the fire, this number increased substantially as producers sought to find new outlets. This increase in shipments out of Northern Ireland meant that the backlog of animals which had built up in July and August 1998 did not recur. However, this solution could not be found immediately, since it took

time to set up the arrangements necessary to ensure that shipments to Great Britain complied, *inter alia*, with the conditions set out in Commission Decision 93/24/EEC⁽³⁾ in relation to Aujeszky's disease and the certification requirements imposed by the Irish authorities in respect of porcine respiratory and reproductive syndrome.

- (30) The United Kingdom authorities conclude by noting that had the effect of the aid been to place Northern Ireland producers at a competitive advantage, pig producers elsewhere in the United Kingdom would have been disadvantaged most significantly. They consider that this was not the case, and that the aid would not have had a greater impact on producers in other Member States. The United Kingdom authorities therefore conclude that the aid has not affected trading conditions to an extent contrary to the common interest, and that the measure may therefore qualify for derogation under Article 87(3)(c) of the Treaty.

V. ASSESSEMENT

Article 87(1)

- (31) Article 21 of Council Regulation (EEC) 2759/75 of 29 October 1975 on the common organisation of the market in pigmea⁽⁴⁾ provides that Articles 87, 88 and 89 of the Treaty shall apply, save as otherwise provided in the Regulation, to the production of, and trade in the products referred to in Article 1 of the Regulation.
- (32) Article 87(1) of the Treaty provides that any aid granted by a Member State or through State resources 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.
- (33) In its decision to initiate the procedure, the Commission took the view that the measure in question clearly constitutes aid within the meaning of that provision. The payments in question were granted by the authorities of the United Kingdom in favour of certain pig producers in Northern Ireland. Those payments provided financial compensation for the destruction of animals which according to all the parties concerned were unsaleable under market conditions. A unilateral decision by a Member State to grant financial support to certain producers in a market which is highly integrated at Community level and is subject to a common market organisation, and where substantial intra-Community trade takes place, must be considered to threaten to

distort competition and thereby affect trade between Member States.

- (34) In their letter of 23 February 1999, the United Kingdom authorities have expressly recognised that the measure constitutes an aid within the meaning of Article 87(1) of the Treaty. There is therefore no need to examine this aspect.
- (35) The prohibition on State aid contained in Article 87(1) of the Treaty is not unconditional; Articles 87(2) and (3) contain a series of derogations. The derogations contained in points (a) and (c) of Article 87(2) are manifestly inapplicable as are the derogations contained in points (a), (b) and (d) of Article 87(3). Neither the United Kingdom, nor any of the parties submitting comments have suggested that any of these derogations could apply to the measure in question. In order to justify the aid, the United Kingdom has referred to Article 87(2)(b) of the Treaty, and has suggested that measure should be considered aid to make good the damage caused by an exceptional occurrence. Alternatively, the United Kingdom has suggested that the aid may be considered to facilitate the development of certain economic activities without adversely affecting trading conditions to an extent contrary to the common interest, and may therefore qualify for derogation under Article 87(3)(c). It is therefore necessary to examine each of these provisions.

Article 87(2)(b)

- (36) Article 87(2)(b) of the Treaty provides that aid to make good the damage caused by an exceptional occurrence is to be considered compatible with the common market.
- (37) In its decision to initiate the procedure, the Commission expressed serious doubts as to whether the conditions for the application of this provision were fulfilled in this case. In general the Commission considered that the possibility of the closure of processing capacity as a result of an accidental event should be considered a normal entrepreneurial risk rather than an exceptional occurrence. In this context, the Commission, noted that the fire, although extensive, was limited to a single facility. In no case had the Commission hitherto accepted that a fire at a single processing plant could be considered an exceptional occurrence. Furthermore, no aid was being paid to the owner of the facility itself, who in fact appeared to be covered by normal commercial fire insurance.
- (38) So far as the effects of the fire on the Northern Ireland pig producers were concerned, the Commission noted that the fire did not cause any material damage to their production facilities. The losses they incurred were as a result of an inability to find alternative market outlets to sell pigs which would otherwise have been sold for

⁽³⁾ OJ L 16, 25.1.1993, p. 18.

⁽⁴⁾ OJ L 282, 1.11.1975, p.1.

processing at the Ballymoney plant. Furthermore, the Commission was unsure to what extent the losses sustained by the producers were caused by the fire at the Ballymoney plant and to what extent they were the result of the generally depressed state of the pig market at the relevant time.

- (39) In their written observations, the United Kingdom authorities maintain, as a matter of principle, their point of view was that the fire should be considered an exceptional occurrence, but do not introduce any new arguments in this respect. The respondents also maintain that the fire should be considered as an exceptional occurrence, with the exception of the Ulster Farmers' Union, which maintains that the fire was a normal risk for the owners of the processing plant, but not for the producers who depended on that plant to accept their pigs and who were severely disadvantaged by an event entirely outside their control.
- (40) In the light of the information provided by the United Kingdom authorities and the respondents, which is discussed below, the Commission accepts that the fire at the Ballymoney plant would have caused substantial difficulties for pig producers in Northern Ireland, whatever the general state of the pig market at the time when the fire occurred.
- (41) Nevertheless, the Commission remains of the opinion that the fire at the Ballymoney facility cannot be considered to constitute an exceptional occurrence within the meaning of Article 87(2) of the Treaty.
- (42) In the first instance, it is necessary to point out that, being derogations from the general principle of incompatibility of State aid contained in Article 87(1), the provisions of Articles 87(2) and (3) are to be interpreted restrictively.
- (43) Secondly, the Commission notes that as regards material loss, the main victims of the fire, the owners of the Ballymoney facility, are not receiving aid. Furthermore, none of the respondents has contradicted the statement in the opening of the procedure that it appears that the owners were covered by normal commercial fire insurance. The Commission therefore concludes that as regards the owners of the facility, the fire must be considered to constitute a normal commercial risk, and cannot therefore be considered an exceptional occurrence.
- (44) The Commission cannot accept the argument that the fire should nevertheless be considered to constitute an exceptional occurrence because the Northern Ireland pig producers were suddenly deprived of the main outlet for their production due to circumstances entirely beyond their control. In economic terms the effects of the fire are the same as if the plant had closed for other reasons, for example because it was not profitable, or as a result of the insolvency of the owners. The Commission

considers that in normal commercial transactions there is always a degree of risk, albeit small, that one of the parties may cease trading for reasons which are beyond the control of the other parties. Such events do not constitute exceptional occurrences within the meaning of Article 87(2)(b) of the Treaty, although they may justify the payment of aid under other provisions of Article 87, provided that the conditions laid down therein are met.

Article 87(3)(c)

- (45) Article 87(3)(c) provides that aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the common market provided that such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (46) In its decision to initiate the procedure under Article 88(2) of the Treaty, the Commission accepted that the payment of GBP 15 to cover the slaughter and disposal costs of surplus pigs qualified for the derogation under Article 87(3)(c) of the Treaty. However, it expressed doubts whether the same considerations could apply to the payment of compensation of GBP 30 per pig slaughtered on the grounds that this appeared to constitute an operating aid. The United Kingdom and all the other respondents contest this assessment.
- (47) Before the fire on 26 June 1998, the total number of pigs slaughtered in Northern Ireland was about 41 500 per week, of which about 16 500 were slaughtered and processed at the Ballymoney plant. The fire resulted in the total loss of this capacity.
- (48) In their observations, the United Kingdom authorities have shown that the available alternative outlets for this production were extremely limited. Even if the remaining slaughtering and processing facilities in Northern Ireland had been able to increase their slaughter capacity, for example by working longer hours, their overall slaughter and processing capacity was limited by the absence of the necessary processing facilities, in particular cold storage facilities.
- (49) As regards the possibility of arranging for the pigs concerned to be transported for slaughtering and processing outside Northern Ireland, the only two export markets of economic significance for live pigs for Northern Ireland are the Republic of Ireland and Great Britain. However the option of shipping pigs from Northern Ireland to Great Britain is limited, *inter alia*, by the conditions set out in Decision 93/24/EEC in relation to Aujeszky's disease, while the possibility of moving animals from Northern Ireland to the Irish Republic is limited by the conditions imposed by the Irish

authorities certification requirements for porcine respiratory and reproductive syndrome. The figures provided by the United Kingdom authorities show that in the period immediately before the fire the Northern Ireland pig market was almost entirely self-contained. No pigs at all were transported to the Irish Republic in May and June of 1998 and just 1 214 pigs (less than 0,5 % of total production) were shipped to Great Britain. After the fire, strenuous attempts were made by the sector to find alternative outlets, but it was not until October 1998 that the volume of animals transported from Northern Ireland exceeded the volume being processed at Ballymoney immediately before the fire.

- (50) In the meantime a substantial backlog of animals was building up on farms in Northern Ireland. This backlog was accelerating rapidly because of the relatively short production cycle for pigs (in practice about five months), leading to overcrowding. Furthermore, it is necessary to note that a large number of animals were becoming practically unsaleable because once pigs reach a certain weight (about 110 kg) they become too heavy to be handled by the equipment in pig slaughter houses. The aid scheme implemented by the United Kingdom was solely intended to provide for the removal from farms and humane slaughter of these overweight pigs.
- (51) It is clear that as a result of the overall situation, severe animal welfare problems were developing on farms. This is documented by the reports of on-the-spot inspections carried out by official veterinarians, by representations made by independent veterinarians to the competent authorities at the time and in the comments of the North of Ireland Veterinary Association submitted to the Commission in the context of this procedure. Indeed such was the level of concern that on 6 August 1998 the Department of Agriculture for Northern Ireland issued a press release to remind pig farmers of their welfare obligations.
- (52) Against this background, the United Kingdom authorities first considered the possibility of invoking their legal powers to remove the affected animals from farms. However, they concluded that this was impracticable for operational and logistic reasons, and would not in any case resolve the problem (see recital 23). The Commission accepts these explanations.
- (53) The United Kingdom authorities then introduced a limited aid scheme under which aid would be paid solely to cover the cost of slaughter and disposal of the

animals concerned. However not a single producer participated in this scheme (recital 24).

- (54) In its decision to initiate the procedure under Article 88(2), the Commission noted that at present the Commission does not have a well-defined policy on the payment of State aid to alleviate animal welfare problems. Nevertheless it noted that Community legislation has been concerned with this question, laying down certain minimum welfare standards. Furthermore, the Commission noted that the United Kingdom authorities had taken measures to minimise the effects of the scheme, in particular by ensuring that the slaughtered animals were destroyed and not used for human consumption. The Commission therefore considered that the removal from farms in Northern Ireland of excess numbers of overweight pigs which have no normal market outlet, and their slaughter under humane conditions, was a measure which could be considered to facilitate the development of certain economic activities. In the light of the explanations provided by the United Kingdom authorities, the Commission now accepts that the decision to pay token compensation to producers was taken only after exhaustive consideration of the alternatives, and was necessary in order to secure cooperation from the producers.
- (55) The Commission therefore concludes that the measure can be regarded as analogous to the decision to pay GBP 15 to cover the slaughter and disposal costs of the animals concerned.
- (56) Since the measure can in principle be accepted as aid to facilitate the development of certain economic activities, it is necessary to consider whether the aid has in fact affected trading conditions to an extent contrary to the common market.
- (57) As the United Kingdom authorities point out in their observations, the aid of GBP 30 per pig was in fact substantially below the average Northern Ireland pig price during the week preceding the week in which the scheme applied. The table below summarises average pig prices in Great Britain, Northern Ireland and the Republic of Ireland, expressed in pounds sterling, in the week before the Ballymoney fire, the week immediately before the scheme was introduced, and the four weeks after the scheme, when the effects of the withdrawal of the slaughtered pigs would be at their greatest.

	Producer prices per pig in GBP, week ending					
	14.6.1998	30.8.1998	6.9.1998	13.9.1998	20.9.1998	27.9.1998
Great Britain	64,33	46,25	44,86	43,03	43,41	42,92
Northern Ireland	59,55	39,54	37,45	35,90	35,15	34,17
Republic of Ireland	57,51	50,09	50,00	50,39	51,26	50,70

- (58) These figures show that while prices in all three markets had fallen between the date of the Ballymoney fire and the introduction of the scheme, as a result of the generally depressed state of the sector, the fall in prices in Northern Ireland had been somewhat greater. Moreover, even after the introduction of the scheme, prices continued to fall in Northern Ireland at a faster rate than in Great Britain, while prices in the Republic of Ireland remained broadly stable. Furthermore, throughout the relevant period, the amount of aid remained substantially below the market price for pigs in Northern Ireland.
- (59) In addition, the amount of aid paid, which represented the only return for the producers, was substantially below the cost of production of the animals concerned. Since they had to carry a large proportion of the loss, it appears extremely unlikely that the aid might have strengthened the competitive position of the beneficiaries at the expense of other producers to an extent beyond that which was strictly necessary to attain the objectives of the scheme.
- (60) For the reasons given above, the Commission considers that the aid of GBP 30 paid to certain pig producers in Northern Ireland in order to secure their cooperation in the humane removal from farms and destruction of overweight surplus pigs which had no normal market outlet can be considered to facilitate the development of the Northern Ireland pig sector without adversely affecting trading conditions to an extent contrary to the common interest.
- (61) Furthermore, given that the aid was granted for animal welfare reasons only in respect of overweight pigs, which were otherwise unsaleable, in order to reduce overcrowding on farms, and given that the United Kingdom authorities ensured that the meat obtained from such animals was destroyed and not used for human consumption and, lastly, given the limited amount of compensation paid, the Commission also considers that it can rule out the possibility that the aid measure interfered with the mechanisms of the common

organisation of the market in pigmeat in a manner contrary to Regulation (EEC) 2759/75.

VI. CONCLUSIONS

- (62) The Commission finds that the United Kingdom has unlawfully implemented the pig welfare slaughter compensation scheme contrary to Article 88(3) of the Treaty. However, for the reasons given above, the Commission considers that the aid scheme meets the conditions for the application of the derogation provided for by Article 87(3)(c) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The State aid of GBP 30 per pig slaughtered under the pig welfare slaughter compensation scheme implemented in the United Kingdom (Northern Ireland) in September 1998 is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty.

Article 2

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 9 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission