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Notice to readers (see page 3 of the cover)

(Acts adopted pursuant to Title V of the Treaty on European Union)

COUNCIL JOINT ACTION
of 14 December 2000
appointing the Special Representative of the European Union for the African Great Lakes Region
and repealing Joint Action 96/250/CFSP

(2000/792/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS JOINT ACTION:

Having regard to the Treaty on European Union, and in particular Article 14 and Article 18(5) thereof,

Article 1

Whereas:

Mr Aldo Ajello is hereby appointed European Union Special Representative (hereinafter referred to as 'Special Representative') for the African Great Lakes Region.

(1) The European Union wishes to assist in resolving the crises affecting the African Great Lakes Region.

Article 2

(2) For this reason, the European Union intends to support the efforts of the United Nations Organisation (UNO), the Organisation of African Unity (OAU), the sub-regional organisations and all the prominent figures and parties involved, to find a lasting and comprehensive peaceful solution to the political, economic and humanitarian problems facing the region.

1. The Special Representative shall support the efforts aimed at creating the necessary conditions for a lasting and peaceful solution to the crises affecting the African Great Lakes Region, including preparations, at the appropriate time, for an international conference on peace, stability, democracy and development in the African Great Lakes Region.

(3) Joint Action 96/250/CFSP of the Council of 25 March 1996 in relation to the nomination of a Special Envoy for the African Great Lakes Region ⁽¹⁾, the application of which was last extended by Joint Action 2000/347/CFSP ⁽²⁾, expires on 31 December 2000.

2. In particular, the mandate of the Special Representative shall be to:

(4) On the basis of the review of Joint Action 96/250/CFSP, the mandate of the Council's Special Envoy should be extended.

— support the efforts of the UNO, the OAU, sub-regional organisations and their various representatives to bring an end to the conflicts in the region, as well as those of the prominent African figures who are assisting these organisations;

(5) On 30 March 2000 the Council adopted guidelines on appointing procedure and administrative arrangements concerning European Union Special Representatives. The arrangements for the European Union Special Representative need to be adjusted in accordance with these guidelines.

— establish and maintain close contact with the governments of the countries in the region and with other interested governments and international organisations in order to identify measures which need to be taken towards solving the problems of the region;

— where appropriate, establish contact with other prominent figures and parties who might have a role to play in settling the conflicts in the region.

Article 3

(6) For reasons of transparency and clarity, the provisions concerning the European Union Special Representative for the African Great Lakes Region should be incorporated into a single text and Joint Action 96/250/CFSP thus repealed,

1. The Special Representative shall conclude a contract as 'Special Adviser' with the Council.

2. The Special Representative shall be responsible for implementing his/her mandate, including the constitution of his/her team, in consultation with the Presidency, assisted by the Secretary-General/High Representative, and in full association with the Commission.

⁽¹⁾ OJ L 87, 4.4.1996, p. 1.

⁽²⁾ OJ L 122, 24.5.2000, p. 6.

3. Member States and institutions of the European Union (EU) may propose the secondment of staff to work with the Special Representative. The remuneration of personnel who might be seconded by a Member State or an EU institution to the Special Representative shall be covered by the Member State or the EU institution concerned respectively.

4. All A-type posts to be filled shall be published in Member States and EU institutions and taken up by the best qualified applicants.

5. The privileges, immunities and further guarantees necessary for the completion and smooth functioning of the mission of the Special Representative and the members of his staff shall be defined with the parties. Member States and the Commission shall grant all necessary support to such effect.

6. The Presidency, Commission and/or Member States, as appropriate, will provide logistical support in the region.

Article 4

The Special Representative shall report directly to the Secretary-General/High Representative. He shall be accountable to him as regards the administrative costs incurred in connection with his/her activities.

Article 5

1. The Special Representative shall submit regular reports on his/her own initiative or when requested, to the Council

through the Secretary-General/High Representative. Such reports shall also be forwarded to the Commission.

2. The implementation of this Joint Action shall be kept under regular review, taking into account notably the development of, and consistency with, other EU contributions to the region.

Article 6

Joint Action 96/250/CFSP shall be repealed.

Article 7

This Joint Action shall enter into force on 1 January 2001.

It shall apply until 31 December 2001.

Article 8

This Joint Action shall be published in the Official Journal.

Done at Brussels, 14 December 2000.

For the Council

The President

J. GLAVANY

COUNCIL JOINT ACTION
of 14 December 2000
appointing the Special Representative of the European Union to act as Coordinator of the Stability
Pact for South-Eastern Europe and repealing Joint Action 1999/523/CFSP

(2000/793/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 14 and 18(5) thereof,

Whereas:

- (1) Joint Action 1999/523/CFSP⁽¹⁾, expires on 31 December 2000.
- (2) Following reexamination of the said Joint Action it is evident that the mandate of the Special Representative should be extended.
- (3) On 30 March 2000 the Council adopted guidelines on the procedure for appointing Special Representatives of the European Union (EUSRs) and administrative arrangements concerning them. The arrangements for the EUSR to act as Coordinator of the Stability Pact for South-Eastern Europe need to be adapted to these guidelines.
- (4) For reasons of transparency and clarity, the provisions concerning the EUSR acting as Coordinator of the Stability Pact for South-Eastern Europe should be incorporated into a single text and Joint Action 1999/523/CFSP accordingly repealed,

HAS ADOPTED THIS JOINT ACTION:

Article 1

Mr Bodo Hombach is appointed Special Representative of the European Union to carry out the functions of Special Coordinator for the Stability Pact for South-Eastern Europe hereinafter 'Special Coordinator' according to the arrangements provided for in point 13 of the Stability Pact document.

Article 2

The Special Representative shall carry out the tasks envisaged by the Stability Pact for South-Eastern Europe, as follows:

- promote achievement of the Pact's objectives within, and between, the individual countries;

- chair the South-Eastern Europe Regional Table;
- establish and maintain close contact with all participants and facilitating States, organisations and institutions of the Pact, as well as pertinent regional initiatives and organisations;
- provide periodic progress reports to the OSCE Chairman-in-Office, according to its procedures, on behalf of the South-Eastern Europe Regional Table;
- participate in the High Level Steering Group of the donors coordination process;
- cooperate closely with all institutions of the European Union in order to promote the role of the European Union in the Pact according to points 18, 19 and 20 of the Stability Pact document;
- meet periodically and as necessary with the Chairmen of the Working Tables to ensure overall coordination;
- provide the secretariat of the South-Eastern Europe Regional Table and the three Working Tables.

Article 3

The Union shall, by providing its Special Representative with the necessary human and logistical resources, make a contribution to his functions as Special Coordinator.

The European Union looks to the other participants in the Stability Pact for South-Eastern Europe also to make a contribution to the functioning of the Pact.

Article 4

1. The Special Representative shall liaise closely with the Office of the High Representative in Bosnia and Herzegovina.
2. The Special Representative shall also liaise closely with the United Nations Civil Administration in Kosovo.

Article 5

1. The financial reference amount intended to cover the operational expenditure related to the mission of the Special Representative shall be EUR 2 020 000 for 2001.

⁽¹⁾ OJ L 201, 31.7.1999, p. 2. Joint Action as last extended and amended by Joint Action 1999/822/CFSP (OJ L 318, 11.12.1999, p. 40).

2. The amount specified in paragraph 1 shall be allocated to financing the operating expenditure of the Central Office of the Stability Pact for South-Eastern Europe in Brussels over the period in question.

3. The expenditure financed by the amount stipulated in paragraph 1 shall be managed in accordance with the European Community procedures and rules applicable to the budget.

Article 6

1. The Special Representative shall conclude a contract as 'Special Adviser' with the Council.

2. The Special Representative shall be responsible for implementing his mandate, including the constitution of his team, in consultation with the Presidency, assisted by the Secretary-General/High Representative, and in full association with the Commission.

3. Member States and institutions of the European Union may propose the secondment of staff to work with the Special Representative. The remuneration of personnel who might be seconded by a Member State or an institution of the European Union to the Special Representative shall be covered respectively by the Member State or the institution of the European Union concerned.

4. All A-type posts shall be published in Member States and in the institutions of the European Union and filled by the best-qualified applicants.

5. The privileges, immunities and further guarantees necessary for the completion and smooth functioning of the mission of the Special Representative and the members of his staff shall be defined with the parties. Member States and the Commission shall grant all necessary support to such effect.

The equipment, supplies and premises for the Brussels office of the Stability Pact for South-Eastern Europe shall be purchased or rented on behalf of and for the European Communities.

6. The Presidency, Commission and/or Member States, as appropriate, shall provide logistical support in the region.

Article 7

1. The Special Representative shall report directly to the Secretary-General/High Representative. He shall be accountable

to the Secretary-General/High Representative for administrative expenditure incurred in respect of his activities.

2. The management of operational expenditure shall be subject to a contract between the Special Representative and the Commission.

Article 8

1. The Special Representative shall submit regular reports, on his own initiative or when requested, to the Council through the Secretary-General/High Representative. These reports shall also be forwarded to the Commission.

2. The implementation of this Joint Action shall be kept under regular review, taking into account notably the development of, and coherence with, other contributions of the European Union to the region.

Article 9

Positions of the European Union in the context of the Stability Pact for South-Eastern Europe will be determined in accordance with the guidelines adopted by the Council on 13 September 1999.

Article 10

Joint Action 1999/523/CFSP is hereby repealed.

Article 11

This Joint Action shall enter into force on 1 January 2001.

It shall apply until 31 December 2001.

Article 12

This Joint Action shall be published in the Official Journal.

Done at Brussels, 14 December 2000.

For the Council
The President
J. GLAVANY

COUNCIL JOINT ACTION
of 14 December 2000
appointing the European Union Special Representative for the Middle East peace process and
repealing Joint Action 96/676/CFSP

(2000/794/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 14 and 18(5) thereof,

Whereas:

- (1) Joint Action 96/676/CFSP of the Council of 25 November 1996 in relation to the nomination of a European Union special envoy for the Middle East peace process ⁽¹⁾, is due to expire on 31 December 2000.
- (2) On the basis of a review of Joint Action 96/676/CFSP, the mandate of the Special Representative should be extended.
- (3) It is also important to ensure coordination and coherence of the European Union approach in the Middle East.
- (4) On 30 March 2000 the Council adopted guidelines on the appointing procedure and administrative arrangements for European Union Special Representatives (EUSRs). The arrangements applicable to the EUSR should be adjusted in accordance with those guidelines.
- (5) For reasons of transparency and clarity, the provisions applicable to the EUSR should be set out in a single text and Joint Action 96/676/CFSP should therefore be repealed,

relevant international organisations, in order to work with them in strengthening the peace process;

- (b) observe peace negotiations between the parties and be ready to offer the European Union's advice and good offices should the parties request this;
- (c) contribute, where requested, to the implementation of international agreements reached between parties and engage with them diplomatically in the event of non-compliance with the terms of these agreements;
- (d) engage constructively with signatories to agreements within the framework of the peace process in order to promote compliance with the basic norms of democracy, including respect for human rights and the rule of law;
- (e) report to the Council's bodies on the possibilities for European Union intervention in the peace process and on the best way of pursuing European Union initiatives and ongoing Middle East peace process-related European Union business, including the political aspects of relevant European Union development projects;
- (f) monitor actions by either side which might prejudice the outcome of the permanent status negotiations;
- (g) develop joint cooperation on security issues within the EU-Palestinian Permanent Security Committee set up on 9 April 1998;
- (h) contribute to a better understanding of the EU's role among opinion leaders in the region.

HAS ADOPTED THIS JOINT ACTION:

Article 1

Mr Miguel Angel Moratinos is hereby appointed the European Union Special Representative for the Middle East peace process.

Article 2

The mandate of the Special Representative shall be to:

- (a) establish and maintain close contact with all the parties to the peace process, other countries of the region, the United States of America and other interested countries, as well as

Article 3

1. The financial reference amount intended to cover the operational expenditure related to the mission of the Special Representative shall be set at EUR 1 285 280 for the year 2001.

2. The amount specified in paragraph 1 shall be allocated to financing the expenditure of the EU-Israel Forum and the Final Status Task Forces, and that relating to cooperation through the EU-Palestinian Security Committee.

3. The expenditure financed by the amount stipulated in paragraph 1 shall be managed in accordance with the European Community procedures and rules applicable to the budget.

⁽¹⁾ OJ L 315, 4.12.1996, p. 1. Joint Action as last extended and amended by Joint Action 1999/843/CFSP (OJ L 326, 18.12.1999, p. 71).

Article 4

1. The Special Representative shall conclude a special adviser's contract with the Council.
2. The Special Representative shall be responsible for implementing his mandate, including the constitution of his team, in consultation with the Presidency, assisted by the Secretary-General/High Representative, and in full association with the Commission.
3. Member States and European Union institutions may propose the secondment of staff to work with the Special Representative. The remuneration of personnel seconded by a Member State or a European Union institution to the Special Representative shall be covered by the Member State or European Union institution concerned.
4. All A-type posts shall be published in Member States and European Union institutions and filled by the best-qualified applicants.
5. The privileges, immunities and further guarantees necessary for the completion and smooth functioning of the mission of the Special Representative and the members of his staff shall be defined with the parties. Member States and the Commission shall grant all necessary support to such effect.
6. The Presidency, Commission and/or Member States, as appropriate, shall provide logistical support in the region.

Article 5

1. The Special Representative shall report directly to the Secretary-General/High Representative. He shall be accountable to the Secretary-General/High Representative for administrative expenditure incurred in respect of his activities.
2. The management of operational expenditure shall be subject to a contract between the Special Representative and the Commission.

Article 6

1. The Special Representative shall submit regular reports, on his own initiative or when requested, to the Council through the Secretary-General/High Representative. These reports shall also be forwarded to the Commission.
2. The implementation of this Joint Action shall be kept under regular review, taking into account notably the development of and consistency with other European Union contributions to the region.
3. In particular the Presidency, assisted by the Secretary-General/High Representative, shall ensure coordination between the activities of the Special Representative and the EU adviser appointed under Council Joint Action of 13 April 2000 on a European Union assistance programme to support the Palestinian Authority in its efforts to counter terrorist activities emanating from the territories under its control ⁽¹⁾.

Article 7

Joint Action 96/676/CFSP is hereby repealed.

Article 8

This Joint Action shall enter into force on 1 January 2001.
It shall apply until 31 December 2001.

Article 9

This Joint Action shall be published in the Official Journal.

Done at Brussels, 14 December 2000.

For the Council
The President
J. GLAVANY

⁽¹⁾ OJ L 97, 19.4.2000, p. 4.

I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 2745/2000
of 15 December 2000
establishing the standard import values for determining the entry price of certain fruit and
vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1498/98 ⁽²⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 16 December 2000.

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

Done at Brussels, 15 December 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 15 December 2000 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	99,3
	204	74,8
	999	87,0
0707 00 05	052	116,8
	624	195,9
	628	152,5
	999	155,1
0709 90 70	052	89,1
	204	40,2
	628	109,0
	999	79,4
0805 10 10, 0805 10 30, 0805 10 50	052	45,1
	204	46,9
	388	32,2
	999	41,4
0805 20 10	052	93,5
	204	78,9
	999	86,2
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	74,2
	999	74,2
0805 30 10	052	68,6
	600	73,3
	999	70,9
0808 10 20, 0808 10 50, 0808 10 90	060	38,0
	400	79,6
	404	89,1
	720	112,9
	999	79,9
0808 20 50	064	57,8
	400	87,5
	720	134,9
	999	93,4

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2543/1999 (OJ L 307, 2.12.1999, p. 46). Code '999' stands for 'of other origin'.

**COMMISSION REGULATION (EC) No 2746/2000
of 15 December 2000**

fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 66th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1670/2000 ⁽²⁾, and in particular Article 10 thereof,

Whereas:

(1) The intervention agencies are, pursuant to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs ⁽³⁾, as last amended by Regulation (EC) No 635/2000 ⁽⁴⁾, to sell by invitation to tender certain quantities of butter that they hold and to grant aid for cream, butter and concentrated butter. Article 18 of that Regulation stipulates that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further stipulated that the price

or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure, and that a decision may also be taken to make no award in response to the tenders submitted. The amount(s) of the processing securities must be fixed accordingly.

(2) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

The minimum selling prices and the maximum aid and processing securities applying for the 66th individual invitation to tender, under the standing invitation to tender provided for in Regulation (EC) No 2571/97, shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 16 December 2000.

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

Done at Brussels, 15 December 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 193, 29.7.2000, p. 10.

⁽³⁾ OJ L 350, 20.12.1997, p. 3.

⁽⁴⁾ OJ L 76, 25.3.2000, p. 9.

ANNEX

to the Commission Regulation of 15 December 2000 fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 66th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

(EUR/100 kg)

Formula			A		B	
Incorporation procedure			With tracers	Without tracers	With tracers	Without tracers
Minimum selling price	Butter ≥ 82 %	Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Processing security		Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Maximum aid	Butter ≥ 82 %		95	91	—	91
	Butter < 82 %		92	88	—	88
	Concentrated butter		117	113	117	113
	Cream		—	—	40	38
Processing security	Butter		105	—	—	—
	Concentrated butter		129	—	129	—
	Cream		—	—	44	—

**COMMISSION REGULATION (EC) No 2747/2000
of 15 December 2000**

**fixing the maximum aid for concentrated butter for the 238th special invitation to tender opened
under the standing invitation to tender provided for in Regulation (EEC) No 429/90**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1670/2000 ⁽²⁾, and in particular Article 10 thereof,

Whereas:

- (1) In accordance with Commission Regulation (EEC) No 429/90 of 20 February 1990 on the granting by invitation to tender of an aid for concentrated butter intended for direct consumption in the Community ⁽³⁾, as last amended by Regulation (EC) No 124/1999 ⁽⁴⁾, the intervention agencies are opening a standing invitation to tender for the granting of aid for concentrated butter; Article 6 of that Regulation provides that in the light of the tenders received in response to each special invitation to tender, a maximum amount of aid is to be fixed for concentrated butter with a minimum fat content of 96 % or a decision is to be taken to make no award; whereas the end-use security must be fixed accordingly.

- (2) In the light of the tenders received, the maximum aid should be fixed at the level specified below and the end-use security determined accordingly.
- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 238th special invitation to tender under the standing invitation to tender opened by Regulation (EEC) No 429/90, the maximum aid and the amount of the end-use security shall be as follows:

- | | |
|---------------------|-----------------|
| — maximum aid: | EUR 117/100 kg |
| — end-use security: | EUR 129/100 kg. |

Article 2

This Regulation shall enter into force on 16 December 2000.

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

Done at Brussels, 15 December 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 193, 29.7.2000, p. 10.

⁽³⁾ OJ L 45, 21.2.1990, p. 8.

⁽⁴⁾ OJ L 16, 21.1.1999, p. 19.

**COMMISSION REGULATION (EC) No 2748/2000
of 15 December 2000
suspending the buying-in of butter in certain Member States**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1670/2000 ⁽²⁾, and in particular Article 10 thereof,

Whereas:

- (1) Article 2 of Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream ⁽³⁾, as last amended by Regulation (EC) No 2099/2000 ⁽⁴⁾, lays down the criteria for opening or suspending the buying-in of butter by invitation to tender in the Member States.
- (2) Commission Regulation (EC) No 2397/2000 ⁽⁵⁾ suspending the buying-in of butter in certain Member States establishes the list of Member States in which intervention is suspended. As a result of the market prices communicated by Ireland intervention must no longer be suspended in this country and the list of

Member States established by Regulation (EC) No 2397/2000 adjusted accordingly.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

Buying-in of butter by invitation to tender as provided for in Article 6(1) of Regulation (EC) No 1255/1999 is hereby suspended in Belgium, Denmark, Germany, Spain, France, Italy, Greece, Luxembourg, the Netherlands, Austria, Finland, Portugal, the United Kingdom and Sweden.

Article 2

Regulation (EC) No 2397/2000 is hereby repealed.

Article 3

This Regulation shall enter into force on 16 December 2000.

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

Done at Brussels, 15 December 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 193, 29.7.2000, p. 10.

⁽³⁾ OJ L 333, 24.12.1999, p. 11.

⁽⁴⁾ OJ L 249, 4.10.2000, p. 20.

⁽⁵⁾ OJ L 276, 28.10.2000, p. 17.

**COMMISSION DECISION No 2749/2000/ECSC
of 13 December 2000**

fixing the rate of the levies for the 2001 financial year and amending Decision No 3/52/ECSC on the amount of and methods for applying the levies provided for in Articles 49 and 50 of the Treaty

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 49 and 50 thereof,

Whereas:

- (1) In view of the variations in average values recorded during the reference period, Article 2 of Decision No 3/52/ECSC of the High Authority ⁽¹⁾, as last amended by Commission Decision No 2787/1999/ECSC ⁽²⁾, should be amended.
- (2) The requirements of the European Coal and Steel Community are estimated in the operating budget for the 2001 financial year at EUR 195 million. The budget, which was adopted by the Commission on 13 December 2000 in the form shown in the Annex to this Decision, indicates the amount of income to be yielded by levies in 2001, namely EUR 0 million.
- (3) The estimated yield of levies at a rate of 0,01 % is EUR 4,814 million,

HAS ADOPTED THIS DECISION:

Article 1

The rate of the levies on output from 1 January 2001 shall be 0 % of the figures used as the basis of assessment for such levies.

Article 2

Article 2 of Decision No 3/52/ECSC is replaced by the following:

'Article 2

The average value in euro of the products on which the levies are assessed shall, from 1 January 2001, be as follows:

<i>(EUR/tonne)</i>	
Product	Average value
Brown coal briquettes and semi-coke derived from hard coal	69,38
Hard coal of all categories	45,50
Pig iron other than that used for making ingots	178
Steel in ingots	227
Finished products and end products of iron and steel as described in Annex I to the Treaty	378'

Article 3

This Decision shall enter into force on 1 January 2001.

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

Done at Brussels, 13 December 2000.

For the Commission

Michaela SCHREYER

Member of the Commission

⁽¹⁾ OJ ECSC 1, 30.12.1952, p. 4.

⁽²⁾ OJ L 336, 29.12.1999, p. 6.

ANNEX

ECSC OPERATING BUDGET FOR 2001

(million EUR)

Requirements		Resources	
Operations to be financed from resources for the financial year (non-repayable)	Forecast	Resources for the financial year	Forecast
1. Administrative expenditure	5,0	1. Current resources	
2. Aid for redeployment (Article 56) ⁽¹⁾	80,0	1.1 Yield from levy at a rate of 0,00 %	p.m.
3. Aid for research (Article 55) ⁽²⁾	79,0	1.2 Net balance	48,0
3.1 Steel	56,0	1.3 Fines and surcharges for late payment	p.m.
3.2 Coal	23,0	1.4 Miscellaneous	3,0
4. Social measures — coal (Article 56)	31,0	2. Cancellation of commitments not likely to be implemented	36,0
		3. Drawings on provision for financing ECSC budget	108,0
Total budget	195,0	Total budget	195,0

⁽¹⁾ The indicative breakdown for aid for redeployment is EUR 55 million for coalworkers and EUR 25 million for steelworkers.

⁽²⁾ Including projects with an impact on technical measures to combat harmful effects at the workplace and around steel plants (indicative amount of EUR 4 million), industrial hygiene and mine safety (indicative amount of EUR 3 million).

COMMISSION REGULATION (EC) No 2750/2000
of 15 December 2000
prohibiting fishing for saithe by vessels flying the flag of Denmark

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy ⁽¹⁾, as last amended by Regulation (EC) No 2846/98 ⁽²⁾, and in particular Article 21(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 2742/1999 of 17 December 1999 fixing for 2000 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required and amending Regulation (EC) No 66/98 ⁽³⁾, as last amended by Regulation (EC) No 2579/2000 ⁽⁴⁾, lays down quotas for saithe for 2000.
- (2) In order to ensure compliance with the provisions relating to the quantity limits on catches of stocks subject to quotas, the Commission must fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated.
- (3) According to the information received by the Commission, catches of saithe in the waters of ICES divisions IIa (EC waters) Skagerrak and Kattegat, ICES IIIb, c and d

(EC waters) and the North Sea by vessels flying the flag of Denmark or registered in Denmark have exhausted the quota allocated for 2000. Denmark has prohibited fishing for this stock from 7 December 2000. This date should be adopted in this Regulation also,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of saithe in the waters of ICES divisions IIa (EC waters) Skagerrak and Kattegat, ICES IIIb, c and d (EC waters) and the North Sea by vessels flying the flag of Denmark or registered in Denmark are hereby deemed to have exhausted the quota allocated for 2000.

Fishing for saithe in the waters of ICES divisions IIa (EC waters) Skagerrak and Kattegat, ICES IIIb, c and d (EC waters) and the North Sea by vessels flying the flag of Denmark or registered in Denmark is hereby prohibited, as are the retention on board, transshipment and landing of this stock caught by the above vessels after the date of application of this Regulation.

Article 2

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

It shall apply from 7 December 2000.

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

Done at Brussels, 15 December 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 261, 20.10.1993, p. 1.

⁽²⁾ OJ L 358, 31.12.1998, p. 5.

⁽³⁾ OJ L 341, 31.12.1999, p. 1.

⁽⁴⁾ OJ L 298, 25.11.2000, p. 3.

COMMISSION REGULATION (EC) No 2751/2000
of 15 December 2000
prohibiting fishing for mackerel by vessels flying the flag of Ireland

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy ⁽¹⁾, as last amended by Regulation (EC) No 2846/98 ⁽²⁾, and in particular Article 21(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 2742/1999 of 17 December 1999 fixing for 2000 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required and amending Regulation (EC) No 66/98 ⁽³⁾, as last amended by Regulation (EC) No 2579/2000 ⁽⁴⁾, lays down quotas for mackerel for 2000.
- (2) In order to ensure compliance with the provisions relating to the quantity limits on catches of stocks subject to quotas, the Commission must fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated.
- (3) According to the information received by the Commission, catches of mackerel in the waters of ICES divisions IIa (non-Community waters), Vb (Community waters),

VI, VII, VIIIabde, XII and XIV by vessels flying the flag of Ireland or registered in Ireland have exhausted the quota allocated for 2000. Ireland has prohibited fishing for this stock from 28 November 2000. This date should be adopted in this Regulation also,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of mackerel in the waters of ICES divisions IIa (non-Community waters), Vb (Community waters), VI, VII, VIIIabde, XII and XIV by vessels flying the flag of Ireland or registered in Ireland are hereby deemed to have exhausted the quota allocated for 2000.

Fishing for mackerel in the waters of ICES divisions IIa (non-Community waters), Vb (Community waters), VI, VII, VIIIabde, XII and XIV by vessels flying the flag of Ireland or registered in Ireland is hereby prohibited, as are the retention on board, transhipment and landing of this stock caught by the above vessels after the date of application of this Regulation.

Article 2

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

It shall apply from 28 November 2000.

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

Done at Brussels, 15 December 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 261, 20.10.1993, p. 1.

⁽²⁾ OJ L 358, 31.12.1998, p. 5.

⁽³⁾ OJ L 341, 31.12.1999, p. 1.

⁽⁴⁾ OJ L 298, 25.11.2000, p. 3.

COMMISSION REGULATION (EC) No 2752/2000**of 15 December 2000****fixing the maximum export refund on wholly milled round grain rice in connection with the invitation to tender issued in Regulation (EC) No 2281/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 1667/2000 ⁽²⁾, and in particular Article 13 (3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2281/2000 ⁽³⁾.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 299/95 ⁽⁵⁾, allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled round grain rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2281/2000 is hereby fixed on the basis of the tenders submitted from 8 to 14 December 2000 at 195,00 EUR/t.

Article 2

This Regulation shall enter into force on 16 December 2000.

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

Done at Brussels, 15 December 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 193, 29.7.2000, p. 3.

⁽³⁾ OJ L 260, 14.10.2000, p. 7.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 2753/2000**of 15 December 2000****fixing the maximum export refund on wholly milled medium grain and long grain A rice in connection with the invitation to tender issued in Regulation (EC) No 2282/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 1667/2000 ⁽²⁾, and in particular Article 13 (3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2282/2000 ⁽³⁾.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 299/95 ⁽⁵⁾, allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled medium grain and long grain A rice to be exported to certain European third countries pursuant to the invitation to tender issued in Regulation (EC) No 2282/2000 is hereby fixed on the basis of the tenders submitted from 8 to 14 December 2000 at 190,00 EUR/t.

Article 2

This Regulation shall enter into force on 16 December 2000.

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

Done at Brussels, 15 December 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 193, 29.7.2000, p. 3.

⁽³⁾ OJ L 260, 14.10.2000, p. 10.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

**COMMISSION REGULATION (EC) No 2754/2000
of 15 December 2000**

**fixing the maximum export refund on wholly milled round grain, medium grain and long grain A
rice in connection with the invitation to tender issued in Regulation (EC) No 2283/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 1667/2000 ⁽²⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2283/2000 ⁽³⁾.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 299/95 ⁽⁵⁾, allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled grain, medium grain and long grain A rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2283/2000 is hereby fixed on the basis of the tenders submitted from 8 to 14 December 2000 at 197,00 EUR/t.

Article 2

This Regulation shall enter into force on 16 December 2000.

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

Done at Brussels, 15 December 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 193, 29.7.2000, p. 3.

⁽³⁾ OJ L 260, 14.10.2000, p. 13.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 2755/2000**of 15 December 2000****fixing the maximum export refund on wholly milled long grain rice in connection with the invitation to tender issued in Regulation (EC) No 2284/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 1667/2000 ⁽²⁾, and in particular Article 13 (3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2284/2000 ⁽³⁾.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 299/95 ⁽⁵⁾, allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled long grain rice falling within CN code 1006 30 67 to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2284/2000 is hereby fixed on the basis of the tenders submitted from 8 to 14 December 2000 at 275,00 EUR/t.

Article 2

This Regulation shall enter into force on 16 December 2000.

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

Done at Brussels, 15 December 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 193, 29.7.2000, p. 3.

⁽³⁾ OJ L 260, 14.10.2000, p. 16.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

**COMMISSION REGULATION (EC) No 2756/2000
of 15 December 2000**

amending Regulation (EC) No 1487/95 establishing the supply balance for the Canary Islands for products from the pigmeat sector and fixing the aid for products coming from the Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1601/92 of 15 June 1992 introducing specific measures for the Canary Islands concerning certain agricultural products ⁽¹⁾, as last amended by Regulation (EC) No 1257/1999 ⁽²⁾, and in particular Article 4(4) thereof,

Whereas:

- (1) The amounts of aid for the supply of the pigmeat sector to the Canary Islands have been settled by Commission Regulation (EC) No 1487/95 of 28 June 1995 establishing the supply balance for the Canary Islands for products from the pigmeat sector and fixing the aid for products coming from the Community ⁽³⁾, as last amended by Regulation (EC) No 1985/2000 ⁽⁴⁾. For the calculation of aid for supply to the Canary Islands of products from the pigmeat sector, the existing relationship between the aid for cereals and the aid for pigmeat

must be taken into consideration. As a consequence of the changes in the rates and prices for cereal products in the European part of the Community and on the world market, the aid for supply to the Canary Islands should be set at the amounts given in the Annex.

- (2) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Pigmeat,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EC) No 1487/95 is hereby replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 January 2001.

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

Done at Brussels, 15 December 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 173, 27.6.1992, p. 13.

⁽²⁾ OJ L 160, 26.6.1999, p. 80.

⁽³⁾ OJ L 145, 29.6.1995, p. 63.

⁽⁴⁾ OJ L 237, 21.9.2000, p. 20.

ANNEX

'ANNEX II

Amounts of aid granted for products coming from the Community market

(EUR/100 kg net weight)	
Product code	Amount of aid
0203 21 10 9000	6,3
0203 22 11 9100	9,4
0203 22 19 9100	6,3
0203 29 11 9100	6,3
0203 29 13 9100	9,4
0203 29 15 9100	6,3
0203 29 55 9110	10,7

NB: The product codes as well as the footnotes are defined in Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1).'

COMMISSION REGULATION (EC) No 2757/2000**of 15 December 2000****deciding not to accept tenders submitted in response to the 257th partial invitation to tender as a general intervention measure pursuant to Regulation (EEC) No 1627/89**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ⁽¹⁾, and in particular Article 47(8) thereof,

Whereas:

- (1) Commission Regulation (EC) No 562/2000 of 15 March 2000 laying down detailed rules for the application of Council Regulation (EC) No 1254/1999 as regards the buying-in of beef ⁽²⁾ lays down buying standards. Pursuant to the abovementioned Regulation, an invitation to tender was opened pursuant to Article 1(1) of Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying-in of beef by invitation to tender ⁽³⁾, as last amended by Regulation (EC) No 2734/2000 ⁽⁴⁾.
- (2) Article 13(1) of Regulation (EC) No 562/2000 lays down that a maximum buying-in price is to be fixed for quality R3, where appropriate, under each partial invitation to tender in the light of tenders received. In accordance with Article 13(2) of that Regulation, a decision

may be taken not to proceed with the tendering procedure.

- (3) Once tenders submitted in respect of the 257th partial invitation to tender have been considered and taking account, pursuant to Article 47(8) of Regulation (EC) No 1254/1999, of the requirements for reasonable support of the market and the seasonal trend in slaughterings and prices, it has been decided not to proceed with the tendering procedure.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Beef and Veal,

HAS ADOPTED THIS REGULATION:

Article 1

No award shall be made against the 257th partial invitation to tender opened pursuant to Regulation (EEC) No 1627/89.

Article 2

This Regulation shall enter into force on 18 December 2000.

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

Done at Brussels, 15 December 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 21.

⁽²⁾ OJ L 68, 16.3.2000, p. 22.

⁽³⁾ OJ L 159, 10.6.1989, p. 36.

⁽⁴⁾ OJ L 316, 15.12.2000, p. 45.

COMMISSION REGULATION (EC) No 2758/2000
of 15 December 2000
correcting Regulations (EC) No 2643/2000 and (EC) No 2653/2000 on the issue of system B export
licences in the fruit and vegetables sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 2699/2000 ⁽²⁾, and in particular Article 35(11) thereof,

Whereas:

- (1) Commission Regulations (EC) No 2643/2000 ⁽³⁾ and (EC) No 2653/2000 ⁽⁴⁾ interrupt the issue of system B export licences for table grapes and apples for the current export period within the meaning of Commission Regulation (EC) No 2432/2000 of 31 October 2000 fixing export refunds on fruit and vegetables ⁽⁵⁾.

- (2) Checks have revealed that there is an error in the date of the end of that period,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1 of Regulations (EC) No 2643/2000 and (EC) No 2653/2000, '16 January 2001' is replaced by '17 January 2001'.

Article 2

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

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

Done at Brussels, 15 December 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 297, 21.11.1996, p. 1.

⁽²⁾ OJ L 311, 12.12.2000, p. 9.

⁽³⁾ OJ L 302, 1.12.2000, p. 56.

⁽⁴⁾ OJ L 303, 2.12.2000, p. 11.

⁽⁵⁾ OJ L 279, 1.11.2000, p. 30.

COMMISSION REGULATION (EC) No 2759/2000**of 15 December 2000****amending Regulation (EEC) No 1725/92 laying down detailed implementing rules for the specific measures for supplying the Azores and Madeira with products from the pigmeat sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1600/92 of 15 June 1992 concerning specific measures for the Azores and Madeira relating to certain agricultural products ⁽¹⁾, as last amended by Regulation (EC) No 1257/1999 ⁽²⁾, and in particular Article 10 thereof,

Whereas:

- (1) The amounts of aid for supplying the Azores and Madeira with products from the pigmeat sector have been fixed by Commission Regulation (EEC) No 1725/92 of 30 June 1992 laying down detailed implementing rules for the specific measures for supplying the Azores and Madeira with products from the pigmeat sector ⁽³⁾, as last amended by Regulation (EC) No 1986/2000 ⁽⁴⁾. In calculating the aid for the pigmeat products intended for the Azores and Madeira, it is necessary to take account of the relationship that exists between the aids

for cereals and those for pigmeat. As a result of the changes in quotations and prices for cereal products on the European territory of the Community and on the world market, the amounts of aid for supplying the Azores and Madeira should be fixed again as set out in the Annex hereto.

- (2) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Pigmeat,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EEC) No 1725/92 is replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 January 2001.

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

Done at Brussels, 15 December 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 173, 27.6.1992, p. 1.

⁽²⁾ OJ L 160, 26.6.1999, p. 80.

⁽³⁾ OJ L 179, 1.7.1992, p. 95.

⁽⁴⁾ OJ L 237, 21.9.2000, p. 22.

ANNEX

'ANNEX II

Amounts of aid granted for products referred to in Annex I and coming from the Community market

(EUR/100 kg net)

Product code	Amount of aid
0203 11 10 9000	6,3
0203 12 11 9100	9,4
0203 12 19 9100	6,3
0203 19 11 9100	6,3
0203 19 13 9100	9,4
0203 19 15 9100	6,3
0203 19 55 9110	10,7
0203 19 55 9310	10,7
0203 21 10 9000	6,3
0203 22 11 9100	9,4
0203 22 19 9100	6,3
0203 29 11 9100	6,3
0203 29 13 9100	9,4
0203 29 15 9100	6,3
0203 29 55 9110	10,7

NB: The product codes as well as the footnotes are defined in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1).'

**COMMISSION REGULATION (EC) No 2760/2000
of 15 December 2000
amending Regulation (EEC) No 1627/89 on the buying in of beef by invitation to tender**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ⁽¹⁾, and in particular Article 47(8) thereof,

Whereas:

- (1) Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying in of beef by invitation to tender ⁽²⁾, as last amended by Regulation (EC) No 2734/2000 ⁽³⁾, opened buying in by invitation to tender in certain Member States or regions of a Member State for certain quality groups.
- (2) The application of Article 47(3), (4) and (5) of Regulation (EC) No 1254/1999 and the need to limit intervention to buying in the quantities necessary to ensure reasonable support for the market result, on the basis of

the prices of which the Commission is aware, in an amendment, in accordance with the Annex hereto, to the list of Member States or regions of a Member State where buying in is open by invitation to tender, and the list of the quality groups which may be bought in.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Beef and Veal,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EEC) No 1627/89 is hereby replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on 16 December 2000.

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

Done at Brussels, 15 December 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 21.

⁽²⁾ OJ L 159, 10.6.1989, p. 36.

⁽³⁾ OJ L 316, 15.12.2000, p. 45.

ANEXO — BILAG — ANHANG — ΠΑΡΑΡΤΗΜΑ — ANNEX — ANNEXE — ALLEGATO — BIJLAGE — ANEXO —
LIITE — BILAGA

Estados miembros o regiones de Estados miembros y grupos de calidades previstos en el apartado 1 del artículo 1 del Reglamento (CEE) n° 1627/89

Medlemsstater eller regioner og kvalitetsgrupper, jf. artikel 1, stk. 1, i forordning (EØF) nr. 1627/89
Mitgliedstaaten oder Gebiete eines Mitgliedstaats sowie die in Artikel 1 Absatz 1 der Verordnung (EWG) Nr. 1627/89 genannten Qualitätsgruppen

Κράτη μέλη ή περιοχές κρατών μελών και ομάδες ποιότητας που αναφέρονται στο άρθρο 1 παράγραφος 1 του κανονισμού (ΕΟΚ) αριθ. 1627/89

Member States or regions of a Member State and quality groups referred to in Article 1 (1) of Regulation (EEC) No 1627/89

États membres ou régions d'États membres et groupes de qualités visés à l'article 1^{er} paragraphe 1 du règlement (CEE) n° 1627/89

Stati membri o regioni di Stati membri e gruppi di qualità di cui all'articolo 1, paragrafo 1 del regolamento (CEE) n. 1627/89

In artikel 1, lid 1, van Verordening (EEG) nr. 1627/89 bedoelde lidstaten of gebieden van een lidstaat en kwaliteitsgroepen

Estados-Membros ou regiões de Estados-Membros e grupos de qualidades referidos no n.º 1 do artigo 1.º do Regulamento (CEE) n.º 1627/89

Jäsenvaltiot tai alueet ja asetukset (ETY) N:o 1627/89 1 artiklan 1 kohdan tarkoittamat laaturyhmit
Medlemsstater eller regioner och kvalitetsgrupper som avses i artikel 1.1 i förordning (EEG) nr 1627/89

Estados miembros o regiones de Estados miembros	Categoría A			Categoría C		
Medlemsstat eller region	Kategori A			Kategori C		
Mitgliedstaaten oder Gebiete eines Mitgliedstaats	Kategorie A			Kategorie C		
Κράτος μέλος ή περιοχή κράτους μέλους	Κατηγορία Α			Κατηγορία Γ		
Member States or regions of a Member State	Category A			Category C		
États membres ou régions d'États membres	Catégorie A			Catégorie C		
Stati membri o regioni di Stati membri	Categoria A			Categoria C		
Lidstaat of gebied van een lidstaat	Categorie A			Categorie C		
Estados-Membros ou regiões de Estados-Membros	Categoria A			Categoria C		
Jäsenvaltiot tai alueet	Luokka A			Luokka C		
Medlemsstater eller regioner	Kategori A			Kategori C		
	U	R	O	U	R	O
Belgique/België	×	×	×			
Deutschland	×	×	×			
España	×	×	×			
France	×	×	×			×
Ireland				×	×	×
Italia	×	×	×			
Nederland		×				
Österreich	×	×	×			
Northern Ireland				×	×	×

COMMISSION REGULATION (EC) No 2761/2000**of 15 December 2000****determining the world market price for unginned cotton and the rate for the aid**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Greece, and in particular paragraphs 3 and 10 of Protocol 4 on cotton, as last amended by Council Regulation (EC) No 1553/95 ⁽¹⁾,

Having regard to Council Regulation (EC) No 1554/95 of 29 June 1995 ⁽²⁾ laying down general rules for the system of aid for cotton and repealing Regulation (EEC) No 2169/81, as last amended by Regulation (EC) No 1419/98 ⁽³⁾, and in particular Articles 3, 4 and 5 thereof,

Whereas:

- (1) Article 3 of Regulation (EC) No 1554/95 requires a world market price for unginned cotton to be periodically determined from the world market price determined for ginned cotton, using the historical relationship between the two prices as specified in Article 1(2) of Commission Regulation (EEC) No 1201/89 of 3 May 1989 laying down rules for implementing the system of aid for cotton ⁽⁴⁾, as last amended by Regulation (EC) No 1624/1999 ⁽⁵⁾. If it cannot be determined in this way it is to be based on the last price determined.
- (2) Article 4 of Regulation (EC) No 1554/95 requires the world market price for ginned cotton to be determined for a product of specific characteristics using the most favourable offers and quotations on the world market of those considered representative of the real market trend. To this end an average is to be calculated of offers and quotations on one or more European exchanges for a cif product to a North European port from the supplier countries considered most representative as regards international trade. These rules for determination of the world market price for ginned cotton provide for adjust-

ments to reflect differences in product quality and the nature of offers and quotations. These adjustments are specified in Article 2 of Regulation (EEC) No 1201/89.

- (3) Application of the above rules gives the world market price for unginned cotton indicated hereunder.
- (4) The second subparagraph of Article 5(3a) of Regulation (EC) No 1554/95 stipulates that the advance payment rate for the aid is to be the guide price less the world market price and less a further amount calculated by the formula applicable when the guaranteed maximum quantity is based on the revised production estimate for unginned cotton plus at least 7,5 %. Commission Regulation (EC) No 2714/2000 ⁽⁶⁾ fixes the revised production estimate for the 2000/2001 marketing year, and the relevant percentage increase. The application of this method results in the fixing of the advance payment rate for each Member State at the levels set out below,

HAS ADOPTED THIS REGULATION:

Article 1

1. The world market price for unginned cotton as indicated in Article 3 of Regulation (EC) No 1554/95 is set at 40,136 EUR/100 kg.
2. The advance payment of the aid referred to in Article 5(3a), second subparagraph, of Regulation (EC) No 1554/95 is fixed at:
 - 51,601 EUR/100 kg in Spain,
 - 27,152 EUR/100 kg in Greece,
 - 66,164 EUR/100 kg in other Member States.

Article 2

This Regulation shall enter into force on 16 December 2000.

⁽¹⁾ OJ L 148, 30.6.1995, p. 45.

⁽²⁾ OJ L 148, 30.6.1995, p. 48.

⁽³⁾ OJ L 190, 4.7.1998, p. 4.

⁽⁴⁾ OJ L 123, 4.5.1989, p. 23.

⁽⁵⁾ OJ L 192, 24.7.1999, p. 39.

⁽⁶⁾ OJ L 313, 13.12.2000, p. 7.

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

Done at Brussels, 15 December 2000.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 2762/2000
of 15 December 2000
amending representative prices and additional duties for the import of certain products in the
sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector ⁽¹⁾, as amended by Commission Regulation (EC) No 1527/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses ⁽³⁾, as last amended by Regulation (EC) No 624/98 ⁽⁴⁾, and in particular the second subparagraph of Article 1(2), and Article 3(1) thereof,

Whereas:

- (1) The amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation

(EC) No 1411/2000 ⁽⁵⁾, as last amended by Regulation (EC) No 2675/2000 ⁽⁶⁾.

- (2) It follows from applying the general and detailed fixing rules contained in Regulation (EC) No 1423/95 to the information known to the Commission that the representative prices and additional duties at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties on imports of the products referred to in Article 1 of Regulation (EC) No 1423/95 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 16 December 2000.

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

Done at Brussels, 15 December 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 175, 14.7.2000, p. 59.

⁽³⁾ OJ L 141, 24.6.1995, p. 16.

⁽⁴⁾ OJ L 85, 20.3.1998, p. 5.

⁽⁵⁾ OJ L 161, 1.7.2000, p. 22.

⁽⁶⁾ OJ L 306, 7.12.2000, p. 26.

ANNEX

to the Commission Regulation of 15 December 2000 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(EUR)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 ⁽¹⁾	26,41	3,36
1701 11 90 ⁽¹⁾	26,41	8,33
1701 12 10 ⁽¹⁾	26,41	3,23
1701 12 90 ⁽¹⁾	26,41	7,90
1701 91 00 ⁽²⁾	26,67	11,90
1701 99 10 ⁽²⁾	26,67	7,38
1701 99 90 ⁽²⁾	26,67	7,38
1702 90 99 ⁽³⁾	0,27	0,38

⁽¹⁾ For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ L 89, 10.4.1968, p. 3).

⁽²⁾ For the standard quality as defined in Article 1 of Council Regulation (EEC) No 793/72 (OJ L 94, 21.4.1972, p. 1).

⁽³⁾ By 1 % sucrose content.

COMMISSION REGULATION (EC) No 2763/2000
of 15 December 2000
fixing the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector ⁽³⁾, as last amended by Regulation (EC) No 2235/2000 ⁽⁴⁾, and in particular Article 2 (1) thereof,

Whereas:

- (1) Article 10 of Regulation (EEC) No 1766/92 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation. However, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.
- (2) Pursuant to Article 10 (3) of Regulation (EEC) No 1766/92, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market.

- (3) Regulation (EC) No 1249/96 lays down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector.
- (4) The import duties are applicable until new duties are fixed and enter into force. They also remain in force in cases where no quotation is available for the reference exchange referred to in Annex II to Regulation (EC) No 1249/96 during the two weeks preceding the next periodical fixing.
- (5) In order to allow the import duty system to function normally, the representative market rates recorded during a reference period should be used for calculating the duties.
- (6) Application of Regulation (EC) No 1249/96 results in import duties being fixed as set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the cereals sector referred to in Article 10 (2) of Regulation (EEC) No 1766/92 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 16 December 2000.

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

Done at Brussels, 15 December 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 161, 29.6.1996, p. 125.

⁽⁴⁾ OJ L 256, 10.10.2000, p. 13.

ANNEX I

Import duties for the products covered by Article 10(2) of Regulation (EEC) No 1766/92

CN code	Description	Import duty by land inland waterway or sea from Mediterranean, the Black Sea or Baltic Sea ports (EUR/tonne)	Import duty by air or by sea from other ports ⁽²⁾ (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00	0,00
	medium quality ⁽¹⁾	0,00	0,00
1001 90 91	Common wheat seed	0,00	0,00
1001 90 99	Common high quality wheat other than for sowing ⁽³⁾	0,00	0,00
	medium quality	18,35	8,35
	low quality	44,51	34,51
1002 00 00	Rye	34,85	24,85
1003 00 10	Barley, seed	34,85	24,85
1003 00 90	Barley, other ⁽³⁾	34,85	24,85
1005 10 90	Maize seed other than hybrid	61,97	51,97
1005 90 00	Maize other than seed ⁽³⁾	61,97	51,97
1007 00 90	Grain sorghum other than hybrids for sowing	34,85	24,85

⁽¹⁾ In the case of durum wheat not meeting the minimum quality requirements for durum wheat of medium quality, referred to in Annex I to Regulation (EC) No 1249/96, the duty applicable is that fixed for low-quality common wheat.

⁽²⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

— EUR 3 per tonne, where the port of unloading is on the Mediterranean Sea, or

— EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic Coasts of the Iberian Peninsula.

⁽³⁾ The importer may benefit from a flat-rate reduction of EUR 24 or 8 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating duties

(period from 1 December 2000 to 14 December 2000)

1. Averages over the two-week period preceding the day of fixing:

Exchange quotations	Minneapolis	Kansas-City	Chicago	Chicago	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11,5 %	SRW2	YC3	HAD2	Medium quality (*)	US barley 2
Quotation (EUR/t)	133,58	131,57	111,60	97,36	191,25 (**)	181,25 (**)	118,85 (**)
Gulf premium (EUR/t)	—	15,66	9,47	6,25	—	—	—
Great Lakes premium (EUR/t)	25,31	—	—	—	—	—	—

(*) A discount of 10 EUR/t (Article 4(1) of Regulation (EC) No 1249/96).

(**) Fob Great Lakes.

2. Freight/cost: Gulf of Mexico — Rotterdam: 18,41 EUR/t; Great Lakes — Rotterdam: 30,30 EUR/t.

3. Subsidy within the meaning of the third paragraph of Article 4(2) of Regulation (EC) No 1249/96: 0,00 EUR/t (HRW2)
0,00 EUR/t (SRW2).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 22 December 1999

on the State aid implemented by Spain for Ramondín SA and Ramondín Cápsulas SA

(notified under document number C(1999) 5203)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2000/795/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 called on interested parties to submit their comments pursuant to the provision cited above ⁽¹⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) By letter dated 2 October 1997 (registered on 23 October 1997 under No SG A/38452), Mr Sanz Alonso, President of the Autonomous Community of Rioja, submitted a complaint against State aid allegedly granted to Ramondín SA ('Ramondín').
- (2) In a letter dated 2 January 1998 (D/50003) the Commission informed the Spanish authorities of this complaint and requested them to present, within 15 working days, their observations and any information which would enable the Commission to determine whether aid within the meaning of Article 87(1) of the EC Treaty was involved.
- (3) After receiving a reminder sent on 11 March 1998 (D/51136), the Spanish authorities replied in a letter dated 13 March 1998 (registered on that same date under No SG A/32119), presenting their observations and forwarding information supplied by the Basque regional authorities.
- (4) By letter dated 18 June 1998 (D/52538) the Commission informed the authorities of the Autonomous Community of Rioja of the content of the reply received from the Spanish authorities. In a letter dated 17 July 1998 (D/53048) the Commission requested additional information from the Rioja authorities. The Rioja authorities supplemented their complaint, by means of letters dated 10 July 1998 (registered on 13 July 1998 under No SG A/35419) and 2 October 1998 (registered on 5 October 1998 under No SG A/37220).

⁽¹⁾ OJ C 194, 10.7.1999, p. 18.

- (5) In the light of information published in the press (*El Correo*, 4 October 1998), the aid was entered on the register of unnotified aid under No NN 117/98.
- (6) In the light of the observations and information presented by the Spanish authorities and the supplementary information presented by the Rioja authorities, the Commission sent a letter (D/54346) on 26 October 1998, inviting Spain to provide within 15 working days detailed information about Ramondín's investment at Laguardia, which, according to information published in the press, had meanwhile ceased to be a mere plan and had moved into the implementation stage, as well as information on the regional aid and tax concessions received by Ramondín. That same letter pointed out that when the Commission considers aid to have been granted or altered without due notification having been made, and after having allowed the Member State to express its opinion on the matter, the Commission is empowered to take an interim decision, pending the outcome of its examination of the aid, ordering the immediate suspension of payment of such aid and the transmission, within a time limit set by the Commission, of all documents, information and data necessary to determine whether such aid is compatible with the common market. The Commission therefore informed the Spanish Government that it might have to order suspension of payment of the aid in question pending a detailed investigation.
- (7) The Spanish authorities replied to the Commission's letter of 26 October 1998 with letters dated 22 December 1998 (registered on 5 January 1999 under No SG A/30062) and 5 January 1999 (registered on 6 January 1999 under No SG A/30110).
- (8) By letter dated 30 April 1999 (SG (99) D/2945) the Commission notified Spain that it had decided to initiate the procedure under Article 88(2) of the Treaty with regard to the tax aid granted to Ramondín ⁽²⁾. In the same letter, it required Spain to provide certain specified items of information and to suspend payment of the tax aid already granted to Ramondín.
- (9) By letter dated 27 May 1999 (registered on 10 June 1999 under No A/34343), the Spanish authorities provided information on the suspension required by the Commission in its letter of 30 April 1999.
- (10) By letter dated 31 May 1999 (registered on 8 June 1999 under No A/34240), Ramondín requested a copy of the decision to initiate the procedure of which the Commission had notified Spain by its letter of 30 April 1999.
- (11) By letter dated 15 June 1999 (D/52539) the Commission sent Ramondín a copy of its decision to initiate the procedure of which it had notified Spain by its letter of 30 April 1999.
- (12) By letter dated 15 June 1999 (D/52543), replying to Spain's letter of 27 May 1999, the Commission requested Spain to describe in detail the measures it had taken to comply with the suspension required by the Commission in its letter of 30 April 1999.
- (13) By letters dated 29 June 1999 (registered on 30 June 1999 under No A/34867) and 8 July 1999 (registered on 13 July 1999 under number A/35270), the Spanish authorities replied to the request for information made in the Commission's letter of 30 April 1999.
- (14) By letter dated 5 July 1999 (registered on 19 July 1999 under No A/35494), the Álava Provincial Council, replying to the Commission's letter of 15 June 1999 (D/52543), provided details of the measures it had taken to comply with the suspension required by the Commission in its letter of 30 April 1999.
- (15) By letters dated 30 July 1999 (registered on 4 August 1999 under No A/36070), 9 August 1999 (registered on 11 August 1999 under No A/36242) ⁽³⁾ and 10 August 1999 (registered on 11 August 1999 under No A/36243) ⁽⁴⁾, three interested parties submitted observations. By letter dated 26 August 1999 (D/63580), the observations were forwarded to Spain for comment; Spain did not respond.

⁽²⁾ See footnote 1.

⁽³⁾ These observations were transmitted by fax on 10 August 1999 and subsequently by post.

⁽⁴⁾ These observations were transmitted by fax on 10 August 1999 and subsequently by post.

II. COMPLAINT SUBMITTED BY THE AUTONOMOUS COMMUNITY OF RIOJA

- (16) By letter of 2 October 1997, Mr Sanz Alonso, President of the Autonomous Community of Rioja, a region of Spain adjacent to the Province of Álava, submitted a complaint concerning the circumstances in which Ramondín, a manufacturer of metal capsules for wine bottles, had decided to move its industrial facilities from Logrono (Rioja) to Laguardia (Álava, Basque Country), five kilometres from its existing site.
- (17) In his complaint, Mr Sanz Alonso alleged that Ramondín's decision was motivated by tax incentives and public aid for investment offered respectively by the Álava Provincial Council and the Autonomous Community of the Basque Country, and he requested the Commission to check the compatibility with the Treaty not of the regional (or provincial) tax system in force in the Basque Country but of the effects and impact of certain advantages granted under that system and of its combination with other aid granted to Ramondín under aid schemes authorised by the Commission.

III. RAMONDÍN AND ITS INVESTMENT AT LAGUARDIA

- (18) Ramondín is a company incorporated under Spanish law in 1933 and specialised in the manufacture of capsules for sealing bottles of still and sparkling wines and other quality beverages. Since 1971 it has been established at Logrono (Rioja), with three production centres (Logroño, Burdens and Mexico) and subsidiaries in the United States, Scotland, Chile, Australia and China. According to information contained in the investment plan submitted to the Basque regional authorities, Ramondín has nearly 40 % of the world market for tin capsules, with an output of 480 million capsules per year. Its competitors have the following market shares:

Company	Market Share	Output (million capsules/year)
Pechiney	30 %	360
Relvas	10 %	120
Vatke	6 %	72
Bouchage Métallique	4 %	48
Rivercap	4 %	48
Quibel	3 %	36
Others	3 %	36
Total	60 %	720

- (19) In 1997 Ramondín employed 300 people and generated turnover of EUR 24 million, of which 70 % came from sales outside Spain. This, together with the fact that there are few suppliers on the world market, shows that there is intra-Community trade in the product concerned.
- (20) On 15 December 1997 Ramondín set up a new company, Ramondín Cápsulas SA (Ramondín Cápsulas), which has been active since September 1999. It was intended that Ramondín Cápsulas would take over all the activities of Ramondín, which would cease being active from the end of 1999.

- (21) According to the information provided by the Spanish authorities, Ramondín had initially planned to invest ESP 4 270 million in moving its existing assets from Rioja to Laguardia (Álava) and purchasing new fixed assets.
- (22) Ramondín subsequently decided to channel the new investments through Ramondín Cápsulas, of which it holds 99,8 % of the capital.
- (23) According to the Spanish authorities, Ramondín Cápsulas intends to invest ESP 1 950 million between 1998 and 2000 in order to set up a factory at Laguardia (Álava) equipped with three production lines, two of which will manufacture capsules for sealing bottles while the third will produce rolled lead sheet for electric batteries.
- (24) The investment plan originally submitted to the Basque regional authorities forecast that 30 new jobs would be created and considered that the following costs were eligible:

(in 1 000 ESP)

	1998	1999	2000	Total
Land and buildings	438 666			438 666
Plant	932 000	214 000	170 000	1 316 000
Eligible costs	1 370 666	214 000	170 000	1 754 666

- (25) With the investment, Ramondín expects to attain a turnover of ESP 5 000 million in 1999 and ESP 5 960 million (EUR 35,82 million) in 2001.

IV. THE AID MEASURES, INITIATION OF THE PROCEDURE UNDER ARTICLE 88(2) OF THE TREATY, THE REQUIREMENT TO PROVIDE INFORMATION AND THE REQUIREMENT TO SUSPEND PAYMENT

- (26) Ramondín and Ramondín Cápsulas have benefited from the following aid:
- an ESP 150 million grant awarded by the Basque Regional Government to Ramondín Cápsulas on 15 October 1998 within the framework of the Ekimen regional aid scheme ⁽⁵⁾. This grant was awarded in respect of an investment of ESP 1 754 million, which corresponds to an intensity of 8,55 % gge (gross). The maximum intensity of aid allowed in the Basque Country is 25 % nge ⁽⁶⁾,
 - a tax credit equivalent to 45 % of the total amount of the ESP 3 857 million investment, granted by the Álava Provincial Council to Ramondín by Decision 738/97 adopted on 21 October 1997 under a tax provision in the Province's Finance Act ⁽⁷⁾,

⁽⁵⁾ Scheme approved by the Commission by letter SG (96) D/11028 of 13 December 1996 (State aid N 529/96). The Decree of the Basque Regional Government establishing the scheme (Decree No 289/1996 of 17 December 1996) was published in *Boletín Oficial del País Vasco* — Official Journal of the Basque Country No 246, 23.12.1996, p. 20138).

⁽⁶⁾ The maximum limit for regional aid in the Basque Country, in accordance with the Spanish regional aid map (OJ C 25, 31.1.1996, p. 3).

⁽⁷⁾ See the Sixth additional provision of Provincial law (Norma Foral) 22/1994 of 20 December 1994 (*Boletín Oficial del Territorio Histórico de Álava* — (Official Journal of the Province of Álava) (BOTH A) No 5, 13.1.1995), whose validity was extended until the end of 1996 by the fifth additional provision of Provincial Law 33/1995 of 20 December 1995 (BOTH A No 4, 10.1.1996) and until the end of 1997 by point 2.11 of the single derogating provision of Provincial Law 24/1996 of 5 July 1996 (BOTH A No 90, 9.8.1996), and the seventh additional provision of Provincial Law 31/1996 of 18 December 1996 (BOTH A No 148, 30.12.1996). From 1 January 1998, the tax credit may be granted pursuant to the 11th additional provision of Provincial Law 33/1997 of 19 December 1997 (BOTH A No 150, 31.12.1997) and from 1 January 1999 pursuant to the seventh additional provision of Provincial Law 36/1998 of 17 December 1998 (BOTH A No 149, 30.12.1998).

- a reduction of 99 %, 75 %, 50 % and 25 % in the basis of assessment for corporation tax, applicable, respectively, for four consecutive years running from the first year in which the basis of assessment is positive. These reductions are available to newly established companies, on condition that they invest a minimum of ESP 80 million and create a minimum of 10 jobs ⁽⁸⁾. As a newly established company, Ramondín Cápsulas is eligible for these reductions.
- (27) Ramondín and Álava Agencia de Desarrollo SA, a development agency controlled by the Álava provincial authorities, furthermore agreed on the sale of a 55 050 m² plot of land in the Casablanca industrial estate at Laguardia (Álava) to Ramondín at a price of ESP 2 500 per square metre.
- (28) In view of the foregoing, the Commission informed Spain on 30 April 1999 that it had decided:
- require Spain to provide the necessary information for determining whether the investment aid granted to Ramondín under the Ekimen scheme complied with the decision authorising that scheme ('requirement to provide information on Ekimen'). In so far as it appeared to involve merely moving a factory five kilometres from its existing location, the Commission voiced doubts as to whether Ramondín's investment could be considered an 'initial investment' for the purposes of the guidelines on national regional aid ⁽⁹⁾,
 - initiate the procedure under Article 88(2) of the Treaty in respect of two tax measures from which Ramondín had benefited, namely: (i) a tax credit equivalent to 45 % of the amount of the investment and (ii) a reduction in the basis of assessment for corporation tax available to newly established companies which invest at least ESP 80 million and create at least 10 jobs ('decision to initiate the procedure'),
 - require Spain immediately to suspend payment of the tax aid referred to in the preceding indent ('requirement to suspend payment'),
 - require Spain to provide information on the sale of a plot of land to Ramondín by Álava Agencia de Desarrollo SA, to enable the Commission to determine whether State aid was involved in that transaction ('requirement to provide information on the land sale').

V. SPAIN'S REPLY TO THE DECISION TO INITIATE THE PROCEDURE UNDER ARTICLE 88(2) OF THE TREATY, THE REQUIREMENT TO PROVIDE INFORMATION AND THE REQUIREMENT TO SUSPEND PAYMENT

V.1. Decision to initiate the procedure

- (29) By letter dated 27 May 1999 Spain stated that the tax treatment afforded to Ramondín Cápsulas was the result of applying a general tax system; consequently, there had not been any award of State aid to the company, only the 'concrete application' of a tax credit and recognition that the company qualified for the abovementioned reduction in the basis of assessment for corporation tax.

V.2. Requirement to suspend payment

- (30) By letter dated 27 May 1999 Spain informed the Commission that there was no need to suspend payment of the tax credit since it did not take the form of a transfer of funds.
- (31) In reply to the Commission's letter of 15 June 1999 (D/52543), in which it requested Spain to describe in detail the measures it had taken to comply with the requirement to suspend payment, Spain stated that Ramondín Cápsulas would benefit from the tax credits only when it began operating (in September 1999) and then only if its accounts showed a profit. Spain added that it would take the appropriate steps to suspend the tax credit when the conditions for applying it were met.

⁽⁸⁾ Article 26 of Provincial Law 24/1996 of 5 July 1996 on corporation tax.

⁽⁹⁾ OJ C 74, 10.3.1998, p. 9.

V.3. Requirement to provide information on Ekimen

- (32) The Basque regional authorities confirmed that they had awarded a grant of EUR 0,9 million (ESP 150 million) to Ramondín Cápsulas. They also confirmed that Ramondín's investment consisted partly in moving its plant from Logrono to a new site at Laguardia (Álava), which meant that Ramondín Cápsulas was to take over the activities of Ramondín, and partly in increasing production capacity and creating a new production line for making lead sheet for car batteries. Only part of the new plant would therefore consist of old machinery and equipment reinstalled there. The figures updated to June 1999 and set out in the following table show that new investment accounts for 53,6 % of the new plant:

Type of investment	New	Reinstalled
Land	194 076 000	
Buildings	1 471 483 000	
Plant	935 637 000	2 250 000 000
Total ESP	2 601 196 000	2 250 000 000
Total EUR	15 633 502	13 522 772

- (33) The Basque Regional Government confirmed that, for the purpose of calculating eligible costs, only part of the new investment was taken into account, giving an amount of EUR 10,54 million. The eligible costs correspond to the costs included in the standard taxable base used for calculating the net grant equivalent (nge), i.e. land, buildings and plant. The amount of the grant (EUR 0,9 million) represents 8,53 % (gross) of the eligible costs, which is well below the ceiling for regional aid (25 % nge).

V.4. Requirement to provide information on the land sale

- (34) The Spanish authorities confirmed that the land purchased by Ramondín was owned by Álava Agenda de Desarrollo SA, a public enterprise belonging to the Álava Provincial Council.
- (35) The Spanish authorities also submitted two valuations dated 16 and 21 June 1997, i.e. before the sale of the land to Ramondín, which took place in October 1997. They claimed that the two expert reports constituted two independent expert valuations for the purpose of complying with the Commission communication on State aid elements in sales of land and buildings by public authorities ⁽¹⁰⁾. The first valuation arrived at a price of ESP 2 900 per square metre for the whole of the industrial estate in which the plot acquired by Ramondín is located, while the second one estimated the price of a serviced plot at ESP 2 500 per square metre, specifying that it was a 'purely commercial or market valuation'.

VI. COMMENTS FROM INTERESTED PARTIES

- (36) Comments were received from Ramondín, the Autonomous Community of Rioja and the Governing Council of Castile-Leon.

VI.1. Ramondín

- (37) In its comments, Ramondín claimed, first of all, that it was not merely an interested third party but the recipient of the aid and it was therefore directly and individually affected by the final decision which the Commission was to adopt. It consequently asked to be given access to the file and the right to be heard before the final decision was adopted.

⁽¹⁰⁾ OJ C 209, 10.7.1997, p. 3.

(38) As far as the substance of the matter was concerned, Ramondín made the following statements:

- Ramondín was a company that was originally established in the Basque Country and moved its facilities to Logroño (Rioja) in 1971, among other things because of the advantages offered by the Logroño Municipal Council,
- In 1994 Ramondín created the company Manufacturas Ramondín SA with a view to setting up operations in Álava. At that time, Ramondín could have secured larger tax concessions than it obtained later. It decided in the end not to move its plant 'since at that time it had no reason to leave' its facilities at Logroño,
- in 1995 the Logroño Municipal Council decided to reclassify the industrial estate where Ramondín was based. This meant that the firms concerned had 20 years in which to leave the estate, which was thereafter to be classed as an urban area,
- following a series of unsuccessful contacts with the municipal authorities, the Municipal Council offered Ramondín a plot in the Cantabria II industrial estate, which had been created over 25 years earlier. The plot was located between two buildings whose 'dilapidated appearance' did not correspond to the modern image that Ramondín wanted to project,
- in the mean time, Ramondín had contacted the authorities of neighbouring areas, including Álava, with a view to finding a solution to the problem of its forced relocation. Ramondín accepted the option offered by Álava basically because of the land available in the Casablanca industrial estate at Laguardia,
- the 45 % tax credit was a general measure open to all businesses fulfilling the conditions laid down in the Law governing the grant of the credit. There were therefore no exceptions or any discretionary powers involved. The administration confined itself to verifying, by means of a 'prior check', that the conditions for the grant of the credit were fulfilled, after which the tax credit was granted automatically. It was therefore a 'regulated administrative act'. The fact that the tax provision in question required a minimum investment of ESP 2 500 million did not render it selective since this was justified by the aim of attracting large firms to the Province of Álava, which would generate more revenue than small firms. It was not a temporary measure since it was extended each year, proving that it was intended to be permanent. There was no parallelism between the Ekimen scheme and the tax credit, something that was demonstrated by the different geographic and material scope of the tax provisions and the rules governing the Ekimen scheme,
- the reduction in the tax base for newly established companies was also a general measure, since it was applied irrespective of the sector in which the beneficiary firm was operating. It was a measure that was not intended to encourage firms to relocate but pursued the legitimate objective of promoting the prosperity of a given geographic area,
- Ramondín's investment at Laguardia clearly constituted an 'initial investment' since it involved the creation of a new plant with new production lines or, alternatively, the expansion of an existing business.

VI.2. Governing Council of Castile-Leon

- (39) In its comments, the Governing Council of Castile-Leon stated that Ramondín had moved its facilities from Rioja to Álava on account of the State aid offered by the Autonomous Community of the Basque Country and the authorities of the Province of Álava.
- (40) The Governing Council of Castile-Leon also argued that the tax aid measures in question constituted State aid that was incompatible with the common market, for the following reasons:
- they were chargeable to the State, irrespective of the administrative entities that adopted them,
 - they reduced the tax burden that Ramondín would normally have incurred,
 - they directly affected competition and trade between Member States, as was clear from the information contained in Ramondín's investment plan and the analysis made by the Commission in its decision to initiate the procedure under Article 88(2) of the Treaty,

- they were selective advantages since they favoured a specific undertaking or the production of certain specific goods, because:
 - (i) the measures were applicable only by virtue of a link between the undertakings in question and a particular region of a Member State, as opposed to undertakings established in other regions;
 - (ii) the tax credit was a discretionary measure since (a) it was conditional on making an investment of at least ESP 2 500 million; and (b) the authority granting it could decide which investments exceeding that amount qualified for the tax credit, as well as on the limits and periods of application;
 - (iii) the reduction in the tax base was discriminatory since it was available only to newly established companies that fulfilled certain specific conditions relating to new investments.

(41) The Governing Council of Castile-Leon added that:

- the Commission itself had followed this line of reasoning when adopting Decisions 93/337/EEC ⁽¹¹⁾ and 1999/718/EC ⁽¹²⁾,
- the allocation of taxation powers in Spain could in no way serve as a justification for evading the Community rules on State aid. Here the Governing Council of Castile-Leon referred to the Advocate-General's opinion in Joined Cases C-400/97, C-401/97 and C-402/97 ⁽¹³⁾,
- the Spanish courts had found that the tax aid measures in question constituted tax privileges that impaired and distorted competition, thereby distorting the allocation of resources.

(42) Lastly, the Governing Council of Castile-Leon stressed that the measures in question had been implemented, which was in breach of the notification obligation laid down in Article 88(3) of the Treaty and meant that they were null and void.

VI.3. Regional Government of Rioja

(43) The Regional Government of Rioja began by stating that Ramondín's decision to move its facilities from Rioja to Álava was motivated by the economic and tax incentives offered by the authorities of the Province of Álava. Ramondín explicitly acknowledged in the letter it addressed to the President of the Autonomous Community of Rioja on 5 March 1997 ⁽¹⁴⁾ that it intended to take advantage of those incentives. The town-planning constraints adduced by the Basque regional authorities as the reason for the move could not be taken into account since the land-use reclassification would not take effect until 2016 and would in any case not affect acquired rights. Neither could the price of land at Logroño be described as 'prohibitive', as the Basque authorities claimed.

(44) With regard more specifically to the tax aid, the Regional Government of Rioja made the following points:

- in accordance with the case-law of the Court of Justice of the European Communities and the approach repeatedly taken by the Commission in similar cases, the aid measures in question constituted State aid within the meaning of Article 87(1) of the Treaty, irrespective of the authority adopting them,
- the notion of State aid was a material concept, irrespective of the form taken by the State support; the tax incentives fulfilled that criterion,
- the tax incentives conferred an economic advantage on Ramondín: both the tax credit and the reduction in the tax base had the aim and effect of relieving Ramondín of part of the tax burden on its profits; that advantage was granted without any compensating benefits to the tax administration. A loss of tax revenue was equivalent to the use of State resources in the form of tax expenditure,

⁽¹¹⁾ OJ L 134, 3.6.1993, p. 25.

⁽¹²⁾ OJ L 292, 13.11.1999, p. 1.

⁽¹³⁾ Not yet reported, but available in some (unofficial) language versions on the website of the Court of Justice of the European Communities (<http://curia.eu.int/en/juris/index.htm>).

⁽¹⁴⁾ In that letter, which was mentioned in the decision to initiate the procedure (see footnote 1), Ramondín's managing director informed the President of the autonomous Community of Rioja that Ramondín was likely to leave Rioja and set up operations at Laguardia owing to the economic and tax incentives offered by the province of Álava, unless Rioja was to offer to make an 'investment'.

- the tax aid in question affected competition and trade between Member States, in so far as Ramondín was carrying on an economic activity that was the subject of intra-Community trade; the world market in capsules, and particularly tin capsules, of which Ramondín had a 40 % share, was booming and the sector was highly competitive,
 - the measures in question fulfilled the specificity criterion since the beneficiaries were identifiable and their competitive position was improved,
 - as far as the tax credit was concerned, because it required a minimum investment of ESP 2 500 million the measure reserved the benefits of the 45 % tax credit for large investors. Furthermore, because the measure was included in the annual finance act, the investment had to be made during a specific period, something which gave the Basque authorities plenty of discretion with regard to individual projects; such discretion also enabled them to decide which part of the investments qualified for the tax credit and to lay down the periods and limitations applicable in each case,
 - as far as the reduction in the tax base was concerned, the specific nature of the measure derived from the fact that only newly established companies that invested at least ESP 80 million and created at least 10 jobs were eligible,
 - the two tax incentives in question were geographically specific in that they were available only to firms established or operating in Álava, placing the firms concerned in a more favourable position than those operating elsewhere in Spain,
 - since the tax aid had been implemented in breach of Article 88(3) of the Treaty, it was null and void,
 - the fact that the Commission had initiated the procedure under Article 88(2) of the Treaty in respect of six tax aid schemes in the Basque Country providing aid similar to that granted to Ramondín confirmed the above analysis.
- (45) The Regional Government of Rioja also referred to the Basque regional authorities' argument that the aid granted to Ramondín was justified on the grounds of the allocation of taxation powers in Spain. The Regional Government of Rioja dismissed that argument and stressed that the same position was taken by the Advocate-General in the abovementioned Joined Cases C-400/97, C-401/97 and C-402/97 as well as by the Commission. According to the Regional Government of Rioja, the case-law of the Court of Justice made it perfectly clear that any measure involving a benefit restricted to firms investing in a particular area of a Member State conferred on those firms an advantage that was not justified by the general scheme or nature of the tax system in question.
- (46) Lastly, the Regional Government of Rioja referred to a judgment of the Spanish Supreme Court annulling tax measures similar to those from which Ramondín had benefited, on the grounds that they created tax privileges which were detrimental to competition and distorted the allocation and free movement of capital and workers. The principles established in that judgment were applied in a judgment delivered by the High Court of the Basque Country, which annulled the 45 % tax credit introduced by the Province of Álava.
- (47) Spain did not make any comment on the observations submitted by interested parties. With regard to Ramondín's request to be given access to the file and the right to be heard, the Commission points out that decisions on State aid are addressed to the Member State in question (see, for example, the judgment of the Court of Justice of 2 April 1998 in Case C-367/95 P ⁽¹⁵⁾). Furthermore, in accordance with Article 1(h) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁶⁾ (now Article 88), the beneficiary of an aid measure is an 'interested party'. In this connection the Court of First Instance, confirming the approach taken by the Court of Justice, ruled as follows (judgment of 25 June 1998 in Joined Cases T-371/94 and T-394/94 *British Airways and Others v Commission*, paragraph 59 ⁽¹⁷⁾):

⁽¹⁵⁾ [1998] ECR I-1719.

⁽¹⁶⁾ OJ L 83, 27.3.1999, p. 1.

⁽¹⁷⁾ [1998] ECR II-2405.

'With more particular regard to the Commission's duty to inform interested parties, the Court of Justice has ruled that the publication of a notice in the *Official Journal of the European Communities* is an appropriate means of informing all the parties concerned that a procedure has been initiated (*Intermills v Commission*, cited above, recital 17), while also pointing out that "the sole aim of this communication is to obtain from persons concerned all information required for the guidance of the Commission with regard to its future action" (Case 70/72 *Commission v Germany* [1973] ECR 813, point 19). [...]

The Commission consequently takes the view that Ramondín's rights as an 'interested party' have been fully safeguarded by publication of the decision to initiate the procedure and the invitation given in the notice to 'interested parties' to submit comments.

VII. ASSESSMENT OF THE AID

VII.1. Aid granted under the Ekimen scheme

- (48) The non-repayable grant covering 8,55 % of investments was awarded to Ramondín Cápsulas under the abovementioned Ekimen scheme, a regional aid scheme authorised by the Commission. The Commission has found that this aid was covered by the general scheme and satisfied the conditions laid down in the decision approving it.
- (49) It first has to be established whether the investment in question constitutes an 'initial investment' for the purposes of the guidelines on national regional aid ⁽¹⁸⁾. In view of the circumstances surrounding Ramondín's relocation of its facilities from Rioja to the Basque Country, the Commission had doubts as to whether the entire amount of Ramondín's investment could be considered an 'initial investment' for the purposes of the rules governing the assessment of regional aid ⁽¹⁹⁾.
- (50) In those rules, 'initial investment' is defined as an investment in fixed capital relating to the setting-up of a new establishment, the extension of an existing establishment, or the starting-up of an activity involving a fundamental change in the product or production process of an existing establishment ⁽²⁰⁾.
- (51) This was confirmed in the Commission's letter of 13 December 1996 approving the Ekimen scheme ⁽²¹⁾, which stipulated that the aid provided for by the scheme was to be used to finance initial investments or investments to enlarge or modernise existing establishments and that investments for replacement purposes were excluded from the scope of the scheme.
- (52) Information provided by the Spanish authorities confirms that Ramondín decided to set up a new factory at Laguardia that would not operate in conjunction with the Logroño plant: on the contrary, the new factory at Laguardia was to replace the Logroño plant. Ramondín Cápsulas, the company newly created at Álava, thus took over all the industrial activities of Ramondín.
- (53) The decision to move the factory involved, on the one hand, closing the Logroño plant and, on the other, opening the Laguardia factory. The move will also involve increasing production capacity, with the creation of new production lines, including a new line for producing lead sheet for car batteries.
- (54) As mentioned in recital 32, the Basque regional authorities have confirmed that they awarded a grant of ESP 150 million (EUR 0,9 million) to Ramondín Cápsulas. Ramondín Cápsulas plans to create 30 new jobs in addition to the 300 jobs transferred from Logroño to the new site at Laguardia.

⁽¹⁸⁾ See footnote 9.

⁽¹⁹⁾ See the Commission's 1979 communication on regional aid systems (OJ C 31, 3.2.1979, p. 9), and in particular point 18(i) of the Annex for the definition of 'initial investment'. This definition is reproduced in point 4.4 of the guidelines on national regional aid.

⁽²⁰⁾ See point 18(1) of the Annex mentioned in the above footnote.

⁽²¹⁾ See footnote 5.

- (55) In the light of the information provided by the Spanish authorities, the Commission takes the view that the grant was awarded in accordance with the rules governing the Ekimen scheme, in particular Article 10 thereof, and within the absolute limit laid down by Article 12, i.e. ESP 5 million per new job created ⁽²²⁾.
- (56) The Spanish authorities also confirmed that Ramondín's investment consisted partly in moving its plant from Logroño to a new site at Laguardia (Álava) and partly in increasing production capacity and creating a new production line for making lead sheet for car batteries. Only part of the new plant was therefore to consist of old machinery and equipment reinstalled there. The figures updated to June 1999 and set out in the following table show that new investment accounts for 53,6 % of the new plant:

Type of investment	New	Reinstalled
Land	194 076 000	
Buildings	1 471 483 000	
Plant	935 637 000	2 250 000 000
Total ESP	2 601 196 000	2 250 000 000
Total EUR	15 633 502	13 522 772

- (57) The Basque Regional Government confirmed that, for the purpose of calculating eligible costs, only part of the new investment was taken into account, giving an amount of ESP 1 754,666 million (EUR 10,54 million). The eligible costs correspond to the costs included in the standard taxable base used for calculating the net grant equivalent (nge), i.e. land, buildings and plant. The amount of the grant (EUR 0,9 million) represents 8,53 % (gross) of the eligible costs, which is well below the ceiling for regional aid (25 % nge).
- (58) In view of the foregoing, the Commission finds that there is evidence for considering that the investment at Laguardia will involve 'the extension of an existing establishment' for the purposes of point 4.4 of the guidelines on national regional aid ⁽²³⁾.
- (59) The Commission consequently concludes that the non-refundable grant covering 8,55 % of eligible costs was awarded to Ramondín Cápsulas in accordance with the conditions governing the Ekimen regional aid scheme approved by the Commission.

VII.2. Sale of a plot of land to Ramondín by Álava Agencia de Desarrollo

- (60) In his complaint, the President of the Autonomous Community of Rioja alleged that Ramondín had purchased a plot of land at Laguardia on advantageous terms.

⁽²²⁾ 'Article 10 — non-refundable grant

The aid to be granted in the form of non-refundable grants covering up to 25 % of eligible investments shall be awarded in accordance with the following conditions:

1. A grant of 10 % of investment costs deemed eligible shall be awarded as a general measure.
2. In the case of strategic projects and investment projects involving significant job creation which create at least 50 jobs and entail investments worth at least ESP 750 million, the above percentage shall be increased by 5 points.
3. Businesses whose project is carried out in a preferential interest area as provided for in Article 4 of this Decree shall receive an additional grant of 5 % of the investment costs deemed eligible.
4. The percentage may be further increased by up to 5 points according to the following criteria:
 - the extent to which the project is integrated into the Basque Country's industrial base,
 - whether the investment is in one of the Basque Country's strategic sectors,
 - the number of jobs created by the project.'

'Article 12 — Limits, maximum amount and compatibility of the aid

The maximum non-refundable grant that may be awarded for an investment project shall be ESP 5 million per job created, except in the case of strategic projects. The maximum amount of the grant shall furthermore not exceed ESP 4 000 million [...]

⁽²³⁾ See footnote 9.

- (61) In their reply to the requirement to provide information on the land sale, the Spanish authorities submitted two valuations dated 16 and 21 June 1997, i.e. before the sale of the land by the public enterprise Álava Agencia de Desarrollo to Ramondín, which took place in October 1997.
- (62) The first valuation arrived at a price of ESP 2 900 per square metre for the whole of the industrial estate in which the plot acquired by Ramondín is located, while the second one estimated the price of a serviced plot at ESP 2 500 per square metre, specifying that it was a 'purely commercial or market valuation'.
- (63) In its communication on State aid elements in sales of land and buildings by public authorities ⁽²⁴⁾, the Commission provides guidance to Member States by describing a simple procedure for handling sales of land and buildings in a way that automatically precludes the existence of State aid, namely sale through an unconditional bidding procedure. If public authorities intend not to use that procedure, an independent valuation should be carried out by one or more independent asset valuers prior to the sale negotiations in order to establish the market value on the basis of generally accepted market indicators and valuation standards. The market price thus established is the minimum purchase price that can be agreed without granting State aid.
- (64) On the basis of the abovementioned communication ⁽²⁵⁾, the Commission takes the view that the valuations were carried out by two independent asset valuers prior to the sale negotiations and make it possible to establish the market value on the basis of generally accepted market indicators and valuation standards.
- (65) The Commission finds that the price paid by Ramondín (ESP 2 500 per square metre) in October 1997 is within the range (ESP 2 500 to 2 900 per square metre) determined by two studies carried out by two independent valuers prior to the date of the sale. On that basis, the Commission concludes that the said price is the minimum purchase price that can be agreed without granting State aid.
- (66) The Commission has therefore not found any evidence of State aid being involved in the sale by Álava Agencia de Desarrollo to Ramondín of a 55 050 m² plot of land in the Casablanca industrial estate at Laguardia (Álava) at a price of ESP 2 500 per square metre.

VII.3. Tax aid: tax credit equivalent to 45 % of the cost of investments and reduction in the tax base for newly established companies

- (67) It should first be recalled that tax relations between the Spanish State and the Basque Country are governed by the Economic Agreement established by Law 12/1981 of 13 May 1981, as subsequently amended by Law 38/1997 of 4 August 1997. Under the Economic Agreement, the Álava Provincial Council may, under certain conditions, maintain, establish and regulate the tax system within its territory, with the exception of taxes associated with customs, revenue-producing monopolies and alcohol, the regulation of which is the exclusive responsibility of the central government ⁽²⁶⁾. Using the powers conferred on it by the Economic Agreement, the Álava Provincial Council established a system of tax aid within the framework of corporation tax. The beneficiaries of this aid are natural and legal persons carrying on an economic activity within the Province of Álava.
- (68) The Commission further points out that tax incentives similar to those being assessed in this Decision (tax credit and reduction in the basis of assessment) were declared incompatible with the common market by Decision 1999/718/EC (Daewoo Electronics Manufacturing España SA), which was notified to the Spanish authorities by letter dated 15 March 1999 ⁽²⁷⁾.

VII.3.1. Tax credit

- (69) The tax credit granted to Ramondín is governed by the sixth additional provision of Provincial Law 22/1994 of 20 December 1994 on the implementation of the budget of the Province of Álava for 1995, which reads as follows:

⁽²⁴⁾ See footnote 10.

⁽²⁵⁾ See footnote 10.

⁽²⁶⁾ See Article 6 of the Economic Agreement, as amended by Law 38/1997 of 4 August 1997.

⁽²⁷⁾ See footnote 12.

'Investments in new tangible fixed assets carried out between 1 January 1995 and 31 December 1995 and exceeding ESP 2 500 million shall, by decision of the Álava Provincial Council, qualify for a tax credit equivalent to 45 % of the amount of the investment, as determined by the Álava Provincial Council, to be offset against the amount of personal tax liability.

Any tax credit not used up because it exceeds the amount of tax liability may be carried forward and used for up to nine years following that in which the decision of the Álava Provincial Council is taken.

The decision of the Álava Provincial Council shall lay down the timelimits and restrictions applicable in each individual case.

Benefits granted under this provision shall be incompatible with any other tax concessions for which the same investments may be eligible.

The Álava Provincial Council shall also decide on the duration of the investment process, which may include investments made during the preparatory phase of the project which generates the investments.'

- (70) This measure was kept in force in 1996 by the finance act for that year (Provincial Law 33/1995), as amended by the new corporation tax act (Provincial Law 24/1996, which deleted the reference to the period of nine years in the second paragraph) and in 1997 by the finance act for that year (Provincial Law 31/1996). The tax credit equivalent to 45 % of the amount of investments was maintained, with amendments to the wording of the provisions, in 1998 and 1999 by Provincial Laws 33/1997 of 19 December 1997 and 36/1998 of 17 December 1998 respectively.
- (71) The principle that State aid is incompatible with the common market and the exceptions provided for by Article 87 of the Treaty apply to aid 'in any form whatsoever' and, in particular, to certain tax measures.
- (72) If it is to be classed as aid, a measure has to satisfy each of the four criteria mentioned in Article 87 and spelled out below.
- (73) First, the measure must afford the beneficiaries an advantage that reduces the costs they normally have to bear in the course of their business. The advantage may be granted through different types of reduction in the company's tax burden and, in particular, through an exemption from or reduction in tax liability.
- (74) The 45 % tax credit in question undoubtedly fulfils this criterion since, thanks to the credit, Ramondín enjoys a reduction in its tax burden equivalent to 45 % of the amount of the investment as determined by the Álava Provincial Council. The tax credit can, however, be used without any timelimit, starting in the first year in which the company makes a profit.
- (75) Second, the advantage must be granted by the State or through State resources. A loss of tax revenue is equivalent to the use of State resources in the form of tax expenditure ⁽²⁸⁾. This principle also applies to aid granted by regional or local bodies of Member States (see the judgment of the Court of Justice of 14 October 1987 in Case 248/84 *Germany v Commission* ⁽²⁹⁾). The State aid may furthermore be granted via tax measures laid down by law, regulation or administrative practice or via decisions taken by the tax administration.
- (76) The tax credit granted to Ramondín derives from the combined effect of a budgetary measure and an individual decision (Decision No 738/1997 of 21 October 1997), both taken by a public authority, the Álava Provincial Council.
- (77) Third, the measure must affect competition and trade between Member States. This criterion presupposes that the beneficiary of the measure carries on an economic activity, irrespective of its legal status or method of financing. The Court of Justice has repeatedly ruled, for the purposes of interpreting this condition, that intra-Community trade is to be deemed to be affected from the moment the beneficiary firm carries on an economic activity which is the subject of trade between Member States.

⁽²⁸⁾ With regard to the concept of 'tax expenditure', see 'Tax expenditures. Recent experiences', OECD, Paris, 1996; see also Stanley S. Surrey, Tax incentives as a device for implementing government policy: A comparison with direct government expenditures, *Harvard Law Review*, Volume 83, No 4, pages 705 to 738.

⁽²⁹⁾ [1987] ECR 4013.

- (78) It has already been seen that Ramondín carries on an economic activity which is the subject of trade between Member States in a sector that is highly competitive.
- (79) Fourth, the measure must be specific or selective in the sense that it favours 'certain undertakings or the production of certain goods'. The advantage may be selective because it is granted either as an exception to general tax arrangements established by law, regulation or administrative practice, or at the discretion of the tax administration. In the present case, the advantage is selective chiefly on account of the discretion enjoyed by the administration in granting it.
- (80) With regard to this condition, the Court of Justice held in *Kimberly Clark Sopalin* (judgment of 26 September 1996 in Case C-241/94 *France v Commission* ⁽³⁰⁾) that, where the entity granting an advantage enjoys a degree of latitude which enables it to vary its financial assistance having regard to a number of considerations such as, in particular, the choice of beneficiaries, the amount of the financial assistance and the timelimits and other conditions under which it is provided, as well as to decide on whether or not to renew the measures concerned from one year to the next, the conditions in which such assistance is granted are liable to place certain firms in a more favourable situation than others and thus to meet the conditions for classification as aid for the purposes of Article 87(1) of the Treaty.
- (81) When it adopted Decision No 738/1997, the Álava Provincial Council enjoyed, pursuant to the abovementioned provisions, discretionary powers for determining which investments in tangible fixed assets amounting to more than ESP 2 500 million qualified for the tax credit, deciding to which part of the investments the 45 % reduction could be applied, and establishing the timelimits and maximum ceilings applicable in each case.
- (82) The text of Decision No 738/1997 granting the tax credit to Ramondín indicates that the credit corresponds to 45 % of an ESP 3 857 million investment. The investments concerned are the following:

Type of investment	Amount
Land	137 000 000
Buildings	471 000 000
Plant	3 249 000 000
Total ESP	3 857 000 000
Total EUR	23 181 036

According to the information supplied by the Spanish authorities, the above investments are not the same as those which were taken into consideration for the purpose of granting aid to Ramondín Cápsulas under the Ekimen scheme. The Decision stipulates that there is no timelimit on the use of the tax credit; it is therefore impossible to calculate precisely its intensity in advance. On the basis of the profit forecasts set out in Ramondín's business plan, the aid intensity of the tax credit is 34,7 % nge, which is well above the regional ceiling of 25 % nge. In any event, the Álava Provincial Council reserves the right to determine the amount of the tax credit for each year, depending on the investments made.

- (83) Furthermore, the text of Decision No 738/1997 adopted by the Álava Provincial Council on 21 October 1997 provides as follows as far as Ramondín's investment is concerned:

⁽³⁰⁾ [1996] ECR I-4551.

'[...] the tax credits in respect of the investment may be applied in practice [...] under the following conditions:

- | | |
|--|-----------------------------------|
| — Time-limit: | None |
| — Maximum amount to which the tax credit may be applied: | 100 % of the net tax liability |
| — Percentage | 45 % of the investment to be made |

'[...]

- (84) The expression 'applying in practice [concretar] the tax credits', in the context of a provision enabling the authority:

— 'determine' the amount to which the 45 % credit may be applied and the duration of the investment process, which can include investments made during the project preparation phase, and

— 'lay down' the timelimits and other restrictions applicable in each individual case,

can be interpreted only as an act adopted by virtue of a discretionary power and aimed at 'applying in practice' the tax credit.

- (85) It is also worth mentioning, for guidance, judgment 76/99 delivered by the High Court of the Basque Country on 29 January 1999 in Case 908/98 *Administration of the State v General Council of Guipúzcoa* ⁽³¹⁾, which annulled a measure allowing the authorities of the Province of Guipúzcoa to grant a 45 % tax credit. The wording of that measure is similar to that of the provision granting the tax credit covered by the present Decision. In the grounds of its judgment, the High Court of the Basque Country made the following point with regard to the legal provision enabling tax credits to be granted:

'[the measure) provides for a tax credit corresponding to 45 % of the amount of the investment as determined by the Provincial Council, the benefit of which is decided, in terms of both the amount and the possible recipients, by the tax administration itself, in violation of the principle laid down in Article 7 of the General Tax Law, according to which the exercise of regulatory powers and the adoption of administrative acts in the tax field constitute a regulated activity, and in breach of the principle of legal certainty enshrined in Article 9 of the Spanish Constitution.'

- (86) Lastly, the Commission's analysis finds further confirmation in the Basque Regional Government's document 'Política Industrial. Marco General de Actuación 1996-1999' [Industrial policy: General implementing framework 1996-99], which states:

'[...] taxation policies are essential for boosting economic growth and also for assisting industrial projects that contribute to the industrial development of the [Basque] Country' [page 131].

- (87) The same document states, in the chapter entitled 'Taxation policy instruments':

'[...] the independent taxation powers we enjoy [in the Basque Country] can also prompt us to seek imaginative forms of "tailor-made" tax treatment, for example for priority projects, or to grant tax incentives to large firms' [page 133].

- (88) Secondly, although the discretionary nature of the tax credit is sufficient for it to be classed as a specific measure, and therefore as State aid, the Commission considers that the minimum investment required (ESP 2 500 million) to qualify for the credit is high enough to restrict its application in practice to investments which involve the raising of large amounts of capital, and that it is not justified by the nature or general scheme of the tax system to which an exception is made. In this case, Spain did not give any justification, in line with the logic of the tax system, for the fact that only large firms are eligible for the tax credit.

⁽³¹⁾ Not yet reported.

- (89) The recipient of the aid argued that the fact that the tax measure in question established a threshold of ESP 2 500 million did not make it selective, since that limit was justified by the aim of attracting large firms to Álava, which would generate more revenue than small businesses. This calls for certain comments.
- (90) The Commission takes the view that not all differences in treatment between groups of economic operators constitute State aid. Looking at tax and social security systems, as well as the other rules affecting the costs incurred by businesses, it is clear that the legal provisions governing these measures in each Member State do not merely establish uniform rules: on the contrary, they contain rules that depart from the ordinary rules and apply in particular to certain categories of firms. This makes it necessary to draw a distinction between:
- differentiated treatment that does not constitute an exception ⁽³²⁾ to the ordinary rules but results rather from the application, to specific situations, of the same principles as those underlying the ordinary rules, and
 - differentiated treatment which, favouring certain undertakings, departs from the internal logic of the ordinary rules.
- (91) The Court of Justice already established this distinction in its judgment of 2 July 1974 in Case 173/73 *Italy v Commission* ⁽³³⁾:
- ‘It must be concluded that the partial reduction of social charges pertaining to family allowances devolving upon employers in the textile sector is a measure intended partially to exempt undertakings of a particular industrial sector from the financial charges arising from the normal application of the general social security system, without there being any justification for this exemption on the basis of the nature or general scheme of this system’ (paragraph 33).
- (92) This interpretation given by the Court of Justice makes it possible to conclude, conversely, that differentiated treatment of certain economic operators which was justified on the basis of the nature or general scheme of the system would not have to comply with Articles 87, 88 and 89 of the Treaty.
- (93) In this connection, the Commission takes the view that the ‘nature or general scheme of the system’ cannot merely consist in the attainment of an objective which the authority wishes to achieve through the differentiated treatment of a group of economic operators, since in that case it would be sufficient to refer to a particular economic policy objective in order to evade the rules of Articles 87, 88 and 89 of the Treaty. In other words, the justification for differentiated treatment on the basis of the nature or general scheme of the system cannot be provided by referring to external objectives, but must be established by demonstrating the consistency of the measures in question with the internal logic of the system.
- (94) Advocate-General Ruiz-Jarabo Colomer thus made the following points in his opinion of 17 September 1998 in Case C-6/97 *Italy v Commission* ⁽³⁴⁾:
- ‘[...] it can sometimes prove difficult to draw the dividing line between measures that may constitute public subsidies, on the one hand, and those which belong to the general scheme of a State's tax system, on the other. Any system of tax relief has the effect of exempting a sector or group of taxpayers from the generally applicable tax rules. Such exemptions (18) are often geared to objectives that differ from what could be described as the primary taxation requirements (19); they pursue social, industrial or regional development or other similar objectives. From the standpoint of their function, they resemble in that respect direct aid measures granted by States and should normally be treated as such for the purposes of Article 92 of the Treaty. In that case, it will be for the State establishing them to demonstrate, on the contrary, that they constitute what are frequently referred to as “measures of a general nature” and that, as such, they fall outside the scope of Article 92. To that end, the State in question must specify which internal logic of the system the measures follow, something which should of course rule out any intention of improving conditions for a particular sector in comparison with its foreign competitors [...]’ (paragraph 27).

⁽³²⁾ Opinion of Advocate-General Darmon in Joined Cases C-72/91 and C-73/91 *Sloman Neptun* [1993] ECR I-887, paragraph 58.

⁽³³⁾ [1974] ECR 709.

⁽³⁴⁾ Not yet reported, but available in some (unofficial) language versions on the website of the Court of Justice (see footnote 13).

- (95) Advocate-General La Pergola followed the same line of reasoning in his opinion of 12 November 1998 in Case C-75/97 *Belgium v Commission* ⁽³⁵⁾:

'[...] In other words, can the derogations or amendments introduced by the disputed measures into the general social security system, which they leave in place, be said to be objectively justified by the economy and the nature of such an arrangement under the ordinary law, having regard to its internal logic, or do they serve the sole purpose of arbitrarily benefiting certain undertakings or specific sector (9)? It should be held, in my opinion, that a measure is general when it is aimed at achieving equality between businesses. The general principle of equality of treatment is recalled in the provision in Article 92(1) of the Treaty specifically prohibiting measures whereby the State favours certain undertakings or the production of certain goods at the expense of others within the same category of undertaking, to which the provisions adopted should be capable of being applied. Such measures remain subject to the rules on aid because, by operating discrimination that is unjustified and hence expressly prohibited by the Treaty, they do not comply with but contradict the criterion of general measures, which the applicant asks us to take into account.' (paragraph 8).

- (96) The Court of Justice upheld that argument in the judgment it delivered in the same Case on 17 June 1999 ⁽³⁶⁾:

'So, the Maribel *bis/ter* scheme, which pursues an employment policy by means affording a direct advantage only in relation to the competitive situation of the undertakings concerned, belonging to certain sectors of economic activity, is not justified by the nature or scheme of the social security system in force in Belgium' (paragraph 39).

- (97) Given the high threshold of ESP 2 500 million, only large investors can qualify for the tax credit. In view of the foregoing, it must be concluded that this difference in tax treatment pursues an objective that is foreign to the internal logic of the tax system and therefore cannot be justified on the basis of the nature or general scheme of that system. Such difference in treatment makes the tax credit a specific measure and, along with the other features identified earlier, means that it must be classed as aid for the purposes of Article 87(1) of the Treaty.

- (98) Thirdly, the Commission takes the view that the temporary (annual) nature of the measure in fact allows the authorities discretion to grant the tax credit to certain firms only, namely those initiating their investment processes during the period covered by the measure. The Commission notes that the measure does not appear in general tax legislation, only in the annual finance acts, which confirms its temporary nature and enables it to be used for specific projects.

- (99) The tax credit was initially introduced for the 1995 financial year. The fact that in subsequent years the same provision was not maintained in its original wording, to the extent that, for example, from the 1996 financial year onwards firms qualifying for the tax credit have been able to use it for an unlimited period, gives the Commission grounds for considering that the Álava Provincial Council has wide discretionary powers for deciding which investments are eligible for the credit, since it can introduce the tax credit for one year, subsequently amend the measure and even abolish it, if necessary, the following year.

- (100) The Commission also takes the view that the temporary (annual) nature of the measure rules out from the start the possibility of considering that it is compatible with the 'nature or general scheme' of the tax system. Its temporary nature also demonstrates that the aim pursued is not in line with the requirements inherent in any tax system and that the tax credit is being used as an industrial policy instrument to facilitate certain large investments that the administration considers it desirable to promote.

⁽³⁵⁾ Not yet reported, but available in some (unofficial) language versions on the website of the Court of Justice (see footnote 13).

⁽³⁶⁾ Not yet reported, but available in an unofficial version on the website of the Court of Justice (see footnote 13).

- (101) With regard to the latter point, the Commission refers, also for guidance, to Judgment 411/99 delivered by the High Court of the Basque Country on 17 May 1999 in Case 907/98 *Administration of the State v General Council* ⁽³⁷⁾, which annulled the tax credit established by the Álava Provincial Council for the 1998 financial year. In this judgment, the High Court held that:

'The General Council and Provincial Council of Álava, defendant and co-defendant respectively, have not provided any justification with regard to compliance with the principle of proportionality in the achievement of the objectives pursued by means of these measures [the tax credit]. Those authorities have merely referred to the temporary and exceptional nature of the measure [...].'

- (102) Fourthly, the Commission underlines the close similarities between this measure and the Ekimen scheme, both in terms of the objectives pursued (the financing of new investments in both cases) and as regards their geographical scope (regional in the case of Ekimen, provincial in the case of the tax credit); Ekimen was, however, regarded as a regional aid scheme by the Spanish authorities and was notified as such. The only difference between the two, which is that the Ekimen scheme supports only industrial investments, is more of a formal distinction, since the minimum investment (ESP 2 500 million) required to qualify for the tax credit effectively limits the possible beneficiaries to industrial firms.
- (103) The apparent differences between the Ekimen scheme and the tax credit cannot detract from the reality of the situation, which is as follows: the different administrations (responsible for taxation and industrial development) involved in promoting new industrial initiatives in the Basque Country coordinate their action; the objective pursued by both instruments is the same, namely to encourage investments; the tax credit was introduced at the same time as the Garapen scheme, which was similar to and predated the Ekimen scheme; and, lastly, since the same tax credit exists in the three Provinces that go to make up the Basque Country, the geographical scope of the two instruments is the same.
- (104) Consequently, and in line with Decision 1999/718/EC ⁽³⁸⁾, the tax credit granted to Ramondín, corresponding to 45 % of the amount of the investment as determined by the Álava Provincial Council, constitutes state aid within the meaning of Article 87(1) of the Treaty.
- (105) In its letter to Member States SG(89) D/5521 of 29 April 1989 the Commission stated that it 'considers that a Member State has failed to fulfil its obligation to notify it where the process of putting aid into effect has been initiated. By "putting into effect" it means not the action of granting aid to the recipient but rather the prior action of instituting or implementing the aid at a legislative level according to the constitutional rules of the Member State concerned. Aid is therefore deemed to have been put into effect as soon as the legislative machinery enabling it to be granted without further formality has been set up' ⁽³⁹⁾. This is the case with this measure, which has been carried out unlawfully in breach of the provisions of Article 88(3) of the Treaty.

VII.3.2. Reduction in the tax base for newly-established companies

- (106) The reduction in the tax base for newly-established companies granted to Ramondín Cápsulas is laid down in Article 26 of Provincial Law 24/1996 of 5 July 1996 on corporation tax, which reads as follows ⁽⁴⁰⁾:

'1. Companies starting their business activity shall be entitled to a reduction of 99 %, 75 %, 50 % and 25 % respectively in the positive basis of assessment deriving from their economic activity, before this is offset by any negative bases of assessment arising in previous periods, for the four consecutive tax periods running from the first period in which, within four years of starting their business activity, they generate a positive basis of assessment.

[...].

2. To qualify for this reduction, businesses shall fulfil the following conditions:

⁽³⁷⁾ Not yet reported.

⁽³⁸⁾ See footnote 12.

⁽³⁹⁾ See 'Competition law in the European Communities, Volume II A: Rules applicable to State aid', p. 70.

⁽⁴⁰⁾ Only the provisions which are relevant for the purposes of assessing the aid are quoted here.

- (a) They must start their business activity with a minimum paid-up capital of ESP 20 million;
- (b) [...];
- (c) [...];
- (d) the new activity must not have been carried on previously, either directly or indirectly, under different ownership;
- (e) the new business activity must be performed on premises or in an establishment where no other activity is carried on by any natural or legal person;
- (f) they must during the first two years of their activity invest at least ESP 80 million in tangible fixed assets, all of which assets must be assigned to the activity and must not be hired out or transferred for use by third parties. For the purposes of this requirement, goods acquired by leasing shall also be deemed to be investments in tangible fixed assets, provided that the business undertakes to exercise the purchase option;
- (g) they must create at least 10 jobs within six months of starting their business activity and must maintain the annual average workforce at that level from that point and until the year in which their entitlement to the reduction in the basis of assessment expires;
- (h) [...];
- (i) they must have a business plan covering a period of at least five years.

3. [...].

- 4. The minimum amount of investment referred to in subparagraph (f) and the minimum number of jobs created referred to in subparagraph (g) of paragraph 2 above shall be incompatible with any other tax concession established for the same investment or job creation.
- 5. The reduction provided for in this Article shall be requested by means of an application lodged with the tax administration, which, after checking that the initial requirements are satisfied, will where appropriate notify the applicant company of its provisional authorisation, to be formally adopted by decision of the Álava Provincial Council.

[...].'

- (107) If it is to be classed as aid, the reduction in the tax base has to satisfy each of the four criteria mentioned in Article 87 and spelled out below.
- (108) First, the reduction in the tax base affords Ramondín Cápsulas an advantage that reduces the costs it would normally have to bear in the course of its business.
- (109) Second, the reduction in the tax base involves a loss of tax revenue equivalent to the use of State resources in the form of tax expenditure ⁽⁴¹⁾.
- (110) Third, the reduction in the tax base affects competition and trade between Member States since Ramondín Cápsulas carries on an economic activity which is the subject of trade between the Member States, in a sector that is highly competitive.
- (111) Fourth, the measure must be specific or selective in the sense that it favours 'certain undertakings or the production of certain goods'. In the present case, the reduction in the tax base is selective chiefly because only newly-established companies can qualify for it. Article 26 of Provincial Law 24/1996 makes it possible to afford newly-established companies more favourable tax treatment than that applied to other businesses already present on the market. This circumstance is sufficient to demonstrate the specific nature of the measure, on the basis of which the Commission classifies the reduction in the tax base granted to newly-established companies as State aid within the meaning of Article 87(1) of the Treaty. The specific nature of the measure is strengthened by the fact that only businesses investing ESP 80 million and creating 10 jobs qualify for the reduction in the tax base.

⁽⁴¹⁾ See footnote 28.

- (112) The specific nature of the measure is also strengthened by its purpose, as set out in Provincial Law 24/1996 establishing it. After listing the general objectives of the tax system, the preamble to that instrument enumerates another set of objectives that have more to do with industrial policy, among which it specifically mentions the aim of 'stimulating the creation of new business initiatives', an objective pursued in the instrument by measures aimed at the specific category of newly established companies (see point (g) of the preamble), which are granted a reduction in the tax base during the first four years of operation in which they make a profit. This stated objective, which confirms that the measure constitutes start-up aid for newly established companies, does not enable it to be considered compatible with the nature or general scheme of the tax system in question. Neither have the regional authorities indicated or demonstrated ⁽⁴²⁾, in their reply to the Commission's letter informing them that it had decided to initiate the procedure, that the selective nature of the measure is justified by the 'nature or general scheme' of the tax system concerned.
- (113) In line with Decision 1999/718/EC ⁽⁴³⁾, the Commission concludes that the measure in question clearly constitutes operating aid. Since any profits will be generated in the future and are essentially uncertain, it is not possible to calculate precisely the aid intensity involved in the reduction in the tax base.
- (114) In its letter to Member States SG(89) D/5521 of 29 April 1989 the Commission stated that it 'considers that a Member State has failed to fulfil its obligation to notify it where the process of putting aid into effect has been initiated. By "putting into effect" it means not the action of granting aid to the recipient but rather the prior action of instituting or implementing the aid at a legislative level according to the constitutional rules of the Member State concerned. Aid is therefore deemed to have been put into effect as soon as the legislative machinery enabling it to be granted without further formality has been set up' ⁽⁴⁴⁾. This is the case with this measure, which has been carried out unlawfully in breach of the provisions of Article 88(3) of the Treaty.
- (115) As regards the nature of the aid granted to Ramondín and Ramondín Cápsulas in the light of Community law, with the exception of that granted by the Basque authorities in accordance with the conditions governing the Ekimen scheme, the aid was not granted under schemes approved by the Commission but pursuant to national measures that had not been approved by the Commission and should have been notified to it at the planning stage in accordance with Article 88(3) of the Treaty. This aid is consequently illegal under Community law.
- (116) Article 87(1) of the Treaty provides that aid meeting the criteria laid down therein shall normally be incompatible with the common market.
- (117) In this particular case the exceptions provided for in Article 87(2) of the Treaty are not applicable since the aid does not pursue the objectives listed in that provision. Nor indeed have the Spanish authorities attempted to rely on those exceptions.

VII.4. Compatibility of the aid

- (118) Article 87(3) of the Treaty lists the types of aid that may be considered to be compatible with the common market. Compatibility must be determined with reference to the Community as a whole, and not with reference to one Member State or region thereof taken individually. To ensure that the common market functions normally and given the principle established in Article 3(g) of the Treaty, the exceptions listed in Article 87(3) should be construed strictly when it comes to examining any aid scheme or individual aid measure. In particular, the exceptions may be relied on only where it can be demonstrated that, without the aid, market forces would not be sufficient on their own to induce the beneficiaries to act in such a way that would enable one of the objectives mentioned in the exceptions to be achieved.

⁽⁴²⁾ See the judgment referred to in footnote 33. See also points 90 to 96 of this Decision.

⁽⁴³⁾ See footnote 12.

⁽⁴⁴⁾ See footnote 39.

- (119) Under Article 87(3)(a), an exception may be made in the case of aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. The municipality of Laguardia is not located in an area qualifying for regional aid under Article 87(3)(a) of the Treaty.
- (120) As regards the exceptions provided for in Article 87(3)(b) and (d), the aid in question is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the Spanish economy, nor does it display the features of projects of that kind. Nor is it intended to promote culture or heritage conservation.
- (121) As far as the exception provided for in Article 87(3)(c) of the Treaty is concerned, Laguardia is located in an area which qualifies for regional aid in accordance with that provision. The maximum aid intensity allowed in the Basque Country is 25 % nge ⁽⁴⁵⁾. To assess the compatibility of the aid measures concerned, a distinction has to be drawn between investment aid (the tax credit) and operating aid (the reduction in the tax base).

VII.4.1. *Investment aid (tax credit)*

- (122) The tax credit was not awarded under a regional aid scheme approved by the Commission, but granted by means of individual decisions taken by the competent authorities. In such cases, the impact of the aid has to be examined in the context of the Community as a whole. The Court of Justice confirmed this interpretation in *Hytasa* (judgment of 14 September 1994 in Joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* ⁽⁴⁶⁾) and *Pyrsa* (judgment of 14 January 1997 in Case C-169/95 *Spain v Commission* ⁽⁴⁷⁾).
- (123) An individual aid measure may be classed as regional aid compatible with the common market where it effectively contributes to the long-term development of the area and does not have effects that are detrimental to the common interest and competitive conditions in the Community. The aid can accordingly be considered to be compatible with the common market where it does not adversely affect trading conditions to an extent contrary to the common interest.
- (124) The tax credit can be treated in the same way as investment aid in so far as, in the case in point, it is granted in respect of a productive investment (initial investment) in an assisted area. The eligible investments are investments in new tangible fixed assets, i.e. land, machinery and equipment, plant and buildings in a municipality located in an assisted area within the meaning of Article 87(3)(c) of the Treaty. Furthermore, the tax credit is calculated as a percentage of the amount of the investment, which is standard practice for investment aid.
- (125) The figures updated to June 1999 and set out in the following table show that new investment accounts for 53,6 % of the new plant:

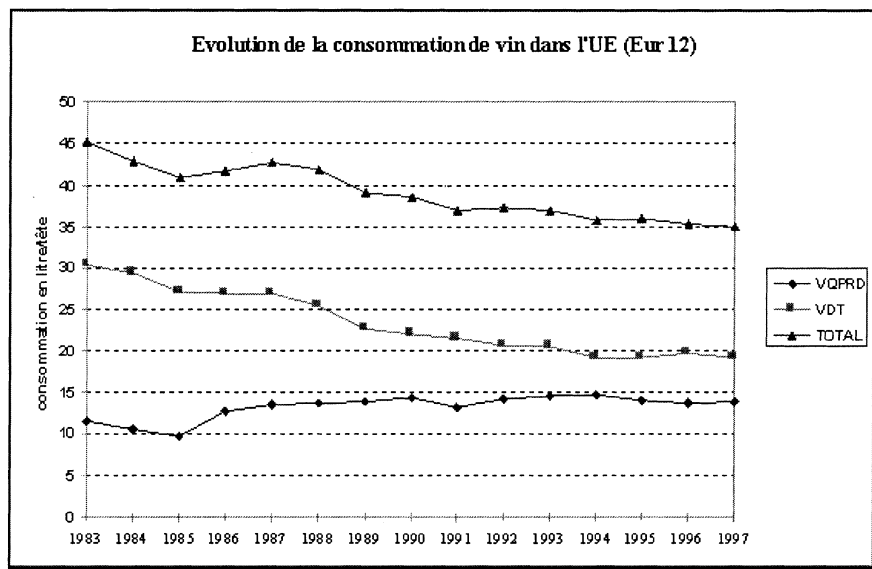
Type of investment	New	Reinstalled
Land	194 076 000	
Buildings	1 471 483 000	
Plant	935 637 000	2 250 000 000
Total ESP	2 601 196 000	2 250 000 000
Total EUR	15 633 502	13 522 772

⁽⁴⁵⁾ See footnote 6.

⁽⁴⁶⁾ [1994] ECR I-4103.

⁽⁴⁷⁾ [1997] ECR I-135.

- (126) As far as the Community interest is concerned, the outlook for the tin capsules market segment is promising given environmental requirements and trends in the consumption of quality wines.
- (127) The material traditionally used to make capsules for sealing bottles of quality wine was, until 1993, lead. In that year, the United States introduced a ban on the use of lead in capsules for quality wines because of the risk of the wine being contaminated when the contents of the bottle are poured.
- (128) European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste ⁽⁴⁸⁾ reduced considerably the concentrations of lead allowed in packaging. Capsules for sealing bottles of wine are regarded as packaging for the purposes of the Directive.
- (129) As a result of these legislative changes introduced in the first half of the 1990s, tin capsules as a substitute for lead capsules, which have been banned ever since, enjoy considerable growth prospects in a world market amounting to some 1 200 million units per year.
- (130) Wine quality appears to be one of the key factors determining trends in wine consumption in the Community. Consumption of 'table wines' is falling sharply while that of 'quality wines' is rising. This general observation should be qualified, however: in the 'table wines' category, wines with a clear identification of origin (vins de pays, Landwein, indicazione geografica tipica, vins de cépage) are enjoying a revival of interest and their consumption is on the increase. Furthermore, the growth in the market shares of 'quality wines' is also reflected in an increase in the quantities produced: between the wine-growing years 1992/93 and 1994/95, their share of output rose from 30 % to 35 %. Part of this increase is due to the reclassification of former 'table wines' as 'quality wines' ⁽⁴⁹⁾:



Key:

Evolution of wine consumption in the EU (EU-12)

Consumption in litres per capita

VQPRD: Quality wines produced in specific regions.

VDT: Table wines.

⁽⁴⁸⁾ OJ L 365, 31.12.1994, p. 10.

⁽⁴⁹⁾ European Commission Directorate-General for Agriculture, CAP 2000. Working documents. Situation and outlook: Wine Sector, June 1998, p. 37.

- (131) Demand from the battery industry will continue to underpin lead consumption in the Community, largely as a result of rising demand for lead acid batteries for the automobile industry. In 1994 lead consumption in the battery industry had risen by nearly 14 % from the 1991 level, accounting for some 70 % of total refined-lead demand ⁽⁵⁰⁾. The battery industry is the only lead end-use that is less influenced by environmental constraints owing to the lack of competition from other metals:

(1 000 tonnes)

	1990	1991	1992	1993	1994	Share 1994 %
Batteries	2 545	2 566	2 591	2 610	2 924	68

- (132) This upward trend is also reflected in the results of battery manufacturers. The Varta group points in its 1998 annual report to an increase in domestic demand in the western European countries; both the north American and European markets have benefited from steady growth in demand for car batteries ⁽⁵¹⁾.
- (133) The industry is made up of a large number of small refineries. There are around 30 smelters/secondary refining plants in the Community, accounting for an output of between 5 000 and 65 000 tonnes per operator. The number of operators is decreasing as the large multinationals and main producer groups establish their own operations. Ramondín's output forecasts (500 tonnes at the outset, rising to 1 600 tonnes in 2001) show that it is a marginal producer. Furthermore, Ramondín intends to operate on a subcontract basis (job processing).
- (134) In view of the foregoing, and provided that the ceiling of 25 % nge is observed, the Commission takes the view that the grant of a tax credit to Ramondín will not adversely affect trading conditions to an extent contrary to the common interest and can consequently be regarded as aid which is compatible with the common market. On the other hand, the total amount of any advantage conferred by means of the tax credit in excess of the 25 % nge ceiling will not qualify for exemption under Article 87(3)(c) of the Treaty since, as stressed in the guidelines on national regional aid, any aid over and above that limit would no longer guarantee the equilibrium between the resulting distortions of competition and the advantages of the aid in terms of regional development and would therefore have to be regarded as incompatible with the common market. The maximum amount of aid (expressed in terms of nge ⁽⁵²⁾) to be deemed compatible under this Decision must be calculated in such a way as to comply with the rules on cumulation of aid ⁽⁵³⁾.
- (135) In order to check that application of the tax credit complies with the regional aid ceiling, including the rules on cumulation of aid ⁽⁵⁴⁾, Spain must submit annual reports over the entire period in which the tax credit is in force.

VII.5. Operating aid: reduction in the tax base

- (136) The Commission points out that tax aid may be considered to be investment aid where the investment constitutes the tax base ⁽⁵⁵⁾. However, in this case, the reduction in the tax base does not fulfil that condition and consequently cannot be classed as investment aid. Neither can it be regarded as employment aid linked to the investment since it is not dependent on the number of jobs created. The minimum investment of ESP 80 million and the minimum creation of 10 jobs, both required by the instrument introducing this tax concession, do not cause the reduction in the tax base granted to Ramondín Cápsulas to be classed as investment aid, since the minimum investment and job creation requirements are not calculated according to a specific investment but constitute thresholds above which certain firms qualify for the tax concession. Even if Ramondín Cápsulas had created 1 000 jobs, the amount of the advantage conferred by means of the reduction in the tax base would have been the same. Consequently, the minimum investment and job creation requirements cannot be regarded as *quid pro quo*, calculated on the basis of the amount of the investment.

⁽⁵⁰⁾ *Panorama of EU Industry* 1997, pp. 11 to 23.

⁽⁵¹⁾ 1998 Management report group and Varta AG, p. 9 (<http://194.172.32.120/company/10years.html>)

⁽⁵²⁾ For the method of calculating the net grant equivalent, see Annex 1 to the guidelines on national regional aid, referred to in footnote 9.

⁽⁵³⁾ In accordance with point 4.18 of the guidelines on national regional aid; referred to in footnote 9, the aid intensity ceiling apply to the total aid (i) where assistance is granted concurrently under several regional schemes, and (ii) whether the aid comes from local, regional, national or Community sources.

⁽⁵⁴⁾ See footnote 53.

⁽⁵⁵⁾ See footnote 46 in Annex I to the guidelines on national regional aid, referred to in footnote 9.

- (137) On the other hand, the Commission considers that the reduction in the tax base is to be classed as operating aid. Its aim is to relieve Ramondín Cápsulas of the costs which it would itself normally have had to bear in the course of its day-to-day management or its usual activities. Thanks to this reduction in its current expenses, the profitability of Ramondín Cápsulas will be improved as a result of the increase in its net profit (profits after tax).
- (138) As the Commission explained in points 4.15 to 4.17 of the guidelines on national regional aid ⁽⁵⁶⁾, regional aid aimed at reducing a firm's current expenses (operating aid) is normally incompatible with the common market. However, this type of aid may exceptionally be allowed in the regions which are eligible for the exception laid down in Article 87(3)(a) of the Treaty, where justified by its contribution to regional development and its nature and where the amount of the aid is in proportion to the handicaps it is intended to alleviate. The Commission notes that the Basque Country is not one of the areas covered by Article 87(3)(a) of the Treaty.
- (139) It consequently has to be concluded that, since the operating aid in question does not qualify for any of the exceptions provided for in the Treaty, it is incompatible with the common market.
- (140) This Decision relates only to those tax measures explicitly examined herein and does not assess the other measures provided for by the specific tax arrangements adopted in the Province of Álava. The Commission reserves the right to examine any such measures that might constitute aid, either as general schemes, or in so far as they might be applied to Ramondín.

VIII. CONCLUSIONS

- (141) As regards the questions in respect of which the Commission required Spain to provide information, the Commission finds that:
- the non-repayable grant covering 8,55 % of eligible costs was awarded to Ramondín Cápsulas in accordance with the conditions governing the Ekimen regional aid scheme approved by the Commission,
 - no State aid was involved in the sale by Álava Agencia de Desarrollo to Ramondín of a 55 050 m² plot of land in the Casablanca industrial estate at Laguardia (Álava) at a price of ESP 2 500 per square metre.
- (142) As regards the measures covered by the decision to initiate the procedure under Article 88(2) of the Treaty, the Commission finds that Spain has acted illegally and in breach of Article 88(3) of the Treaty in implementing the following aid:
- (a) the reduction in the tax base for newly established companies provided for by Article 26 of Provincial Law 24/1996 of 5 July 1996, granted to Ramondín Cápsulas;
 - (b) the grant to Ramondín of a tax credit corresponding to 45 % of the cost of the investment as determined by the Álava Provincial Council in Decision No 738/1997 of 21 October 1997.

The aid referred to in (a) and the part of the aid referred to in (b) above which, in accordance with the rules on the cumulation of aid, exceeds the ceiling of 25 % nge for regional aid in the Basque Country has to be deemed incompatible with the common market.

Consequently, in order to reestablish the economic conditions with which the company would have had to contend if it had not been granted incompatible aid, the Spanish Government must take all the necessary steps to withdraw the benefits deriving from the aid and where appropriate recover it from the beneficiaries.

⁽⁵⁶⁾ See footnote 9.

The aid must be recovered in accordance with the procedures and provisions laid down in Spanish law, and must include the interest which has accrued between the date on which the aid was granted and the date on which it is actually repaid, calculated at a rate equal to the percentage value on that date of the reference rate used to calculate the net grant equivalent of regional aid in Spain ⁽⁵⁷⁾.

The part of the aid referred to in paragraph (b) which, provided that the rules on the cumulation of aid are observed, does not exceed the ceiling of 25 % nge for regional aid in the Basque Country has to be deemed compatible with the common market. In order to check that application of the tax credit complies with the regional aid ceiling, including the rules on cumulation of aid ⁽⁵⁸⁾, Spain must submit annual reports over the entire period in which the tax credit is in force,

HAS ADOPTED THIS DECISION:

Article 1

1. The State aid which Spain has implemented in the form of the grant to Ramondín SA of a tax credit corresponding to 45 % of the cost of the investment as determined by the Álava Provincial Council in Decision No 738/1997 of 21 October 1997 is compatible with the common market as regards the part of the aid which, in accordance with the rules on the cumulation of aid, does not exceed the ceiling of 25 % nge for regional aid in the Basque Country.

2. Spain shall submit annual reports over the entire period in which the tax credit is in force in order to enable the Commission to check that the aid to Ramondín SA is granted in accordance with the rules on cumulation of aid and does not exceed the ceiling of 25 % nge for regional aid in the Basque Country.

Article 2

The following State aid implemented by Spain is incompatible with the common market:

- (a) the grant to Ramondín Cápsulas SA of the reduction in the tax base for newly established businesses provided for by Article 26 of Provincial Law 24/1996 of 5 July 1996;
- (b) the grant to Ramondín SA of a tax credit corresponding to 45 % of the cost of the investment as determined by the Álava Provincial Council in Decision No 738/1997 of 21 October 1997, as regards the part of the aid which, in accordance with the rules on the cumulation of aid, exceeds the ceiling of 25 % nge for regional aid in the Basque Country.

Article 3

1. Spain shall take all necessary measures to withdraw the benefits deriving from, and where appropriate recover from the beneficiaries, the aid referred to in Article 2 and unlawfully made available to the beneficiaries.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the Decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiaries 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

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

⁽⁵⁷⁾ Commission letter to Member States SG(91) D/4577 of 4 March 1991. See also the judgment of the Court of Justice of 21 March 1990 in Case C-142/87 *Belgium v Commission* [1990] ECR I-959.

⁽⁵⁸⁾ See footnote 53.

Article 5

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 22 December 1999.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION
of 21 June 2000
on State aid granted by Germany to CDA Compact Disc Albrechts GmbH, Thuringia
(notified under document number C(2000) 1728)
(Only the German text is authentic)
(Text with EEA relevance)
(2000/796/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 the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having regard interested parties the opportunity to submit their comments ⁽¹⁾ pursuant to Article 88(2) of the EC Treaty and Article 6(1) of Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽²⁾,

Whereas:

1. PROCEDURE

- (1) In response to reports in the press, the Commission wrote to Germany on 6 October 1994 asking for information on State support for a plant manufacturing CDs in Albrechts, Thuringia. By letter dated 9 November 1994, the German authorities notified aid granted by the *Land* Governments of Thuringia and Bavaria to Pilz Albrechts GmbH (PA) of Albrechts (Thuringia) and the Pilz Group of Kranzberg (Bavaria). The case was initially registered under number N 662/94.
- (2) By letter dated 15 November 1994, the Commission asked for more detailed information. The German authorities elaborated on their notification by letter dated 7 March 1995 concerning further measures by the Treuhandanstalt (THA) and by Thuringia and Bavaria. As it was clear from this information that substantial amounts of aid had already been granted before the notification, the case was reregistered under number NN 54/95.
- (3) By letters dated 1 August 1995, 16 October 1995 and 25 November 1996, the Commission asked additional questions which the German authorities answered by letters dated 22 August 1995, 25 August 1995, 18 January 1996 and 17 April 1997. On 3 February 1997 and on 22 and 23 September 1997, meetings were held in Brussels and Erfurt between representatives of the Commission and the German authorities. By letter dated 20 January 1998, the German authorities submitted a summary of their comments on the case based on the outcome of the meeting with Commission representatives in Erfurt.
- (4) By letter dated 17 July 1998, the Commission informed the German authorities of its decision to initiate formal investigation proceedings under Article 88(2) of the EC Treaty with regard to the aid in question and enclosed a detailed questionnaire. The Commission's decision to initiate proceedings was published in the *Official Journal of the European Communities* ⁽³⁾. In the same notice all other interested parties were invited to submit their comments on the aid in question.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

⁽²⁾ OJ C 390, 15.12.1998, p. 7.

⁽³⁾ See footnote 2.

- (5) The Commission received no such comments within the time limit laid down in its decision. However, it subsequently received comments from CDA Datenträger Albrechts GmbH (CDA), as an interested part, by letters dated 20 July 1999 (received on 22 July), 22 July 1999 (received on 23 July), 27 August 1999 (received on 31 August) and 13 October 1999 (received on 14 October).
- (6) Germany reacted to the notice of the decision to initiate proceedings by letter dated 26 August 1998. Thereby doubts arose as regards the possible misuse of funds. On 15 October 1998 another meeting was held in Brussels between representatives of the Commission and the German authorities. By letter dated 11 November 1998, the latter submitted further information on the companies in question. By letters dated 30 March, 1 April and 16 April 1999, they provided further information but failed to answer the questions put by the Commission with the requisite care. Consequently, by letter dated 22 July, the Commission once again had to remind Germany of the need to answer the questions and set a deadline of 31 August. After this deadline had been extended in response to a request by letter dated 28 July and after a further meeting had been held between representatives of the Commission and the German authorities in Brussels on 23 September, the authorities sent further information by letters dated 28 September and 19 October 1999.

2. THE FACTS

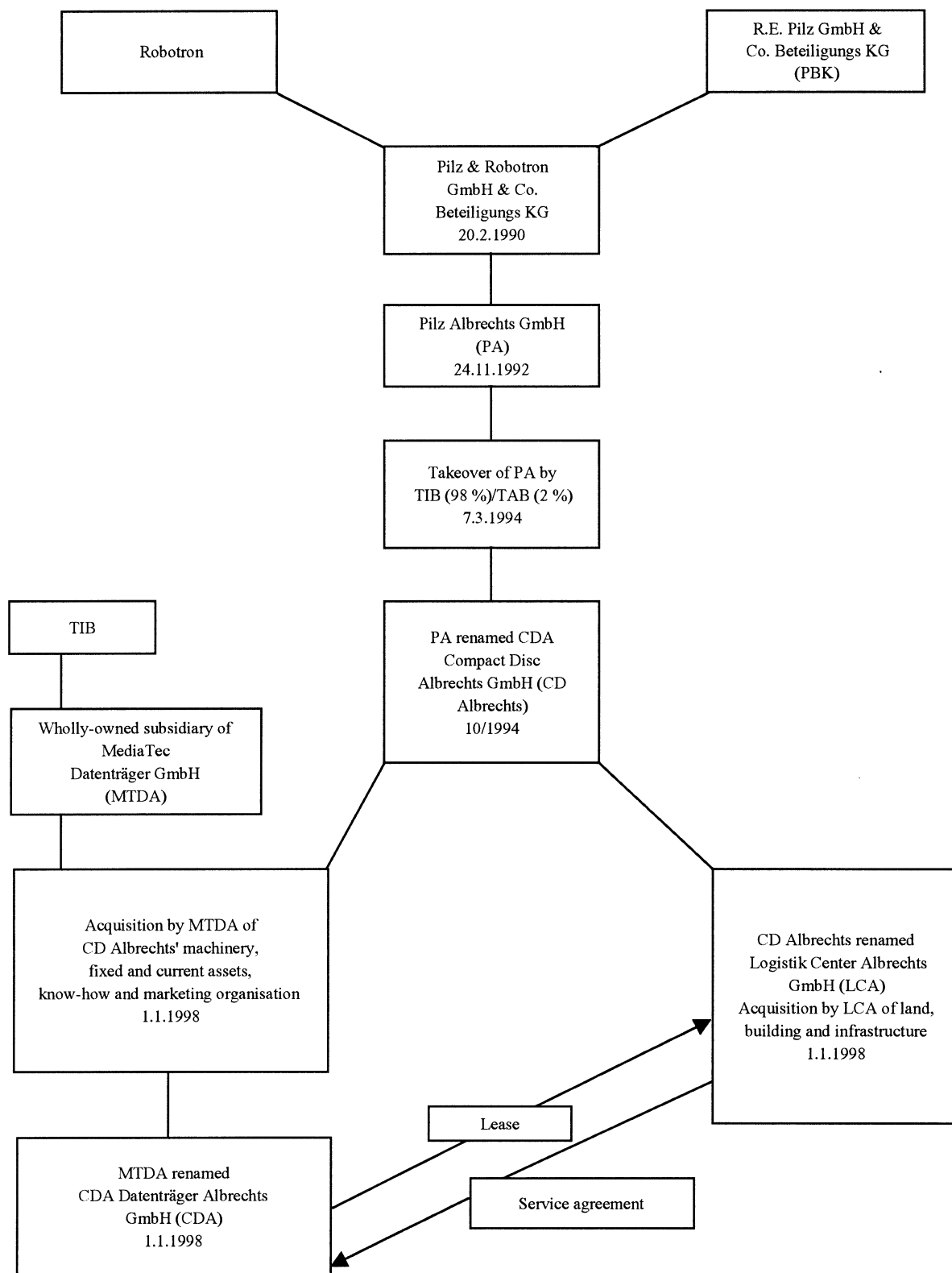
- (7) The comments and opinions received after formal investigation proceedings were initiated shed more light on the extent of the misuse of funds and on the modus operandi of the cash-concentration system within the Pilz Group. However, gaps still remained, particularly as regards the possible misuse of funds in the various companies making up the Pilz Group.
- (8) According to the documents available at present, the facts are as follows.

2.1. Purpose of the financial measures

- (9) The aid in question was granted for the setting up of a plant for manufacturing CDs, CD boxes and accessories in Albrechts, Thuringia, an assisted area pursuant to Article 87(3)(a) of the EC Treaty ⁽⁴⁾.
- (10) On 19 December 1989 VEB Kombinat Robotron of Dresden (hereinafter referred to as 'Robotron') and Mr Reiner Pilz, as manager of the Pilz Group of companies of Kranzberg, Bavaria, signed a joint declaration of intent to set up a plant for manufacturing CDs etc., as a joint venture.
- (11) On 20 February 1990 the basic joint venture agreement was concluded between Robotron and R.E. Pilz GmbH & Co. Beteiligungs KG, Kranzberg, Bavaria (hereinafter referred to as 'PBK'). Robotron took a two-thirds share and Pilz a one-third share in the resultant Pilz & Robotron GmbH & Co. Beteiligungs KG. Its de facto managing director was Mr Reiner Pilz.
- (12) On 29 August 1990 the joint venture, as principal, and Pilz GmbH & Co. Construction KG, as general contractor, signed a contract to set up a brand-new, turnkey plant with production equipment for an all-inclusive price of DEM 235 525 000.
- (13) After Robotron AG, the legal successor to Robotron, was wound up by the THA in 1992, PBK took over its shares in the joint venture also.
- (14) On 24 November 1992 the company's headquarters were transferred to Albrechts and PA was founded as a subsidiary of Pilz GmbH & Co. Compact Disc KG, Kranzberg, to which the shares of PBK had previously been transferred. The purpose of this company was to operate the CD manufacturing plant, which had since been set up. This company was integrated into the Pilz Group's central cash-management system from the outset.

⁽⁴⁾ N 464/93; N 613/96, valid until the end of 1999.

- (15) The company subsequently encountered major difficulties, with the result that production had to be halted and restarted several times. In addition, the German authorities discovered that Mr Pilz's account of expenditure on setting up the plant had been manipulated. The contractual ties to the Pilz Group were subsequently dissolved in March 1994.
- (16) On 25 July 1995 insolvency proceedings were initiated in respect of the assets of all the Pilz Group's domestic companies. To the Commission's knowledge, the Pilz Group employed around 650 staff before its bankruptcy, including 300 in Albrechts. No balance-sheet figures, profit and loss accounts or similar documents of the Pilz Group have been submitted to the Commission. Mr Pilz himself has since been sentenced to a long prison term for fraudulent bankruptcy and other offences. Further criminal proceedings for subsidy fraud are pending.
- (17) In a restructuring agreement concluded on 7 March 1994, the shares in PA (worth DEM 33 million) were acquired by Thüringer Industriebeteiligungsgesellschaft ('TIB')(98 %) and Thüringer Aufbaubank ('TAB') (2 %) with retroactive effect from 1 January 1994. From October 1994 the company operated under the name CDA Compact Disc Albrechts GmbH (hereinafter referred to as 'CD Albrechts').
- (18) Despite the attempts by the new owners to consolidate business operations, the attempt to privatise the company failed. CD Albrechts' fixed and current assets, technical know-how and marketing organisation were subsequently acquired with effect from 1 January 1998 by MediaTec Datenträger GmbH ('MTDA'), a wholly-owned subsidiary of TIB founded in 1996. At the same time, the name of CD Albrechts was changed to LCA Logistik Center Albrechts GmbH (LCA) and that of MTDA to CDA Datenträger Albrechts GmbH ('CDA'). The latter's main centre of activities is no longer the market for music CDs and accessories, but the production of high-performance data-storage media, in particular recordable CDs (CD-ROMs) and DVDs.
- (19) LCA continues to own the land on which the company operates, the existing buildings, the technical infrastructure and the logistical installations. An agreement has been concluded between LCA and CDA on the exchange of services which provides for a lease contract with an annual rent of DEM 800 000 and for a service contract worth around DEM 3 million a year, depending on the volume of business.



2.2. Volume of investment

- (20) The total cost of investment for setting up the CD plant in Albrechts, including the necessary development costs of DEM 7,5 million, was initially put at DEM 243,025 million.
- (21) The overall breakdown of financing for the project was as follows:

(in DEM million)	
Source	Amount
R.E. Pilz & Co. KG's own funds	11
Investment allowance	17
Assistance under the joint Federal Government/Länder scheme for improving regional economic structures	55,895
Investment grant for highly skilled jobs	0,55
Bank borrowings	158,58
Total	243,025

- (22) Under an additional contract dated 26 May 1992, the partners in the joint venture agreed to expand manufacturing capacity for CDs and CD boxes. An all-inclusive price of DEM 39 million for all deliveries and services was agreed.
- (23) The additional contract was to be financed as follows:

(in DEM million)	
Source	Amount
Own funds	—
Investment allowance	4,134
Investment grant (joint scheme)	7,56
Other borrowing	27,306
Total	39

- (24) The total volume of investment was thus DEM 282,025 million.

2.3. Public financial measures during the start-up phase (1991/1992)

- (25) In 1992 the THA granted a 100 % deficiency guarantee (DEM 190 million) covering the major part of the loans to Robotron AG and the joint venture. The THA has been required to meet this guarantee in respect of an amount of DEM 120 million. Under the restructuring agreement of 7 March 1994, this amount of DEM 120 million was waived.
- (26) Up to 31 December 1993 PA received investment grants from the *Freistaat* of Thuringia totalling DEM 63,45 million under the 20th and 21st framework plans for the joint scheme for improving regional economic structures.
- (27) These grants accrued indirectly to the Pilz Group's central cash-management system.
- (28) The above amount comprised a grant of DEM 55,895 million for start-up investments (made on 24 July 1991) and a grant of DEM 7,56 million for capacity-augmenting investments under the additional agreement of 26 May 1996 mentioned in recital 22.
- (29) For its part, the *Land* of Bavaria contributed to financing the overall project via the Bayerische Landesanstalt für Aufbaufinanzierung ('LfA') with an investment allowance of DEM 7 834 504 for 1991 and DEM 11 591 904 for 1992, giving a total of DEM 19 426 408.

- (30) Given the high level of regional aid granted, only DEM 54,7 million of the DEM 65,85 million bank consortium's loan was actually used. The LfA granted a deficiency guarantee of 100 % instead of the 80 % originally envisaged.
- (31) In March 1994 this guarantee was called in for the first time, to the amount of DEM 3 million. The LfA then waived its legal claim to repayment of this amount. The guarantee was called in for the second and last time in July 1995, this time to the full amount, following PBK's insolvency. The LfA subsequently became a creditor of that company by legal subrogation.
- (32) Thus, public financial measures in connection with establishing the CD plant amounted initially to DEM 350,57 million.

	Measure	Amount (DEM million)	Recipient	Granted by	Date	Legal basis
1	100 % deficiency guarantee, initially 80 % guarantee covering DEM 52,72 million	54,7	PBK	LfA	1991	<i>Gesetz über die Übernahme von Staatsbürgschaften und Garantien des Freistaates Bayern</i>
2	Investment grants and allowances	19,42	Joint venture	LfA	1991/1992	Joint scheme for improving regional economic structures, Investment-allowance Law
3	Waiver	3,0	PBK	LfA	1994	None
4	100 % guarantee	190,0	Robotron AG, joint venture	THA	1991	THA scheme
5	Investment grants and allowances	63,45	Joint venture, from 24.11.1992, PA	Thuringia	1991 to 1993	Joint scheme for improving regional economic structures, Investment-allowance Law
Total		330,57				

2.4. Financial measures in connection with restructuring the company (1993 to the present day)

- (33) As early as in October 1993, the TAB granted PA a DEM 25 million interest-bearing loan to cover liquidity shortfalls. In March 1994 it granted a further DEM 20 million loan to enable the company to repay the loan which had been secured by the THA. According to the German authorities, both loans accrued directly to Pilz, Kranzberg, via the joint cash-management arrangement between PA and the Pilz Group. Despite extensive investigations by the German criminal prosecution authorities, the relevant accounting operations are still not entirely transparent.
- (34) The TAB and the TIB paid a total of DEM 15 million in connection with their takeover of the firm in March 1994. Of this amount, DEM 3 million was paid by the TIB for the purchase of its shares in PBK. A further DEM 12 million was paid into PA's capital reserve.
- (35) Shares in PA worth DEM 33 million were purchased by the TIB (98 %) and the TAB (2 %) with retroactive effect from 1 January 1994. In April 1994 the TIB granted the firm a further liquidity loan of DEM 3,5 million.
- (36) On the basis of a contract dated 8 March 1994, the *Freistaat* of Bavaria, acting through the LfA, granted the firm a loan of DEM 2 million. In December 1994 it granted a further loan of DEM 7 million.
- (37) In June 1994 the LfA granted a further DEM 15 million operating loan to the Pilz Group. This was intended as a bridging loan to cover the period up until such time as an investor willing to buy the joint venture was found.

- (38) In addition, PA, whose name had in the meantime been changed to CD Albrechts, received a DEM 15 million liquidity loan from the TAB in October 1994. This loan, although paid to CD Albrechts, again accrued indirectly to the Pilz Group's joint cash-management system.
- (39) As far as the Commission is aware, the company received further financial aid in January 1995, when the TAB granted it a DEM 9,5 million loan.

Overview of financial measures in connection with the restructuring of the company

	Measure	Amount in DEM million	Recipient	Granted by	Date	Legal basis
1	Loan	25,0	PA	TAB	October 1993	None
2	Loan	20,0	PA	TAB	March 1994	None
3	Purchase price	3,0	PBK	TIB	March 1994	None
4	Grant	12,0	PA	TIB	March 1994	None
5	Shareholding	33,0	PA	TIB (98 %), TAB (2 %)	March 1994	None
6	Loan	2,0	PA	LfA	March 1994	None
7	Shareholder's loan	3,5	PA	TIB	April 1994	None
8	Loan	15,0	Pilz Group	LfA	June 1994	None
9	Loan	15,0	CD Albrechts	TAB	October 1994	None
10	Loan	7,0	CD Albrechts	LfA	December 1994	None
11	Loan	9,5	CD Albrechts	TAB	January 1995	None
12	Interest	21,3			since the end of 1993	None
Total		166,3				

- (40) According to the German authorities, these payments generated considerable interest-rate advantages, totalling at least DEM 21,3 million from the end of 1993 until 1998.
- (41) On the basis of an agreement dated 7 November 1995, the TAB assumed all the LfA's claims on the company, totalling DEM 50,4 million against the payment of DEM 15 million. For its part, the TAB waived its claims on CDA Albrechts for the amount in excess of its expenditure on the acquisition (DEM 44,4 million).
- (42) Assuming this information is complete, funds totalling at least DEM 556,27 million have been paid in connection with the setting up of the joint venture and the establishment, operation and restructuring of the CD plant in Albrechts ⁽⁵⁾.

2.5. Takeover of fixed and current assets by MTDA

- (43) This amount does not include any financial transactions involved in the takeover of CD Albrechts' assets and operations by MTDA. According to the German authorities, MTDA's takeover of CD Albrechts' active business and the simultaneous change of name to CDA took the form of a routine asset purchase. The price of the fixed assets was established at DEM 12,2 million by an assessment of their current market value. The current assets were valued at DEM 23,1 million at the end of 1997. The total purchase price of DEM 35,3 million was paid by means of the assumption of liabilities ⁽⁶⁾.

⁽⁵⁾ DEM 330,55 million in the start-up base + DEM 166,3 million for restructuring + DEM 15 million TAB/LfA takeover of claims + 44,4 million TAB waiver of claims = DEM 556,27 million.

⁽⁶⁾ DEM 9,9 million in liabilities towards suppliers and TAB loan of DEM 25,4 million.

2.6. Contribution by the consortium of private banks

- (44) In addition to the mentioned loans, the private bank consortium waived claims of DEM 12 million in 1994. According to the German authorities, it also granted a further DEM 8 million loan to the Pilz Group without public assistance.

3. COMMISSION DECISION TO INITIATE PROCEEDINGS UNDER ARTICLE 88(2) OF THE EC TREATY

- (45) In its decision to initiate proceedings under Article 88(2) of the EC Treaty, the Commission expressed doubts as to the compatibility with the common market of the aid which was not notified and unlawfully disbursed before it had taken a decision.
- (46) It had serious reservations about whether investment grants made under the joint scheme for improving regional economic structures and investment allowances complied with the various sets of horizontal Community guidelines on State regional aid since, in particular, they served to offset losses but did not contribute to the economic development of the region in question by creating jobs.
- (47) Since, according to the German authorities, aid was granted under the scheme approved by the *Gesetz über die Übernahme von Staatsbürgschaften und Garantien des Freistaates Bayern*, the Commission had serious doubts as to whether the conditions and obligations of that aid scheme had actually been met.
- (48) The Commission also had reservations as to whether the aid granted by the THA complied with the Commission decisions of 1991 and 1992 on the THA's activities ⁽⁷⁾ since the setting up of a joint venture to establish a new production plant could not be regarded as a typical privatisation measure.
- (49) For the rest, it felt that the investigations by the German criminal prosecution authorities suggested that aid had been misused by the recipient.
- (50) On the basis of the information available, the Commission examined the case in the light of the exemption provided for in Article 87(3)(c) of the EC Treaty for 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest' and in the light of the 'guidelines for State aid for rescuing and restructuring of companies in difficulty' ⁽⁸⁾. It doubted whether the loans and guarantees met the criteria for rescue aid.
- (51) In this connection, it had not received any indication either that a restructuring plan had ever existed which guaranteed that the company's long-term viability could be restored. The Commission also considered that the aid had not been limited to the strict minimum and that the principle of one-off aid had not been observed. The criteria for approving restructuring aid could therefore not be regarded as having been met.
- (52) Moreover, the Commission objected to the lack of information that would have enabled it to check the compatibility with Article 87 of the EC Treaty of the aid to the joint venture and, possibly, the aid granted in connection with the setting up of MTDA, now CDA. It therefore expressly asked the German authorities to provide it with all the documentation, information and data it required to examine the compatibility of the aid with the common market ⁽⁹⁾.

3.1. Comments from CDA

- (53) In its belated comments, CDA requests a legal hearing as an interested party in the formal investigation proceedings. Its main objection is to its inclusion in the proceedings.

⁽⁷⁾ First and 2nd Treuhand schemes; NN 108/91 and E 15/92.

⁽⁸⁾ OJ C 368, 23.12.1994, p. 12.

⁽⁹⁾ Case C 301/87, *France v Commission* [1990] ECR I-307, confirmed by Joined Cases C 324/90 and C-342/90 *Germany and Pleuger Worthington v Commission* [1994] ECR I-1173.

- (54) CDA submits that it neither received nor used any of the aid which is the subject of the present proceedings and that it is unconnected with LCA and was founded as an independent, wholly-owned subsidiary of TIB as part of a market-driven commitment by TIB and operates as such on the market.
- (55) CDA claims that it did not benefit from State aid in connection with the takeover of the assets of what is now LCA. The fixed and current economic assets it acquired from LCA were obtained against payment of a market price corresponding to the current value.
- (56) Nor does the fact that CDA operate on land belonging to LCA constitute any such aid. CDA pays LCA a proper consideration for logistic services and use of the land that is in line with market conditions.

3.2. Comments from Germany

- (57) In their comments on the notice of the decision to initiate proceedings, the German authorities argued that the setting up of the Albrechts plant should be regarded not as the establishment of a new company but a hive-off from Robotron AG involving an alliance with a substantial partner. The aim of the project was to bring Robotron up to date with the latest technology in data storage media. The fact that this was done via a legally independent company and in the form of a joint venture does not affect its inclusion within the liquidation remit of the THA.
- (58) The German authorities also state that the setting up of the joint venture under the basic commercial contract served precisely to save the Pilz Group, which had been in difficulties since at least 1989, from bankruptcy. Up to December 1994, services which, from a legal standpoint, were supplied to the joint venture in Albrechts actually accrued, from an economic standpoint, indirectly to the Pilz Group in Kranzberg via its joint cash-management system. In 1991 and 1992 the income from the establishment of the Albrechts plant covered the Pilz Group's operating losses. Adjustments totalling DEM 108 million had to be made in the annual accounts for 1993 as a result of manipulation by Pilz of the valuation of fixed assets. In the annual accounts for 1994, adjustments of DEM 40 million had to be made to claims against the Pilz Group which, given its economic situation, were unenforceable. The loans granted as operating capital in 1993 and 1994 were channelled to Pilz in Kranzberg via the central cash-management system.
- (59) The German authorities believe that a negative final decision coupled with a demand for repayment would be neither legally admissible nor appropriate. Under the second sentence of Article 14(1) of Regulation (EC) No 659/1999, recovery of aid may not be required where this would be contrary to a general principle of Community law. The principle of proportionality is also such a principle.
- (60) The German authorities argue that the present case is atypical and not expressly covered by the Community guidelines, which restrict the Commission's margin of discretion. On account of the criminal injury incurred, LCA, as the legal successor to CD Albrechts, cannot be compared with a company which has benefited from the receipt of aid. The business activities of its competitors are therefore not impaired. A negative decision would therefore have no corrective effect on competition.

3.3. Investigations into the scale of misuse of funds

- (61) It is apparent from the information supplied by the German authorities that they knew at least as early as March 1994 that a massive misuse of funds had occurred. Despite numerous requests from the Commission, the German authorities have failed to provide any complete or up-to-date information on the use to which the aid had been put by Pilz or on the organisation of the Pilz Group's cash-concentration system. The Commission's decision to initiate formal proceedings under Article 88(2) of the EC Treaty was necessarily based on provisional and incomplete positions.

- (62) Assuming that all of the publicly secured loans granted by October 1994, the investment grants made under the joint scheme for improving regional economic structures and a significant proportion of the tax allowances were channelled into the cash-concentration system, the Commission concludes that, over time, the aid was mixed with other funds, in particular bank loans and own funds, in such a way that, for the most part, it can no longer be identified where it originated.

3.4. Investigations into the use to which the misused funds were put

- (63) There are enormous difficulties involved in establishing on what the misused funds were actually spent. Despite extensive investigations by the German criminal prosecution authorities and the pursuit of legal claims by both the German authorities and the present-day LCA against Mr Pilz and his sons, it has not so far been possible to relate funds precisely to specific financial events within the Pilz Group.
- (64) As far as the Commission is aware, the funds have been used and the cash-concentration system organised as follows.
- (65) The publicly secured loans which are the subject of the formal proceedings were not initially granted to LCA or its predecessor, CD Albrechts. Rather, they were paid in instalments directly to the general contractor responsible for setting up the CD plant, Pilz GmbH & Co. Construction KG, by the 'Albrechts Consortium'.
- (66) Funds were disbursed on the basis of their use being monitored by an auditing firm which was instructed to confirm to the banks before the funds were released that the corresponding goods/services had been paid for by Pilz GmbH & Co. Construction KG itself, a company associated with it or an outside company.
- (67) This company used a small proportion of the funds to meet claims. However, the bulk of the money accrued to the Pilz Group. In this respect, numerous invoices were presented for machinery, plant and other goods/services which were not intended for PA's CD plant and were not supplied to it or installed in the plant.
- (68) Cases of manipulation were uncovered in the course of a special check by the auditing firm C & L Treuarbeit Deutsche Revision, which was reviewing the investment after economic responsibility had been taken over by TIB and TAB; according to the information supplied by the German authorities, its findings were as follows.
- (69) The agreed DEM 11 million shareholder's contribution was not paid by PBK. Moreover, PBK was liable because of the requirement to contribute non-valuable assets when the company was formed.
- (70) The goods/services supplied in connection with the setting up of the plant were passed on via PA and paid to the general subcontractor at an excessively high price. Liabilities thus arose within PA's fixed assets which significantly exceeded the actual fixed-asset values. These liabilities were then partially waived under the restructuring agreement of 7 March 1994.
- (71) The DEM 25 million and DEM 20 million operating loans granted in October 1993 and March 1994 respectively accrued to the Pilz Group via the joint cash-management system it operated with PA.
- (72) While it is true that the DEM 15 million under the structural agreement of September/October 1994 was paid to PA, production had to be carried out for the Pilz Group for which the latter did not pay, with the result that this loan was again of benefit solely to the Pilz Group.
- (73) Only the DEM 7 million loan granted in December 1994 went to support PA.

- (74) TAB's meeting of liabilities vis-à-vis LfA in October 1995 for DEM 15 million and its waiver of the DEM 44,4 million served to bring the liabilities down to a level corresponding more or less to the available value.
- (75) For the mentioned reasons, an estimate of the proportion of aid in the firms' liabilities is possible only on the basis of hypothetical considerations. However, there is no complete chain of evidence to show that certain amounts must constitute aid.

3.5. Measures taken by the German authorities to recover the misused funds

- (76) The misused aid accrued to the Pilz Group in the form of publicly secured loans and investment grants and allowances. The eight domestic Pilz companies are now bankrupt; there were no divisible assets.
- (77) LCA, the legal successor to CD Albrechts, notified claims against these companies totalling some DEM 193 million plus interest. Of these claims, the receiver immediately acknowledged an amount of DEM 40 443 811,82, this amount being apparent from the accounts of Pilz GmbH & Co. Compact Disc KG (PA's parent company). The further claims will be met once bankruptcy proceedings have been completed on a pro rata basis together with those of other non-priority creditors. However, the receiver has already stated that neither funds nor usable assets will be available at that time; the notified claims are therefore likely not to be met.
- (78) By notice of 27 July 1995, Thuringia demanded the repayment by CD Albrechts GmbH of investment grants under the joint scheme⁽¹⁰⁾ (GA) totalling DEM 32 448 240. This notice has now become legally enforceable. Since the grants did not in fact accrue to the firm in Albrechts but rather to the Pilz Group or personally to the Pilz family, no claim for payment has been made against CD Albrechts GmbH. Nevertheless, the latter had to be the addressee of the repayment notice since this was the only way of justifying the claim and calling Mr Pilz to account in view of the fact that he was liable for them with his private assets⁽¹¹⁾.
- (79) A notice [...] (*) demanding repayment of the 1992 investment allowance, totalling DEM 6 137 404 plus interest of DEM 2 148 090, has also been issued.
- (80) A total of four years of intensive investigations by the Federal Criminal Office have led to charges of fraud being brought in connection with the misuse of grants made under the joint scheme⁽¹²⁾. In a separate case relating to the granting of tax allowances on investment⁽¹³⁾, criminal proceedings have also been initiated.
- (81) In proceedings before the Landshut District Court (Bavaria), Mr Reiner Pilz was sentenced to six years' imprisonment for 28 cases of fraud and for breach of public trust. An appeal against this sentence was quashed by the Federal Supreme Court on 14 September 1999, and the sentence therefore acquired force of law.

4. ASSESSMENT

- (82) The aid granted by Germany to the joint venture and its legal successors came from public funds. It distorts competition within the internal market by placing the recipient firm in a position to finance operating investment largely or entirely with public funds. Since this situation adversely affects trade between the Member States, the measures fall within the scope of Article 87(1) of the EC Treaty.

⁽¹⁰⁾ Twenty-sixth framework plan: N 123/97.

⁽¹¹⁾ In addition to pursuing its claims in the context of the bankruptcy proceedings, the Land of Thuringia is also seeking compensation in three civil cases:

Thuringia v Reiner E. Pilz, appeal proceedings before the Intermediate Court of Appeal [OLG] in Munich, 21 U 3653/97;

Thuringia v Pilz and others, Appeal to the Federal Supreme Court, IX ZR 247/98;

Thuringia v Reiner E. Pilz, Preliminary proceedings before the Munich District Court, 9 O 18336/98.

(*) Betriebsgeheimnis.

⁽¹²⁾ Landgericht Mülhausen, 350 Js 41163/95.

⁽¹³⁾ Staatsanwaltschaft Mülhausen, 30 Js 55107/96.

- (83) In contravention of Article 88(3) of the EC Treaty, the aid from Thuringia, Bavaria and the THA was granted in the large part before being notified and in its entirety before the Commission adopted a decision. The aid should therefore be classified as unlawful.
- (84) Consequently, provided that it is not covered by a scheme authorised by the Commission, the aid must be examined in the light of the general rules for the granting of State aid as aid *hoc* aid to determine whether and, if so, which derogations provided for in the EC Treaty could be applicable.
- (85) The grants for business investment in plant that are made available in eligible areas of Germany under the joint scheme and the tax allowances for investment constitute State aid for regional policy purposes within the meaning of Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement. Regional aid may be granted solely to disadvantaged areas and is designed for the specific purpose of developing such areas by promoting investment, attracting new firms and creating jobs in the context of long-term sustainable development.
- (86) The doubts voiced by the Commission at the start of Article 88(2) proceedings as to whether the investment allowances had been used in accordance with the approved scheme have largely been confirmed.

4.1. The measures of the *Land* of Thuringia

- (87) According to the investigations of the German criminal prosecution authorities, there was an exchange of goods/services with a total value of DEM 109 million between the companies within the Pilz Group. Consequently, the entire investment plan should not have received assistance since there was an infringement of the prohibition of aid being used to finance investment goods from associated companies. At the same time, the investment grant of DEM 63,45 million made on the basis of the joint scheme and the Investment Allowance Act for 1991 and 1992 was inconsistent with the programme and thus should not have been deemed to be covered by it.
- (88) Consequently, the regional aid totalling DEM 63,45 million which was granted by the *Land* of Thuringia and channelled into the Pilz Group's cash-concentration system must be regarded as incompatible aid and be recovered. After examination by the Thuringian Ministry of Economic Affairs of the evidence concerning the use of this aid, a repayment notice was issued to CD Albrechts on 27 July 1995 in respect of only DEM 32,5 million. A further amount of DEM 30,95 million should therefore be recovered.

4.2. The measures of the *Land* of Bavaria (LfA)

- (89) Despite the Commission's request for information made when the proceedings were initiated, the German authorities have failed to provide sufficiently detailed information to ensure proper examination of the State guarantee of DEM 54,7 million provided by the *Land* of Bavaria in accordance with Article 87(1) of the EC Treaty and, more particularly, to dispel the Commission's doubts concerning the lawfulness of the change to a 100 % deficiency guarantee and the increase in the amount covered from DEM 52,72 million to DEM 54,7 million.
- (90) The legal basis for the guarantee was cited as being the *Richtlinie für die Übernahme von Staatsbürgschaften im Bereich der gewerblichen Wirtschaft* (Guidelines for the granting of State guarantees in industry and commerce) ⁽¹⁴⁾, which had been approved by the Commission. Under those guidelines, loans to finance investment, in particular the construction, expansion, conversion, modernisation or rationalisation of plant, may be secured if there is a specific *Land* interest, even if the plant is located outside Bavaria. Parties entitled to submit an application must put up an appropriate amount of their own funds to finance the plan, and the securing of the overall finance of the plan must give rise to the likelihood of the loan (both principal and interest) being repaid on time.

⁽¹⁴⁾ Order of the Bavarian Ministry of Finance of 7 August 1973, No L 6511-1/7-43 358.

- (91) However, it is clear that this measure did not essentially serve to finance the investment which was the subject of the aid application, and the investor did not make an appropriate contribution from its own funds to financing the investment costs.
- (92) In addition, the German authorities' statements on the use of these publicly secured loans which, as explained above, were essentially of economic benefit solely to the companies in the Pilz Group, lead to the conclusion that the aid was misused.
- (93) It must be concluded from this that the aid was not used for the investment project involving the setting up of a CD plant but to keep the entire Pilz Group in business and that it was therefore misused within the meaning of Article 88(2) of the EC Treaty. Therefore, the aid does not comply with the Treaty's provisions and should be revoked and recovered by the German authorities.
- (94) This goes also for the investment grants on basis of the *Gemeinschaftsaufgabe* and the *Investitionszulagegesetz* of a total amount of DEM 19,42 million.
- (95) The German authorities have informed the Commission that they have taken the steps required under German law to recover the aid in the bankruptcy proceedings concerning the Pilz Group.
- (96) In this context, the waiver of the repayment of a DEM 3 million loan should also be deemed incompatible and the relevant funds recovered by dint of having been granted without any legal basis.

4.3. Measures of the THA

- (97) In its decision initiating proceedings, the Commission expressed misgivings as to whether the THA guarantee of DEM 190 million, of which DEM 120 million was actually called in, could be covered by the *Treuhand* schemes approved by the Commission⁽¹⁵⁾ since these were targeted at typical measures for privatising firms belonging to the THA.
- (98) These doubts increased in the course of the proceedings, particularly as a result of the statement made by Mr Henzler, the then managing director of Robotron AG appointed by the THA, to the German judicial authorities according to which it was his objective from the beginning to wind Robotron up, i.e. to split it into small firms and privatise them, and an investment of this magnitude did not fit into this plan. Robotron AG had been forced to take out loans of DEM 20 million in order to pay its contribution, and this ran counter to commercial principles. As main partner, he did not consider Robotron to have competence in the area of CDs. He stated that Robotron therefore signed the contracts only on condition that Pilz would buy back the shares in Robotron when the plant was completed at the nominal price including bank interest.
- (99) The THA guarantee of DEM 190 million is therefore incompatible with the terms of the competition law of the European Community. However, of this DEM 190 million, only the amount actually called in, i.e. DEM 120 million, should be recovered because it is this amount which actually was paid out to the company.

4.4. Measures in connection with the restructuring of the company

- (100) The measures comprise the TAB's takeover on 7 November 1995 of all the LfA's claims on the company, totalling DEM 50,4 million, against payment of DEM 15 million and the subsequent waiver of a total amount of DEM 44,4 million.
- (101) This waiver cannot be regarded as State aid. The claims arose at a time when the company was in private hands in connection with the misuse of funds within the cash-concentration system of the Pilz Group. When the company was subsequently acquired by the TIB/TAB, the insolvency practitioner waived the discharge of the claims for this reason. At that time it was already clear that the claims could not be enforced and were worthless in economic terms. With the waiver, the actual state of affairs was confirmed by a formal decision⁽¹⁶⁾.

⁽¹⁵⁾ State aid NN 108/91, letter of 26 September 1991 (SDG (91) D/17825) and State aid E 15/92, letter of 8 December 1992 (SG(92) D/17613) — not published.

⁽¹⁶⁾ See State aid Case NN 152/98, Commission letter dated 22.6.1999 (SG(99) D/4499).

4.4.1. Takeover of fixed and current assets by MTDA

- (102) According to the German authorities, MTDA's takeover of substantial parts of CD Albrechts' active business and the simultaneous change of name to CDA took the form of a routine asset purchase. The price of the fixed assets was put at DEM 12,2 million by means of an assessment of then current market value. The current assets were priced at DEM 23,1 million on the basis of their book value at the end of 1997. The total purchase price of DEM 35,3 million was met by assuming liabilities.
- (103) The Commission therefore considers that MTDA's acquisition of CD Albrechts' operations and main assets does not constitute State aid. The economic assets to be transferred were valued on the basis of a number of neutral opinions given by a sworn, publicly appointed expert. The fixed and current assets were therefore transferred at their market value. The transaction is therefore of no relevance as regards State aid.

4.4.2. Measures to consolidate the company's situation

- (104) To the extent that measures served to consolidate the situation of the present-day LCA after economic responsibility had been taken over by TIB and TAB, Article 87(3)(c) of the EC Treaty would be the only legal basis on which the aid might be compatible with the common market.
- (105) Under that provision, the Commission may approve 'aid to facilitate the development of certain activities [...], where such aid does not adversely affect trading conditions to an extent contrary to the common interest'. To that end, it must apply the Community guidelines on State aid for rescuing and restructuring of firms in difficulty ⁽¹⁷⁾.
- (106) Such restructuring aid should restore the long-term viability of the recipient firm. This first requires there to be a restructuring plan which ensures that the firm becomes competitive again in the long term and is able to survive without State aid. Without such a plan, the Commission considers that the aid merely constitutes operating aid designed to offset losses, which cannot be permitted ⁽¹⁸⁾. The firm's viability must be restored without there being any unacceptable adverse effects on competition in the Community. Consequently, the restructuring plan must indicate precisely how the firm's long-term profitability is to be restored so that the firm is in a position to cover all its costs and generate a minimum return on the capital invested in it.
- (107) Since, in its decision initiating Article 88(2) proceedings, the Commission instructed Germany in vain to supply all the information it required, in particular concerning the restructuring plan, a decision must now be reached on the basis of the available information ⁽¹⁹⁾.
- (108) The information available to the Commission does not indicate that the aid has been granted under a viable restructuring plan involving specific operational measures which allow the Commission to conclude that the measures will have a positive outcome.
- (109) Consequently, it has not been possible to determine either how the firm's long-term viability and health can be restored within a reasonable time scale and on the basis of realistic assumptions as to its future operating conditions.

⁽¹⁷⁾ See footnote 8.

⁽¹⁸⁾ See Commission notice concerning Iritecna (OJ C 328, 25.11.1999, p. 2), Decision 94/662/EC (OJ L 258, 6.10.1994, p. 26), Joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* 94] ECR, I-4103 (point 67), and Article 6(1)(b) of the GATT Agreement on subsidies (OJ L 336, 23.12.1994, p. 1).

⁽¹⁹⁾ Case C 47/91 *Italy v Commission* [1994] ECR, I-4635 and with reference to Case C 301/87 *France v Commission*, [1990] ECR I-307, confirmed by Joint Cases C 324/90 and C 342/90 *Germany and Pleuger Worthington v Commission* [1994], ECR, I-1173.

- (110) It must also be stressed that the financing of LCA is still provisional since it still has not been privatised. It is merely being financed in order to keep it in business.
- (111) The Commission thus concludes that the conditions laid down in the guidelines have not been met. The restructuring aid of DEM 166,3 million granted to LCA cannot therefore be approved and must be recovered.

4.4.3. *Reimbursement of the aid*

- (112) Based on the assumption that, in the case of aid measures which are both unlawful and incompatible with the common market, effective competition should be restored, Regulation (EC) No 659/1999 provides, in Article 14(1), that 'where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary'. The Commission accordingly decides that Germany shall recover the aid from the beneficiary.
- (113) Having regard to recent changes affecting the beneficiary of the aid, the Commission considers it appropriate to define further the extent of the obligation to recover the aid.
- (114) In accordance with the Commission's practice and the case-law of the Court of Justice of the European Community, aid must be recovered from the undertaking which actually benefited from it. Where the beneficiary has subsequently been sold or simply been renamed, aid must be recovered from the purchaser or any person, who benefited in one or another way from the transaction, irrespective of the circumstance that the relevant sums have been or have not been taken into account in the conditions of sale. In this respect, no conflicting principle of national law can stand in the way of the full application of Community law ⁽²⁰⁾.
- (115) In so far as the present decision concerns aid granted to PA/PBK or the joint venture, the Commission considers that in order to implement properly a Commission decision requiring the recovery of State aid, the Member State must behave as a private creditor would, and with at least the same care that the Member State itself would exercise if it were collecting such things as tax or social security debts. Domestic law must not be applied in a less favourable way than it would be applied to a claim made purely under domestic law, nor in such a way that collection is rendered impossible or extremely difficult. As a general principle, this means that the Member State must seek to collect the debt at once and must use all available means to do so, where possible taking measures to enforce its claim against all available assets of the debtor, and seeking the liquidation of the debtor undertaking if the undertaking is unable to repay the debt.
- (116) As with the collection of any debt, a Member State acting as an ordinary creditor must seek to ensure that there is no danger that the collection of the debt might be contested or annulled; to do so it must make use of all the means available under domestic law, for example under provisions governing fraud at the expense of creditors, or suspected agreements prior to insolvency proceedings.
- (117) It is possible, indeed likely, that in a liquidation as a result of insolvency proceedings all the undertaking's remaining assets will be sold. In itself this raises no particular problem, as the sale takes place under the supervision of a liquidator who is required to seek the best possible result in the interest of the creditors, with the proceeds of the sale of the assets being used to satisfy their claims. Although the proceeds of the sale of the assets might not be sufficient to pay off all the undertaking's debts, and thus to ensure full repayment, a liquidation is not without importance in terms of competition. Competing undertakings, who might have suffered injury as a result of the incompatible State aid, will have the opportunity to fill the gap in the market left by the liquidated undertaking, and indeed themselves to buy the assets being sold with a view to using them more efficiently.

⁽²⁰⁾ See Case C-303/88 *Italy v Commission*, (1991) ECR, I-1433, point 60.

- (118) Nevertheless, in order to prevent evasion of its decision and to ensure that all distortion of competition is eliminated, the Commission has a duty if necessary to require that recovery proceedings should not be confined to the initial recipient, but should instead be extended to include any undertaking continuing the business of the initial undertaking using the transferred production plant, in so far as there are aspects of the transfer on either side which indicate that the business is in fact being continued. Examples of considerations of this kind would be what is transferred (assets and liabilities, staff, consolidated assets), the purchase price, the identity of the shareholder or owner or the initial undertaking and of the buyer, the time at which the transfer takes place (after investigations have begun, after the initiation of the formal investigation procedure, or after the adoption of the final decision), and the commercial character of the transfer.
- (119) The object or effect of this proceeding may be to take these assets outside the reach of the Commission decision. This would be in contradiction to the Commission's duty to prevent evasion of its decision and with the duty of Member States to ensure that the obligations imposed by a Commission decision are complied with.
- (120) In the present case, LCA and CDA are still taking advantage from the aid formerly granted to PBK, the joint venture and PA by using the assets and infrastructure of these companies. Both are continuing the activities of PBK, the joint venture and PA.
- (121) Therefore, the Commission considers it necessary to make it clear in this Decision that the term 'the recipient' includes not just PBK, the joint venture and PA but also LCA and CDA or any other undertaking to which PBK's, the joint venture's or PA's assets have been transferred or will be transferred in such a way as to evade the consequences of this Decision.

5. CONCLUSION

- (122) The Commission regrets that Germany has granted the aid in contravention of Article 88(3) of the EC Treaty.
- (123) The decisive factor in the Commission's assessment has been above all the fact that the State aid granted for the purposes of setting up the CD plant in Albrechts and consolidating the firm's situation in fact financially benefited companies belonging to the Pilz Group and, to that extent, was misused within the meaning of Article 88(2) of the EC Treaty. In detail they consist in aid measures of about DEM 63,45 million of the *Land* Thüringen, a total of DM 77,12 million of the LfA and DM 120 million of the THA. The total amount of aid of DEM 260,57 million used to that end should therefore be rescinded and recovered.
- (124) The DEM 166,3 million in aid granted for the restructuring of CD Albrechts and its legal successors LCA and CDA is also incompatible with the provisions of the Treaty because the German authorities have hitherto failed to submit a restructuring plan designed to enable the firm's long-term profitability to be restored. The condition set out in the guidelines about restructuring aid concerning the restoration of the firm's long-term viability and health within a reasonable time scale and on the basis of realistic assumptions as to its future operating conditions cannot therefore be deemed to have been met.
- (125) In addition, there has been no private investor willing to take over the present-day LCA and CDA. Consequently, no private contribution has been made, with the result that it is not possible to determine whether the restructuring efforts have been proportionate to the aid granted. The aid granted cannot therefore be approved. The derogation provided for in Article 87(3)(c) cannot therefore be applied to the restructuring aid.
- (126) The unlawful and incompatible aid, which was paid out to PBK, the joint venture and PA, must be recovered. In addition, all the abovementioned aid must also be recovered from LCA and CDA, since both companies are direct legal successors of PBK, the joint venture and PA still benefiting from their assets, thus still taking advantage from the aid formerly granted to these companies. Finally, the aid must be recovered from any other undertaking to which PA's, the joint venture's or PBK's assets have been transferred or will be transferred in such a way as to evade the consequences of this Decision.

- (127) The recovery of the aid shall be made in accordance with German law, including the provisions concerning interest due for late payment of amounts owing to the Government, interest which shall run from the date of the award of the aid ⁽²¹⁾.
- (128) According to the jurisprudence of the Court of Justice, such recovery of aid implies that those provisions are to be applied in such a way that the recovery required by Community law is not rendered practically impossible. Any procedural or other difficulties in regard to the implementation of the measure cannot have any influence on its lawfulness ⁽²²⁾,

HAS ADOPTED THIS DECISION:

Article 1

1. DEM 260,57 million of the aid granted to R.E. Pilz GmbH & Co. Beteiligungs KG, the Pilz & Robotron GmbH & Co. Beteiligungs KG and Pilz Albrechts GmbH by Germany for the establishment, operation and consolidation of the CD plant in Albrechts (Thuringia) was used elsewhere within the Pilz Group.

This amount consists in DEM 63,45 million from the *Freistaat Thüringen*, DEM 77,12 million of the *Freistaat Bayern* and DEM 120 million from the *Treuhandanstalt*.

The wrongful use constitutes a misuse of aid within the meaning of Article 88(2) of the EC Treaty and the aid is therefore incompatible with the Treaty.

2. The aid totalling DEM 166,3 million for the restructuring of CDA Compact Disc Albrechts GmbH is incompatible with the provisions of the EC Treaty pursuant to Article 87(1) thereof.

Article 2

1. Germany shall take the necessary measures to recover from the respective beneficiaries the aid referred to in Article 1 and unlawfully made available to them.

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 beneficiaries until their actual recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant-equivalent of regional aids.

3. For the purposes of this Article the term 'beneficiaries' shall include CDA Datenträger Albrechts GmbH and LCA Logistic Center Albrechts GmbH as well as any other undertaking to which R.E. Pilz GmbH & Co. Beteiligungs KG's, the Pilz & Robotron GmbH & Co. Beteiligungs KG's and Pilz Albrechts GmbH's assets and/or infrastructure have been transferred or will be transferred in such a way as to evade the consequences of this Decision.

Article 3

Germany shall inform the Commission within one month of being notified of this Decision of the measures it has taken to put it into effect and the results they have produced.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 21 June 2000.

For the Commission

Mario MONTI

Member of the Commission

⁽²¹⁾ Letter of the Commission to the Member States SG (91) D/4577 of 4.3.1991; also Case C-142/87, *Belgium v Commission* [1990] ECR I-959.

⁽²²⁾ See footnote 21.

NOTICE TO READERS

Owing to a technical problem occurring between the publication of Regulation (EC) No 2119/2000 (OJ L 252, 6.10.2000, p. 11) and that of Regulation (EC) No 2220/2000 (OJ L 253, 7.10.2000, p. 1), document Nos 2120/2000 to 2219/2000 have not been assigned.