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II

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COMMISSION

COMMISSION DECISION

of 17 March 1999

on State aid given by Greece to Heracles General Cement Company

(notified under document number C(1999) 716)

(Only the Greek text is authentic)

(Text with EEA relevance)

(2000/199/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

II

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

Background to the dispute

Having given notice to the Parties concerned to submit their comments in accordance with the same provisions⁽¹⁾ and having regard to those comments,

Whereas:

I

The Heracles Decision and its annulment

- (1) On 6 July 1995, the Court of First Instance of the European Communities annulled⁽²⁾ a Commission Decision, notified to the Greek authorities by letter of 1 August 1991⁽³⁾, to authorise aid granted by the Greek Government to Heracles General Cement Company (hereinafter 'Heracles'), a Greek cement manufacturer.

- (2) In 1983, the Greek authorities adopted a number of structural measures designed to remedy serious disturbances in the country's economy, including Law 1386/83 for the organisation for the financial reconstitution of undertakings (hereinafter 'Law 1386/83'), adopted on 5 August 1983. That law created an organisation known as the Business Reconstruction Organisation (*Organismos oikonomikis Anasygrotiseos Epicheiriseon* or OAE — the 'BRO'). The purpose of the BRO was to 'contribute to the social and economic development of the country through the financial rejuvenation of undertakings, the import and application of foreign technology, the development of Greek-based technology and the establishment and operation of socialised or mixed economy undertakings'. The BRO was empowered in particular to administer and manage undertakings, participate in the capital of undertakings and grant loans. Law 1386/83 also authorised the capitalisation of the debts of the undertakings concerned by the issue of new shares.

- (3) By Ministerial Decree of 7 August 1986, the Greek Government applied Law 1386/83 to Heracles, the balance sheet of which had shown a substantial deficit since 1983, by bringing it under public control and converting into capital its debts to Greek public institutions amounting to GRD 27 755 million (approximately EUR 84 million).

⁽¹⁾ OJ C 84, 21.3.1996, p. 3.

⁽²⁾ Joined Cases T-447/93, T-448/93 and T-449/93, *AITEC and Others v. Commission* [1995] ECR II-1971.

⁽³⁾ OJ C 1, 4.1.1992, p. 4.

- (4) Law 1386/83 was not notified to the Commission by the Greek authorities prior to its adoption. Nor does the Commission appear to have received advance notification from the Greek Government that Law 1386/83 was going to be applied to Heracles in August 1986. However, following the granting of the aid, the matter was brought to the Commission's attention by competitors of Heracles. The Commission therefore requested the Greek Government, by telex of 18 September 1986, to provide clarification on the point within seven days and to notify it of any application of Law 1386/83 in that instance. In response to that request, the Greek Government provided detailed information by letter of 10 October 1986, pointing out in particular that, in its view, the conversion of Heracles' debts into shares did not constitute aid within the meaning of Article 92 of the Treaty.
- (5) On 29 October 1986, the Commission initiated administrative proceedings in respect of Law 1386/83; these culminated in the adoption on 7 October 1987 of Commission Decision 88/167/EEC⁽⁴⁾, which authorised 'the implementation of the law' under Article 92(3)(b) of the Treaty, on the ground that it was intended to remedy a serious disturbance in the economy of a Member State.
- (6) The implementation of Law 1386/83 was made subject, however, to a number of conditions, including the requirement that the Greek Government notify individual cases exceeding certain thresholds.
- (7) In the recitals to the Decision, the Commission found that Law 1386/83 and the operations of the BRO fulfilled the conditions for the application of the second part of Article 92(3)(b), particularly in view of Protocol 7 to the Act of Accession of Greece, on the economic and industrial development of Greece. Protocol 7 provides that 'in the application of Articles 82 and 93 of the EEC Treaty, it will be necessary to take into account the objectives of economic expansion and the raising of the standard of living of the population'.
- (8) The Greek Government was informed of Decision 88/167/EEC by letter from the Commission dated 17 November 1987. Thereafter, by letter dated 3 December 1987, the Greek authorities provided detailed additional information concerning Heracles, while repeating their view that the intervention in question did not constitute State aid.
- (9) On 8 December 1987, Titan Cement Company ('Titan'), a Greek competitor of Heracles, lodged a complaint with the Commission opposing the granting of the aid to Heracles.
- (10) By letter dated 15 February 1988, the Commission informed the Greek Government that it had decided to initiate administrative proceedings under Article 93(2) of the Treaty against the aid granted to Heracles. Noting that there had been an increase in Greek cement exports, particularly those of Heracles, to other Member States, the Commission found that the aid could distort competition and affect trade between Member States within the meaning of Article 92(1) of the Treaty, since Heracles had been making losses since 1983 whilst engaging in intra-Community trade. It pointed out that the only derogation applicable to the aid was that provided for by Article 92(3)(b) of the Treaty but that the application of that provision was subject to certain conditions which were not, in its view, met in the case of Heracles.
- (11) On 9 March 1988, Titan sent to the Commission further comments on the aid granted to Heracles.
- (12) Following its decision to open proceedings under Article 93(2) of the Treaty, the Commission published a notice⁽⁵⁾ inviting parties concerned other than the Member States to submit their comments on the aid to Heracles within one month.
- (13) In response to that notice, several of Heracles' competitors claimed that serious disturbance had been caused to the Community cement market as a result of the intervention by the Greek authorities, which had very greatly strengthened Heracles' competitive position. Thereafter, several meetings and exchanges of correspondence took place between, on the one hand, the Commission and the applicants and, on the other, the Commission and the Greek Government.
- (14) The procedure was terminated by the Commission with the adoption of a Decision to approve the aid⁽⁶⁾. In that Decision the Commission concluded that the aid awarded to Heracles in 1986, by transforming parts of its debt into capital, could be considered to be in conformity with Decision 88/167/EEC.
- (15) In parallel with the procedure relating to Heracles, the Commission on 3 April 1989 initiated proceedings pursuant to Article 93(2) of the Treaty against aid granted on the basis of Law 1386/83 to Halkis, the third largest Greek cement producer. Those proceedings led to Commission Decision 91/144/EEC⁽⁷⁾ ('the Halkis Decision'), in which the Commission found that the aid to Halkis had been granted in breach of the rules set out in Article 93(3) of the Treaty and was incompatible

⁽⁴⁾ OJ L 76, 22.3.1988, p. 18.

⁽⁵⁾ OJ C 124, 11.5.1988, p. 4.

⁽⁶⁾ See footnote 3.

⁽⁷⁾ OJ L 73, 20.3.1991, p. 27.

with the common market, since it did not qualify for exemption under Article 92(2) and (3) of the Treaty, having regard in particular to the increase in Halkis' exports to Italy. The Commission concluded that the aid was contrary to 'the common interest'.

IV

III

The Parties challenging the aid before the Court

(16) By application lodged at the Court of Justice of the European Communities on 27 March 1992, the Associazione Italiana Tecnico Economica del Cemento ('AITEC'), an Italian cement producers' association, brought an action for the annulment of the Commission Decision approving the aid granted to Heracles, which had been notified on 1 August 1991 ⁽⁸⁾.

(17) Similarly, by applications lodged at the Court of Justice on 30 March 1992, Titan and the British Cement Association ('BCA'), together with three of the BCA's member companies, Blue Circle Industries plc, Castle Cement Ltd and Rugby Group plc, which are the principal cement manufacturers in the United Kingdom, brought actions for the annulment of the same Decision ('the contested decision').

(18) The three cases before the Court of Justice, which were numbered C-97/92, C-105/92 and C-106/92, were joined for purposes of the proceedings.

(19) By orders of the President of the Court of Justice of 12 October 1992 and 24 March 1993 respectively, the Hellenic Republic and, subsequently, Heracles were given leave to intervene in support of the form of order sought by the defendant in the three cases, pursuant to applications lodged by them at the Registry of the Court of Justice on 14 August and 10 August 1992 respectively. They lodged their statements in intervention, which were common to the three Joined Cases, on 7 December 1992 and 3 July 1993 respectively.

(20) On 27 September 1993, the Court of Justice referred the proceedings to the Court of First Instance.

The main findings of the Court of First Instance

(21) As to the substance of the case, the Court of First Instance ('the Court') found that all of the applicants maintained, in essence, that, when assessing the compatibility of the aid at issue with the Treaty, the Commission could not simply examine whether it fulfilled the conditions laid down by Decision 88/167/EEC, which declared that the aid scheme established by Law 1386/83, on the basis of which the contested aid was granted, was compatible with the Treaty. According to the applicants, the Commission should have carried out a specific examination of the compatibility of the aid at issue with the common market. It was appropriate, therefore, for the Court to determine first of all the scope of Decision 88/167/EEC and then to verify whether or not the contested decision disregarded Decision 88/167/EEC and Article 92 of the Treaty.

(22) As regards the scope of Decision 88/167/EEC, the Court of First Instance found that the Commission had approved the implementation of Law 1386/83 on the ground that it fulfilled the conditions of the second part of Article 92(3)(b) of the Treaty, read in conjunction with Protocol 7, since it was intended to remedy a serious disturbance in the Greek economy. However, the Commission authorised the implementation of the law subject to the condition that the Greek Government shall notify the individual cases of intervention in firms made subject to the law employing 300 or more persons in the case of non-sensitive branches and 100 or more persons in the case of sensitive branches.

(23) In the Court's view it followed that the Commission considered that interventions by the BRO on a certain scale should be subjected to a specific examination, first, of whether the aid fulfilled the 'conditions' imposed by Decision 88/167/EEC and, second, of whether or not it resulted in the undertakings concerned 'being left in a stronger competitive position vis-à-vis industries in other Member States than would otherwise occur had those difficulties not arisen in the first place'. The Court concluded that the need for such an examination was in line with Article 92 of the Treaty, whose purpose was to prevent aid granted by Member States from distorting competition or affecting intra-Community trade.

(24) As to the contested decision, the Court of First Instance noted that the Commission pointed out therein that the obligation to notify individual significant cases had been imposed 'so that these could be considered from the point of view of their impact on intra-Community trade

⁽⁸⁾ See footnote 3.

and competition'. However, in the contested decision, the Commission merely considered the consequences of the aid in Greece, and concluded that the aid fulfilled the conditions of Decision 88/167/EEC, particularly as regards the absence of any increase in production capacity and the viability of the undertaking. Whilst it was indeed necessary for those factors to be taken into consideration for the purposes of examining the compatibility of the aid with the common market, they were not enough for any conclusion to be reached in that regard, since Decision 88/167/EEC also required the Commission to examine the extent to which competition might be distorted or intra-Community trade might be affected. The Commission had undertaken no such examination in any way.

- (25) The Commission had therefore disregarded the scope of its obligation under Decision 88/167/EEC and Article 92 of the Treaty to examine whether the aid in question distorted competition and affected intra-Community trade.

V

The enlargement of the Article 93(2) proceedings

- (26) In its judgment the Court of First Instance annulled the Commission's decision to close the Article 93(2) proceedings initiated in 1988; this means that those proceedings are still open, and a new final decision is called for.
- (27) In order to comply with the judgment, therefore, the Commission decided on 14 November 1995 to enlarge the Article 93(2) proceedings. The Commission observed that it had originally initiated proceedings only on the ground that the aid to Heracles might be incompatible with Decision 88/167/EEC; the proceedings needed to be broadened, so that the Commission could carry out a full investigation of the compatibility of the aid with Article 92, as the Court had required, without infringing the rights of defence of the Greek Government. The recapitalisation of Heracles constituted aid caught by Article 92(1) of the EC Treaty. There was at least serious doubt whether the aid could be considered compatible with the common market. The Commission also raised the question whether or not the aid was restricted to the minimum necessary to enable Heracles to regain its profitability. The Commission had now compared Heracles with its slightly smaller but profitable competitor Titan, and

concluded that Heracles appeared to have been overcapitalised by some GRD 5 000 million (approximately EUR 15,5 million).

- (28) The Commission informed the Greek authorities of its decision to enlarge the Article 93(2) proceedings by letter dated 29 November 1995. The Greek authorities replied by letter dated 13 February 1996; a summary of their arguments is given below.
- (29) The Commission announced its decision to enlarge the proceedings in a notice published in the *Official Journal of the European Communities*⁽⁹⁾. The notice invited other Member States and other Parties concerned to submit comments. In response to that notice information was submitted by three national cement associations, by one of Heracles' competitors, and by some other interested parties. Those comments are summarised in Section VI.
- (30) The observations received from interested parties were submitted to the Greek Government for its comments by letter dated 17 June 1996. In letters dated 23 July and 12 September 1996 the Greek authorities requested extensions of the deadline within which they were to comment, and ultimately submitted their comments by letter dated 8 November 1996. Heracles submitted additional information by letters dated 12 December and 23 December 1996. Further to those answers, the Commission, by letter dated 16 January 1997, asked the Greek Government to provide additional information. That information was submitted on 6 February 1997.
- (31) A series of meetings between the Commission departments and interested parties took place in summer and autumn 1997: Commission staff met the Agrupación de Fabricantes de Cemento de España ('Oficemen') on 29 July; AITEC on 30 July; the old shareholders in Heracles on 31 July; Lafarge Coppée SA ('Lafarge') on 31 July; representatives of the British cement industry on 1 August; and Titan on 17 September. A joint meeting with Heracles and the Greek Government took place on 19 September.
- (32) On 12 August 1997, the Commission asked the Greek authorities for further information. The Greek authorities replied by letter of 17 November. Heracles' competitor Titan submitted further information to the Commission by letter of 2 December. Heracles addressed a memorandum to the Commission by letter of 23 January 1998. The Greek authorities sent additional information by letter of 10 February. In addition to its memorandum of 23 January, Heracles submitted further information in a letter of 6 April.

⁽⁹⁾ See footnote 1.

- (33) A meeting with the Greek authorities took place on 5 October 1998. Additional information was sent by Heracles on 24 November and 29 December. Another meeting with Heracles' representatives took place, at their request, on 12 January 1999. The Greek authorities sent final submissions to the Commission on 8 February 1999, summarising the discussion to date and the information already supplied.

VI

***Observations received in the course of the
Article 93(2) proceedings***

**VI.1. Observations submitted by the Greek
Government and Heracles**

- (34) Following the Commission's initial decision to open proceedings, in 1988, the Greek Government submitted its first observations by letter dated 27 April 1988. A bilateral meeting with representatives of the Greek Government and of Heracles took place on 29 June. Further to this meeting, the Commission requested additional information by letter dated 18 July, the reply to which was received on 26 October. An additional meeting took place on 30 May 1989, further to which the Greek Government submitted supplementary information by letter dated 18 July 1989. Another meeting was held on 13 December 1989, followed by a letter from the Greek Government dated 6 March 1990. Further meetings took place on 19 October 1990, 16 November 1990 and on 11 January 1991. The Greek Government submitted written information on 3 March 1991.
- (35) In 1988, the Greek Government rejected the point of view taken by the Commission in its entirety: it contended that the BRO's intervention had been limited to the absolute minimum necessary for the company to survive; it defended the necessity of maintaining fixed low domestic cement prices; it denied that Heracles' productive capacities had been or would be increased; it claimed that the additional regional aid had been awarded in 1985 but not yet paid, and that without this aid the conversion of debt into capital would have been GRD 3 billion higher; and it submitted information on Heracles' investments in order to show that a real restructuring had taken place.
- (36) In 1989, the Greek Government announced that some of the Commission's objections would be met. The fixed domestic cement price had been abolished, and Heracles' investment programme for 1987 to 1990 would be boosted, thus accelerating its restructuring. Finally, the Greek Government had decided not to award the additional regional investment aid.
- (37) In 1990 and 1991, the discussion focused on the remaining problem, namely the amount of aid, and on the Greek Government's newly announced intention to privatise Heracles.
- (38) Throughout the proceedings, both before the judgment of the Court of First Instance and during the formal investigation initiated by the Commission in 1988 and subsequently enlarged in 1995, the Greek Government has maintained that the conversion in 1986 of a part of Heracles' debts into shares held by the BRO, that is to say by the Government, did not constitute State aid within the meaning of Article 92(1). The Greek authorities have criticised the Commission for failing to ascertain, when it approved that intervention by the Greek State in August 1991, whether the intervention could in fact be considered State aid under Article 92(1), rather than simply taking the view that anything done under Law 1386/83, which was the legal basis of the measure in question and which the Commission had approved under Article 92(3)(b) in October 1987, would necessarily constitute State aid.
- (39) More specifically, the Greek Government contends that the private investor test is satisfied, as the GRD 20 775 million invested by the Greek Government in Heracles gave a return of GRD 120 790 million six years later when the company was privatised in 1992. The Greek Government further contends that the aid is not caught by Article 92(1), owing to the lack of trade between Member States. It points out that the comparison between Heracles and Titan also shows that the aid had no adverse effect on the position of Heracles' main competitor, and that the aid was the minimum required for Heracles to remain viable, since Titan's sales did not drop either at home or abroad, nor was there any adverse effect on its turnover. Titan's pre-tax profits increased after the debt-to-share conversion, outstripping Heracles' profits.
- (40) Heracles itself stresses that it fully supports the observations put forward by the Greek Government. Heracles contends that the capitalisation of its debts does not constitute aid, but that even if it did it ought to be approved in its entirety. Heracles argues that the Commission approved the aid to the company in 1991 on the basis of specific information and considerations that still apply today. If the Commission were now to come to a different conclusion on the basis of the same facts, it would violate the principle of legal certainty and the principle of sound administration. Moreover, given the time that has elapsed, the Commission has failed to

take a decision within a reasonable time, and is clearly rendered responsible. Heracles also maintains that it cannot be possible, in view of the principle of sound administration which Community institutions must observe in the exercise of their authority, for their proven errors to have an adverse effect on a private individual acting in good faith and to damage or undermine his interests.

VI.2. Observations submitted by interested parties

(a) Reactions to the Commission notice published on 11 May 1988 ⁽¹⁰⁾

- (41) Following its initial decision to initiate proceedings in 1988 in respect of aid to Heracles, the Commission received observations from the Governments of three other Member States, seven national associations, four competitors of Heracles, and the old shareholders in Heracles, all of them in support of the Commission's own position.
- (42) The *Belgian, Dutch, French and German* associations of cement manufacturers emphasised that their members had undergone heavy restructuring programmes, which included cuts in production capacity and substantial investment, without receiving any special aid. The Belgian association added that its members were facing serious disruption of the market which was partly the result of cheap imports of Greek cement. The Dutch association feared that the overcapacity created and maintained in Greece by means of State aid would force the Greek cement industry, and notably Heracles, to sell large volumes of cement in other countries, even at very low prices. The German association added that Greek cement, and Heracles cement in particular, was being offered in several western European countries, including Germany, at prices below comparable production cost.
- (43) The *Luxembourg* association of construction materials manufacturers and traders pointed out that cement produced by Heracles had found its way to Luxembourg via the Netherlands at prices one third lower than those charged by the cement industry in Luxembourg.
- (44) The *Italian* association of cement manufacturers protested against the increasing imports of cheap Greek cement in Italy, more than half of which came from Heracles. Both the Italian association and an Irish producer stressed that the Greek cement industry had had the benefit of various general aid schemes, notably export aid. Any further operating aid, such as a

conversion of debt into capital, would be incapable of satisfying the tests of Article 92(3).

- (45) The *British* Government objected in particular to rescue aid not linked to a sound restructuring plan.
 - (46) Two *Greek* competitors of Heracles stressed that the best way to help the Greek cement industry as a whole would be the abolition of price control for cement in Greece.
 - (47) The Governments of *Denmark* and *Germany*, an association in the *United Kingdom* and a manufacturer in *Denmark* protested against the aid in more general terms.
 - (48) The Commission submitted these observations to the Greek Government by letter dated 18 September 1989; the Government commented by letter dated 6 March 1990.
 - (49) The old owners of Heracles submitted confidential information in November 1990. This information could not be submitted to the Greek Government, and must therefore be disregarded.
- ### (b) Reactions to the Commission notice published on 21 March 1996 ⁽¹¹⁾
- (50) The reactions of interested parties to the Commission's notice announcing the enlargement of the proceedings against the aid granted to Heracles are summarised below. They include submissions from a competitor of Heracles, from three national cement associations and from the old shareholders in Heracles. Following the enlargement of the proceedings lawyers representing a French cement manufacturer several times submitted observations on the aid.
 - (51) In general these interested parties argue that the aid unlawfully granted to Heracles is incompatible with the common market and should be recovered with accrued interest. They submit that the aid to Heracles cannot be authorised under Article 92(3)(b), because it does not remedy a serious disturbance in the Greek economy. They contend that the Commission has not shown how the aid might have remedied such a disturbance, nor what the effect on the economy might have been if the aid had not been granted.

⁽¹⁰⁾ See footnote 5.

⁽¹¹⁾ See footnote 1.

Titan

- (52) Titan argues that the aid accorded to Heracles, its principal business rival in the common market, has caused it serious injury. Titan is of the view that the Commission should have calculated the minimum level of debt capitalisation which would have ensured Heracles' survival by estimating the level of aid that was sufficient to reduce the financial costs of Heracles' indebtedness to a level where they could have been met out of cash flow.
- (53) Titan regards the approach taken by the Commission, which compared Heracles' financial position with that of Titan, as flawed in several respects. First, it did not take account of the viability test: Heracles would have been perfectly viable even if its financial position remained weaker than that of Titan, the industry leader. That Heracles should have had to carry higher financial costs was perfectly natural, since it had invested much more heavily and recently than Titan. Second, Titan questions the validity of the data used by the Commission in making such comparisons, particularly in respect of the year 1987.

The British cement industry

- (54) The British cement industry⁽¹²⁾ states that the aid enabled Heracles to export to the United Kingdom in volumes that would not have been possible otherwise: the volume of cement exported by Heracles to the United Kingdom increased from 12 500 tonnes in 1986 to 388 000 tonnes in 1988, and was over 400 000 tonnes a year in the period 1989 to 1995. The aid permitted Heracles to produce cement at low unit cost, without the burden of the financing costs associated with the setting-up of the plant, which had been built and modernised using the aid. The effect on Heracles' profitability enabled it to sustain a substantial flow of unprofitable exports to the United Kingdom.
- (55) The British cement industry submits that had no aid been given, Heracles would not have ceased to trade altogether, but would merely have been forced to take appropriated restructuring measures more promptly; these would very likely have included a further rationalisation of its production capacity to match demand. In its notice, the Commission does not indicate how such a restructuring would necessarily have led to any serious disturbance in the Greek economy.

- (56) The State-imposed price controls that operated on the domestic market prevented manufacturers from obtaining a commercial rate of return on cement sold at home, and contributed to the difficulties of the Greek cement industry in general. Had the Greek Government acted to remedy that situation in 1986, for example, rather than in 1989, it would certainly have relieved the problems of the Greek cement industry without requiring the award of State aid. And if Heracles had been liquidated sooner, rather than being allowed by the Greek Government to benefit as a result of unlawful aid, the industry would have been rationalised more rapidly.
- (57) The British cement industry calls for the Commission to assess whether the aid granted to Heracles was necessary in order to remedy a serious disturbance in the Greek economy on the assumption that: (i) the Greek Government had not granted unlawful State aid to Halkis, permitting Halkis to be liquidated and thereby making possible the restructuring of the Greek cement industry, and (ii) the Greek Government had moved earlier to lift the domestic price controls.
- (58) The British cement industry submits, however, that this comparison, based on 1987 figures, is unduly favourable to Heracles, and that a correct analysis shows that the excess capitalisation was even greater. The Parties also criticise the Commission on the ground that it contended itself with considering what capital injection was needed to maintain Heracles' business substantially in its existing form, and simply assumed that this was necessary in order to prevent a disruption of the Greek economy.

AITEC

- (59) In its comments, AITEC refers to the distortions of competition caused by increasing levels of exports by Heracles to Italy from 1988 onwards: the volume of cement exported by Heracles to Italy grew from 34 000 tonnes in 1987 to 885 000 tonnes in 1991, an increase from 1% to 32%. AITEC claims that Heracles has attained its market penetration in Italy by charging abnormally low prices and pursuing an aggressive pricing policy. It quotes figures which indicate that prices for Greek cement are on average 22,5% lower than those in Italy, and up to 30% lower than prices on the Greek market.
- (60) AITEC argues that the aid granted to Heracles gave it an advantageous position vis-à-vis its competitors in Italy and enabled it to secure a substantial share of the Italian market. The fact that there was no restructuring linked to the conversion of the debts of Heracles in 1986 meant that the company's production capacity, as it stood in 1985, remained unaltered. But its annual

⁽¹²⁾ The observations summarised here are those submitted by the BCA and by three of its members, Blue Circle Industries plc, Castle Cement Ltd and Rugby Group plc. These Parties are referred to collectively as 'the British cement industry'.

output increased, despite the fact that the number of its employees diminished considerably over the period from 1988 to 1994, from 3 600 to 3 000. It should also be noted that during that same period, 1988 to 1994, the ratio of investment to the company's turnover increased from 2% to about 4%. This AITEC considers to have been made possible by the aid that Heracles received. Heracles' exports to Italy have led, the association claims, to the loss of a total of 350 to 400 jobs in Italy.

Oficemen

- (61) Oficemen notes in its letter that it is characteristic of the Greek cement industry that most of its output is exported. Out of the total volume of Greek cement exported in the years 1989 to 1995, the share of exports to Spain increased from 1% to 12%, or in absolute terms from 62 000 tonnes to 929 000. The volume of exports by Heracles to Spain increased from 29 000 tonnes in 1989 to 370 000 tonnes in 1994; the latter figure amounts to approximately 50% of Greek exports to Spain in that year. Oficemen maintains that so great an increase in Heracles' share of exports within five years was due to the aid it received from the Greek State, which allowed it to sell below production costs. Spanish cement manufacturers found themselves in a disadvantageous position vis-à-vis Heracles.

Old shareholders in Heracles

- (62) The old shareholders in Heracles regard themselves as interested parties because the enforced increase in the company's had the effect of diluting the control of the original shareholders. They also observe that it is not surprising that Heracles became overcapitalised, since the capital increase was a disguised manoeuvre aimed at taking control of the company, and was not motivated by purely financial considerations. The old shareholders argue that the aid was granted by an unlawful mechanism: it was not notified in advance, and it infringed Council Directive 77/91/EEC⁽¹³⁾, as last amended by the Act of accession of Austria, Finland and Sweden ('the Second Company Law Directive'). An aid measure cannot be found compatible under Article 92(3) when the mechanism by which the aid is granted itself infringes a provision of Community law other than those laid down in Articles 92, 93 and 94 of the Treaty, in this case the Second Company Law Directive. Even if it were to be found compatible, the aid should not be authorised, since it was granted by unlawful means. In accordance with the case-law of the Court of Justice, the old shareholders should recover their original position of control.

Lafarge

- (63) Lafarge, a French cement manufacturer, criticises the Commission decision to enlarge the proceedings for failing to take account of the fact that the aid might enable Heracles to take over a loss-making cement producer, Halkis, and subsequently to increase its capacity even further. Heracles is controlled by Concretum SA, through Cal-Nat SA, and Lafarge here refers indirectly to the fact that Heracles has purchased from its parent Concretum at least 50% of Concretum's holding in Halkis. Concretum is the controlling shareholder in Halkis, and owns 70% of Halkis' shares. Lafarge contends that even if this does not formally constitute a takeover of Halkis by Heracles, the result in economic terms is the same, namely a reinforcement of the production capacity of two manufacturers who have taken advantage of state aid. Lafarge argues that the proceedings have not been broadened sufficiently, and do not cover the question of the economic unification of Heracles and Halkis.

VII

Application of Article 92 of the EC Treaty

VII.1. Application of Article 92(1) of the Treaty

- (64) For the reasons set out below, the Commission considers that the aid granted to Heracles in 1986 is caught by Article 92(1) of the Treaty, and more specifically that it was granted through State resources to a specific undertaking and threatened to distort competition and to affect trade between Member States.
- (65) Decision 88/167/EEC concerning Law 1386/83 determined that the interventions of the BRO constituted State aid. Heracles had been loss-making since 1983, and by the end of 1985 had accumulated losses of GRD 7 249 million, which was equal to approximately three times its share capital at the time; by Ministerial Decree of 7 August 1986 it was made subject to Law 1386/83, and its debts were converted into capital. Heracles owed GRD 27 755 million to public institutions, and capitalising this gave it a share capital 10 times greater than before, 93% of it owned by the Government.
- (66) As the Commission observed when it decided on 15 November 1995 to enlarge the Article 93(2) proceedings, the aid granted to Heracles distorts competition and affects trade between Member States within the meaning of Article 92(1).

⁽¹³⁾ OJ L 26, 30.1.1977, p. 1.

VII.2. Distortion of competition and effect on trade between Member States

(a) The European cement market ⁽¹⁴⁾

Dyckerhoff, Heidelberg, Germany; Holderbank, Switzerland; Italcementi, Italy; Lafarge, France and Scancem AB, Sweden.

(67) Cement is a tradable goods, although its low price-to-weight ratio makes it competitive only at short distances from its production site when transported overland. Consequently, practically all international trade in cement is either cross-border over a small radius, or seaborne in large vessels at much larger distances.

(68) The rate of activity in the cement industry is related to the rate of activity in the construction industry, which is directly dependent on the economic situation. Cement is an important basic material in construction and civil engineering, which account for substantial public and private investment.

(69) Cement production consists of two essential phases:

- the manufacture of a semi-finished product, known as 'clinker', which is obtained from the calcination in a high-temperature kiln of raw materials — clay, limestone, etc. — previously prepared in paste or powder form depending on the production process used (wet or dry),
- the manufacture of cement as a finished product, obtained by the homogeneous mixture of ground clinker and calcium sulphate with or without one or more additional components — slag, fly ash, pozzolana, filler, etc. — depending on the type of cement.

(70) Cement production requires large quantities of energy. Significant advances have been made in recent decades in reducing the energy required to produce a tonne of cement.

(71) There are no generally accepted criteria for ranking cement companies or groups, as both turnover and capacity can be defined in different ways. Published turnover in consolidated accounts may include non-cement activities, and the existence of trading affiliates can lead to different quantities of cement being produced and distributed by the same company. Capacity in part-owned companies can be calculated differently. Subject to these reservations, the largest companies in the world having cement interests in the Community are considered to be, in alphabetical order: Blue Circle, United Kingdom; Cemex, Mexico;

(72) As a result of the decline in building in Europe as a whole during the period from 1979 to 1985, total Community consumption fell from 164 million tonnes in 1979 to 134 million in 1985. But during the second half of the 1980s there was an increase in demand for cement across the Member States as a result of the spreading use of concrete in road construction and of reinforced concrete in railway networks, the renovation of ageing infrastructures, etc. Imports accounted for a relatively small proportion of consumption in the Community as a whole: 3,9% in 1979, and 4,6% in 1986. Total Community imports were stable between 1979 and 1986, at 6,4 million tonnes. Total output in Europe decreased from 185 million tonnes in 1979 to 153 million tonnes in 1986, reflecting a slowdown in consumption and building. The proportion of Community output which was exported was 13% in 1986, equivalent to 19,1 million tonnes.

(73) Consumption of cement decreased over the period from 1979 to 1986, in Greece and in the Community as a whole. But the negative trend was much steeper in the case of the whole Community than it was in the case of Greece. The proportion of the total Community market accounted for by Greek output rose from 6,5% in 1979 to 8,6% in 1986. This was due to the combined effect of an increase in Greek output and a decrease in Community output.

(74) In the second half of the 1970s and at the beginning of the 1980s, Greek cement producers increased their production capacities by some seven million tonnes, to meet strong demand from markets in the middle East, which at that time were in full expansion owing to higher prices being paid for oil products. Greece had traditionally exported cement to countries in the Middle East and North Africa, and until 1986 it exported hardly anything to other Member States. In the mid-1980s, however, falling oil prices led to the collapse of the middle eastern markets; this, combined with the expansion of local cement firms, created huge overcapacity in the Greek cement industry, and prompted a search for new markets for domestic output, which considerably outstripped domestic consumption. Since then Greek exporters have been diverting an increasing portion of their production to other Member States. Whereas in 1987 Greece exported six million tonnes of cement to third countries and only 0,5 million to other Member States, exports to other Member States had grown to 2,6 million tonnes in 1990 and 2,8 million tonnes in 1992.

(75) At the end of 1985 and the beginning of 1986, Greek producers looked towards western Europe, especially to those markets it regarded as more easily accessible: first the United Kingdom, because it had the highest cement prices in Europe, and second Italy, where small associations formed by consumers and import/export

⁽¹⁴⁾ Institute of Economic and Industrial Research, *The Competitiveness of the Greek Industry*, Part D, *The Cement Industry*, Athens, June 1987 (report prepared on behalf of the Commission's DG III).

companies had taken the step of importing Greek cement.

(b) The structure of the cement industry in Greece ⁽¹⁵⁾

- (76) The manufacture of cement is one of Greek industry's most traditional sectors. The two largest companies, Heracles and Titan, account between them for 80% of the Greek cement market (approximately 40% each). The third-largest company, Halkis, has a market share of 13 to 14%, and the fourth, Halyps, has 6 to 7%. The market shares of the four cement manufacturers differ considerably from region to region in Greece. Each company has a larger market share in the areas closest to its own plants and distribution centres.

- (77) The domestic cement market is an oligopolistic market. Of the four manufacturers, only one, Titan, is a purely Greek company. The other three are controlled by foreign multinationals, two of them, Heracles and Halkis, by the same Italian company. In reality, therefore, two companies, Heracles/Halkis and Titan, account for 93% of the domestic market. The market is thus a highly concentrated one. At present there is no external competition in the domestic market, because imports are negligible and it is difficult for foreign companies to establish themselves in Greece because of the restrictions on access (strict environmental regulations, permits for operation as in all European countries, high transport costs, the strong position and comparative advantages of the Greek companies, etc.).

- (78) The following table shows the market shares in Greece of the four Greek cement manufacturers Titan, Heracles, Halkis and Halyps from the mid-1980s onwards.

Domestic market shares of Greek cement manufacturers, 1985 to 1994

(%)

Firm	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
Titan	44,6	43,6	43,2	43	43,3	42,4	41,8	42	41,5	39,6
Heracles	43,3	42,9	43,6	43,1	42,6	42,1	41	40,1	40,5	38,7
Halkis	8,8	9,1	8,4	9	9,4	10	11,3	11,6	11,4	13
Halyps	3,4	4,4	4,9	4,9	4,7	5,5	5,9	6,3	6,6	8,6

Source: Hellenic Cement Association/Cembureau

- (79) As regards the profitability and financial indicators of the Greek cement industry during the mid-1980s, it may be noted that gross operating profits per tonne of output increased overall during the period from 1979 to 1985, as a result of gains in operating cost efficiency in the industry, although export prices decreased and prices in the domestic market were at comparatively low levels. An analysis of profits before and after financial charges indicates the adverse effect of financial charges on the industry's profitability. High financial charges were incurred in order to finance the modernisation of the industry. The charges grew further because most of the long-term debt incurred in connection with modernisation was in foreign currencies, so that at each devaluation of the drachma there was a corresponding relative increase in interest payments and in the outstanding debt, directly affecting the financial structure of the companies; the drachma was devalued by a factor of 3,2 against the US dollar between 1979 and 1985.

Consolidated profits of the Greek cement industry

(GRD billion)

	1979	1980	1981	1982	1983	1984	1985
Profits before financial charges	2,3	2,7	3,7	3,2	2,6	4,0	4,5
Financial charges	1,2	1,6	2,2	2,8	5,5	9,4	13,3
Net profits before tax	1,1	1,1	1,5	0,4	-2,9	-5	-8,8

Source: Companies' balance sheets

⁽¹⁵⁾ The information on the Greek cement industry in this section is based mainly on two studies: (i) Institute of Economic and Industrial Research, *The Competitiveness of the Greek Industry*, Part D, *The Cement Industry*, Athens, June 1987 (report prepared on behalf of the Commission's DG III); (ii) Institute of Economic and Industrial Research, *Cement Industry*, Athens 1997.

- (80) Turning to financial indicators, it is worth noting that the heavy impact of accumulated losses on the financial structure of the two companies in 1985 completely eroded the book value of their net worth, which meant that the net worth of the whole industry was negative. The table below shows that:

- the gearing of the industry deteriorated from 1982 onwards, and by 1985 long and short-term liabilities exceeded total assets, which meant that the total assets of the industry as a whole were financed by long and short-term debt,
- liquidity, which was satisfactory until 1982, also deteriorated thereafter, reflecting acute problems of cash flow for the industry as a whole,
- profitability, in terms of netprofit, deteriorated throughout the period.

Financial indicators for the Greek cement industry

	1979	1982	1985
Long and short-term liabilities/Total assets	0,75	0,81	1,07
Current assets/Short-term liabilities	0,85	0,75	0,43
Net profit or loss before tax/Total assets	0,06	0,01	(0,10)

Source: Companies' balance sheets, current prices.

The respective profile of each Greek producer in the year 1985 is shown in the table below:

(GRD million)

	Heracles	Titan	Halkis	Halyps	Total industry
Number of workers	1 937	2 076	1 288	270	5 571
Total assets	43,6	20,7	16,7	6,3	87,4
Net worth	- 2,2	3,7	- 8,3	0,2	- 6,6
Current liabilities	31,8	10,2	19,2	4,4	65,6
Long-term liabilities	14,0	6,8	5,8	1,7	28,3
Net income (before tax)	- 4,2	0,4	- 5,0	—	- 8,8

Source: Companies' balance sheets.

- (81) One factor that was crucial to the development of the cement industry in Greece around that time was that selling prices on the domestic market were low in comparison to prices in other domestic markets in the Community. This was in part due to the fact that cement prices in Greece were set by the State. Greek export prices declined sharply after 1983, a development which adversely affected similar companies elsewhere in the Community too. As recalled above, a high proportion of long-term loans, which had been used to finance investments in the early 1980s, were in foreign currencies. This caused difficulties for the industry because of the weakness of the drachma in comparison to foreign currencies. Manufacturers had to face high financial charges, the impact of which led to heavy losses for the industry as a whole in 1983 to 1985.

- (82) Lastly, energy prices were an important factor, in view of the cost structure of the cement industry. Energy

prices, and specifically the prices of coal, oil and electricity, had a particular significance for the Greek cement industry: they accounted for 53 % of total costs, whereas the European average in 1984 was some 39 %. But coal, the main fuel for the industry in both Greece and the Community as a whole, was considerably less costly in Greece from 1984 onwards.

(c) Development of Heracles' export pattern

- (83) The Greek cement industry has traditionally been a considerable exporter. Greek exports grew strongly during the period from 1979 to 1986, from 4,9 million tonnes in 1979 to 7,6 million tonnes in 1985. The proportion of Greek cement output which was exported was 55,9 % in 1985, 43,6 % in 1990 and

51,7% in 1995. The Greek cement industry has several advantages over its competitors which enable it to export effectively. First of all, given the characteristics of Greece's geography, production can be located closer to where the raw materials are mined and at the same time to places where the final product is loaded for transport by sea; the most economical method of transporting cement is by sea, especially over long distances. Most of the Greek companies have modern plants, and their production costs are lower too because their production units are larger. Finally, the largest Greek companies have cargo vessels of their own for the transport of cement.

- (84) Heracles is the largest Greek exporter. Between 1983 and 1984, Heracles' exports fell by 6%. In 1985, they grew by 3%, an increase similar to that of all Greek cement companies. In 1986 and 1987 exports were maintained at the 1985 level. They fell by 18% in 1988, when total Greek exports decreased by 11,3%.

	Heracles' exports (million tonnes)	Greek exports (million tonnes)	Heracles' share
1985	3,4	7,6	45 %
1986	3,4	7,1	48 %
1987	3,4	7,1	48 %
1988	2,8	6,3	44 %
1989	2,4	5,1	47 %
1990	2,8	5,9	47 %

- (85) During the period from 1985 to 1987, Heracles managed to increase its share of exports to the other Member States from 14,8% to 18,8%.

- (86) From the information presented above it can be concluded that the State aid granted to Heracles in 1986 resulted in the survival of the company and enabled it to export an increasing proportion of its output to other Member States. For these reasons Heracles' recapitalisation constitutes aid caught by Article 92(1) of the Treaty, since it distorted competition and affected trade between Member States.

- (87) Thus the Commission does not accept the Greek Government's contention that the aid to Heracles was outside the scope of Article 92(1). Nor can the Commission accept the argument that there was no trade between Member States, so that not all the requirements of Article 92(1) were met: it was already foreseeable at the time that Greek exports would be directed towards other Member States, as the Court of First Instance found in its judgment.

- (88) At the time, the Greek Government accepted risks which would have been prohibitive to other investors. The Greek Government has in any event failed to show that Heracles could have found the means necessary for its survival on the capital market. It has also failed to show that the State measure to assist Heracles did not constitute aid because on the basis of the structure and prospects of the company a reasonable return in the form of dividends or capital growth could be expected within a reasonable time.

- (89) The Greek Government claims that the private investor principle was satisfied, but contradicts itself when it argues on the one hand that the financial problems faced by Heracles in 1986 were caused by short-term problems in the economy and on the other hand that Law 1386/83 and the operations of the BRO were a necessary response to the particular economic situation and developments in Greece.

- (90) By failing to notify the aid prior to the recapitalisation, the Greek Government failed to comply with its obligations under Article 93(3) of the Treaty. Moreover, the Commission had in 1987 approved the implementation of Law 1386/83 subject to the condition that the Commission was to be notified of individual cases in which a firm was brought within the scope of the law if the firm employed 300 or more persons in the case of non-sensitive branches and 100 or more persons in the case of sensitive branches (see Decision 88/167/EEC). The aid was, therefore, granted unlawfully.

VIII

Assessment of the compatibility of the aid with the common market under Article 92

VIII.1. The exemptions in Article 92(2) and (3) of the Treaty

- (91) The Commission is accordingly required to assess whether any of the clauses in Article 92(2) and (3) can be applied so as to exempt the aid from the general prohibition in Article 92(1).
- (92) The exceptions laid down in Article 92(2) do not apply in this case, given the nature of the intervention, which did not pursue any of the objectives listed there.

- (93) Greece may be regarded as meeting the definitions in Article 92(3)(a), which allows 'aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment'; but the concept of regional development to which that exception is linked is based essentially on the provision of aid for new investment or major expansions or conversions of undertakings involving large-scale investments of a physical nature and the costs associated with these. The recapitalisation of Heracles cannot be considered to fall within the scope of that exemption.
- (94) Article 92(3)(c) cannot apply to the aid granted to Heracles, which was not designed 'to facilitate the development of certain economic activities or of certain economic areas'. In other words, the aid had no regional objectives, nor was it linked to any restructuring of the company in question.
- (95) Article 92(3)(d) cannot apply, because the aid was not intended 'to promote culture and heritage conservation'.
- (96) The first part of Article 92(3)(b) makes provision for 'aid to promote the execution of an important project of common European interest'; this cannot apply to the aid granted to Heracles, which was not intended to promote the execution of such a project.
- (97) It was under the second part of Article 92(3)(b) that the Commission authorised Law 1386/83, on the ground that it was intended to remedy a serious disturbance in the Greek economy, and that law provided the legal basis for the granting of aid to Heracles, so that an individual award of aid of this kind may be permitted solely under that exemption.
- (99) The Commission wishes to emphasise that the Heracles case was not a one-off case but clearly a part of the whole programme pursued by the BRO. The economic situation in Greece had been constantly deteriorating up to October 1985. Both internal and external imbalances had created a difficult situation which demanded firm policy measures. In particular, the Greek authorities were confronted with very serious external payments and pressures on the exchange rate in September 1985. Thus, in October 1985, they introduced an economic stabilisation and recovery programme. This programme included measures to devalue the drachma by 15%; the introduction of a non-interest-bearing import deposit scheme; the abolition of wage indexation; major changes to the tax system; and a tightening of credit and monetary policy. By the time the austerity programme was instituted many Greek companies had got into financial difficulties as a result of the previous policy on wages, limits on making workers redundant, price controls, interest rates and overvaluation of the drachma. When the Commission adopted Decision 88/167/EEC authorising the implementation of Law 1386/83, it observed that it had to be regarded as important that Greek companies maximise their economic performance if the objectives of the austerity programme were to be achieved. Given the major effort the Greek Government was undertaking to reverse past policies in the October 1985 stabilisation programme, the Commission concluded that Law 1386/83 and the operations of the BRO were an integral part of the programme and were compatible under Article 92(3)(b).
- (100) On the question of the purpose of the aid, that is to say whether reorganising and recapitalising Heracles would help to remedy a serious disturbance within the Greek economy, it should be noted that Heracles was at the time, and still is, an enterprise important to the Greek economy. The Greek Government stressed this in its letter of 3 December 1987, pointing out that in the absence of an intervention on the part of the BRO, the existence of the largest cement group with a workforce of approximately 2 000 directly employed in the second largest exporting industry of Greece would have been threatened. This would have had grave social and regional consequences, and repercussions on the Greek balance of payments.

VIII.2. Applicability of Article 92(3)(b)

- (98) As stated above, Law 1386/83 forms the legal basis under which the aid was granted to Heracles. The implementation of the law was made subject, however, to a number of conditions, including the requirement that the Greek Government was to notify individual cases exceeding certain thresholds. This specific notification requirement was imposed in order to enable the Commission to consider significant individual cases from the point of view of their impact on trade between Member States and competition.
- (101) The Commission would point out that under the Treaty the aid must be limited to the minimum necessary to achieve the goal for which it was granted, in order to avoid undue distortion of competition.
- (102) The Commission accepts, then, that aid to Heracles was necessary in order to achieve the objectives of the measures taken by the Greek authorities to remedy the serious disturbance in the Greek economy; but the Commission is of the opinion that the aid granted was not limited to the minimum necessary, because it went

beyond the objective of remedying the serious disturbance in the Greek economy and thus distorted competition and affected trade between Member States to an extent contrary to the common market. The immediate result of the measures taken in respect of Heracles was a debt write-off, which brought substantial cost savings, since there was now no need to pay interest on the debts capitalised or default interest on liabilities overdue to the public institutions. The company's liquidity increased considerably, since its debts were capitalised and it no longer had to pay interest or capital to its creditors; this enabled it to improve the credit terms it offered to its customers on the domestic and export markets, and to export a greater proportion of its output to other Member States. The company was left in a stronger competitive position, by reason of an increase in its exports and a shift in the destination of its exports towards other Member States. Only that part of the aid which was necessary to restore Heracles' viability without affecting trade between Member States to an extent contrary to the common market, and which would not place the company in a more favourable position vis-à-vis its competitors, may be said to be compatible under Article 92(3)(b) of the Treaty. That part of the aid helped to remedy a serious disturbance in the Greek economy; it did affect trade, since the State intervention enabled the company to stay in business and to increase its exports to the other Member States, but not to an extent contrary to the common market. The increase in Heracles' exports to other Member States has to be seen in the light of a general shift of Greek exports towards other Member States which took place from 1986 onward. As has been pointed out above, the collapse of the middle eastern markets, which were the traditional export markets of Greece, caused the diversion to the Member States of an increasing proportion of the output of all Greek exporters, mainly because of the competitiveness of Greek exports as compared with European production, which was not sufficient during the period from 1986 to 1990 to meet the increase in internal consumption.

- (103) In order to establish what part of the aid is not justifiable under Article 92(3)(b), because it went beyond the scope of remedying a serious disturbance in the Greek economy, and left the company in a financial situation which was better than necessary in order to ensure its long-term viability, the Commission has carried out an analysis of Heracles' economic development and financial situation and has examined the most appropriate methods for its calculation.

(a) Economic development and financial situation of Heracles

- (104) Heracles had been loss-making since 1983. In 1985, it was in acute financial difficulty: in its annual report,

it disclosed negative capital and reserves of GRD 2 163 million, net losses of GRD 4 216 million, and net losses on ordinary activities of GRD 4 623 million. By the end of 1985, its accumulated losses amounted to GRD 7 249 million.

- (105) In 1985 and 1986, before State intervention, Heracles faced the following situation:

- it was equipped with modern production facilities, owing to a major investment programme carried out in the early 1980s (1983 was the last year in which capital expenditures were high),
- this investment programme had been financed very largely, if not exclusively, by additional foreign borrowing,
- the devaluation of the drachma had had a negative impact on the cost of this borrowing,
- sales revenue prospects were hit by domestic price controls,
- declining demand in the company's traditional export markets in the Middle East came hand-in-hand with the oil price shock of 1985/1986, which reduced the capacity of oil-exporting countries to finance major construction programmes.

- (106) The economic and financial position of the company was thus characterised by sharply rising financial charges resulting from borrowing, which not only had a negative impact on its profitability but in fact threatened it with liquidation. On the other hand, it could look forward to a relatively substantial improvement in production efficiency, owing to the investment programme undergone in the early 1980s.

- (107) By Ministerial Decree of 7 August 1986, the Greek Government converted into share capital GRD 27 755 million in commercial debt owed by Heracles to various public institutions, in order to save the company from insolvency. This relieved Heracles of part of its debt and financial burdens, because it did not have to pay interest on this borrowing or to pay dividends to its shareholders. Heracles was rescued, and continued to export a proportion of its output to other Member States.

- (108) The table below shows Heracles' financial and economic situation in the period from 1985 to 1989 and thus the effects of the State aid measure on the company's accounts.

(GRD million)

	1985	1986	1987	1988	1989
Fixed assets	27 627	24 507	22 194	26 854	24 572
Current assets	14 301	14 987	17 078	20 438	25 132
Capital and reserves	- 2 163	23 054	23 751	32 402	35 866
Long-term liabilities	13 990	4 841	2 768	1 506	687
Short-term liabilities	30 933	12 679	12 155	12 305	11 249
Total assets	43 583	40 919	39 820	47 607	49 934
Turnover	29 928	29 840	30 480	34 923	39 549
Operating costs	28 020	27 356	26 840	29 777	31 940
Operating profit or loss	1 908	2 484	3 640	5 146	7 609
Financial charges	- 6 530	- 4 202	- 2 388	- 2 087	- 1 992
Profit or loss on ordinary activities	- 4 622	- 1 718	1 252	3 059	5 617
Extraordinary profit or loss	407	- 230	- 1 144	- 1 634	- 2 151
Net profit or loss	- 4 215	- 1 948	108	1 425	3 466

Source: Company's annual reports 1985 to 1989.

- (109) The table below shows the trend in some major financial indicators for Heracles before and after the conversion of debt into capital.

	1985	1986	1987	1988	1989
Long- and short-term liabilities/Total assets	1,03	0,43	0,37	0,29	0,24
Current assets/Short-term liabilities	0,46	1,18	1,41	1,66	2,23
Net profit or loss before tax/Total assets	- 0,1	- 0,05	0	0,03	0,07

Source: Company's annual reports 1985 to 1989.

- (110) As indicated by Heracles' annual reports, its financial situation before the debt-to-equity conversion was very precarious: the high financial outgoings due to high levels of outstanding debt had resulted in substantial losses which had eroded the company's capital. But during the most critical years for the company's activity, Heracles registered positive operating results, if financial costs are left out of consideration, and its poor financial results were closely linked to the extremely weak situation of the Greek economy as a whole.

(b) Alternative methods for calculating the part of the aid which was not restricted to the minimum necessary

- (111) At the time it enlarged the Article 93(2) proceedings⁽¹⁶⁾, and following the judgment of the Court of First Instance, the Commission seriously

⁽¹⁶⁾ See footnote 1.

doubted whether the aid to Heracles could be considered compatible with the common market, as has been recalled above. In particular, the Commission doubted whether the exemption in Article 92(3)(b) could apply in Heracles' case. The Commission was of the opinion that the aid might well have left Heracles in a stronger competitive position than would have been necessary in order to ensure its viability.

- (112) The Commission examined the financial costs of Titan and Heracles in relation to their turnover and volume sold, and concluded that Heracles was overcapitalised by approximately GRD 5 billion, so that the aid had not been limited to the minimum necessary.
- (113) Following the enlargement of the Article 93(2) proceedings, the Commission received comments from numerous interested parties, including some concerning the method for calculating the minimum level of debt conversion needed to ensure Heracles' viability.
- (114) On behalf of its members, the BCA commissioned a study of the economic aspects of the aid from Prof. George Yarrow, of Hertford College. In his first report, Prof. Yarrow estimated the degree of Heracles' overcapitalisation by analysing its cash flow as indicated in its accounts. At the Commission's request, the British cement industry asked Prof. Yarrow to provide additional observations, since the conclusions drawn in the first report were more of an *ex post* nature and could be used only as factual evidence.
- (115) In his subsequent *ex ante* evaluation and calculations based upon comparison of financial structures, Prof. Yarrow assumed that Heracles' investment (relative to Titan) was financed in the same way as Titan's activities as a whole, i.e. by a similar mix of debt and equity and with similar payments and charges in respect of debt and equity. On such assumptions, the depreciation and asset figures indicated that Heracles' debt capacity would, other things being equal, have been about twice that of Titan in the mid-1980s. On this basis, the BCA arrived at the conclusion that the conversion of Heracles' debts in 1986 was excessive by about GRD 15,5 billion.
- (116) In its complaint, Titan claimed that the amount of capitalisation was excessive and that a conversion of that magnitude was not only unnecessary but also disproportionate in relation to the company's size and needs. In Titan's view, the minimum level of debt capitalisation that would have ensured Heracles' viability would have been one which allowed it to continue to service its debt and still remain in production. Titan accordingly proceeded to analyse Heracles' expected cash flows after 1986, given that cash flows are what is used to pay debts.
- (117) According to Titan's calculations, based on financial data extracted from Heracles' annual reports, Heracles generated enough cash in the years 1987 and onwards to sustain at least GRD 15 billion more in debt, or even GRD 20 billion if the capital repayments were weighted towards the later years.
- (118) *Heracles*, in order to demonstrate that the debt-to-equity conversion in 1986 had not overcapitalised it, submitted to the Commission a report drawn up by Prof. Joseph Hassid, of Piraeus University, and Prof. Emmanuel Sakellis, of the Panteion University of Athens. Their calculations were made by comparing various capital structure ratios for Heracles with corresponding ratios extracted from four large samples of international cement producers⁽¹⁷⁾. The samples comprised not only viable companies but also some facing difficulties.
- (119) The starting point of the report was to determine the amount by which the net worth of Heracles would have had to be increased on 31 December 1985 in order to ensure the company's viability. For a company to qualify as viable, its long-term capital had to exceed the value of its fixed assets. Otherwise it would have to finance part of its fixed assets through short-term borrowing, something which would leave it in an unhealthy condition, since its working capital, which included stocks that were not readily liquid, would not be sufficient to cover such short-term liabilities.
- (120) To determine the amount that needed to be converted from short-term liability to equity, financial information was taken from the balance sheets of the four samples, in order to estimate individual and group average financial indicators, and to use the geometric average of the four sample averages as an appropriate critical value towards which Heracles' financial structure should aim to converge. For the samples the following ratios were calculated: (i) net worth plus long-term liabilities divided by fixed assets; (ii) fixed assets divided by net worth; and (iii) the Z-score, a ratio for the evaluation of the probability of bankruptcy.

⁽¹⁷⁾ First sample: *Troy Almanac of Business and Financial Ratios* (441 companies engaged in cement production during the period from July 1984 to June 1985). Second sample: Value Line databases (all cement industries in the USA in 1985). Third sample: Robert Morris & Associates, *Annual Statement Studies* (209 companies engaged in the production of cement and related products during the period from April 1985 to March 1986). Fourth sample: Robert Morris & Associates, *Annual Statement Studies* (136 ready-mix concrete companies during the period from April 1985 to March 1986).

- (121) Applying the first ratio, the amount by which the long-term capital of Heracles should have increased was estimated at GRD 27,5 billion. That amount would have had to be converted from short-term liabilities into either long-term loans or equity in order to achieve the same ratio as the four samples. The amount of Heracles' short-term liabilities converted into equity in August 1986 was GRD 20,2 billion (the remaining GRD 7,5 billion represented a conversion of long-term loans to equity); this was less than what was called for by the ratio. The results with the other ratios were similar.
- (122) The Commission takes the view that in order to examine to what extent the debt conversion was greater than what was needed to maintain the company's viability it is appropriate, because of the specificity of the cement market in Greece, to compare Heracles with its slightly smaller but consistently profitable Greek competitor Titan, as it did when it enlarged the Article 93(2) proceedings in November 1995. Both companies operated in the same difficult economic circumstances, and faced similar costs for such things as labour, energy and interest rates. At the time of the capitalisation the prevailing market conditions for Greek producers differed significantly from those of their European competitors, in particular as regards the macroeconomic environment, input prices and conditions, national corporate law obligations, the system of fixed prices, and dependence on export markets.
- (123) Moreover, as regards the financial year chosen for the comparison, the Commission considers, as it did when it enlarged the Article 93(2) proceedings, that 1987 is the proper reference year, because it was Heracles' first normal operating year after receiving the aid. Comparing figures for 1987 will allow an examination to be made of the situation at the time the State intervention took place.
- (124) The Commission believes that the comparison between Heracles' and Titan's financial structure should be carried out on the basis of three financial ratios, namely net financial charges divided by turnover, net financial charges per tonne sold, and net financial charges per tonne produced. When it decided to enlarge the Article 93(2) proceedings in November 1995, the Commission used the first two ratios; in the light of the information exchanged in the course of the proceedings it is now of the opinion that it is appropriate to add the third ratio, namely financial charges per tonne produced. This will enable the Commission to carry out a better comparison of the two companies, because it compensates for differences in supply strategies whereby one company stocks its output while the other supplies direct from production.
- (125) On the basis of the information received from the Greek authorities on 8 February 1999, which enables the Commission better to document its final conclusion, the Commission is thus in a position to refine the financial method for calculating Heracles' overcapitalisation. The calculation is based on more detailed configurations of financial charges, for both Heracles and Titan, in that income from participating interests can be deducted from the total amount of both companies' financial charges.
- (126) Applying this method, the Commission finds that Titan's net financial charges represented 10,1% of its turnover, whereas the quotient for Heracles was just 8,1%. In terms of net financial costs related to volume sold, the quotients are GRD 469,9 per tonne for Titan and GRD 392,7 per tonne for Heracles; in terms of net financial costs per tonne produced, the quotients are GRD 423,5 per tonne for Titan and GRD 471,2 per tonne for Heracles.
- (127) The Commission has applied Titan's ratios to Heracles in order to calculate the average theoretical amount of net financial expenditures saved by Heracles, and concludes that Heracles' overcapitalisation amounts to GRD 2 488 million (approximately EUR 7 million).
- (128) This method results in a smaller differential between the two companies' financial charges, and thus a smaller degree of overcapitalisation of Heracles as compared to Titan. The reasoning behind the method is that the financial charges used in the comparison between Heracles and Titan correspond, because they are both net amounts, which makes them comparable. In the financial world, net financial charges are preferred to gross financial charges for analyses of this kind, because they provide more accurate figures.
- (129) The figure of GRD 2 488 million represents the amount of the debt-to-equity conversion which exceeded what was necessary to ensure Heracles' long-term viability. The overcapitalisation had distortive effects on the European cement market, in that it left Heracles in a stronger competitive position, as appears from the increase in its exports, and the shift in the destination of its exports towards other Member States. This part of the aid was not necessary to restore Heracles' viability, went beyond the scope of remedying a serious disturbance in the Greek economy, unduly placed the company in a more favourable position vis-à-vis its competitors, and is not compatible with the common market under Article 92(3)(b) of the Treaty. In order to restore the previous competitive position, the benefits which the company derived from it must be returned.
- (130) The approach followed here enables the Commission to calculate Heracles' overcapitalisation on the basis of the information available at the time when the State intervention took place, without making use of *ex post* information based on events which happened after the debt conversion and which were not known at the time

of the State intervention. For these reasons the Commission disputes the approach taken by Titan in order to calculate Heracles' excess equity, which is based on the analysis of the company's cash flows after 1986 and its capacity to service its debt.

- (131) Furthermore, the Commission's method for determining Heracles' overcapitalisation relates the financial charges of the two companies directly to their output, expressed both in monetary and in physical values. This makes it possible to reject certain artificial assumptions used by the BCA in determining Heracles' excess equity capital, such as the assumptions that Titan and Heracles had similar financial structures or that both financed their business using a similar mix of debt and equity, which do not correspond completely to the reality of that time.

- (132) The Commission also disputes the approach taken by Heracles in order to demonstrate that it was not overcapitalised, which was based on a comparison of Heracles with a large number of international cement producers. As has been pointed out, the prevailing market conditions for Greek producers at the time of the capitalisation differed significantly from those of their world competitors, and an analysis based on a comparison of the financial ratios of companies operating in different environments and under different circumstances is not considered to be accurate.

- (133) The analysis set out above takes account not only of the doubts that the Commission initially formulated regarding the compatibility of the aid in question, but also of the Commission's examination of the distortive effects of the aid in the Community. In this context the Commission has assessed whether the aid was granted in conformity with Decision 88/167/EEC, that is to say with Law 1386/83, and with Article 92 of the Treaty. This assessment has shown that the conversion of part of Heracles' debts into capital in 1986 can be considered to have been undertaken by the Greek Government in conformity with Decision 88/167/EEC.

- (134) Turning to the question of compatibility with Article 92 of the Treaty, the examination demonstrates that one part of the total aid of GRD 27 755 million, amounting to GRD 25 267 million, can be considered compatible with the common market under Article 92(3)(b) of the Treaty on the ground that it helped to remedy a serious disturbance in the Greek economy without affecting trade to an extent contrary to the common market and without unduly placing the company in a more favourable position vis-à-vis its competitors. But the analysis also shows that Heracles was overcapitalised by GRD 2 488 million. In order to rectify the distortive effect of the aid in the market, the Commission should accordingly require the Greek Government to recover the sum of GRD 2 488 million from Heracles. The sum

to be repaid should bear interest from the date on which it was made available to the recipient until the date on which it is repaid. Interest should be calculated on the basis of the reference rate which was used for calculating the grant equivalent of regional aid at the time the aid was granted.

- (135) When the Court annulled the Commission's earlier positive decision on aid to Heracles it imposed a duty on the Commission to examine whether the aid distorted competition and affected trade between Member States, and in the analysis set out above the Commission has accordingly performed that duty.

IX

Conclusions

- (136) The Commission has demonstrated here that the aid is unlawful and in part incompatible with the common market.
- (137) Heracles argues that any reversal of the Commission's Decision on the compatibility of the aid would be in contradiction with the principles of legitimate expectations and of sound administration. Heracles contends that the facts on which the Commission based its decision remain the same; but it should be noted that in its judgment the Court of First Instance not only requires the Commission to assess the foreseeable effects of the aid but also — implicitly at least — places a duty on the Commission to consider the effects which were in fact observed in the years 1986 to 1991. Thus the facts the Commission has to consider are not confined to those relating to the time when the aid was granted, but include those which arose later.
- (138) The Commission would point out, too, that the Court of Justice has consistently held⁽¹⁸⁾ that, in view of the mandatory nature of the supervision of State aid by the Commission under Article 93 of the Treaty, undertakings to which an aid has been granted may not, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the procedure laid down in that Article. The fact that the Commission initially approved the aid to

⁽¹⁸⁾ See the judgments of the Court of Justice in Case C-5/89 *Commission v Germany* [1990] ECR I-3437, paragraph 14, and Case C-169/95 *Spain v Commission* [1997] ECR I-135, paragraph 53.

Heracles cannot be regarded as capable of having caused the recipient undertaking, Heracles, to entertain any legitimate expectation, since that Decision was challenged in due time before the Court, which annulled it. The Commission's error cannot, therefore, erase the consequences of the unlawful conduct of Greece,

2. Recovery shall be effected in accordance with the procedures of national law. The sums to be recovered shall bear interest from the date on which they were made available to the recipient until their actual recovery. The interest shall be calculated on the basis of the reference rate used to determine the grant equivalent of regional aid at the time when the aid was granted.

HAS ADOPTED THIS DECISION:

Article 1

The recapitalisation of Heracles General Cement Company to the amount of GRD 27 755 million constitutes aid within the meaning of Article 92(1) of the EC Treaty. Out of this aid a section amounting to GRD 25 267 million is hereby found to be compatible with the common market, on the ground that it satisfies the tests for exemption under Article 92(3)(b) of the Treaty. The remainder of the aid, amounting to GRD 2 488 million, is incompatible with the common market.

Article 2

1. Greece shall take the measures necessary to recover from the recipient the incompatible aid referred to in Article 1, which was granted to it unlawfully, and to secure the repayment of the sum of GRD 2 488 million in aid referred to in Article 1.

Article 3

Within two months of notification of this Decision, Greece shall inform the Commission of the measures it has taken to comply with it.

Article 4

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 17 March 1999.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 25 November 1999

concerning an aid scheme implemented by Portugal with a view to reducing the debt burden of intensive stock farms and assisting recovery in the pig-farming sector

(notified under document number C(1999) 4861)

(Only the Portuguese text is authentic)

(2000/200/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organisation of the market in pigmeat⁽¹⁾ and Council Regulation (EEC) No 2777/75 of 24 October 1975 on the common organisation in poultrymeat⁽²⁾, as last amended by Regulations (EC) No 3290/94⁽³⁾ and (EC) No 2916/95⁽⁴⁾, and in particular Articles 21 and 19 thereof,

Having called on interested parties to submit their comments⁽⁵⁾,

Whereas:

I

Procedure

- (1) Decree-Law No 146/94 of 24 May 1994 includes, in Chapter I, a credit line for reducing the debt burden of intensive stock farms and, in Chapter II, a credit line for assisting recovery in the pig-farming sector. The Decree-Law was published in the Portuguese Official Gazette⁽⁶⁾.
- (2) On 26 November 1996, since it had received no notice of the State aid from the Portuguese authorities, the

Commission sent Portugal a letter pursuant to Article 88(3) of the Treaty, asking it to confirm, within 15 working days, the existence of the aid, its entry into force, any budgetary implications it might have and details of one of the credit lines. By letter of 23 December 1996 the Portuguese authorities gave confirmation of the existence of Decree-Law No 146/94 on State aid in the form of credit lines for reducing the debt burden of firms of intensive stock farms and assisting recovery in the pig-farming sector. The measures were accordingly entered, under NN 65/97, in the register of unnotified State aids.

- (3) By letter of 23 May 1997, recorded as received on 27 May 1997, the Portuguese Permanent Representation sent the Commission the information it had requested in its letters of 26 November 1996 and 5 May 1997.
- (4) By letter of 10 October 1997 the Commission notified Portugal of its decision to initiate proceedings under Article 88(2) of the Treaty against the aids in question. In the letter, the Commission also gave notice to Portugal to submit its comments within one month of the date of the letter.
- (5) The Commission's Decision to initiate the proceedings provided for in Article 88(2) of the Treaty was published in the *Official Journal of the European Communities*⁽⁷⁾. The Commission invited the other Member States and other interested parties to submit their comments on the aids in question within one month of the publication of the Decision in the *Official Journal of the European Communities*.

- (6) Portugal submitted its comments by letter dated 13 January 1998.

- (7) The Commission did not receive any comments from other interested parties.

⁽¹⁾ OJ L 282, 1.11.1975, p. 1.⁽²⁾ OJ L 282, 1.11.1975, p. 77.⁽³⁾ OJ L 349, 31.12.1994, p. 105.⁽⁴⁾ OJ L 305, 19.12.1995, p. 49.⁽⁵⁾ OJ C 83, 18.3.1998, p. 5.⁽⁶⁾ *Diário da República*, Series I-A, No 120 of 24 May 1994.⁽⁷⁾ See footnote 5.

II

Credit line for assisting recovery in the pig-farming sector***Description of the aids***

- (8) The purpose of Decree-Law No 146/94 of 24 May 1994 is to overcome what are regarded as grave structural difficulties in the pig and poultry sector, a sector which does not qualify under operational programmes co-financed by the EAGGF Guidance Section. The Decree-Law introduces two measures: a credit line (available to pig-, poultry- and rabbit-farmers) and a credit line (available only in respect of pig-breeding and fattening in closed circuit).

Credit line for reducing the debt burden in the intensive stock-farming sector

- (9) The objectives of the credit line for reducing the debt burden in the intensive stock-farming sector were as follows:

- to enable beneficiaries to renegotiate their stock-farming related debts towards credit institutions where there was proof that such debts were connected with investments in modern facilities, animal health and environmental protection that had taken place between 1 January 1985 and 31 December 1993,
- to make available to those beneficiaries resources for the settlement of unpaid debts towards suppliers of capital goods, debts which had fallen due between 1 January 1992 and 31 December 1993.

- (10) The aid was granted in the form of an interest-rate subsidy for bank loans. The loans were for a period of up to five years and were repayable annually from the second year onwards. The interest-rate subsidy changes annually and is degressive from the first year onwards (first year 60 %, second year 45 %, third year 30 %). From the fourth year onwards the interest-rate subsidy ceases to apply to the loans. The subsidy was calculated in relation to the reference rate of 13 % specified in Decree-Law No 359/89 of 18 November 1989⁽⁸⁾.

- (11) There was a limit of PTE 28 billion on the overall amount of the loans.

- (12) The purpose of this credit line is to provide pig farms with financial resources for the acquisition of inputs (intermediate consumption).

- (13) The aid was granted in the form of an interest-rate subsidy for bank loans. The loans were for a period of up to four years and were repayable annually. The interest-rate subsidy, expressed as a percentage of the interest rate applicable under the contract concerned, varied from year to year and was degressive from the first year onwards (first year 10 %, second year 8 %, third year 6 % and fourth year 4 %).

- (14) There was a limit of PTE 7,632 billion on the overall amount of the loans.

III

Reasons for initiating proceedings under Article 88(2) of the Treaty

- (15) The reasons which prompted the Commission's decision to initiate proceedings under Article 88(2) of the Treaty can be summed up as follows.

- (16) The Commission took the view that the credit line for reducing the debt burden in the intensive stock-farming sector did not, in the light of the Community guidelines applicable at the time⁽⁹⁾, satisfy the requirements for being regarded as aid for rescuing or restructuring firms in difficulty. By virtue of point 2.2 of the said guidelines, Member States may continue to apply special Commission rules for these types of aid in the agricultural sector.

- (17) Complying with the special rules for the restructuring of firms in the agricultural sector means fulfilling three requirements: the aid must relate to investment already carried out; the aid (possibly combined with earlier aid in the case of these investments) must not exceed a certain rate and the firms must offer certain guarantees in terms of viability and be in danger of bankruptcy.

- (18) The Commission took the view that the credit line granted by Portugal satisfied the first of these requirements but not the other two.

⁽⁸⁾ The national reference rate is currently 8 %.

⁽⁹⁾ OJ C 368, 23.12.1994, p. 12.

- (19) The Commission felt that, since the credit line for assisting recovery in the pig-farming sector was intended for the acquisition of inputs, it concerned not investments but short-term loans (*crédits de gestion*). The measure in question did not satisfy the principal requirement applicable by virtue of Community practice, namely that it should have a maximum duration of one year.

IV

Arguments put forward by Portugal

- (20) By letter of 13 January 1998 the Portuguese Government submitted its comments on the measures described under Section III.
- (21) Commenting generally, the Portuguese authorities stated that the aids in question were Portugal's only measure in favour of intensive stock-farming, a sector which was experiencing major difficulties as a consequence above all of three factors:
- the early opening up of agricultural frontiers, with sharp falls in prices brought about by the unrelenting pressure of imports,
 - high interest rates charged by banks, especially where borrowers belonged to the farming sector,
 - high feed prices as a result of drought (and, consequently, a poor harvest) in 1993 and Portugal's geographical remoteness in relation to the other Member States.

The Portuguese authorities added that, in spite of the aid, the market situation for intensive stock-farming had failed to improve. From 1993 Portugal moved from self-sufficiency to being a net importer of 20% of its domestic requirements in that sector.

Credit line for reducing the debt burden in the intensive stock-farming sector

- (22) The Portuguese authorities underlined the fact that the Commission recognised 'that the amount of the aid is below the maximum rates normally allowed by the Commission (...)'. In this respect, the Portuguese

authorities stated that the meaning of 'the Commission took into consideration, however, that since it was established *a posteriori* that the upper limits had been exceeded, those limits had not been complied with when the aid was granted' was not clear. According to the Portuguese authorities, the Commission was raising the formal question of the precise moment when non-compliance with the limits was recorded, as opposed to the basic question of compliance with the maximum amounts.

- (23) The Commission concluded that the aid scheme did not comply with the sectoral limits under Council Regulation (EC) No 950/97⁽¹⁰⁾. According to the Portuguese authorities, the Commission appeared to be applying to the aid scheme for agricultural holdings the sectoral limits specified in that Regulation, on the grounds that those limits were part of the agricultural structures policy. This requirement was not, however, part of the guidelines and, as the Portuguese authorities saw it, was not applicable.
- (24) With regard to the viability of the firms, the Portuguese authorities pointed out that the Commission criteria referred to viability only, without specifying whether this meant economic or financial viability. The said authorities further took the view that it could not be assumed that the banks' scrutiny would be limited to an examination of the financial situation of the firm.

Credit line for assisting recovery in the pig-farming sector

- (25) The Commission did not receive any comment from the Portuguese authorities regarding this measure.

V

Assessment of the aids**Applicability of Article 87(1) of the Treaty**

- (26) Under Article 21 of Regulation (EEC) No 2759/75 and Article 19 of Regulation (EEC) No 2777/75, Articles 92 to 94 (now Articles 87 to 89) of the Treaty apply to the production of, and trade in, the products referred to in Article 1(1) of those Regulations.

⁽¹⁰⁾ OJ L 142, 2.6.1997, p. 1.

(27) Under Article 87(1) 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 incompatible with the common market.

(28) The Community produces 22,31 million tonnes of meat and other products derived from pigs, poultry and rabbits⁽¹¹⁾. Portugal's production is 0,54 million tonnes. There is an appreciable amount of trade in these products between Portugal and the rest of the Community: in 1997 Portugal's imports and exports of these products totalled 75 900 tonnes and 4 100 tonnes respectively. In terms of value the exports were worth EUR 6,0 million and the imports EUR 160,5 million.

(29) The measures in question are therefore likely to affect trade in pig and poultry products between Member States since the aid favours operators in one Member State and not in the others. The measures have a direct and immediate effect on the production costs of intensive stock farms in Portugal. Consequently they give these farms an economic advantage denied to farms in other Member States which do not have access to such aids. They accordingly distort, or threaten to distort, competition.

(30) In the light of the above the measures must be regarded as State aids covered by Article 87(1).

Possible derogations under Article 97 of the Treaty

(31) It is possible to derogate from the principle of incompatibility laid down in Article 87(1).

(32) The exceptions to that incompatibility, which are set out in Article 87(2), are manifestly not applicable in this case, however, and were not invoked by the Portuguese authorities.

(33) The derogations provided for in Article 87(3) must be strictly interpreted when regional or sectoral aid programmes or individual instances of the application of general aid schemes are examined. They can be granted only where the Commission can establish that the aid is necessary for the achievement of one of the objectives concerned. To grant those derogations to aid not fulfilling that condition would be to permit distortion of trade between Member States, and of

competition, without any justification as regards the Community interest and, at the same time, to permit undue advantage to operators in certain Member States.

(34) By virtue of Article 87(3)(c), aid may be regarded as compatible with the common market if it is intended to facilitate the development of certain economic activities or of certain economic areas and does not adversely affect trading conditions to an extent contrary to the common interest.

(35) It is in the light of that provision that the aid must be assessed.

Credit line for reducing the debt burden in the intensive stock-farming sector

(36) The Commission first of all examined whether the credit line was in conformity with the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽¹²⁾ which were in force when the aids were granted and at the beginning of the procedure provided for in Article 88(2). The guidelines were, however, amended when new Community guidelines⁽¹³⁾ came into force on 1 January 1998. In the interests of legal certainty the assessment of the measure is, for the purposes of a final decision, based on the rules in force when the procedure under Article 88(2) was initiated.

(37) By virtue of Point 2.2 of the 1994 guidelines, Member States may request that the special rules for this type of aid be applied to the agricultural sector. Portugal did not inform the Commission of the rules it wished to see applied as regards scrutiny of the measures.

(38) The Commission's scrutiny must accordingly cover all aspects of the guidelines, in particular rescue and restructuring aid and the special rules applicable to the agricultural sector.

(39) Rescue aid must:

— consist of liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates,

⁽¹¹⁾ Source: Eurostat (1997).

⁽¹²⁾ See footnote 9.

⁽¹³⁾ OJ C 283, 19.9.1997, p. 2.

- be restricted to the amount needed to keep a firm in business (for example, covering wage and salary costs and routine supplies),
 - be paid only for the time needed (generally not exceeding six months) to devise the necessary and feasible recovery plan,
 - be warranted on the grounds of serious social difficulties and have no undue adverse effects on the industrial situation in other Member States.
- (40) The Commission is not in possession of the information needed to verify compliance with the second and fourth indents of recital 39. In its opinion, however, the aid does not satisfy the remaining criteria.
- (41) In the case of the requirement set out in the first indent the minimum subsidised interest rate ($40\% \times 13\% = 5,2\%$) is well below the Community reference rate applicable to Portugal in 1994 (15,33%, i.e. the interest rate for regional aid⁽¹⁴⁾). Moreover, the duration of the aid (the subsidy is payable for three years) is well in excess of the normal six-month period applicable under Community rules.
- (42) In the light of the above, the credit line in question does not meet the Community requirements applicable to aid for rescuing firms in difficulty.
- (43) The Commission is of the opinion that the general rules governing aid for the restructuring of firms in difficulty do not apply to the case at hand because they call for the drawing up and implementation of a plan for the restructuring of the recipient firms. The strict requirements which the said plan must feature as regards restoring viability, in particular a reduction in capacity in sectors where there is overcapacity, and appreciable contribution on the part of the recipients of the aid to the restructuring effort, and the elimination of adverse effects on competitors, were not taken into account by the Portuguese authorities.
- (44) In no case do the legislative provisions scrutinised specify the drawing up, for each firm, of restructuring plans, plans which must include measures likely to lead to viability in the long term. Similarly, although the sector concerned suffers from structural overcapacity at Community level, no measure appears to have been adopted with a view to reducing capacity. Moreover, at no stage in the proceedings did the Portuguese authorities request that the measures be scrutinised in the light of the general rules governing aid for the restructuring of firms in difficulty.
- (45) The Commission then examined the aids in the light of the special rules, set out at 2.2 of the 1994 guidelines, applicable to the restructuring of firms in difficulty in the agricultural sector, this being the Commission practice in the case of such aid in the sector concerned⁽¹⁵⁾. The purpose of the rules in question is to ensure that the only agricultural holdings or firms which receive aid for restructuring are those which, are in principle viable but which, by virtue of the implementation of a measure intended to bring about a permanent improvement in agricultural structures (investment), are facing financial difficulties as a result of factors that are external to the firm.
- (46) The special rules are as follows:
- the aid must concern loans taken out to finance investments already made,
 - the aggregate grant equivalent of any aid awarded when the loans were taken out, plus the new aid, may not exceed the rates generally allowed by the Commission, namely 35% (75% in the case of less-favoured areas within the meaning of Article 21(2) of Regulation (EC) No 950/97) in the case of investment in primary agricultural production, and 55% (75% in the case of Objective 1 areas) for investment in the processing and marketing of agricultural products complying with the sectoral limits laid down by the Commission. At present the sectoral limits are those specified in the guidelines for State aid in connection with investments in the processing and marketing of agricultural products⁽¹⁶⁾,
 - the aid must be granted in response to adjustments to the interest rates on new loans, made to take account of changes in the cost of money, the amount of the aid must be less than or equal to the change in the rates or the new loans, or must concern farms that offer viability guarantees, in particular in cases where the financial burdens resulting from existing borrowings are such that the farms are at risk, possibly of bankruptcy.

⁽¹⁴⁾ OJ C 74, 10.3.1998, p. 9.

⁽¹⁵⁾ Precedents: N 904/95, N 21/96, N 864/96 and N 813/97.

⁽¹⁶⁾ OJ C 29, 2.2.1996, p. 4.

- (47) Regarding the requirement set out in the first indent of recital 46, access to the credit line was restricted to firms which had taken out loans in connection with their economic activities and with investment taking place over a given period, in order to cover financial costs deriving therefrom. The investment relates to the modernisation of facilities, animal health and environmental health protection. The Commission therefore takes the view that this requirement was satisfied.
- (48) Turning now to the requirement set out in the second indent of recital 46 the Member State must be able to demonstrate that the combined effect of the restructuring aid granted and any investment aid previously granted does not exceed the maximum rates applicable (35% normally and 75% in the case of less-favoured farming areas). Since the credit line was restricted to agricultural production firms the maximum rates for processing firms are not applicable.
- (49) Concerning the intensity of the aid granted in connection with this credit line it should be recalled that the national aid is in the form of an interest-rate subsidy. According to the method normally used by the Commission the net grant equivalent of the interest-rate subsidy available under Decree-Law No 146/94 is 21,8%, based on the current value of the difference between the interest rates actually applied and what is regarded as the reference market rate. In order to calculate the grant equivalent, the Commission took into account not only the interest-rate subsidy in relation to the reference rate of 13% used by the Portuguese authorities, but also the difference between this rate and the Community reference rate (interest rate for regional aid) applicable in Portugal when the aid was granted: 15,33%.
- (50) When, at the beginning of the proceedings under Article 88(2), the Commission stated that the aid was less than the maximum rates it normally allowed, it was referring solely to the aid element of the credit line and not to the aggregate of the aid element of the credit line and any investment aid received earlier, which must be less than 35% of the total cost (75% in the case of less-favoured farming areas).
- (51) The Portuguese authorities pointed out that an analysis had shown that all of the aid approved in the context of the credit line complied with the maximum aggregate grant equivalent of 75% in less-favoured farming areas and that 87% of the aid approved in connection with the credit line complied with the maximum aggregate grant equivalent of 35% in farming areas other than less-favoured farming areas.
- (52) Since the Portuguese authorities did not indicate on what basis the analysis had been carried out, the Commission does not have the information needed to assess the representativeness and extent of the infringement of that rule. It notes, however, that according to information provided by the Portuguese authorities themselves, the limits were not complied with in 13% of the cases involving farming areas other than less-favoured farming areas.
- (53) Accordingly, as the Commission sees it, if an *ex post* analysis is needed to verify compliance with this limit it must be concluded that the limit was not a criterion for approving the aid and, when the measure was implemented, the limit was not complied with in 13% of the approved cases in farming areas other than less-favoured farming areas.
- (54) The Commission accepted, however, the argument put forward by the Portuguese authorities to the effect that, when they were in force, the special rules applicable to the restructuring of firms operating in the sector of primary agricultural production did not normally take into account the sectoral limits on investment under Regulation (EC) No 950/97.
- (55) In the light of the foregoing the Commission takes the view that the requirement set out in the second indent of recital 46 has not been satisfied in the cases where the aggregate grant equivalent of the investment aid received and the credit line exceeded the maximum amount the recipients could legitimately have received under the special rules applicable to the restructuring of firms in difficulty in the agricultural sector.
- (56) In order to comply with the third indent of recital 46 the measure must be intended for agricultural holdings which present guarantees of viability.
- (57) The Portuguese authorities initially stated that, since this was a measure for the restructuring of bank loans, they had taken the view that the guarantee of viability had automatically already been verified by virtue of the analysis carried out by the banks prior to the granting of the loans.
- (58) In accordance with its established practice the Commission considers that, as a rule, scrutiny by a financial institution prior to the granting of a consolidating loan cannot replace scrutiny with a view to verifying that a firm is economically viable within the

meaning of the abovementioned Community guidelines or of special rules applicable to the agricultural sector. The scrutiny carried out by the banks is aimed above all at verifying whether the financial situation of the firm is such as to suggest that the loan can be expected to be repaid normally. While this is of course essential to the economic viability of a firm, it is not sufficient for the purposes of guaranteeing the viability of a firm within the meaning of the Community guidelines or the special rules applicable to the agricultural sector.

- (59) The Commission does, however, recognise the practical difficulties associated with assessing the long-term economic viability of agricultural holdings. Under the circumstances, financial viability may constitute a good indicator of economic viability. Similarly it may reasonably be felt that only a limited number of financially viable holdings will not also be economically viable.
- (60) By virtue of this third criterion the Commission must, in its scrutiny, also take into consideration the origins of the financial difficulties faced by firms. Aid to firms which, although viable, are in difficulty cannot be regarded as compatible with the common market unless their financial difficulties stem from factors that are external to them and not from factors that are inherent in their internal management.
- (61) Information supplied by the Portuguese authorities suggests that the origin of the difficulties faced by agricultural holdings relates mainly to external factors, in particular: the fact that customs barriers were abolished earlier than required under the Act of Accession of Portugal; the high interest rates applicable to the agricultural sector; and the high prices of raw materials as a result of the 1993 drought. That information suggests that in most cases the economic difficulties stem from factors that are external to the firms.
- (62) The Commission is accordingly in a position to draw the conclusion that the measure under consideration complies with the criterion, relating to the viability of the recipient firms, set out in the third indent of recital 46.
- (63) To conclude, the Commission takes the view that the credit line for reducing the debt burden of intensive stock farms does not satisfy the special rules applicable to the restructuring of firms in difficulty in the agricultural sector in cases where the aggregate grant equivalent of the investment aid received and the credit line exceeded the maximum amounts which the recipients could legitimately have received on the basis of the special rules applicable to the restructuring of firms in difficulty in the agricultural sector.
- Credit line for assisting recovery in the pig-farming sector**
- (64) Since it is a measure aimed at helping producers to acquire pig-farming inputs (in particular feedingstuffs and other operating costs), this credit line must be regarded as a short-term ('seasonal') loan.
- (65) At the time of the granting of the aid the Commission's policy consisted in not objecting to State aid granted in the form of subsidised short-term loans to the agricultural sector ('operating loans'), provided their duration did not exceed one year and, in addition, the loan was not restricted to a single product or a single operation. Within the limit of eligible expenditure the practice does not impose limits on the intensity of the aid, nor does it, at the level of individual recipients, prevent the subsidised loan from being renewed on an annual basis.
- (66) In 1996 the Commission adopted a communication on State aids involving subsidised loans in the agriculture sector (*crédits de gestion*)⁽¹⁷⁾. On 18 June 1997 the Commission decided to suspend its application owing to practical difficulties which had arisen in the course of its implementation.
- (67) A practical consequence of that suspension was the fact that the Commission's previous policy in that respect had again become applicable. Accordingly, on 2 October 1997, when proceedings were initiated under Article 88(2), the rules in force were those described at recital 65. By subsequent decision of the Commission the Community guidelines were again applicable from 30 June 1998.
- (68) The aid granted via the credit line concerned, which consists of an interest-rate subsidy for bank transactions relating to subsidised short-term loans (with a net grant equivalent of 3,1 %) does not, in accordance with the established policy of the Commission, satisfy the requirements for being regarded as compatible with the common market, since the period covered by the interest-rate subsidy (four years) is well in excess of the maximum period authorised in such cases (one year).
- (69) In the absence of any other legal basis on which the credit line might be authorised it must be regarded as operating aid at odds with the Commission's established policy on State aids (Judgment of the Court of First

⁽¹⁷⁾ OJ C 44, 16.2.1996, p. 2.

Instance of 8 June 1995 in Case T-459/93 *Siemens v Commission*⁽¹⁸⁾). Since this is a type of State aid which, by its very nature, is not intended to promote durable development of the sector or region concerned, the direct consequence of such a measure is the improvement of the conditions of production of the products in question in relation to other operators in the same sector in the European Union who do not receive comparable aid.

Conclusion

(70) As regards the derogations under Article 87(3)(a) and (c) in the case of aid to promote or facilitate the development of certain economic activities or of certain economic areas the Commission concludes, on the basis of the abovementioned scrutiny and in the light of the Community rules applicable, that the aid in question is likely to have an adverse effect on trading conditions to an extent contrary to the common interest.

(71) Consideration must also be given to the fact that the aids concern products covered by a common organisation of the market and that there are limits on the powers of Member States to intervene in the operation of those market organisations, this being a matter falling solely within the competence of the Community. By virtue of a well-established precedent of the Court of Justice of the European Communities (see in particular the judgment of 26 June 1979 in Case 177/78 *Pigs and Bacon*⁽¹⁹⁾), common organisations of the market must be regarded as comprehensive and exhaustive systems which preclude any measures by Member States which could derogate from them or adversely affect them.

(72) The aids in question must therefore be regarded as infringing Community rules and do not qualify under any of the derogations provided for in Article 87(3).

VII

Conclusions

(73) Since the aids which are the subject of this Decision were not notified to the Commission in accordance with

Article 88(3) of the Treaty, they were granted unlawfully, in other words without waiting for the Commission to decide on their compatibility with the common market.

(74) Furthermore, for the reasons set out above, they are incompatible with the common market in that they fall within the scope of Article 87(1) of the Treaty and cannot benefit from any of the derogations specified in paragraphs 2 and 3 of that Article.

(75) In the event of incompatibility of aid with the common market, the Commission must exercise its power recognised in the judgment of the Court of Justice of 12 July 1973 in Case 70/72 *Commission v Federal Republic of Germany*⁽²⁰⁾ and confirmed by the judgments of 24 February 1987 in Case 310/85 *Deufil v Commission*⁽²¹⁾ and of 20 September 1990 in case C-5/89 *Commission v Federal Republic of Germany*⁽²²⁾ and order the Member State to recover from the beneficiaries any aid unlawfully paid. Recovery is also mandatory under Article 14(1) of Council Regulation (EC) No 659/1999 of 2 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁽²³⁾. Recovery is necessary to restore the previously existing situation, and to eliminate the financial benefits the recipients of the unlawfully paid aid were able to enjoy unduly from the date on which the aid itself was paid.

(76) In the case of the credit line for reducing the debt burden of firms in the intensive stock-farming sector, taking into account the fact that the measure could perhaps have been regarded as compatible with the common market if the limits pursuant to the special rules for the restructuring of firms had been applied, reimbursement must concern the 13% of cases where the limits were exceeded in farming areas other than less-favoured farming areas.

(77) In the case of the credit line for assisting recovery in the pig-farming sector the aid granted must be recovered in its entirety.

(78) The aid must be repaid in accordance with the procedures of Portuguese law. The amount to be recovered must include interest payable from the granting of the aid until repayment actually takes place. The interest must be calculated on the basis of the market rate, with reference to the rate used for calculating the grant equivalent for regional aid⁽²⁴⁾.

⁽²⁰⁾ [1973] ECR 813.

⁽²¹⁾ [1987] ECR 901.

⁽²²⁾ [1990] ECR I-3437.

⁽²³⁾ OJ L 83, 27.3.1999, p. 1.

⁽²⁴⁾ See footnote 14.

⁽¹⁸⁾ [1995] ECR II-1675.

⁽¹⁹⁾ [1979] ECR 2161.

- (79) This Decision is without prejudice to any consequences which the Commission may draw as regards the financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund (EAGGF),

HAS ADOPTED THIS DECISION:

Article 1

1. The credit line which, under Chapter I of Decree-Law No 146/94 of 24 May 1994, is available for reducing the debt burden of intensive stock farms is incompatible with the common market in the cases where, together with the investment aid received, the grant equivalent exceeds 35 % in farming areas other than less-favoured farming areas.

2. The credit line which is provided for in Chapter II of Decree-Law No 146/94 of 24 May 1994 for assisting recovery in the pig-farming sector is incompatible with the common market.

Article 2

Portugal shall cancel the aid schemes referred to in Article 1.

Article 3

1. Portugal shall take all the necessary measures to recover from the recipients the aids referred to in Article 1 which have already been granted unlawfully.

2. Recovery shall be effected in accordance with the procedures of national law. The amount to be recovered shall include interest from the date on which the aid was made available to the recipients until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

Article 4

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

Article 5

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 25 November 1999.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION

of 9 February 2000

listing the areas of Germany eligible under Objective 2 of the Structural Funds for the period
2000 to 2006

(notified under document number C(2000) 310)

(Only the German text is authentic)

(2000/201/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds⁽¹⁾, and in particular the first subparagraph of Article 4(4) thereof,

After consulting the Advisory Committee on the Development and Conversion of Regions, the Committee on Agricultural Structures and Rural Development and the Committee on Structures for Fisheries and Aquaculture,

Whereas:

- (1) Point 2 of the first subparagraph of Article 1 of Regulation (EC) No 1260/1999 provides that Objective 2 of the Structural Funds is to support the economic and social conversion of areas facing structural difficulties.
- (2) The first subparagraph of Article 4(2) of Regulation (EC) No 1260/1999 provides that the Commission and the Member States shall seek to ensure that assistance is genuinely concentrated on the areas most seriously affected and at the most appropriate geographical level.
- (3) Commission Decision 1999/503/EC⁽²⁾ lays down, in accordance with Article 4(2) of Regulation (EC) No 1260/1999, a population ceiling for each Member State under Objective 2 of the Structural Funds for the period 2000 to 2006. The ceiling for Germany is 10 296 000 inhabitants.
- (4) Article 4(4) of Regulation (EC) No 1260/1999 states that the Commission, on the basis of proposals from the Member States and in close concertation with each Member State concerned, is to draw up a list of the areas

eligible under Objective 2 with due regard to national priorities, without prejudice to the transitional support provided for in Article 6(2) of that Regulation.

- (5) Article 4(11) of Regulation (EC) No 1260/1999 provides that each list of areas eligible under Objective 2 is to be valid for seven years from 1 January 2000; however, where there is a serious crisis in a given region, the Commission, acting on a proposal from a Member State, may amend the list of areas during 2003 in accordance with paragraphs 1 to 10 of Article 4, without increasing the proportion of the population within each region referred to in Article 13(2) of that Regulation,

HAS ADOPTED THIS DECISION:

Article 1

The areas in Germany eligible under Objective 2 of the Structural Funds for the period 2000 to 2006 are listed in the Annex hereto.

This list may be amended in the course of 2003.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 9 February 2000.

For the Commission

Michel BARNIER

Member of the Commission

⁽¹⁾ OJ L 161, 26.6.1999, p. 1.

⁽²⁾ OJ L 194, 27.7.1999, p. 58.

ANNEX

AREAS ELIGIBLE UNDER OBJECTIVE 2 OF THE STRUCTURAL FUNDS IN GERMANY

2000 to 2006

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	

Areas satisfying the criteria of Article 4(5) of Regulation (EC) No 1260/1999

Schweinfurt, city constituting a district in its own right		Whole region	55 400
Bremerhaven, city constituting a district in its own right		Whole region	126 915
Salzgitter, city constituting a district in its own right		Districts: Bad Barum Beddingen Beinum Bleckenstedt Calbecht Drütte Engelnstedt Engerode Flachstöckheim Gitter Hallendorf Heerte Immendorf Lebenstedt (excluding boroughs 055 to 059 and 061) Hohenrode Ringelheim Salder Thiede Üfingen Watenstedt	76 369
Wolfsburg, city constituting a district in its own right		Districts: Almke Alt Wolfsburg Fallersleben (boroughs 152, 153, 154, 155) Ilkerbruch (borough 15300) Sülfeld Schleuse (borough 63103) Hageberg West (borough 394) Hattorf Hehlingen	30 949

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Wolfsburg, city constituting a district in its own right (cont'd)		Heiligendorf Hellwinkel (borough 251) Heßlingen Kästorf Neindorf Neuhaus Reislingen (borough 551) Rothenfelde Sandkamp Schillerteich Stadtmitte Warmenau	
Gifhorn		<i>Municipalities:</i> Stadt Gifhorn (excluding boroughs 105 to 112, 115, 116, 120, 121, 125) EG Sassenburg Stadt Wittingen SG Boldecker Land (excluding MG Osloß) SG Brome (excluding MG Rühen, OT Rühen) SG Hankensbüttel SG Isenbüttel (excluding MG Ribbesbüttel, Wasbüttel, Calberlah excluding OT Edesbüttel, Wettmershagen, Jelpke) SG Meinersen SG Papenteich (excluding MG Adenbüttel, Diderse, Rötgesbüttel, Vordorf excluding OT Rethen, Schwülper excluding OT Groß Schwülper, Walle, Meine excluding OT Meine, Gravenhorst, Ohnhorst) SG Wesendorf (excluding MG Wagenhoff) GG Giebel	121 724
Helmstedt		<i>Municipalities:</i> EG Büddenstedt Stadt Helmstedt Stadt Königslutter (excluding the districts of Boimstorf, Glentorf, Klein Steimke, Lauingen, Lelm, Rotenkamp, Rottorf, Schickelsheim, Sunstedt) EG Lehre (excluding the districts of Beienrode, Klein Brunsrode, Groß Brunsrode, Essenrode) Stadt Schöningen SG Grasleben SG Heeseberg SG Nord-Elm (excluding MG Süplingen, Süplingenburg and Wolsdorf) SG Velpke (excluding MG Bahrdorf) GG Brunsleber Feld, Helmstedt, Königslutter, Mariental, Schöningen	88 209

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Lüchow-Dannenberg		<i>Whole region</i>	52 129
Emden, city constituting a district in its own right	<i>Boroughs 20, 40, 80 and 245</i>		45 157
Duisburg, city constituting a district in its own right		<i>Districts:</i> Walsum (except Overbruch-Ost, Aldenrade-Süd, Wehofen) Hamborn (except Röttgersbach-Nord) Meiderich-Beeck Ruhrort Alt-Homberg Baerl (except Baerl-Nord) Mitte (except Duissern) Rheinhausen (except Bergheim-Süd, Rumeln-Kaldenhausen) Süd (except Bissingheim, Rahm, Mündelheim)	400 363
Krefeld, city constituting a district in its own right		<i>Statistical areas</i> Hammerschmidtplatz Kempener Feld Baackeshof Schinkenplatz Stephanplatz Dießem Lehmheide Gartenstadt Elfrath Sollbrüggen Tierpark Linn Gellep-Stratum Oppum Oppum-Süd Stahldorf Königshof-West Königshof Niederbruch Fischeln-West Hohenbudberg Uerdingen-Markt Uerdingen-Stadtpark	130 243
Oberhausen, city constituting a district in its own right	<i>Statistical areas</i> Borbeck (block 3) Bermensfeld (blocks 2 to 5)		132 944

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Oberhausen, city constituting a district in its own right (cont'd)	Schlad (blocks 2 and 4) Dümpfen (blocks 3 to 6) Styrum (blocks 2 and 4) Alstaden-Ost Alstaden-West Holten (blocks 1 to 13) Sterkrade-Nord (blocks 1 to 22) Alsfeld (blocks 1 to 6, 9 to 12) Osterfeld-Ost (blocks 1 to 5, 7, 8)		
Gelsenkirchen, city constituting a district in its own right	Districts: Resse Resser Mark Buer-Ost (blocks 11, 12, 15, 16, 41, 42, 44 to 48) Erle-Ost (blocks 21 to 25, 31 to 36, 42, 44 to 47, 51, 54 to 58)		233 071
Dortmund, city constituting a district in its own right		Statistical areas City (1 to 4) Westfalenhalle (11, 13) Dorstfelder Brücke (21 to 23) Dorstfeld (31 to 33) Hafen (41 to 43) Nordmarkt (51 to 54) Borsigplatz (61 to 62) Kaiserbrunnen (71 to 73) Westfalendamm (81, 83) Ruhrallee-Ost (92) Eving (121 to 123) Holthausen (130) Lindenhorst (140) Derne (211, 212) Grevel (221) Hostedde (222) Kirchderne (231, 232) Kurl-Nord (241) Scharnhorst (261 to 263, 270) Kolonie Holstein (314) Kolonie Neuasseln (315) Brackeler Feld (321) Wambel-Nord (331) Pferderennbahn (333) Wickede-Flughafen (344) Aplerbeck-Nord (411, 412) Aplerbeck I (413) Aplerbecker Mark (415)	354 494

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Dortmund, city constituting a district in its own right (<i>cont'd</i>)		Schüren (431, 432) Hacheney (521, 522) Hörde (531 to 533, 535) Barop (614, 615) Brünninghausen (631) Universität (642) Hombruch-Nord (651) Rombergpark (681) Bövinghausen (710) Kley (720) Lütgendortmund (733 to 735) Marten-Germania (741) Marten (742) Oespel (750) Deusen (810) Mailoh (821) Huckarde (824, 825) Hangeney (843) Bodelschwingh (910) Mengede (923) Alte Kolonie (924) Oestrich (940) Groppenbruch (951) Schwieringhausen (952) Ellinghausen (953) Niedernette (954)	
Herne, town constituting a district in its own right		<i>Urban boroughs:</i> Herne-Mitte Wanne Sodingen Eickel (only: borough 201, block 2 borough 202, blocks 1, 5, 6, 8 borough 204, block 1 borough 205, block 3 borough 206 borough 208, blocks 1, 2, 3 borough 213, block 5 borough 214, blocks 2, 3 borough 215, block 1 borough 222, blocks 1 to 4 borough 231)	145 025
Kaiserslautern, city constituting a district in its own right		<i>Whole region</i>	101 315

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Pirmasens, town constituting a district in its own right		<i>Whole region</i>	47 184
Greater Saarbrücken		<i>Municipalities:</i> Stadt Saarbrücken with the districts of: Alt-Saarbrücken Altenkessel Burbach Dudweiler Schafbrücke Ensheim Brebach-Fechingen Güdingen Bübingen with the districts of: Rußhütte Unteres Malstatt Leipziger Straße Rastpfuhl Hauptbahnhof Kaninchenberg Universität Winterberg Municipality of Heusweiler Municipality of Quierschied Municipality of Kleinblittersdorf Stadt Sulzbach Stadt Püttlingen Stadt Friedrichsthal Stadt Völklingen (the districts of: Völklingen-Mitte Fenne Fürstenhausen Geislautern Heidstock Hermann-Röchling-Höhe Luisenthal Wehrden) Municipality of Großrosseln (only the districts of Naßweiler and Karlsbrunn)	248 811

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	

Areas satisfying the criteria of Article 4(6) of Regulation (EC) No 1260/1999

Nordfriesland		Whole region	162 084
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Areas satisfying the criteria Article 4(7) of Regulation (EC) No 1260/1999

Mannheim, urban district		<i>Districts:</i> Westliche Unterstadt Östliche Unterstadt Jungbusch Mühlau Neckarstadt West Friesenheimer Insel Neuer Messeplatz and industrial/mixed zone around the Fa. Motorenwerke Mannheim (bounded to the north by Heinrich-Zille-Straße, Käthe-Kollwitz-Straße (whole street); east: Max-Joseph-Straße; south: Carl-Benz-Straße; west: Waldhofstraße) Luzenberg Mannheim 21 Nördlicher Teil (bounded to the north and north-east by: Heinrich-Lanz-Straße, Reichskanzler-Müller-Straße (to City's eastern boundary boroughs 421); south: boundary of statistical area 421; west: Bahnhof including Willy-Brandt-Platz) Mannheim 21 Südlicher Teil (bounded to the north by the boundary to statistical area 431 to where it meets 432; east: boundary of statistical area 431 to Höhe Gontardstraße, Gontardstraße to Höhe Bellenstraße, Carl-Metz-Straße to Meerfeldstraße, Lindenhofplatz, Tunnelstraße; west: B36 to boundary of statistical area 212) Lindenhof — Mitte Lindenhof — Ost Almenhof business park Neckarau — Nordost Schönau — West Sandhofen — Nord Waldhof — West Sandhofen — Südost	47 834
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NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Fürth, city constituting a district in its own right		<i>Districts:</i> Fürth-Innenstadt (bounded to the west by the River Rednitz, to the south by the Nürnberg-Fürth railway line, and to the east by the Frankenschnellweg urban motorway on the Nürnberg city boundary. To the north, the eligible area is bounded by the River Pegnitz as it flows to Röllingersteg; from there by the existing foot- and cycle path and by Dr.-Mack-Straße and Kurgartenstraße to Nürnberger Straße. The boundary continues along Nürnberger Straße to Höhe Engelhardt-Straße, from there along the Stadtpark to Höhe Karlsteg. The boundary the runs along the River Pegnitz until it joins the Rednitz)	13 000
Nürnberg, city constituting a district in its own right		<i>Districts:</i> Nürnberg-Südstadt (bounded by the Nürnberg-München railway line (to the west), the circular railway and marshalling yard, the Münchener/Franken- and Allersberger Straße axis (to the east), the stretch of railway from Hauptbahnhof to Hauptgüterbahnhof (in the north)) Western districts (the area of the waste incineration plant, which is due to be closed down, and the former slaughterhouse, the commercial district in the Fuggerstraße/Wischelstraße/Frankenschnellweg area, the container rail terminal on Austraße, which is due to be closed down, the industrial areas both sides of Fürther Straße between the Westring and Fürth town boundary, and the commercial areas in the district of Leyh adjoining the Fürth town boundary)	68 800
Hamburg		District of St. Pauli: (statistical areas: 2, 3, 4, 5, 7, 8, 9, 10, 11, 12)	20 000
Kiel, city constituting a district in its own right		<i>Districts:</i> Altstadt (01) Vorstadt (02) Exerzierplatz (03.2) Wik (08.1) Wik (08.2) Wik (08.3) Wik (08.5) Ravensberg (09.2) Ravensberg (09.3)	95 052

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Kiel, city constituting a district in its own right (<i>cont'd</i>)		Südfriedhof (11.4) Südfriedhof (11.5) Gaarden-Ost (12.1) Gaarden-Ost (12.2) Gaarden-Süd (13.1) Gaarden-Süd (13.4) Ellerbek (16) Wellingdorf (17) Holtenau (18.1) Holtenau (18.2) Pries (19) Friedrichsort (20) Neumühlen-Dietrichsdorf (21.1) Neumühlen-Dietrichsdorf (21.2) Suchsdorf (23.4) Schilksee (24.2) Meimersdorf (27.3) Moorsee (28.1) Moorsee (28.3) Wellsee (29)	
Lübeck, city constituting a district in its own right		<i>Boroughs:</i> Borough 01 Borough 02.8 Borough 02.9 Borough 03.1 Borough 03.2 Borough 03.3 Borough 03.5 Borough 03.6 Borough 03.7 Borough 04.0 Borough 04.1 Borough 04.2 Borough 04.3 Borough 04.4 Borough 04.5 Borough 04.6.1 Borough 04.6.2 Borough 04.6.3 Borough 04.7 Borough 04.8 Borough 04.9 Borough 05.2 Borough 05.3 Borough 06.1 Borough 06.2.26	75 901

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Lübeck, city constituting a district in its own right (cont'd)		Borough 06.2.27 Borough 06.2.28 Borough 06.2.29 Borough 06.5 Borough 07.2.3 Borough 07.2.4 Borough 07.2.5 Borough 07.2.6 Borough 07.2.7 Borough 07.2.8 Borough 07.2.9 Borough 07.2.10 Borough 07.2.11 Borough 07.2.12 Borough 07.2.13 Borough 07.2.14 Borough 07.2.15 Borough 07.2.16 Borough 07.2.17 Borough 07.2.18 Borough 07.2.31 Borough 07.2.32 Borough 07.2.33 Borough 07.2.34 Borough 07.2.35 Borough 07.2.36 Borough 07.2.37 Borough 07.2.38 Borough 07.2.39 Borough 07.2.40 Borough 08.2.4 Borough 08.2.5 Borough 08.2.6 Borough 08.2.7 Borough 08.2.8 Borough 08.3.22 Borough 08.3.23 Borough 08.3.24 Borough 08.3.25 Borough 08.3.26 Borough 08.3.27 Borough 09.5.1 Borough 09.6 Borough 09.7.2 Borough 09.7.3 Borough 09.8.6 Borough 09.8.7 Borough 10.1	

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Lübeck, city constituting a district in its own right (<i>cont'd</i>)		Borough 17.1 Borough 25.1 Borough 25.2 Borough 25.3 Borough 25.4 Borough 25.5 Borough 25.6 Borough 26.1 Borough 26.2 Borough 26.3 Borough 26.4 Borough 26.5 Borough 27.1 Borough 27.2 Borough 27.5 Borough 27.6 Borough 28.3 Borough 29.7 Borough 30.1.8 Borough 30.1.9 Borough 31.1.1 Borough 31.1.2 Borough 31.1.9 Borough 31.1.10 Borough 31.1.11 Borough 32.5 Borough 32.7.5 Borough 32.6 Borough 32.9	

Areas satisfying the criteria of Article 4(9)(a) of Regulation (EC) No 1260/1999

Bottrop, town constituting a district in its own right	<i>Districts:</i> Fuhlenbrock Stadtwald Südwest Batenbrock-Süd Eigen Boy Kirchhellen-Mitte		39 777
Recklinghausen		<i>Municipalities:</i> Stadt Castrop-Rauxel (excluding Bövinghausen, Frohlind, Obercastrop, including Leßmöllmann)	476 719

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Recklinghausen (<i>cont'd</i>)		Stadt Datteln (excluding Bauerschaft Hagem, Beisenkamp, Dümmer, Hachhausen, Hagem, Horneburg, Schwakenburg, Stadtmitte) Stadt Dorsten (excluding Deuten, Lembeck, Östrich, Rhade) Stadt Gladbeck (excluding Rentfort-Nord) Stadt Herten Stadt Marl (excluding Alt-Marl, Drewer-Süd, Polsum, including: Marl-Frentrop business park) Stadt Oer-Erkenschwick (excluding Oer) Stadt Recklinghausen (excluding Bockholt, Essel, Hochlar, Nordviertel, Ost-Nord, Speckhorn, Stuckenbusch) Stadt Waltrop (excluding Alte Kolonie, Braßkamp, Brockenscheidt-West, Egelmeer, Hirschkampsiedlung, Im Berg, Kettelersiedlung, Klöcknersiedlung, Neue Kolonie/Moselbachtal, Stadtmitte, including: Leveringhäuser Feld)	
Bochum, city constituting a district in its own right		<i>Districts:</i> Voede/Ruhrstadion (statistical boroughs: Ruhrstadion, Stahlwerke, Polizeikaserne, Krümmede)	103 913

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Bochum, city constituting a district in its own right (<i>cont'd</i>)		Gleisdreieck (statistical boroughs: Landgericht, Imbuschplatz, Rathaus, Ostring, Dr.-Ruer-Platz, Hauptbahnhof, Marienkirche) Ehrenfeld Kruppwerke (statistical boroughs: Elbinger Str., Goldhamme, Werk Gusstahl, Griesenbruch, Stahlwerk Weitmar, Engelsburger Str., Werk Höntrop) Hamme (statistical boroughs: Carolinenglück, Hamme Zentrum, Feldsieper Str., Bahnhof Präsident) Hofstede (statistical boroughs: Hannibel, Wedag, Grummer Str., Schlachthof, Speicherstr.) Riemke (statistical boroughs: Graetz, Rensingstr., Am Zillertal, Tippelsberger Str., Auf dem Dahlacken) Wattenscheid-West (statistical boroughs: Kraye Str., Holland, Sevinghausen) Bergen/Hiltrop Gerthe Harpen/Werne (statistical boroughs: Ecksee, Limbeck) Ruhr-Universität (statistical boroughs: Ruhr-Universität, Auf dem Kalwes)	
Ennepe-Ruhr district		<i>Municipalities:</i> Stadt Witten (excluding Kohlensiepen, Wartenberg, Gedern, Rüdighausen-Mitte, Buchenholz, Bommern, Wannen, Vormholz, Bommerholz-Muttental, Durchholz) Stadt Hattingen (only districts: Kernstadt, Baak, Blankenstein, Holthausen, Welper)	108 818

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	

Areas satisfying the criteria of Article 4(9)(c) of Regulation (EC) No 1260/1999

Ostalb district		<i>Municipalities:</i> Bartholomä Böbingen a.d. Rems Durlangen Eschach Göggingen Gschwend Heubach (excluding the urban area of Heubach-Lautern) Heuchlingen Iggingen Leinzell Lorch (excluding the urban areas of Lorch-Unter- und Oberkirneck, Lorch-Rattenharz) Mögglingen Mutlangen Obergröningen Ruppertshofen Schwäbisch Gmünd (only the urban areas of Schwäbisch Gmünd-Bargau with the adjoining Gügling industrial estate and business park, Schwäbisch Gmünd-Großdeinbach, Schwäbisch Gmünd-Weiler in den Bergen) Schechingen Spraitbach Täferrot Waldstetten (excluding the village of: Wißgoldingen)	74 464
Neckar-Odenwald district		<i>Municipalities:</i> Adelsheim Aglasterhausen Billigheim Elztal Fahrenbach Haßmersheim Hüffenhardt Limbach Neckarzimmern Neunkirchen Obrigheim Osterburken Ravenstein Rosenberg Schefflenz Schwarzach Seckach	67 732

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Zollernalb district		<i>Municipalities:</i> Albstadt (only Ebingen) Bitz Burladingen Meßstetten (excluding Hossingen) Nusplingen Obernheim Straßberg Winterlingen	59 876
Freyung-Grafenau		<i>Whole region</i>	82 100
Regen		<i>Whole region</i>	82 600
Cham	<i>Municipalities:</i> Reichenbach Rettenbach Schorndorf Traitsching Wald Walderbach Zell		114 500
Neustadt a.d. Waldnaab		<i>Municipalities:</i> Eslarn Floß Flossenbürg Georgenberg Leuchtenberg Luhe-Wildenaub Moosbach Pleystein, ST Tännesberg Vohenstrauß, ST Waidhaus Waldthurn Windischeschenbach, ST	40 200
Schwandorf		<i>Municipalities:</i> Oberviechtach, ST Schönsee, ST Stadlern Weiding Wernberg-Köblitz Winklarn	16 500

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Tirschenreuth	<i>Municipalities:</i> Brand Ebnath Immenreuth Kastl Kemnath, ST Kulmain Neusorg Pullenreuth Waldershof, ST <i>Areas not affiliated to a municipality:</i> Flötz Ahornberger Forst Lenauer Forst		58 100
Hof, city constituting a district in its own right		<i>Whole region</i>	51 800
Hof, rural district		<i>Whole region</i>	110 300
Kronach		<i>Municipalities:</i> Kronach, ST Ludwigsstadt, ST Mitwitz Nordhalben Pressig Reichenbach Steinbach a. Wald Steinwiesen Stockheim Tettau Teuschnitz, ST Tschirn	52 200
Wunsiedel i. Fichtelgebirge		<i>Whole region</i>	88 400
Berlin-West, city		<i>Traffic zones:</i> <i>Tiergarten:</i> 0011 Großmarkt 0012 Putlitzstraße 0021 Emdenerstr 0022 Perleberger Str. 0041 Tiergarten 0051 Lützowufer 0052 Potsdamer Brücke	1 103 972

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Berlin-West, city (cont'd)		<i>Wedding:</i> 0061 Soldiner Straße 0081 Humboldthain 0091 Rathaus Wedding 0092 Reinickendorfer Str. 0101 Quartier Napoleon <i>Kreuzberg:</i> 0121 Mehringplatz 0131 Moritzplatz 0141 Mariannenplatz 0151 Wiener Straße 0161 Zossener Straße 0162 Südsterne <i>Charlottenburg:</i> 0191 Friedrich-Olbricht-Damm 0192 Reichweindamm 0202 Tegeler Weg 0211 Franklinstraße 0231 Ernst-Reuter-Platz 0232 Breitscheidplatz 0233 Mittlerer Kurfürstendamm 0242 Savignyplatz 0251 Glockenturmstraße 0252 Rominter Allee <i>Spandau:</i> 0281 Werderstraße 0291 Galenstraße 0292 Neustadt 0293 Altstadt 0301 Freiheit 0302 Stresow 0311 Klosterfelde 0331 Zitadelle 0341 Gartenfelder Straße 0351 Schuckertdamm 0361 Siemenswerke <i>Wilmsdorf:</i> 0401 Joachim-Friedrich-Straße 0421 Schaperstraße 0441 Rudolstädter Straße 0442 Hildegardstraße 0461 Stadion Wilmsdorf 0462 Berkaerstraße 0463 Rheinbabenallee 0471 Grunewaldsee	

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Berlin-West, city (cont'd)		<i>Zehlendorf:</i> 0491 Berlepschstraße 0493 Schönow 0511 Jagdschloß Grunewald 0512 Pacelliallee 0513 Freie Universität 0521 Schwanenwerder 0532 Am kleinen Wannsee <i>Schöneberg:</i> 0541 John-F.-Kennedy-Platz 0561 Nollendorfplatz 0571 Großgörschenstraße 0581 Tempelhofer Weg 0591 Priesterweg <i>Steglitz:</i> 0622 Rathaus Steglitz 0631 Feuerbachstraße 0632 Carmerplatz 0633 Stadtpark Steglitz 0634 Südende 0642 Bhf. Lichterfelde Süd 0651 Goerzwerke 0661 Unter den Eichen 0662 Carstennstraße 0663 Thuner Platz 0664 Hindenburgdamm 0671 Calandrellistraße 0672 Kaiser-Wilhelm-Straße 0674 Preysingstraße <i>Tempelhof:</i> 0682 Rathaus Tempelhof 0683 Attilaplatz 0691 Platz der Luftbrücke 0692 Gottlieb-Dunkel-Straße 0711 Lankwitzer Straße 0721 Mauserstraße 0731 Kiepertstraße 0732 Waldsassener Straße 0733 Diedersdorfer Weg <i>Neukölln:</i> 0751 Reuterplatz 0761 Roseggerstraße 0771 Grenzallee 0772 Dammweg 0781 Rathaus Neukölln 0782 Thomasstraße 0791 Volkspark Hasenheide 0792 Leinestraße 0801 Gradestraße 0802 Buschkrugbrücke	

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Berlin-West, city (cont'd)		<i>Reinickendorf:</i> 0841 Flottenstraße 0851 Teichstraße 0852 Schäfersee 0861 Scharnweberstraße 0871 Flughafen Tegel 0881 Borsigdamm 0882 Flohrstraße 0896 Saatwinkel 0961 Hermsdorfer Straße 0962 Lübarser Straße 0964 Tessenowstraße 0971 Breitenbachstraße	
Bremen, city constituting a district in its own right		<i>Districts:</i> Häfen Neustadt (district of Neuenland) Obervieland (district of Habenhausen) Huchting Woltmershausen Hemelingen (district of Hemelingen) Walle Gröpelingen Burglesum (district of Burg-Grambke) Vegesack Blumenthal <i>Districts of:</i> Huckelriede Seehausen Strom Werderland Sankt Magnus	217 249
Gießen, rural district		<i>Municipality of:</i> Gießen (excluding the part of the Wieseck district bounded by Marburger Straße/ Badener Hohl/Hölderlinweg/Am Sandacker/Hangelsteinstraße/Am Urnenfeld — Steinerne Brücke/Ludwig-Richter-Straße)	65 279
Lahn-Dill district		<i>Municipality of:</i> Wetzlar (excluding the urban boroughs of Steindorf, Naunheim, Nauborn and Blasbach)	43 172

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Kassel, city constituting a district in its own right		<i>Districts:</i> Süsterfeld (excluding blocks 023 to 025) including Wilhelmshöhe military installations Rothenditmold Nord Philippinenhof Fasanenhof Wesertor Vorderer Westen/Wehlheiden Bettenhausen (excluding borough of Eichwald) including Forstfeld Waldau Niederzwehren Oberzwehren Unterneustadt	97 301
Hersfeld-Rotenburg	<i>Municipality of:</i> Bad Hersfeld (only the Altstadt area of the centre of Bad Hersfeld, to the west of Friedloser Straße/Bahnhofstraße/Bismarckstraße/Bahnlinie Bad Hersfeld—Alsfeld railway line to Lutherstraße/Wittstraße/Straße am Kurpark/Bad Hersfeld—Alsfeld railway line/Am Heyrings, the Eichhofsiedlung area of the town of Bad Hersfeld, the Johannesberg area of the town of Bad Hersfeld west of the line Buchsbaumweg/Kiefernallee/Landeplatz and the Petersberg part of Bad Hersfeld bounded to the south-west by Wippershainer Straße and to the north-west by Friedewalder Straße)		115 683
Kassel, rural district		<i>Municipalities:</i> Baunatal (only the districts of Kirchbauna, Altenbauna/VW-Werk, Rengershausen) Fuldabrück (district of Bergshausen only) Lohfelden (only the area north-west of the L 3203 road) Bad Emstal Breuna Calden Grebenstein (only the area south and west of the B 83 road, but excluding the boroughs of the town constituting a district in its own right of Burguffeln bounded by the former B 83/Kreisstraße K 47/Fasanenstraße) Habichtswald Naumburg	55 600

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Kassel, rural district (cont'd)		Schauenburg (district of Breitenbach only) Soehrewald Wolfhagen (excluding the boroughs in the centre of Wolfhagen bounded to the north by the line formed by the L 3075 road/Ehringer Straße/Bruchweg/Siemensstraße/B 450 road/Schützeberger Straße/Bahnhofstraße, to the south-east by the line B 450/Magdeburger Straße/Kurfürstenstraße/B 450/Magdeburger Straße, to the south, by the Ippinghäuser Straße/Worthstraße/Hans-Staden-Straße/Moltkestraße line and to the south-west by the Hans-Staden-Straße/Bühler Straße line) Zierenberg	
Schwalm-Eder district		<i>Municipalities:</i> Knüllwald Homberg/Efze (only the districts of Homberg and in the centre of Homberg only the industrial estates, business parks and special construction zones along the B 323 and B 254 roads, Ostpreußen- and Dörnberg-Kaserne areas and the business parks on the K 36 road and the Holzhausen business park) Guxhagen Gudensberg Körle Felsberg Melsungen (excluding the residential areas of Galgenberg, Am Hang/Koppenhagen, Huberg, Kesselberg/Sonnenhang/Hopfenort/Schloth, Hessenwinkel/Hombach/Kohlberg, Innenstadt/Schlachthofstraße/Altstadt/Vorstadt in the centre of Melsungen) Malsfeld Edermünde Spangenberg Morschen Wabern Borken (only the districts of Borken and in the centre of Borken only the area north of the railway line, west of Westrandstraße and east of the Kurt-Schumacher-Anlage plant) Bad Zwesten Fritzlar (excluding the area of the centre of Fritzlar bounded by the L 3214 and L 3150 roads and the River Eder) Niedenstein	98 743

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	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Waldeck-Frankenberg		<i>Municipalities:</i> Bad Wildungen Edertal Waldeck	33 065
Werra-Meißner district	<i>Municipality of:</i> Eschwege (only the redevelopment zones I 'Hospitalplatz-Hinter den Scheuern', II 'Hospitalstraße-Neustadt' and III 'Altstadt Eschwege', in the centre of Eschwege)		98 529
Braunschweig, city constituting a district in its own right		<i>Districts:</i> 39 to 42 Kralenriede Bienrode Wenden Waggum Stöckheim Leiferde	23 325
Göttingen		<i>Municipalities:</i> EG Adelebsen EG Bovenden (excluding Billingshausen, Eddigehausen, Emmenhausen, Spanbeck) Stadt Duderstadt EG Friedland EG Gleichen Stadt Göttingen (excluding Weende-Nord (067), Südliches Ostviertel (015, 026, 028), Geismar-Ost (080, 082, 083)) Stadt Hann. Münden EG Rosdorf (excluding Atzenhausen, Dramfeld, Klein Wiershausen, Lemshausen, Settmarshausen, Sieboldshausen, Volkerode) EG Staufenberg SG Dransfeld SG Gieboldshausen SG Radolfshausen	246 616

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	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Goslar		<i>Municipalities:</i> Stadt Bad Harzburg Stadt Braunlage Stadt Goslar Stadt Langelsheim EG Liebenburg (excluding Dörnten, Groß Döhren, Heißum, Klein Döhren, Klein Mahner, Liebenburg, Neuenkirchen, Osttharingen, Upen) Bergstadt St. Andreasberg Stadt Seesen (excluding Bilderlahe, Bornhausen, Engelade, Herrhausen, Ildehausen, Kirchberg, Mechtshausen) Stadt Vienenburg (excluding Immenrode, Lengde, Lochtum, Weddingen) SG Lutter am Barenberge (excluding MG Wallmoden) SG Oberharz GG Harz	141 367
Northeim		<i>Municipalities:</i> Stadt Bad Gandersheim EG Bodenfelde Stadt Dassel Stadt Einbeck excluding Kühner Höhe Stadt Hardeggen EG Kalefeld EG Katlenburg-Lindau EG Kreiensen Stadt Moringen EG Nörthen-Hardenberg Stadt Northeim Stadt Uslar GG Solling	146 845

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	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Osterode am Harz		<i>Whole region</i>	87 531
Wolfenbüttel		<i>Municipalities:</i> SG Asse SG Oderwald SG Schladen SG Schöppenstedt	36 931
Hameln-Pyrmont		<i>Municipalities:</i> EG Aerzen Stadt Bad Münder (excluding Beber, Brullsen, Böbber, Egestorf, Flegesen, Hamelspringe, Klein Süntel, Luttringhausen, Nienstedt, Rohrsen) Stadt Bad Pyrmont EG Coppenbrügge EG Emmerthal Stadt Hameln (excluding Halvestorf, Haverbeck, Holtensen, Klein Hilligsfeld, Welliehausen) Stadt Hessisch Oldendorf (excluding Barksen, Bensen, Friedrichsburg, Friedrichshagen, Haddessen, Kleinenwieden, Krückeberg, Lachem, Langenfeld, Rumbeck, Segelhorst, Welsede, Wickbolsen, Zersen) EG Salzhemmendorf	149 451

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Holzminden		<i>Municipalities:</i> EG Delligsen Stadt Holzminden (only: Neuhaus, Silberborn, Bülte, Rehwiese, Lüchtinger Weg and Stadtmitte) SG Bevern SG Bodenwerder SG Boffzen SG Eschershausen SG Polle SG Stadtoldendorf GG Boffzen, Eimen, Eschershausen, Grünenplan, Holzminden, Marxhausen, Wenzen	66 017
Celle		<i>Municipalities:</i> Stadt Bergen Stadt Celle (excluding Klein-Hehlen-West, Boye, Scheuen, Bostel, Alvern, Lachtehausen, Osterloh) EG Faßberg EG Hambühren EG Hermannsburg EG Unterlüß EG Wietze EG Winsen SG Eschede SG Flotwedel (excluding Bröckel, Langlingen Ortsteile Wiedenrode, Nienhof, Hohnebostel) SG Lachendorf SG Wathlingen	171 036
Cuxhaven		<i>Municipalities:</i> Stadt Cuxhaven (only: Duhnen, Sahlenburg, Grodén, Altenbruch, Lüdingworth, Franzenburg, Gudendorf, Mitte (boroughs 18, 19, 23, 25, 31 to 36), Döse (boroughs 4, 6))	83 302

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	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Cuxhaven (cont'd)		Stadt Langen (only: Langen, Debstedt, Imsum) EG Loxstedt (only the districts of: Lanhausen, Fleeste, Stotel) EG Nordholz SG Am Dobrock (only: Neuhaus, Wingst, Belum, Geversdorf) SG Bederkesa (only: Bad Bederkesa, Flögeln, Drangstedt) SG Hadeln (only Otterndorf) SG Hemmoor (only Stadt Hemmoor) SG Land Wursten (only: Dorum, Wremen, Misselwarden, Paddingbüttel)	
Lüneburg, rural district		<i>Municipalities:</i> Stadt Bleckede EG Amt Neuhaus SG Dahlenburg	21 454
Uelzen		<i>Municipalities:</i> EG Bienenbüttel Stadt Uelzen (excluding boroughs 3, 4, 12, 14, 15, 17, 19, 28 to 30, 35 to 39) SG Bevensen SG Bodenteich SG Altes Amt Ebstorf SG Rosche SG Suderburg SG Wrestedt	82 287
Delmenhorst, town constituting a district in its own right		<i>Districts:</i> Iprump/Stickgras Stickgras/Annenriede Hasport/Annenheide	20 583
Oldenburg (Old.), city constituting a district in its own right		<i>Districts:</i> Innenstadt (1d, 1e, 116, 211, 412) Bahnhof (311, 341, 351, 352) Hafen (441, 442) Blankenburg (343, 811, 812) Tweelbäke (821, 923, 962, 9c) Kreyenbrück (125, 192, 516, 913, 915, 917) Wechloy (5c, 624) Dietrichsfeld (641, 642, 634, 651, 672) Etzhorn (681, 711, 713, 7b) Ohmstede (332, 732, 734, 735, 7c)	26 784

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Wilhelmshaven, city constituting a district in its own right	<i>Districts:</i> Voslapp, Fedderwarder Groden, Coldewei, Maadebogen, Europaviertel, Siebethsburg, Villenviertel		61 318
Aurich	<i>Municipalities:</i> Stadt Aurich (only centre of Aurich) Stadt Norden (only centre of Norden excluding boroughs 1 and 21)		160 440
Cloppenburg		<i>Municipalities:</i> EG Barßel (only the districts of: Barßel-Ost, Barßeler Moor, Harkebrügge, Loher Ostmark/Lohe, Elisabethfehn, Neuland) EG Bösel (only the districts of: Bösel, Petersdorf, Osterloh, Edewechterdamm, Westerloh, Glaßdorf) Stadt Cloppenburg (only the districts of: Emsteker Feld/Lankum, Staatsforsten, Stapelfeld, Cloppenburg-West, Bühren, Ambühren/Schmertheim, Bethen) Stadt Friesoythe (only the districts of: Mittelsten Thüle/Thülsfelde, Edewechterdamm, Augustendorf, Markhausen, Gehlenberg, Friesoythe-Schlingshöhe, Ellerbrock, Kampe/Kamperfehn, Altenoythe, Schwaneburg/Schwaneburger Moor, Neuscharrel)	49 852

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	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Cloppenburg (cont'd)		EG Molbergen (only the districts of: Dwergte, Stedingsmühlen, Neumühlen/Resthausen, Stalförden, Molbergen-Ost, Peheim) EG Saterland (only the districts of: Ramsloh, Ramsloh-Ost, Hüllen I and II, Sedelsberg, Bollingen, Scharrel, Strücklingen, Sedelsberger Kolonie, Elisabethfehn-Süd, Utende, Hollen/Hollenermoor)	
Emsland		<i>Municipalities:</i> Stadt Haren (Ems) (only the districts of: Haren, Rütenbrook, Altenberge, Emmeln) Stadt Meppen (only the districts of: Hüntel, Holthausen, Versen) Stadt Papenburg (only the districts of: Aschendorf, Herbrum, Tunxdorf, Nenndorf, Bokel) EG Rhede EG Twist (only the districts of: Twist, Bült, Rühlerfeld) SG Dörpen (only the municipalities of: Dörpen, Kluse, Lehe, Neubörger, Neulehe, Wippen)	74 629

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	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Emsland (cont'd)		SG Lathen (only the municipalities of: Fresenburg, Lathen, Niederlangen, Oberlangen, Renkenberge) SG Nordhümmling (only the municipalities: Bockhorst, Esterwegen) SG Sögel (only the municipality of Sögel excluding the district of Elsten) SG Werlte (only the municipality of Werlte excluding the districts of Wehm, Wieste, Bockholte)	
Friesland		<i>Whole region</i>	99 419
Leer		<i>Whole region</i>	157 051
Wesermarsch		<i>Municipalities:</i> EG Berne Stadt Brake (only the districts of: Brake-Hafen, Brake-West, Brake-Süd, Brake-Nord, Golzwarden, Hammelwarder Außendeich, Braker Weserdeich) EG Butjadingen Stadt Elsfleth EG Jade EG Lemwerder Stadt Nordenham (only the districts of: Abbehausen, Einwarden, Esensham, Friedrich-August-Hütte, Schweewarden, Nordenham Zentrum, Ellwürden Zentrum) EG Ovelgönne EG Stadland	68 011
Wittmund		<i>Whole region</i>	56 057

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Wesel		<i>Municipalities:</i> Stadt Dinslaken (excluding Eppinghoven Bruch/Feldmark Oberlohberg Grafschaft) Stadt Hünxe Stadt Kamp-Lintfort (excluding Niersenbruch Saalhoff) Stadt Moers (excluding Asberg Schwafheim Kapellen-Mitt. Achterathsfeld Holderberg Vennikel Moers-Mitte-Süd Scherpenberg) Stadt Neukirchen-Vluyn Stadt Rheinberg Stadt Voerde (excluding Götterswickerhamm Mehrum Ork Voerde-Süd Spellern)	248 459
Heinsberg		<i>Municipalities:</i> Stadt Geilenkirchen Stadt Hückelhoven Stadt Übach-Palenberg Stadt Wassenberg Stadt Wegberg (only Wildenrath)	105 861
Warendorf		<i>Municipality of:</i> Stadt Ahlen	55 723
Hamm, city constituting a district in its own right		<i>Districts:</i> Mitte Uentrop (excluding blocks 212 to 219, 221 to 228) Rhynern (excluding blocks 313, 314, 322 to 329, 332 to 335, 337, 338) Pelkum (excluding blocks 421 to 423, 427, 431 to 437) Herringen Bockum-Hövel (excluding blocks 611, 614, 615, 621 to 624, 644 to 647, 651 to 656, 661 to 666) Heessen (excluding blocks 731, 733 to 737, 738, 742 to 746)	112 064

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Unna		<i>Municipalities:</i> Stadt Bergkamen Stadt Bönen Stadt Kamen Stadt Lünen Stadt Selm (only Selm-Mitte (boroughs 70, 80, 90, 100, 110, 120, 130) and Bork-Cappenberg) Stadt Werne (only boroughs: 30, 40, 50, 60, 70, 110, 160)	240 755
Zweibrücken, town constituting a district in its own right		<i>Whole region</i>	35 885
Donnersbergkreis		<i>Municipalities:</i> Eisenberg Kerzenheim VG Winnweiler	25 250
Kaiserslautern, rural district		<i>Municipalities:</i> VG Bruchmühlbach-Miesau VG Enkenbach-Alsenborn Fischbach VG Landstuhl VG Otterbach VG Otterberg VG Ramstein-Miesenbach VG Weilerbach	92 533
Kusel		<i>Municipalities:</i> Föckelberg Neunkirchen am Potzberg Oberstausenbach Rammelsbach Rutsweiler am Glan Glan-Münchweiler Matzenbach Rehweiler Haschbach am Remigiusberg Theisbergstegen	7 237
Südwestpfalz		<i>Whole region</i>	105 843

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Neunkirchen		<i>Municipalities:</i> Stadt Neunkirchen (the districts of: Innenstadt Wellesweiler Heinitz Sinnerthal Wiebelskirchen) Stadt Ottweiler (Ottweiler district) Municipality of Merchweiler Municipality of Spiesen-Elversberg Municipality of Illingen (the districts of: Uchtelfangen Illingen) Municipality of Schiffweiler (the districts of: Heiligenwald Landsweiler)	97 844
Saarlouis		<i>Municipalities:</i> Gemeinde Überherrn Gemeinde Bous Gemeinde Ensdorf Gemeinde Schwalbach Stadt Saarlouis (the districts of: Roden Lisdorf Neuforweiler) Municipality of Saarwellingen Stadt Dillingen (the districts of: Pachten Pachtener Heide (Dill. Nord) Innenstadt Überm Berg) Municipality of Rehlingen-Siersburg (the districts of: Rehlingen Siersburg) Municipality of Wadgassen (district of Hostenbach)	104 408
Saarpfalz district		<i>Municipalities:</i> Stadt St. Ingbert (the districts of: St. Ingbert-Mitte Rohrbach) Municipality of Kirkel (the districts of: Kirkel-Neuhäusel Limbach) Stadt Bexbach (the districts of: Bexbach Oberbexbach Niederbexbach)	55 625

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Sankt Wendel		<i>Municipalities:</i> Stadt St. Wendel (the districts of: St. Wendel Bliesen Winterbach Niederlinxweiler Oberlinxweiler)	19 239
Flensburg, town constituting a district in its own right		<i>Districts:</i> St. Nikolai — 011 St. Marien — 012 Nordertor — 013 Museum — 014 Duburg — 021 Nord — 022 Kreuz — 031 Galwik — 032 Ostseebad — 034 Katharinenhof — 035 Norderallee — 045 Kaserne — 046 Bellevue — 047 Hospital — 048 Diako — 049 Friedenshügel — 053 Wilhelminental — 054 Gewerbe West — 056 Reepschlägerbahn — 058 Schützenkuhle — 059 Sophienhof — 061 Schäferhaus — 062 Martinsberg — 071 Rude — 072 Peelwatt — 073 Achter de Möhl — 081 Sünderup — 083 Löwenberg — 084 St. Johannis — 091 St. Jürgen — 092 Bremerplatz — 095 Lautrupstal — 096 Blasberg — 101 Friholt II — 104 Nordstraße — 105 Stützpunkt — 111 Friholt I — 116 Fahrensodde — 117 Tarp-Südwest — 132	36 867

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Dithmarschen		<i>Whole region</i>	135 773
Ostholstein		<i>Municipalities:</i> Burg a. F., Stadt Westfehmarn Landkirchen a. Fehmarn Bannesdorf a. Fehmarn Grömitz Grube Riepsdorf Dahme Kellenhusen (Ostsee) Heiligenhafen, Stadt Großenbrode Lensahn Harmsdorf Damlos Kabelhorst Beschendorf Manhagen Neustadt i. H., Stadt Schashagen Altenkrempe Sierksdorf Oldenburg i. H., Stadt Göhl Heringsdorf Neukirchen Gremersdorf Wangels Ratekau Schönwalde am Bungsberg Kasseedorf Timmendorfer Strand Scharbeutz Süsel	123 850
Pinneberg		<i>Municipality of:</i> Helgoland	1 624
Plön		<i>Municipalities:</i> Lütjenburg, Stadt Klamp Blekendorf Helmstorf Panker Tröndel	20 181

NUTS III level region	Eligible areas		Population living in the eligible areas of the NUTS III level region (number of inhabitants)
	All of the NUTS III level region except	Only the following areas are eligible within the NUTS III level region	
Plön (cont'd)		Giekau Dannau Högsdorf Kletkamp Hohwacht (Ostsee) Behrendorf (Ostsee) Selent Martensrade Mucheln Lammershagen Fargau-Pratjau Hohenfelde Kirchnüchel Köhn Schwartbuck	
Rendsburg-Eckernförde		Municipalities: Hanerau-Hademarschen Bendorf Bornholt Beldorf Steenfeld Oldenbüttel Tackesdorf Haale Lütjenwestedt Seefeld Gokels Thaden Hohn Königshügel Christiansholm Friedrichsholm Friedrichsgraben Sophienhamm Bargstall Elsdorf-Westernmühlen Hamdorf Prinzenmoor Breiholz Lohe-Föhrden	15 946
Schleswig-Flensburg		Whole region	192 895
Steinburg		Municipality of: Büttel	45