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II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 20 September 2000

on the part of the Italian regional aid map for the period 2000 to 2006 concerning the areas eligible for the derogation in Article 87(3)(c) of the Treaty

(notified under document number C(2000) 2752)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2002/282/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 called on interested parties to submit their comments in accordance with the abovementioned provisions ⁽¹⁾, and having regard to those comments,

Whereas:

- (2) By letter SG (98) D/12386 of 30 December 1998, it informed the Italian authorities that, under the guidelines, in particular the method described in point 3 and Annex III, and subject to the overall ceiling of 42,7 % of the Community population, the national ceiling for the population covered by the derogations in Article 87(3)(a) and (c) which the Commission deems compatible with the common market is 43,6 % for the period 2000 to 2006. In the same letter the Commission noted that some of the NUTS (nomenclature of statistical territorial units) level II regions in Italy corresponding to 33,6 % of the population satisfied the eligibility criteria for regional aid under Article 87(3)(a). Consequently, the coverage of regional aid under Article 87(3)(c) must not exceed 10 % of the Italian population.

I. Procedure

- (1) By letter SG(98) D/1672 of 24 February 1998, the Commission called on the Italian authorities to notify to it under Article 88(3) of the Treaty and in respect of the period 2000 to 2006 the methodology for determining the regions to be assisted as from 1 January 2000, together with the list of the regions and the corresponding aid intensities and aid cumulation ceilings, by 31 March 1999 at the latest; the methodology and the aid intensities and aid cumulation ceilings laid down must be compatible with the guidelines on national regional aid ⁽²⁾ ('the guidelines').

- (3) Following reminders dated 14 June 1999 (SG(99) D/4259) and 26 October 1999 (SG(99) D/01986) the Italian authorities, acting under Article 88(3), notified the draft regional aid map to the Commission by letter No 16497 of 16 December 1999 from their Permanent Representation, registered as received by the Commission on 17 December 1999. A request for further information was sent to the Italian authorities on 20 January 2000. By letters dated 31 January and 1, 11 and 17 February, the Italian authorities provided additional information. Two meetings between the Italian authorities and the Commission departments took place in Brussels on 14 January and 1 February.

⁽¹⁾ OJ C 175, 24.6.2000, p. 4.

⁽²⁾ OJ C 74, 10.3.1998, p. 9.

- (4) By letter SG(2000) D/102347 of 13 March 2000, the Commission informed Italy that, having examined the information provided by the Italian authorities on the measure in question, it had decided, pursuant to Articles 87 and 88 of the Treaty and Articles 61 and 62 of the EEA Agreement, not to raise any objections with regard to the part of the map concerning the Italian regions eligible for the derogation in Article 87(3)(a) of the Treaty (State aid N 792/99) and to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the part of the map concerning the Italian regions eligible for the derogation in Article 87(3)(c) of the Treaty (State aid C 16/2000).
- (5) The Commission's decision not to raise any objections with regard to part of the Italian map, which it found to be compatible with the Treaty, and to initiate the formal investigation procedure in respect of the other part was published in the *Official Journal of the European Communities* ⁽³⁾. Interested parties were invited to submit their comments on the aspects of the measure in respect of which the Commission had initiated the procedure within one month of the date of publication of the notice in the *Official Journal*.
- (6) On 31 July 2000 the Commission received comments from the municipality of Fivizzano (Tuscany). They were submitted after the deadline for the submission of comments by interested parties.
- (7) By letter of 3 July 2000 (SG(2000) D/53627), the Commission requested the Italian authorities to state whether, following their proposal of 21 June 2000 concerning the areas eligible under Objective 2 of the Structural Funds, the areas proposed as eligible for regional aid in accordance with point 3.10.5 of the guidelines remained unchanged with respect to the notification made in December 1999.
- (8) By letters of 26 July (No 8933) and 29 August 2000 (No 9619) from their Permanent Representation, registered as received by the Commission on 31 July (SG(2000) A/36395) and 29 August (SG(2000) A/37065) respectively, the Italian authorities submitted their comments to the Commission.
- others were presented as areas eligible under Objective 2 of the Structural Funds (point 3.10.5) and yet others were proposed as areas eligible under Objective 1 (phasing-out) of the Structural Funds (also point 3.10.5).
- (11) The proposed intensity ceilings are the following:
- 8 % nge for all areas with the exception of the areas proposed in Abruzzi and Molise,
 - 20 % nge for the areas proposed in Abruzzi and Molise.
- (12) All the above aid intensity ceilings are increased by 10 percentage points gross for small firms and by six percentage points gross for medium-sized firms as defined in Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises ⁽⁴⁾, with the exception of the areas in Abruzzi and Molise, where a bonus of 10 percentage points gross is proposed also for medium-sized firms.
- (13) The Commission has examined the Italian map in the light of the guidelines, and in particular point 5.2 thereof, which stipulates that the draft map must be 'drawn up in accordance with the criteria set out in points 3.5, 3.10, 4.8 and 4.9'.
- (14) As regards the areas proposed as areas eligible for Objective 2 of the Structural Funds, the Italian authorities have proposed parts of employment areas (*sistemi locali del lavoro*) in the regions of Piedmont, Liguria, Friuli-Venezia Giulia, Veneto, Emilia-Romagna, Tuscany, Marche, Umbria, Abruzzi and Lazio.
- (15) Those areas, proposed under point 3.10.5 of the guidelines, which establishes eligibility for the Structural Funds as a criterion for eligibility for the regional aid map, did not yet have the status of eligible areas under Objective 2 of the Structural Funds since, at the time the procedure was initiated, the Italian map for Objective 2 of the Structural Funds had not yet been approved. Consequently, the proposal that these areas be considered eligible for the Article 87(3)(c) derogation in accordance with point 3.10.5 of the guidelines was not deemed compatible with the Treaty. In this connection, the Commission also pointed out that eligibility for Objective 2 did not necessarily mean that all the areas selected were also eligible for the Article 87(3)(c) derogation. They would be included on the regional aid map provided that they satisfied the general

II. Description of the aspects of the measure in respect of which the Commission initiated the procedure

- (9) The draft regional aid map notified by the Italian authorities covers the period 1 January 2000 to 31 December 2006.
- (10) Of the areas proposed by Italy for the Article 87(3)(c) derogation, some were presented on the basis of a particular methodology (point 3.10.3 of the guidelines),

⁽³⁾ OJ C 175, 24.6.2000, p. 11.

⁽⁴⁾ OJ L 107, 30.4.1996, p. 4.

conditions laid down in the guidelines and complied, in particular, with the minimum population and compactness conditions.

III. Comments submitted by Italy

(16) During the formal investigation procedure, the Italian authorities amended their original notification with regard to the areas proposed for the Article 87(3)(c) derogation in line with the outcome of discussions which had enabled the Commission to approve the Italian map for Objective 2 of the Structural Funds.

(17) As provided for in the original notification, the Italian authorities have proposed, for the Article 87(3)(c) derogation, some areas on the basis of a particular methodology (point 3.10.3 of the guidelines), others as areas eligible under Objective 2 of the Structural Funds (point 3.10.5) and yet others as areas eligible under Objective 1 (phasing-out) of the Structural Funds (also point 3.10.5).

(18) As regards the first group, the Italian authorities have proposed a particular methodology, one statistical unit and quantitative indicators for determining the regions eligible.

(19) As stated in the original notification, the statistical unit applied is the employment area (*sistema locale del lavoro*). The method used for demarcating the employment areas is designed to produce a breakdown of Italian territory that maximises the population flow between home and place of work within a given geographical unit. It is based on the results of the 1991 census. Italy has been divided into 784 employment areas.

(20) As stated in the original notification, the indicators are the following:

— average unemployment rate during the period 1994 to 1996,

— a composite indicator identifying the less-favoured industrial areas (arithmetic mean of the unemployment rate — calculated as an average of the unemployment rates over the period 1994 to 1996 — and of the ratio of jobs in industry to the total number of jobs existing in 1996),

— change in the number of jobs in agriculture over the period 1991 to 1996,

All these data are supplied by the national statistics office (ISTAT — Istituto Nazionale di Statistica).

(21) The indicators applied to employment areas under the method described in the guidelines led the Italian authorities to select 49 employment areas.

(22) As regards the areas proposed as areas eligible for Objective 2, the Italian authorities have proposed parts of employment areas in the regions of Valle d'Aosta, Piedmont, Liguria, Lombardy, Friuli, Veneto, Emilia-Romagna, Tuscany, Marche, Umbria, Abruzzi and Lazio.

(23) As regards the areas proposed as areas eligible for Objective 1 (phasing out), the Italian authorities have proposed, as stated in the original notification, parts of employment areas in the region of Molise.

(24) As stated in the original notification, the proposed intensity ceilings are the following:

— 8 % nge for all employment areas with the exception of the areas proposed in Abruzzi and Molise,

— 20 % nge for the areas proposed in Abruzzi and Molise.

(25) As stated in the original notification, all the above aid intensity ceilings are increased by 10 percentage points gross for small firms and by six percentage points gross for medium-sized firms (OJ L 107, 30.4.1996), with the exception of the areas in Abruzzi and Molise, where a bonus of 10 percentage points gross is proposed also for medium-sized firms. The intensity ceilings also represent cumulation ceilings applicable to total aid where assistance is granted concurrently under several regional schemes, irrespective of whether it comes from local, regional, national or Community sources.

IV. Assessment

(26) The Commission has examined the part of the Italian map concerning the areas proposed under the derogation in Article 87(3)(c) of the Treaty, as amended in the course of the formal investigation procedure, in the light of Article 87(3)(c) of the Treaty and the guidelines on national regional aid.

(27) As regards the population ceiling, the Commission notes that the draft Italian map for the purposes of the derogation in Article 87(3)(c), which covers 10 % of the Italian population, is consistent with point 3.10 of the guidelines and with the Commission letter of 30

December 1998 (SG(98) D/12386). As regards this aspect, the draft map can be regarded as being compatible with the relevant provisions of the guidelines.

- (28) In conformity with point 3.10 of the guidelines, the Commission notes that the Italian authorities have notified a particular methodology, a statistical unit and quantitative indicators for determining the areas proposed for the derogation in Article 87(3)(c).

- (29) As regards the indicators, the Commission notes that they satisfy the conditions laid down in point 3.10.2 of the guidelines, namely:

- their number, including both simple indicators and combinations of indicators, is limited to three,
- they are objective and relevant to the examination of the socioeconomic circumstances of the regions,
- they are based on statistical series covering the last three years available or are derived from the last survey carried out,
- they are drawn up by reliable statistical sources.

- (30) As regards the conformity of the proposed areas with the conditions laid down in the guidelines, it should be recalled that point 3.10.3 of the guidelines stipulates that:

- (a) 'The regions must conform to NUTS level III or, in justified circumstances, to a different homogeneous geographical unit. Only one type of geographical unit may be submitted by each Member State.'

The Italian authorities have proposed an approach based on employment areas. The method used for determining those areas is designed to produce a breakdown of Italian territory that maximises the population flow between home and place of work within a given geographical unit and is based on the results of the 1991 census. Italy has been divided into 784 employment areas. These are economically significant areas that form part of a single local job market or ensure a strong correlation between home and place of work. They are economically and socially homogenous areas. They have been used since 1987 as units of reference in national policies

on programming, economic development, employment and local autonomy. The employment area meets the wish of the Commission that the population ceiling should not be used to select only areas with a high density of firms without taking account of the population that contributes to this productive activity and benefits from wealth creation. By ensuring a correlation between home and place of work, the employment area guarantees compliance with the spirit of the Treaty, which allows derogations from the fundamental prohibition on aid for firms laid down in Article 87 with a view to promoting the development of certain economic areas,

- (b) 'The individual regions proposed or the groups of contiguous regions must form compact zones, each of which must have a population of at least 100 000.'

All the areas proposed by Italy comply with the second indent of point 3.10.3 of the guidelines,

- (c) 'The regions proposed must show significant disparities (half of the standard deviation) compared with the average of the potential 87(3)(c) regions of the Member State concerned, in respect of one or other indicator used in the method.'

All the areas proposed by Italy comply with the third indent of point 3.10.3 of the guidelines.

- (31) As regards the areas proposed under point 3.10.5 of the guidelines, which establishes eligibility for the Structural Funds as a criterion for eligibility for the regional aid map, the following observations should be made:

- the Commission notes that all these areas are included in the map of areas eligible under Objective 2 of the Structural Funds for the period 2000 to 2006 ⁽⁵⁾,
- in accordance with the second indent of point 3.10.3 of the guidelines, 'the individual regions proposed or the groups of contiguous regions' form zones each of which 'have a population of at least 100 000',
- also in accordance with the second indent of point 3.10.3, 'the individual regions proposed or the groups of contiguous regions' form 'compact zones'. Indeed, the parts of employment areas proposed present a strong correlation between home and

⁽⁵⁾ Commission decision of 27 April 2001 (C(2001) 1073)).

place of work. They therefore meet the wish of the Commission that the population ceiling should not be used to select only areas with a high density of firms without taking account of the population that contributes to this productive activity and benefits from wealth creation.

The Commission points out that one third of the areas eligible for the Article 87(3)(c) derogation are not eligible under the Structural Funds, while half of the areas eligible under Objective 2, representing 7 % of the Italian population, have not been proposed by the Italian authorities for regional aid. While accepting their proposal, the Commission would draw the attention of the Italian authorities to the loss of effectiveness of regional policy resulting from the dispersion between the above two mechanisms for supporting regional development.

(32) As regards the areas proposed as areas eligible for Objective 1 (phasing out) and in accordance with point 3.10.5 of the guidelines, the following observations should be made:

- all these areas are included in the NUTS level II region (Objective 1 — phasing-out) for the period 2000 to 2006 ⁽⁶⁾;
- in accordance with the second indent of point 3.10.3 of the guidelines, 'the individual regions proposed or the groups of contiguous regions' form zones each of which 'have a population of at least 100 000';
- also in accordance with the second indent of point 3.10.3, 'the individual regions proposed or the groups of contiguous regions' form 'compact zones'. Indeed, the parts of employment areas in the region of Molise present a strong correlation between home and place of work. They therefore meet the wish of the Commission that the population ceiling should not be used to select only areas with a high density of firms without taking account of the population that contributes to this productive activity and benefits from wealth creation.

eligible under Article 87(3)(c) 'which have both a higher per capita GDP/PPS and a lower unemployment rate than the respective Community average'. As notified to the Italian authorities by letter SG(98) D/12398 of 30 December 1998, which adjusts the national regional aid coverage ceilings for the period 2000 to 2006, the employment areas proposed in the regions of Abruzzi and Molise, with a proposed aid intensity of 20 % nge, are not subject to the 10 % nge ceiling.

(34) The Commission would point out that, since the aid intensity for the areas proposed in the regions of Abruzzi and Molise is 20 % nge, and those two regions qualified for Objective 1 in the previous programming period, and since the aid intensity for the other areas proposed is 8 %, both figures have been adjusted 'to reflect the seriousness and intensity of the regional problems addressed when examined in a Community context' in accordance with point 4.8 of the guidelines. Accordingly, this aspect of the Italian proposal can be regarded as being compatible with the relevant provisions of the guidelines.

(35) The Commission notes that the aid intensities proposed for small and medium-sized firms are consistent with point 4.9 of the guidelines, which allows the supplements provided for in the Community guidelines on State aid for SMEs ⁽⁷⁾ to be granted, namely 10 percentage points gross in the case of regions qualifying for exemption under Article 87(3)(c). As regards this aspect, the Italian proposal can be regarded as being compatible with the relevant provisions of the guidelines.

(36) Lastly, the Commission notes that the aid cumulation rules set out in point 4.18 of the guidelines have been complied with. As regards this aspect too, the Italian proposal can be regarded as being compatible with the relevant provisions of the guidelines.

V. Conclusion

(33) As regards the aid intensity ceilings for the areas proposed by the Italian authorities, the Commission notes that, in accordance with point 4.8 of the guidelines, and with the exception among other things of the outmost regions or the regions with low population density, 'the ceiling on regional aid must not exceed 20 % nge in general' or 10 % nge in regions

(37) In the light of the foregoing considerations, the Commission finds that the new draft of the part of the Italian regional aid map for the period 2000 to 2006 which concerns the Italian regions eligible for the derogation in Article 87(3)(c) of the Treaty is compatible with the guidelines on national regional aid ⁽⁸⁾,

⁽⁶⁾ OJ L 194, 27.7.1999, p. 53.

⁽⁷⁾ OJ C 213, 23.7.1996, p. 4.

⁽⁸⁾ OJ C 74, 10.3.1998.

HAS ADOPTED THIS DECISION:

Article 2

This Decision is addressed to the Italian Republic.

Article 1

The part of the Italian regional aid map for the period 2000 to 2006 which concerns the areas eligible for the derogation in Article 87(3)(c) of the Treaty is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty.

Done at Brussels, 20 September 2000.

For the Commission

Mario MONTI

Member of the Commission

Implementation of the measure is accordingly authorised.

ANNEX A

List of employment areas proposed in full

CODE AREA

001	Avigliana	090	Desio
005	Ciriè	072	Gallarate
006	Ivrea	214	Este
007	Pinerolo	216	Montagnana
008	Rivarolo Canavese	313	Ascoli Piceno
324	Carrara	314	Comunanza
325	Massa	320	Offida
328	Castelnuovo di Garfagnana	327	Barga
343	Piombino	339	Prato
373	Roccastrada	348	Pomarance
404	Velletri	405	Aprilia
406	Castelforte	489	Castilenti
407	Cori	490	Giulianova
410	Latina	492	Teramo
411	Priverno	493	Manoppello
415	Frosinone	494	Penne
416	Sora	497	Casoli
488	Atri	500	Guardiagrele
491	Isola del gran Sasso d'Italia	504	Vasto
496	Popoli	295	Fabriano
498	Chieti	299	Sassoferrato
510	Termoli	177	Castagnaro
776	Frosolone	501	Lanciano
777	Isernia	503	Perano
778	Venafro		

ANNEX B

List of employment areas proposed in part

Code	Employment area	Description
230	Gorizia	Gorizia (only the following districts: Piedimonte del Calvario, S. Andrea, S. Rocco-S. Anna and Madonnina del Fante (only the stretch of road consisting of the via Livio Ceccotti viaduct, and continuing next to the right bank of the river Isonzo))
		Savogna d'Isonzo
231	Monfalcone	Cervignano del Friuli (limited to the Aussa-Corno industrial development area)
		Doberdò del Lago
		Grado (the entire municipality and the corresponding foreshore, with the exception of the Fossalun district)
		Monfalcone (the entire municipality and the corresponding foreshore, with the exception of the municipality of S. Polo)
		Ronchi dei Legionari
		San Giorgio di Nogaro
		Staranzano
		Torviscosa
232	Trieste	Duino-Aurisina (the districts of S. Giovanni di Duino, Villaggio del Pescatore, Medeazza e Sistiana, and the corresponding foreshore)
		Monrupino (the Ferneti road terminal area, situated in part in the municipality of Trieste)
		Muggia
		San Dorligo della Valle (the area which is in the Ente Zona Industriale di Trieste, part of which is in the municipality of Trieste)
		Sgonico
		Trieste (the following districts only: Altipiano est, Servola-Chiarbola-Valmaura-Borgo S. Sergio, the port area, the foreshore of the Compartimento di Trieste not including the Trieste port area)
223	Trecenta	Bagnolo di Po
		Stienta
		Trecenta
209	Cavarzere	Cavarzere
		Cona
		Pettorazza Grimani

Code	Employment area	Description
212	Venezia	Chioggia (the following areas only: Canali, Saloni, B.S.Giovanni (including the Val da Rio port area), Sottomarina (centre), Sottomarina (beach))
212	Venice	Venice (the following areas only: Giudecca-Saccafisola, Murano-Sant'Erasmo, Burano- Mazzorbo- Torcello, Pellestrina-S.Pietro in Volta, the port area of the municipality of Venice, Venezia arsenale, Marghera-Catene-Malcontenta)
218	Adria	Adria
		Corbola
		Papozze
219	Badia Polesine	Giacciano con Baruchella
180	Legnago	Terrazzo
221	Porto Tolle	Loreo
		Rosolina
265	Comacchio	Comacchio (cadastral sections 6, 17, 21, 33 and 35 only)
		Migliarino
		Migliaro
		Ostellato
266	Copparo	Copparo (cadastral sections 16, 24 to 29, 32, 34 to 44, 46 to 51, 73 to 77, 79 to 84 and 106 only)
		Formignana
		Ro (cadastral sections 2, 12, 13 and 19 only)
		Tresigallo
267	Ferrara	Canaro
		Ferrara (the following districts only: Northwest and North (except cadastral sections 626 to 644, 646 to 673, 680 to 682))
		Fiesso Umbertiano
		Occhiobello

Code	Employment area	Description
270	Ravenna	Ravenna (the following geographical districts only: Camerlona (cadastral section 1427 only), Casalborsetti-Primaro, Fornace Zarattini, Lido di Magnavacca, Lido Adriano (cadastral sections 1614, 2441 and 2309 only), Lido di Dante (cadastral section 1685 only), Mandriole, Marina di Ravenna, Marina Romea, Mezzano (cadastral sections 1085 to 1094 only), Piailassa Baiona, Piailassa Piombone, Piangipane (cadastral sections 1461 to 1464 and 1467 only), Pineta di Classe 1, Pineta di Classe 2, Pineta S.Vitale, Porto Corsini, Punta Marina Terme (not including cadastral sections 1379 and 1381), Ravenna First District (cadastral sections 759 to 762 only), Ravenna Third District (cadastral sections 612 to 637, 668 to 684, 689 to 692, 695, 705, 769 to 775, 779 to 780, 786 to 797, 799 to 804, 2429 to 2430 and 2432 only), S. Michele (cadastral section 1519 only), Torri (cadastral sections 1153, 1155, 1156, 1159 to 1162 only))
		S. Romualdo (cadastral sections 1163 to 1165 and 1171 only), S. Alberto (cadastral sections 894, 895, 898 to 904, 936 to 942, 944 to 950 only), S. Antonio (cadastral section 1248 only), Savio (cadastral sections 1965 and 1978 only)
323	Aulla	Aulla (cadastral sections 4, 6 to 11, 13 to 18, 20 to 75 only)
		Casola in Lunigiana
		Fivizzano
334	San Marcello Pistoiese	Piteglio
		San Marcello Pistoiese
368	Follonica	Massa Marittima
384	Spoleto	Campello sul Clitunno
		Spoleto
378	Foligno	Foligno (the entire municipality except cadastral sections 1 to 48; 50 to 56; 61 and 62, 66 to 93; 99 to 134; 136 (in part: a square of about 150 ha south east of the built-up area of Sterpete); 137 to 141; 143 and 144; 146 to 170; 181 to 186, 187 (north-east side of the river Teverone over a width of 1 500 m); 188 to 190; 197 to 205; 207 to 233; 247; 249 to 261; 283; 284; 290; 293; 382; 383; 401; 414; 417 to 419; 425 to 429; 435 to 437; 439; 440))
		Trevi
379	Gualdo Tadino	Gualdo Tadino
		Nocera Umbra
		Valtopina

Code	Employment area	Description
389	Terni	Narni (the entire municipality with the exception of cadastral sections 1 to 10, 12 to 26, 28, 29, 105 to 117, 121)
		Terni (the entire municipality with the exception of cadastral sections 1 to 4, 7 to 15, 17, 19; 23 to 42, 51 to 57, 85 to 99, 101 to 109, 111 to 119, 121 to 123, 125 to 152, 154 to 159, 161 to 167, 169 to 200, 202 to 245, 249 to 258, 264 to 285, 287 to 324, 328 to 374, 613, 614, 617, 619 to 656, 658 to 683, 704 to 706, 712, 713 and 733)
302	Camerino	Camerino
		Castelraimondo
505	Villa Santa Maria	Castelguidone
		Castiglione Messer Marino
		Colledimezzo
		Fallo
		Pietraferrazzana
		Schiavi di Abruzzo
		Villa Santa Maria
413	Cassino	Aquino
		Arce
		Ausonia
		Cassino
		Castelnuovo Parano
		Castrocielo
		Cervaro
		Colfelice
		Fontana Liri
		Piedimonte San Germano
		Pignataro Interamna
		Roccasecca
		San Giorgio a Liri
		San Vittore del Lazio
		Sant'Ambrogio sul Garigliano
		Sant'Andrea del Garigliano
		Sant'Apollinare
		Vallemaio
		Villa Santa Lucia

Code	Employment area	Description
62	Cairo Montenotte	Altare (cadastral sections 1 to 14 only)
		Cairo Montenotte (only cadastral sections 14, 15, 18, 19, 24 to 30, 32 to 34, 36 to 39, 44 to 51, and in section 55 only the part north of the railway)
		Carcare
		Cengio
		Cosseria (cadastral sections 14 to 16 only)
		Dego (cadastral sections 1 to 3, 5 to 12, 18 to 31 only)
		Millesimo
		Roccavignale
63	Finale Ligure	Finale Ligure (only cadastral sections 3, 13, 20, 27, 29, 32, 34 and 51 to 54)
64	Savona	Bergeggi (cadastral section 7 only)
		Pontinvrea
		Quiliano (cadastral sections 8, 16 to 21, 27 to 34, 36, 37 and 42 to 47 only)
		Savona (the port area and the following cadastral sections only: 2, 10, 114, 115, 118, 119, 121, 123 to 127 and 129 to 132)
		Vado Ligure (cadastral sections 1 to 13, 24, 27 only)
		Vezzi Portio
65	Chiavari	Carasco (cadastral sections 1 to 11, 13 to 16, 19 and 20 only)
		Chiavari (cadastral sections 8 to 10, 15, 23, 28, 40, 41, 44, 45, 47, 49, 51 to 53, 80, 87, 88 and 99 only)
		Cicagna
		Coreglia Ligure
		Lavagna (cadastral sections 1, 3, 6, 12 to 16, 19 to 21, 29, 31, 32 and 42)
		Leivi
		Moconesi (cadastral sections 1 to 18 only)
		Ne (cadastral sections 5, 6, 19 to 21, 28 to 32, 39 and 41 only)
		Onero
		San Colombano Certenoli
		Tribogna

Code	Employment area	Description
66	Genoa	Arenzano (cadastral sections 32 to 35, 37 and 40 only)
		Avegno
		Bargagli
		Busto (cadastral sections 6 to 11, 13 and 14 only)
		Casella
		Ceranesi (cadastral sections 20, 22, 24, 44 and 45 only)
		Cogoleto (cadastral sections 23 and 35 only)
		Davagna
		Genoa (the port area and the following cadastral sections only: 24 to 27, 29 to 97, 101 to 106, 108 to 112, 153 to 159, 166 to 179, 189 to 194, 200 to 215, 217, 229, 230, 239, 266, 281, 328, 334 to 343, 350 to 364, 367, 374 to 377, 390 to 393, 431 to 433, 461, 520, 522 to 524, 542 to 620, 661, 663, 705, 706, 709 to 725, 801 to 829, 831 to 835, 839, 841, 844 to 847, 853 to 872, 877 to 881, 891, 895 to 899, 960 to 1025, 1047 to 1049, 1083 to 1085, 1089, 1090, 1099, 1107, 1114 to 1122, 1191 to 1193, 1363, 1367, 1712, 1753, 1754, 2718 and 3103 to 3112)
		Isola del Cantone (cadastral sections 1 to 7, 12, 13, 15, 16, 22 and 37 only)
		Montoggio
		Ronco Scrivia (cadastral sections 1, 2, 4, 12, 14, 17, 18, 21, 24, 25 and 27 only)
		Sant'Olcese (cadastral sections 7, 8, 11 to 13, 15, 26 and 32 to 35 only)
		Savignone (cadastral sections 3 to 6, 12, 17 and 18 only)
		Serra Ricco' (cadastral section 13 only)
		Sori (cadastral section 5 to 13, 15 to 17, 25 and 26 only)
67	Masone	Sassello
69	Sestri Levante	Casarza Ligure (cadastral sections 5, 8, 9, 11 to 14, 16 to 20 only)
		Sestri Levante (cadastral section 2 to 4, 10 to 13, 26, 27, 30 to 33, 36, 38, 39, 48 to 52, 58, 59, 61 to 63 only)
70	La Spezia	Arcola (cadastral section 7, 25 to 29, 31, 32, 38, 39, 41 to 47 only)
		Bolano (cadastral sections 17, 25, 37, 41 to 43, 45 only)
		Follo (cadastral sections 1 to 9, 24 to 29, 31, 32 only)
		La Spezia (only the port area, including the shipyards, and the following cadastral sections: 26, 27, 473, 487 to 489, 492, 494, 497 to 500, 527 to 530, 547, 549, 550, 557, 562, 565, 568 to 570, 574, 575, 577 to 579, 628, 629, 687, 688, 821 and 824 to 954)
		Santo Stefano di Magra (cadastral sections 6, 11 to 18, 24 to 31 only)
		Sarzana (limited to the cadastral sections in the following town planning units: 20*, 34, 40, 41, 50*, 51*, 55 - (*), and only the part of the units corresponding to Objective 2)
		Vezzano Ligure (cadastral sections 9, 10, 15 to 26, 41 to 47)

Code	Employment area	Description
9	Turin	Alpignano
		Beinasco
		Borgaro Torinese
		Bruino
		Candiolo
		Castiglione Torinese
		Cinzano
		Coazze
		Collegno
		Druento
		Gassino Torinese
		Giaveno
		Givoletto
		Grugliasco
		La Loggia
		Leini
		Moncalieri (the entire municipality with the exception of the residential hilly area adjacent to the municipalities of Turin, Pecetto and Trofarello and the river Po, and bounded by the strada Moriando, the strada Revigliasco, via Cavour and the railway station)
		Nichelino
		Orbassano
		Pecetto Torinese
		Pianezza
		Piobesi Torinese

Code	Employment area	Description
		Piosasco
		Reano
		Rivalba
		Rivalta di Torino
		Rivoli
		San Benigno Canavese
		San Gillio
		San Mauro Torinese
		San Raffaele Cimena
		Sangano
		Sciolze
		Settimo Torinese
		Turin (the following four neighbourhoods only: Mirafiori Sud; Rebaudengo-Falchera-Villaretto; Madonna di Campagna-Lanzo; Regio Parco-Barca-Bertolla)
		Trana
		Trofarello
		Val della Torre
		Valgioie
		Venaria Reale
		Villarbasse
		Vinovo
		Volpiano
10	Villar Perosa	Perosa Argentina
		Pinasca
		Porte
		San Germano Chisone
		Villar Perosa

Code	Employment area	Description
51	Pont Saint Martin	Pont Saint Martin (cadastral sections 5, 6 and 11 only)
		Donnas
		Bard
		Hône (cadastral section 2 only)
		Arnad
		Verrès (cadastral sections 4 and 10 only)
		Issogne
		Chandepraz
53	Aosta	Fenis
		Saint Marcel
		Brissogne
		Pollein
		Aosta (cadastral sections: 78, 80 to 83, 86, 87, 120 to 124, 133, 134, 137, 199, 204, 208 and 250 only)
71	Busto Arsizio	Arconate
		Buscate
		Busto Garolfo
		Busto Arsizio (with the exception of the following cadastral sections: 1 to 3, 12 to 15, 29, 33 to 51, 56, 88 to 92, 95 to 97, 8888)
		Canegrate
		Casorezzo

Code	Employment area	Description
		Castano Primo
		Castellanza (except for the following cadastral sections: 2, 7, 8, 10, 13, 17, 20, 22 and 26)
		Cerro Maggiore
		Cuggiono
		Dairago
		Fagnano Olona
		Gorla Maggiore
		Gorla Minore
		Inveruno
		Legnano (except for the following cadastral sections: 1, 2, 4 to 11, 29 to 36, 39 to 43, 49 and 50)
		Magnago
		Marnate
		Nosate
		Olgiate Olona
		Rescaldina
		Robecchetto con Induno
		San Giorgio su Legnano
		Solbiate Olona
		Turbigo
		Vanzaghello
		Villa Cortese

Code	Employment area	Description
775	Agnone	Capracotta
		Castelverrino
		Poggio Sannita (only that part below 650 m between the Acquedotto Pezzelle, the municipal boundary corresponding to the river Verrino, the Coste del Mulino municipal road from the FV Verrino road to the eastern junction with the manufacturing sites plan (PIP) area northern service road, the PIP area northern service road, and the Coste del Mulino municipal road from the western junction with the PIP northern service road up to 650 m above sea level)
506	Campobasso	Bojano
		Campobasso
		Campochiaro
		Campodipietra
		Castropignano (only the manufacturing sites plan (PIP) area bounded by the strada Vetecale and the strada Valli)
		Colle d'Anchise
		Ferrazzano
		Gildone
		Guardiaregia
		Mirabello Sannitico
		Pietracatella
		Ripalimosani
		San Massimo
		San Polo Matese
		Spinete
		Toro
		Vinchiaturro
507	Casacalenda	Casacalenda
483	Castel di Sangro	Castel del Giudice
509	Santa Croce di Magliano	Bonefro
511	Trivento	Bagnoli del Trigno
		Montefalcone nel Sannio
		Montemitro
		Roccavivara
		Trivento

COMMISSION DECISION**of 21 December 2000****on State aid granted by Finland to Ojala-Yhtymä Oy***(notified under document number C(2000) 4400)***(Only the Finnish and Swedish texts are authentic)****(Text with EEA relevance)***(2002/283/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 61(1)(a) thereof,

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the Treaty establishing the European Community ⁽¹⁾, and in particular Article 7(3) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽²⁾,

Whereas:

(5) Finland submitted its comments by letter dated 29 May 2000.

(6) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽³⁾. The Commission invited interested parties to submit their comments on the measure.

(7) The Commission received no comments from interested parties.

II. DESCRIPTION OF THE AID

(8) The aid measures regarding which the Commission decided to initiate the Article 88(2) procedure are as follows:

I. PROCEDURE

(1) By letter of 29 October 1999 (registered on 5 November 1999) Finland notified the Commission that the Finnish authorities had granted State aid to Ojala-Yhtymä Oy (Ojala-Yhtymä) in connection with an investment to be made in the area of Piippola.

(2) The Commission requested additional information from Finland by letter dated 2 December 1999. Finland replied by letter of 23 December 1999 (registered on 7 January 2000).

(3) According to the information received from Finland, part of the planned aid had already been granted to the company at the time of the notification. Therefore, the case was registered as non-notified aid.

(4) By letter dated 17 April 2000, the Commission informed Finland that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

— a five-year interest-free loan of FIM 4 million (EUR 672 751,70) granted by the Municipality of Piippola on 12 July 1999,

— a possible aid element in the purchase price of FIM 10 000 (EUR 1 681,87) paid by Ojala-Yhtymä on 12 July 1999 for a plot of land of approximately 50 000 m² from the Municipality of Piippola.

(9) Ojala-Yhtymä is a Finnish manufacturer of custom precision mechanics. The company has 202 employees and its turnover in 1998 was FIM 173 million. Ojala-Yhtymä is an affiliate company within the Ojala group, which currently employs over 620 people and achieved a turnover of FIM 500 million in 1999. It is not, therefore, an SME.

(10) The assisted project is located in Piippola, Finland, where Ojala-Yhtymä began manufacturing tools during the first quarter of the year 2000.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

⁽²⁾ OJ C 278, 30.9.2000, p. 2.

⁽³⁾ See footnote 2.

- (11) According to the information supplied by the Finnish authorities, Ojala-Yhtymä's investment is as follows:

(in FIM '000)

Type of investment	Amount
Land	10
Building	5 000
Machinery	8 000

- (12) According to Finland, the investment will create 20 jobs by 2002.

- (13) The five-year interest-free loan of FIM 4 million (EUR 672 751,70) was granted by the Municipality of Piippola. The loan was granted on 12 July 1999, with an initial tranche of FIM 2 million released on 13 September 1999. As security for the FIM 4 million, the Municipality of Piippola took a charge by way of a senior mortgage, to the value of FIM 4 million, on the five-hectare plot it sold to Ojala-Yhtymä, on which the industrial property is to be built.

- (14) Ojala-Yhtymä has also applied for a grant of FIM 1 million from the TE-keskus (the Employment and Economic Development Centre, a public body supporting new investments in development areas). If Ojala-Yhtymä is awarded the grant, the loan of FIM 4 million would then be reduced by FIM 1 million. Finland has not yet taken any decision to grant this assistance, which may constitute aid, or provided notification of it.

- (15) In addition, Ojala-Yhtymä has purchased a plot of land of 50 000 m² from the Municipality of Piippola for the sum of FIM 10 000 (EUR 1 681,87). The contract of sale was concluded on 12 July 1999. The selling price was not determined on the basis of an unconditional bidding procedure or an independent valuation carried out prior to the negotiations on the sale.

III. COMMENTS FROM FINLAND

- (16) The comments received from Finland can be summarised as follows:

- (17) There will be no distortion of competition, since Ojala-Yhtymä's factory investment in Piippola will replace imports from Korea, China and Taiwan.

- (18) The Municipality of Piippola sold Ojala-Yhtymä the five-hectare plot at the market price. Piippola, the Siikalatva region and the Pohjois-Pohjanmaa province have building land to sell for business activities and

similar projects. As evidence of this, Finland produced an affidavit issued by a notary public on 3 May 2000 ⁽⁴⁾. The statement reads as follows:

'I certify between 40 and 80 real estate transactions a year and, on the basis of my experience and in my opinion, the purchase price referred to above corresponds to the market price at the time in view of the location and surface area of the property and the state of the market.'

- (19) The factory established by Ojala-Yhtymä in Piippola, which is part of the Siikalatva area, will create the conditions for the future development of the area and for maintaining its population. Unemployment in Piippola remains in the region of 15 to 17 %. The 20 or so new jobs brought in by Ojala-Yhtymä are in production, but they will have the knock-on effect of creating 60 to 80 jobs in other service and business sub-sectors. Finland has provided statements bearing out these considerations from both the Siikalatva Development Centre and the Piippola College of Handicrafts and Applied Art.

- (20) The Piippola factory will specialise in the manufacture of deep-drawing and compressor tools and die-casting moulds. These tools and moulds will be principally used in Ojala-Yhtymä's other factories.

- (21) The Piippola factory differs from other tool manufacturers with its state-of-the-art design and manufacturing possibilities. With the multifaceted 3D design programmes it is possible to design tools effectively and simulate their operation. The production equipment is extensively computer-driven. The powerful modern equipment used in the new factory makes it possible to competitively manufacture tools previously made in Korea, China and Taiwan.

- (22) There has been cooperation on staff recruitment and training with the Piippola College of Handicrafts and Applied Art; By the end of 2000 the factory will employ about 20 people; by the end of the investment period the number of staff will rise to about 30 to 40. The factory will be a major employer in Piippola.

- (23) At the level of the region, the number of new jobs corresponds to the number of jobs offered by new companies setting up in the region in a whole year. In terms of manufacturing jobs, the new jobs correspond

⁽⁴⁾ Mr Viljo Lotvonen, manager of Osuuspankki in Pyhäntä from 1974 and notary public appointed by Muhos district court (subsequently Oulu district court).

to about four to five years' worth. For these reasons, Ojala-Yhtymä's direct impact on jobs is extremely significant for the area.

- (24) Many central services have left the area in recent years. For example, in the Municipality of Piippola there are no longer any privately run eating establishments and many commercial services have been discontinued.
- (25) Thanks to the new jobs in the Ojala-Yhtymä tool factory it will be possible to halt the area's population drain, increase private demand and in this way fundamentally improve the supply of services and boost the development of the area.
- (26) The interest subsidy granted by the Municipality of Piippola to Ojala-Yhtymä is important for the implementation of the project and, therefore, has a key effect on accelerating the boost the project will give development in the area.

- (27) In view of the above, the Finnish authorities are of the opinion that the setting up of the Ojala-Yhtymä factory in Piippola will also have considerable impact on the Piippola College of Handicrafts and Applied Art.

IV. ASSESSMENT OF THE AID

- (28) Article 87(1) of the EC Treaty stipulates that, except where otherwise provided, aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, insofar as it affects trade among Member States, incompatible with the common market.
- (29) Where financial aid from the State strengthens the position of an enterprise in relation to its competitors in the Community, it must be regarded as affecting competition.
- (30) The table below shows production figures in Europe:

Machine tool production
(Without parts and accessories, at current value)

(EUR million)

Country	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999 (estimated)
Austria	290	287	277	202	169	218	188	166	219	257
Belgium	224	222	171	143	178	189	209	212	243	245
Czech Republic	—	—	—	117	130	155	192	233	274	248
Denmark	67	61	45	55	38	61	50	53	54	59
Finland	40	41	55	42	62	104	129	141	155	161
France	920	831	555	498	556	601	652	642	703	761
Germany	6 872	7 155	5 925	4 616	4 502	5 579	5 955	5 993	6 776	7 097
Italy	2 889	2 820	2 389	1 799	1 961	2 557	2 963	3 040	3 255	3 538
Netherlands	106	91	89	82	78	95	101	125	140	130
Portugal	28	26	25	22	24	26	27	29	39	40
Spain	800	611	472	337	381	506	632	720	848	912
Sweden	252	164	151	129	150	163	235	225	194	195
Switzerland	1 822	1 637	1 326	1 163	1 490	1 634	1 626	1 754	1 885	1 917
United Kingdom	1 179	947	735	572	720	755	853	1 177	1 009	872
CECIMO (14)	15 489	14 893	12 307	9 761	10 419	12 619	13 811	14 510	15 794	16 432
Index	100,0	96,2	79,5	63,0	67,3	81,5	89,2	93,7	102,0	106,1

Source: CECIMO, the European Committee for the Cooperation of the Machine Tool Industries.

(31) The table below shows the destination of the machine tools in 1997:

$$\text{Production} + \text{Imports} = \text{Exports} + \text{Apparent consumption}$$

where production = 100 in 1997 (estimated value)

Country	Production	Imports	=	Exports			Apparent consumption
				Total	To EU	To outside EU	
Austria	100	135		101	63	38	134
Belgium	100	122		133	86	47	89
Czech Republic	100	64		85	49	36	79
Denmark	100	167		110	52	58	157
Finland	100	78		82	37	45	96
France	100	99		52	30	22	147
Germany	100	26		57	20	37	69
Italy	100	31		61	29	32	70
Netherlands	100	182		153	105	48	129
Portugal	100	303		71	29	42	332
Spain	100	39		60	33	27	79
Sweden	100	123		80	32	48	143
Switzerland	100	16		86	51	35	30
United Kingdom	100	104		68	28	40	136
CECIMO (14)	100	44		66			78

Source: CECIMO, the European Committee for the Cooperation of the Machine Tool Industries.

(32) The Commission, therefore, considers that any State aid granted for the benefit of Ojala-Yhtymä may affect trade.

The loan

(33) The granting of a loan of FIM 4 million, without interest and with repayment at the end of the loan period (four years), constitutes state aid within the meaning of Article 87(1) EC. The aid element is estimated at FIM 1 400 000, which represents 7,99 % (gross) of the eligible costs. Since this measure has not been granted within the framework of a regional scheme authorised by the Commission, it constitutes individual ad hoc aid.

(34) If the Employment and Economic Development Centre awards the grant of FIM 1 million, the loan is to be reduced by the same amount. The aid measure would then include an aid element estimated by the Finnish authorities at FIM 1 050 000. However, as indicated

above, no granting decision has been taken nor has Finland notified its intention to grant this aid. The Commission takes this to be a fact. This decision contains no assessment of the compatibility of the aid with the single market. It is the job of the Finnish authorities to announce their intention to grant aid, where required.

The land sale

(35) According to the Commission Communication on state aid elements in sales of land and buildings by public authorities⁽⁵⁾, Member States must notify the Commission of intended sales of land where there is no unconditional bidding procedure or an independent valuer's assessment, so that the Commission can establish whether the transactions contain a state aid element.

⁽⁵⁾ OJ C 209, 10.7.1997, p. 1.

(36) In their reply to the Commission's announcement that it was initiating the Article 88(2) procedure, the Finnish authorities stated that the price paid for the land (FIM 0,20, i.e. EUR 0,03, per m²) was the current market price. As supporting evidence, Finland quotes the following two purchases of land by the Municipality of Piippola:

- 2 510 m² at FIM 0,40/m² on 31 August 1999,
- 1 000 m² at FIM 1/m² on 31 August 1999.

(37) However, this information is not sufficient to dispel the Commission's doubts as to whether the sale of a plot of land to Ojala-Yhtymä includes a State aid element, for the following reasons:

- the Finnish authorities have not submitted evidence showing that the conditions laid down in the above Communication are met. Therefore, the selling price cannot be deemed to constitute a market price within the meaning of the Communication or be covered by the presumptions laid down in it. The Commission should, therefore, have been given prior notification of the price of the land,
- the Finnish authorities have not submitted any evidence from an independent valuer; a notary public is not an 'independent valuer' within the meaning of the Communication,
- in one of the two transactions quoted by the Finnish authorities the seller was the Finnish State. Since the Finnish authorities do not indicate whether the price was set on the basis of either an unconditional bidding procedure or an independent valuer's assessment, it is difficult to consider it a fair market price,
- the buyer in the second transaction was the Municipality of Piippola. Here too it is not inconceivable that the land sale came with other obligations for the Municipality of Piippola attached,
- no data have been provided on comparable transactions involving private parties in the same area.

(38) Consequently, the response from Finland has not taken away the doubts as to whether the price of FIM 0,20/m² includes a State aid element.

(39) Although Finland responded to the Commission's inquiries and sent detailed data on the transaction, the information is not conclusive. The aid element has, therefore, been estimated in accordance with the following assumptions.

(40) According to the information available, the value of a plot of forestland in Finland depends mainly on the value of the trees growing in the area in question. In

general, forest ground without any trees is basically worthless, particularly if it is situated close to a swamp and a rubbish dump, as in this case. A swamp has basically no value. The value of the trees growing in a given area depends on the quality of the land and trees.

(41) Ojala-Yhtymä acquired the plot of land as forestland. Finland has confirmed that the company assumed all the costs connected with the development of the land. Therefore, the estimated value of the advantage should comprise only the value of any trees in the area.

(42) According to figures from the Finnish Forest Research Institute, the average wood volume of forests in the Pohjanmaa area is approximately 163 m³/hectare. Of this 163 m³/hectare, pine wood accounts for approximately 121 m³/hectare on average.

(43) According to the Forest Management Associations, the selling price of pine logs varies from 284,4 FIM/m³ to 291,1 FIM/m³ depending on the mode of sale.

(44) Assuming, for the sake of argument, the highest possible value of the five-hectare plot of land sold to Ojala⁽⁶⁾, the market value of the trees growing on it can be estimated at FIM 232 836. When the FIM 10 000 paid for the land is deducted, this leaves a financial advantage of FIM 222 836, which represents gross aid intensity of 1,68 % relative to the value of the investment (including the revised value of the land).

(45) Where financial aid from the State strengthens the position of an enterprise in relation to its competitors in the Community, it must be regarded as affecting competition.

The compatibility of the aid

(46) The aid consists of direct grants from the Municipality of Piippola for an investment in the area. Piippola is an assisted area within the meaning of Article 87(3)(c) of the EC Treaty⁽⁷⁾. The regional aid ceiling for this area is 20 % NGE. Paragraph 2 of the Guidelines on National Regional Aid⁽⁸⁾ (the Guidelines) states that the Guidelines apply to all sectors of the economy, apart from those where sector-specific rules apply. Since

⁽⁶⁾ 121 m³ of pine wood per hectare, worth FIM 291,1/m³; the remaining 42 m³ per hectare being spruce wood worth FIM 270,1/m³.

⁽⁷⁾ At the time when the aid was granted, Piippola was classified as area 2, as it is for the period 2000 to 2006.

⁽⁸⁾ OJ C 74, 10.3.1998, p. 9.

manufacturing of metal components is not covered by any sector-specific rules, the aid is to be assessed according to the provisions of the Guidelines.

- (47) The Commission notes that part of the aid has already been paid to the beneficiary Ojala-Yhtymä Oy and that it was not granted under any approved regional scheme. The aid, therefore, counts as ad hoc aid that has to be assessed on its own merits. The Commission is required in particular to examine the impact of the aid in the context of the Community as a whole.
- (48) In Finland, rural areas like Piippola are experiencing net emigration with the population falling by 1 % to 2 % a year. In recent years unemployment in the area has persistently remained in the region of 15 %. According to the information submitted by the Finnish authorities, Ojala-Yhtymä's tool-manufacturing unit in Piippola will introduce a completely new line of business to the area, incorporating world-class state-of-the-art technology, and will, in this way, create new jobs. Looked at from the point of view of the area and the municipality, the

jobs to be created are significant in both quantitative and qualitative terms.

- (49) Finland has confirmed that the investment will directly create 20 new jobs. In addition, between 60 and 80 jobs will be created indirectly.
- (50) According to the Finnish authorities, by 2003 the Ojala Group's Piippola factory will be the most modern tool-manufacturing unit in Finland. Tools will be manufactured in cooperation with European manufacturers of electronics and telecommunications components in a cost-efficient way that ensures high-quality products. The company's business plan indicates that the investment corresponds to growing international demand and will increase the company's market share.
- (51) According to figures from the European machine tool builders confederation, the apparent consumption in Europe of machine tools fell in the period 1992 to 1995. However, over the period 1996 to 1999 the sector experienced steady growth (in EUR million):

*Apparent consumption of machine tools
Without parts and accessories; at current value*

(EUR million)

Country	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999 (estimate)
Austria	275	341	385	215	209	210	327	197	226	251
Belgium	272	284	296	142	157	167	185	200	254	219
Czech Republic	—	—	—	89	142	152	157	183	235	219
Denmark	107	92	64	67	76	117	91	86	142	130
Finland	131	73	38	35	68	121	124	123	148	130
France	1 777	1 566	1 217	757	837	985	1 225	1 091	1 316	1 356
Germany	4 899	5 201	3 939	2 548	2 372	3 654	3 765	4 146	5 126	5 737
Italy	2 349	2 210	1 788	1 121	1 421	2 093	2 197	2 135	2 493	2 781
Netherlands	261	215	244	126	108	188	222	194	351	310
Portugal	112	109	105	124	74	65	81	95	128	111
Spain	857	654	562	279	333	383	480	573	766	930
Sweden	299	172	125	76	225	251	324	317	400	386
Switzerland	694	573	442	333	425	549	544	523	618	650
United Kingdom	1 226	1 005	846	528	686	901	930	1 491	1 192	887
CECIMO (14)	13 259	12 495	10 051	6 440	7 133	9 836	10 651	11 353	13 395	14 097
Index	100,0	94,2	75,8	48,6	53,8	74,2	80,3	85,6	101,0	106,3

Source: CECIMO, the European Committee for the Cooperation of the Machine Tool Industries.

- (52) In view of the above, and considering that the aid intensity (7,99 % gross plus 1,68 % gross) is well below the regional threshold of 20 % gross, it can be concluded that the state aid granted by Finland to Ojala-Yhtymä will facilitate the regional development of the area, without adversely affecting trading conditions to an extent contrary to the common interest.
- (53) The aid can, therefore, benefit from an exemption under Article 87(3)(c) of the Treaty.

V. CONCLUSION

- (54) The Commission finds that the aid in question was unlawfully granted by Finland in breach of Article 88(3) of the Treaty. The Commission nonetheless considers that the State aid granted by Finland to Ojala-Yhtymä will facilitate the regional development of the area, without adversely affecting trading conditions to an extent contrary to the common interest,

HAS ADOPTED THIS DECISION:

Article 1

The state aid which Finland has granted to Ojala-Yhtymä Oy, comprising FIM 1 400 000, plus an aid element included in a land transaction that the Commission estimates at FIM 222 836, is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty.

Article 2

This Decision is addressed to the Republic of Finland.

Done at Brussels, 21 December 2000.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION**of 19 September 2001****on the State aid which the Netherlands is planning to implement in the form of development assistance for a high-technology dredger for the Republic of Djibouti***(notified under document number C(2001) 2900)***(Only the Dutch text is authentic)****(Text with EEA relevance)****(2002/284/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 to Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding ⁽¹⁾,

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽²⁾, and in particular Article 7 thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above and having regard to their comments ⁽³⁾,

Whereas:

I. Procedure

- (1) By letter dated 12 April 2000, the Dutch authorities, acting pursuant to Article 88(3) of the EC Treaty, notified the Commission of development assistance which they intended to grant to the Republic of Djibouti for the purchase of a dredger of more than 365 KW to be built by the Damen Shipyards in Gorinchem.
- (2) By letter dated 13 February 2001, the Commission notified the Dutch authorities that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid. The Dutch authorities submitted their comments to the Commission by letter dated 21 February 2001.

- (3) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽⁴⁾. The Commission invited interested parties to submit their comments.

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

II. Detailed description of the aid

- (5) The project, which provides for development assistance under a general scheme for aid to developing countries, concerns a transaction involving the dredger and three other vessels for a total amount of NLG 11,664 million (EUR 5,293 million). Provision has been made for aid totalling NLG 3,447 million (EUR 1,464 million). Only the dredger falls within the scope of Regulation (EC) No 1540/98. The cost price is NLG 9,564 million (EUR 4,340 million) and the aid earmarked amounts to NLG 2,392 million (EUR 1,085 million), or 25 % of the contract price. The recipient is the autonomous port of Djibouti.

- (6) The Commission decided to initiate the Article 88(2) procedure because it doubted whether the project complied fully with the conditions laid down in Article 3(5) of Regulation (EC) No 1540/98 concerning the compatibility of aid related to shipbuilding granted as development assistance.

- (7) New provisions have been incorporated into Article 3(5) of Regulation (EC) No 1540/98 in cases where aid for shipbuilding is granted in the form of development assistance to a developing country. The Article states that such aid may be deemed compatible with the common market if it complies with the terms laid down for that purpose by OECD Working Party 6 in its Agreement concerning the interpretation of Articles 6 to 8 of the OECD Understanding on export credits for ships. The Commission must verify the particular

⁽¹⁾ OJ L 202, 18.7.1998, p. 1.

⁽²⁾ OJ L 83, 27.3.1999, p. 1.

⁽³⁾ OJ C 172, 16.6.2001, p. 12.

⁽⁴⁾ OJ C 172, 16.6.2001, p. 12.

development content of the proposed aid and satisfy itself that it falls within the scope of the OECD Understanding on export credits and that the offer of development assistance is open to bids from different yards.

- (8) On the basis of the information available to the Commission, it concluded that the projects complied with the OECD criteria.
- (9) However, the Commission doubted whether the development assistance was open to bids from different yards and could not therefore rule out the possibility that it constituted operating aid for Damen.

III. Comments from the Netherlands

- (10) The Dutch authorities provided new information of which they were not aware at the time of the various meetings held before the procedure was initiated.
- (11) They explained that the authorities in Djibouti had asked two other Dutch shipyards to submit bids, but that this request was not taken up. It also emerges from various letters that other Dutch shipyards were aware of the transaction.
- (12) In addition, the Dutch authorities referred once again to their role in the new procedure for ensuring that invitations to tender in the field of development assistance receive significant publicity in future. Thanks to this procedure, all Dutch shipyards will be better informed about specific projects for which a Dutch shipyard has submitted an application for development assistance; this information will be disseminated by the Dutch shipbuilding association (Vereniging Nederlandse Scheepsbouw Industrie, hereinafter referred to as VNSI), to which virtually all Dutch shipyards belong, as soon as a shipyard has submitted an application to the authorities. VNSI will provide its members with all the important information on the transaction (contract amount, type of vessel and customer). In this way, virtually the entire Dutch shipbuilding sector will be informed.

IV. Assessment of the aid

- (13) As explained in the decision to initiate the Article 88(2) procedure, the aid for the contract must be tested against the provisions of Article 3(5) of Regulation (EC) No 1540/98, which lays down new rules on development assistance for shipbuilding.

- (14) That Article states that such aid may be deemed compatible with the common market if it complies with the terms laid down for that purpose by OECD Working Party 6 in its Agreement concerning the interpretation of Articles 6 to 8 of the OECD Understanding on export credits for ships. The Commission must verify the particular development content of the proposed aid and satisfy itself that it falls within the scope of the OECD Understanding and that the offer of development assistance is open to bids from different yards.

- (15) As was also stated in the decision to introduce the procedure, the Commission had already noted that the OECD criteria with which the Member States must comply, as described by the Commission in its letter SG(89) D/311 of 3 January 1989, amended by letter SG(97) D4645 of 10 June 1997, had been fulfilled.

- (16) As regards whether the offer of development assistance was open to bids from different yards, the Commission would point out that these are new provisions which have been incorporated into Regulation (EC) No 1540/98. In addition, they do not indicate how the Commission should check whether this criterion is met; it can therefore be interpreted in a number of ways. The Commission considers that the criterion should be strictly applied and that the offer of assistance should have been open to bids from other shipyards.

- (17) In the decision to initiate the procedure the Commission took the view that, in the light of the information provided by the Dutch authorities and the fact that the shipyard and the Djibouti authorities had negotiated the contract before the new procedure entered into force, there were no grounds whatsoever for concluding that the contract had been given sufficient publicity in compliance with the principle of open tendering.

- (18) The Dutch authorities have since provided information in addition to the comments submitted in the course of the procedure, namely that the authorities in Djibouti asked two other Dutch shipyards to submit a bid for the order in question, but that neither shipyard did so.

- (19) The Commission notes that originally the invitation to tender was not confined to Damen alone, given that other shipyards were given the opportunity to submit a bid.

- (20) In addition, following notification of the decision to initiate the procedure, information on the contract was widely disseminated between all potential interested parties.

- (21) Although the way in which the contract was concluded does not quite fit the best interpretation of open tendering, the Commission is prepared to accept that the procedure followed has been in use for many years and that the Dutch authorities were not fully aware of the scope of Article 3(5) of Regulation (EC) No 1540/98, a position borne out by the Dutch authorities' firm intention to review their procedure in future cases. Accordingly, the Commission would emphasise that the new procedure alone should be followed in all future cases so as to comply with the conditions for open tendering as described in Article 3(5) of Regulation (EC) No 1540/98.

V. Conclusion

- (22) In the light of the above, the doubts underlying the Commission's decision to initiate the Article 88(2) procedure have been resolved. It can therefore be concluded that the project complies with the conditions laid down in Article 3(5) of Regulation (EC) No 1540/98 and that it is therefore compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The aid with an intensity of 25 % which the Netherlands intends to grant to the Republic of Djibouti in the form of development assistance for the purchase of a dredger from the Damen Shipyards is compatible with the common market.

Implementation of the aid is accordingly authorised.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 19 September 2001.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION**of 20 December 2001****on the State aid which Belgium is planning to implement for Sidmar NV***(notified under document number C(2001) 4471)***(Only the Dutch and French texts are authentic)****(Text with EEA relevance)****(2002/285/ECSC)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 4(c) thereof,

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

Having regard to Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for state aid to the steel industry ⁽¹⁾,

Having called on interested parties to submit their comments pursuant to the abovementioned Decision ⁽²⁾ and having regard to those comments,

Whereas:

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽³⁾. The Commission invited interested parties to submit their comments.

(4) Sidmar presented its comments by letter dated 14 September 2001. The Commission forwarded them to Belgium, which was given the opportunity to react. Belgium presented its own comments by letter dated 2 August 2001 and commented on Sidmar's letter by letter dated 31 October 2001.

II. DETAILED DESCRIPTION OF THE AID

(5) The total cost of the three projects in respect of which the Commission initiated the procedure is EUR 5 140 419 and the Belgian authorities proposed to grant aid corresponding to 12 % of the respective costs, amounting in total to EUR 616 851.

I. PROCEDURE

(1) By letter dated 27 November 2000, Belgium, acting in accordance with Article 6(1) of the Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry (hereinafter the 'Steel Aid Code'), notified the Commission of a proposal to grant environmental aid to Sidmar NV (hereinafter 'Sidmar'). By letters dated 19 December 2000, 16 February 2001 and 29 March 2001, the Commission requested further information. The Belgian authorities replied by letters dated 26 January, 15 March and 3 May 2001 respectively.

(2) By letter dated 21 June 2001, the Commission informed Belgium that it had decided to initiate the procedure laid down in Article 6(5) of the Steel Aid Code in respect of the aid for three of the projects and that it had no objections to the aid for the other five projects.

(6) One of the three projects, 'centralised reduction of scrap', consisted in replacing the former system of reducing scrap in the place where it is produced by a centralised system in which scrap is reduced in a single location. In contrast to the previous situation, this central location is enclosed and the resulting waste gases are then cleaned via a filter unit. The total cost of the equipment (EUR 2 478 935) was deemed eligible for environmental aid by the Belgian authorities. This includes not only the waste-gas cleaning equipment but also the cutting machinery. The proposed aid for this project amounts to EUR 297 472.

(7) The other two projects, 'sludge treatment at steel plants' and 'sludge treatment at furnaces', consisted of investments in centrifuges to drain the sludge produced at the steel plants and furnaces. Although the projects allow the sludge to be re-used as a raw material, the Belgian authorities did not deduct any savings from

⁽¹⁾ OJ L 338, 28.12.1996, p. 42.

⁽²⁾ OJ C 234, 18.8.2001, p. 2.

⁽³⁾ See footnote 2.

investment costs when they calculated the costs eligible for environmental aid. The investment costs amount to EUR 1 545 963 and EUR 1 115 521 respectively and the proposed aid to EUR 185 516 and EUR 133 863 respectively.

III. COMMENTS FROM INTERESTED PARTIES

- (8) Sidmar, the aid recipient, is the only interested party to have submitted comments. For all three projects it declared that the reason for the investment was to increase environmental protection. It insisted that the 'centralised reduction of scrap' project was not designed to rationalise production activity. In its view, the investment had not conferred any financial advantage because since its completion in June 2001 the cost per tonne of scrap treated has increased by EUR 4,52, which, Sidmar claims, corresponds to the cost of the new equipment. It concluded that all the equipment, including the cutting machinery (EUR 1 829 454), should be eligible for environmental aid.
- (9) The company also stated that the sole purpose of the 'sludge treatment at furnaces' project was to reduce pollution. Chlorine levels in the water had been reduced from 1 059 mg/l in July 1999 to 648 mg/l in June 2001. According to Sidmar, this was because the sludge was previously pumped from the settling tank to a sludge basin with no provision for soil protection, with the result that salinisation took place as the canal water filtered through. Following the investment, the sludge from the settling tank undergoes forced drainage in the new centrifuges. The fact that canal water is no longer pumped to the furnace sludge basins means that further soil contamination is prevented. Sidmar also argued that no additional savings had been made in raw materials because the sludge could be used in both situations: before the investment, after further (internal or external) treatment to ensure that the sludge was totally dry, and after the investment, immediately following centrifugation.
- (10) With regard to the 'sludge treatment at steel plants' project too, Sidmar stated that the investment was made solely to reduce pollution. In the past, the canal water-laden sludge was pumped to the ladles of the sintering plants. This enabled the sintering charge to be washed and the steel plant sludge to be recycled as a useful raw material. After the investment, the water-laden sludge undergoes forced drainage in centrifuges and the dried sludge is subsequently brought to pre-bedding, where the sintering charge is prepared. In this way the thickened sludge is also recycled as a useful raw material in the sintering plants. However, in the new situation, the sintering charge is moistened with groundwater, which is low in chlorine, and

therefore helps to reduce dioxin emissions from the sintering plant. Dioxin emissions have been reduced from approximately 13 ng TEQ/Nm³ to approximately 2,5 ng TEQ/Nm³.

IV. COMMENTS FROM BELGIUM

- (11) The Belgian authorities reiterated their position that the investments were made solely for environmental reasons and that all the costs should be considered eligible. They fully endorsed Sidmar's position.

V. ASSESSMENT OF THE AID

Legal basis

- (12) Sidmar is a company within the meaning of Article 80 of the ECSC Treaty. Aid granted to it is therefore governed by the Steel Aid Code. The measures notified by Belgium qualify as aid within the meaning of Article 1 of the Steel Aid Code. Article 3 of the Code makes provision for steel companies to receive aid for environmental investments. The conditions which such aid must meet to be deemed compatible with the common market are set out in the Annex to the Steel Aid Code and in the 1994 Community guidelines on state aid for environmental protection⁽⁴⁾ (hereinafter the 'guidelines').
- (13) According to point 3.2.1 of the guidelines, aid ostensibly intended for environmental protection measures but which is in fact for general investment is not covered by the guidelines. The eligible costs must be strictly confined to the extra investment costs necessary to meet environmental objectives.
- (14) Sidmar already meets the mandatory standards as regards pollutants, which can be reduced further thanks to the planned investments. The aid must therefore be assessed in the light of the rules on 'aid to encourage firms to contribute to significantly improved environmental protection'. According to the first paragraph of point B of the guidelines, aid for investment that allows significantly higher levels of environmental protection may be authorised up to a maximum of 30 %. The level of aid must be in proportion to the improvement of the environment that is achieved and to the investment necessary for achieving the improvement.
- (15) According to the Annex to the Steel Aid Code, in the case of aid to encourage firms to contribute to significantly improved environmental protection, the following conditions apply:

⁽⁴⁾ OJ C 72, 10.3.1994, p. 3.

- (a) the Commission will analyse the economic and environmental background of a decision to opt for the replacing of existing plant or equipment. In principle, a decision to undertake new investment which would have been necessary in any event on economic grounds or due to the age of the existing plant or equipment (useful life left equivalent to less than 25 %) will not be eligible for aid;
- (b) the investor will have to demonstrate that a clear decision was taken to opt for higher standards which necessitated additional investment;
- (c) any advantage in regard to lower production costs will be deducted.

Project 1: Centralised reduction of ferrous scrap

- (16) As the Commission acknowledged when it initiated the procedure, this project contributes to important improvements in the environment, with a reduction in dioxin emissions from 50 mg/Nm³ to 10 mg/Nm³. However, according to the rules, the eligible costs must be strictly confined to the extra investment costs necessary to meet environmental objectives, and general investment costs not attributable to environmental protection must be excluded. The scrap-reduction operation has, in any case, to be carried out by the company for its production needs. Part of the purchased equipment (cutting torches, cutting table, feeder with gas and electricity for the cutters, manual facility using an oxy-fuel burner) does not in itself provide for any further improvement in the environmental situation. On the contrary, it is simply a new way for the company to carry out production. Even if the company claims that the cost of scrap reduction per tonne is higher at present because of the cost of the new equipment, such higher costs in themselves do not as yet justify production equipment being deemed eligible for environmental aid. The cost of the cutting equipment (EUR 1 829 454) cannot therefore be considered eligible for environmental aid.
- (17) On the other hand, the cost of the filter unit and the waste-gas collector (EUR 649 481) can be considered eligible for aid. This equipment does not replace existing equipment and is designed purely to reduce pollution. The reduction achieved in dioxin emissions can be regarded as significant, and so the cost is eligible under the rules governing aid to help firms significantly improve environmental protection.

Project 2: Sludge treatment at furnaces

- (18) The Belgian authorities declared initially that the aim of the investments was to process furnace sludge for re-use as a raw material in the production process and that the centrifuges would enable most of the water to be removed and thus contribute directly to recycling the

sludge. Now, however, together with Sidmar, they maintain that the only reason for the investment was increased environmental protection since, prior to the investment, the sludge could have been re-used only after appropriate treatment. Nevertheless, the fact is that only after the investment did Sidmar start re-using the sludge. Before, it was dumped and left in the furnace sludge basins, from where it infiltrated and polluted the soil. Ending the practice of dumping the sludge — and the resultant filtration of the chlorine-laden canal water — led to an important reduction in the chlorine content of the water. This has certainly had a positive effect on the environment. However, in order to calculate the expenditure eligible for environmental aid, the cost of the investment must be reduced by the value of the raw materials which the company has started re-using as a result of the investment. In spite of repeated requests, including in the decision to initiate the procedure, to provide further information on the savings made in raw materials and to deduct them from the eligible costs, Belgium has failed to do so. Hence it is not known which part of the investment expenditure (if any) is eligible for aid. It must therefore be concluded that the notified costs (EUR 1 115 521) were not exclusively designed to secure additional environmental protection and are not therefore eligible for environmental aid.

Project 3: Sludge treatment at steel works

- (19) In the notification the Belgian authorities made the same declaration as for the previous project, namely that the reason for this investment was to re-use the sludge as a raw material. However, in the course of the procedure they, together with Sidmar, clarified their later position that no savings in raw materials were made because use of the sludge did not increase after the new investment. In contrast to the furnace sludge, which was dumped, sludge from the steel works was pumped, without having to be dried, to the ladles of the sintering plants. That sludge contained chlorine-rich canal water, which contributed to a higher level of dioxin emissions from the sintering plants. With the new centrifuges, the sludge undergoes forced drainage before being loaded and ground water is added instead of canal water. As a result, less chlorine enters the sintering process and less dioxin is emitted. Dioxin emissions have been reduced from 13 ng TEQ/Nm³ to about 2,5 ng TEQ/Nm³.
- (20) The centrifuges at the steel plants do not affect the production process because after centrifugation the same amount of sludge is pumped to the sintering plant as when the sludge was rich in canal water. We can therefore accept the position of the Belgian authorities and Sidmar that the investment was made for purely

environmental reasons and has no effect on production and that no savings are made on raw materials. The investment does not replace any existing equipment and the reduction in pollution can be considered significant within the meaning of the rules governing aid to help firms significantly improve on environmental standards. The investment of EUR 1 545 963 can therefore be considered eligible for environmental aid.

VI. CONCLUSION

- (21) In the light of the above, it can be concluded that all the conditions set out in the Steel Aid Code for environmental aid to be deemed compatible have been met as regards part of the notified aid (EUR 263 454). This concerns eligibility and aid intensity, which is below the 30 % ceiling. The aid amount corresponds to part of the notified aid for the 'centralised reduction of scrap' project (EUR 77 938) and to the notified aid for the 'sludge processing at steel plants' project (EUR 185 516).
- (22) However, aid to the amount of EUR 353 397 does not meet the conditions to be deemed eligible and compatible with the common market. It concerns the notified aid for the other part of the aforementioned 'centralised reduction of scrap' investment project (EUR 219 534) and the notified aid for the 'sludge processing at furnaces' project (EUR 133 863),

HAS ADOPTED THIS DECISION:

Article 1

The aid which Belgium is planning to implement for the steel company Sidmar, to the amount of EUR 263 454, is compatible with the common market. This amount

corresponds to the notified aid for part of the 'centralised reduction of scrap' investment project (EUR 77 938) and to the notified aid for the 'sludge processing at steel plants' investment project (EUR 185 516).

Article 2

The aid which Belgium is planning to grant to the steel company Sidmar, to the amount of EUR 353 397, is incompatible with the common market. This amount corresponds to the notified aid for part of the 'centralised reduction of scrap' investment project (EUR 219 534) and to the notified aid for the 'sludge processing at furnaces' investment project (EUR 133 863).

Accordingly, that part of the aid scheme may not be implemented.

Article 3

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

Article 4

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 20 December 2001.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION**of 20 December 2001****on the measure which Germany is planning to implement in favour of the steel company
Georgsmarienhütte Holding GmbH***(notified under document number C(2001) 4510)***(Only the German text is authentic)****(Text with EEA relevance)****(2002/286/EC, ECSC)**

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 Treaty establishing the European Coal and Steel Community, and in particular Article 4(c) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof read in conjunction with protocol 14,

Having regard to Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for state aid to the steel industry ⁽¹⁾,

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽²⁾,

Whereas:

1. PROCEDURE

- (1) By letter dated 31 August 2000 Germany notified the Commission of an asset sale between the receivers of the steel company Stahl Gröditz and its subsidiaries on the one side and two subsidiaries of the Georgsmarienhütte Holding GmbH (hereafter GMH) on the other side ⁽³⁾.

- (2) By letter dated 8 June 2001, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty and Article 6(5) of Commission Decision No 2496/96/ECSC (hereinafter referred to as the Steel Aid Code) in respect of the aforementioned measure. The Commission called on interested parties to submit their comments.

- (3) The United Kingdom Steel Association, the United Kingdom Permanent Representation and the beneficiary company GMH sent comments in the context of the procedure. On 7 August 2001 and 23 August 2001, the Commission forwarded these comments to Germany, which made its comments thereon by letter dated 23 August 2001 and 20 September 2001.

- (4) Germany responded to the opening of procedure by letter dated 17 July 2001 and 19 October 2001.

2. DETAILED DESCRIPTION OF THE MEASURE

- (5) Gröditzer Stahlwerke GmbH and its subsidiaries ⁽⁴⁾ (hereafter: Gröditzer) are located in Saxony. Since 1990 Gröditzer has been owned by the Treuhandanstalt (THA) and its public successors, respectively EREL Verwaltungs GmbH und Co Management KG (EREL), Beteiligungs-Management-Gesellschaft mbH (BMGB), and, lastly, the BvS.

- (6) On 25 February 1997 BMGB entered into an agreement 'Kauf und Abtretungsvertrag über Geschäftsanteile' (hereafter: privatisation agreement) with the Georgs-

⁽¹⁾ OJ L 338, 28.12.1996, p. 42.

⁽²⁾ OJ C 199, 14.7.2001, p. 4.

⁽³⁾ The buyers of the assets are Einhundertvierzigste KOPA Vermögensverwaltungsgesellschaft mbh and Einhundertvierundvierzigste KOPA Vermögensverwaltungsgesellschaft mbh, which are two subsidiaries of Georgsmarienhütte Holding GmbH. In context of the asset sale the term GMH refers also to this two subsidiaries.

⁽⁴⁾ On 20 April 1999 Gröditzer Stahlwerke GmbH sold its assets and liabilities — and thus its economic operations — to the newly created Edelstahl Gröditz GmbH and Stahlwerk Gröditz GmbH which are subsidiaries of Stahl Gröditz Holding GmbH. The sole shareholder of Stahl Gröditz Holding GmbH is BvS. In the meantime Stahl Gröditz GmbH sold the shares in this two subsidiaries to Gröditzer Stahlwerke GmbH.

marienhütte group ⁽⁵⁾ in order to privatise Gröditzer to the latter.

- (7) Over the years before its privatisation Gröditzer received important amounts of State aid, mainly from THA and its successors in the form of guarantees and shareholders loans. New aid has been paid under the privatisation agreement. The privatisation agreement provided therefore that GMH would obtain legal ownership in Gröditzer only after approval, by the Commission, of State aid paid and to be paid to Gröditzer. The privatisation agreement provided however that GMH was entitled to manage the affairs of Gröditzer, while awaiting the transfer of legal ownership.
- (8) On 8 July 1999 the Commission adopted Decision 1999/720/EC, ECSC in respect of the State aid to Gröditzer Stahlwerke GmbH and its subsidiary Walzwerk Burg GmbH ⁽⁶⁾. The Commission decided, *inter alia*, that State aid of DEM 239 million was incompatible with the ECSC and the EC Treaty and had to be recovered.
- (9) As a consequence of this decision GMH and the BvS, the legal successor of initial contractor BMGB, terminated the privatisation agreement.
- (10) In view of the termination of the privatisation agreement, which left Gröditzer without management, a new management contract was concluded between BvS, Gröditzer and GMH ⁽⁷⁾.
- (11) At the same time BvS undertook steps to recover the incompatible aid from Gröditzer. As this led to a heavily indebtedness of Gröditzer, insolvency was applied for by BvS, its largest creditor. Gröditzer Stahlwerke GmbH was declared in provisional insolvency by the Dresden bankruptcy Court on 20 September 1999 and in insolvency on 17 January 2000. On the same date its subsidiaries Stahlwerk Gröditz GmbH and Edelstahl Gröditz GmbH were declared in provisional insolvency.
- (12) The management contract was terminated with the opening of insolvency proceedings against the

subsidiaries on 1 April 2000. At the same time a new management contract was concluded between the receivers of Gröditzer and GMH. The validity of this contract was in the meantime extended until 31 December 2001.

- (13) On 31 August 2000 Germany notified a going-concern asset sale of Gröditzers assets by its receivers to GMH.
- (14) In order to sell the assets, the receiver of Gröditzer conducted a public tender. The bidding procedure was described by Germany as follows:
- (15) In December 1999 the sale of assets of Gröditzer was announced in national and international press (FAZ; FT). Potentially interested parties (on the basis of a shortlist of some 120 companies all over the world) were directly contacted. The value of the assets was estimated and published by the provisional receiver of Gröditzer Stahlwerke GmbH as DEM 103 million ⁽⁸⁾.
- (16) The deadline to submit offers was set at 29 February 2000 with a possibility of due diligence investigations in January/February 2000. On 17 February 2000, the deadline to submit offers and to undertake due diligence investigations was extended until 14 March 2000 as a result of the resignation and replacement of the receiver in the insolvency of Gröditzer Stahlwerke GmbH. The newly appointed receiver published the extended deadline in the same press as the asset sale was announced before. On 25 February 2000 a letter to all potential interested parties also communicated the extended deadline. The bidders were also informed that a take-over of cash, bank deposits or liabilities was not possible as an asset deal was involved.
- (17) Several companies showed interest in the assets of Gröditzer and arranged due diligence investigations. Four companies made an offer for all assets. One of these offers was rejected as it was received after the deadline 14 March 2000 ⁽⁹⁾. No offer was received for single assets.
- Edelstahl GmbH JP Schumacher (hereafter Schumacher), a Düsseldorf based steel trading company made an offer on 25 February 2000. The offer was DEM 13 million including take-over of liabilities,

⁽⁵⁾ Legally the parties to the agreement were Georgsmarienhütte GmbH and Georgsmarienhütte Verwaltungsgesellschaft mbH at Georgsmarienhütte, and Bladenhorster Grundstückverwaltungsgesellschaft mbH, at Castrop-Rauxel. GMH Holding GmbH was created in 1998 as a holding company after an internal restructuring of the Georgsmarienhütte group.

⁽⁶⁾ OJ L 292, 13.11.1999, p. 27.

⁽⁷⁾ On 28 November 2001 the Commission took a final decision on the terms of the management contract. It concluded that the measure did not contain State aid to GMH.

⁽⁸⁾ Estimated in November 1999 by the certified Auktionshaus Dechow and Mr Rolf A. Hartmann for a going-concern asset sale out of insolvency. The value of the assets in a break-up sale was estimated as DEM 18 million.

⁽⁹⁾ Höltger Edelstahl & Partner offered DEM 20 million for the assets of Gröditzer.

— GMH made an offer on 24 February 2000 of DEM 15 million including take-over of liabilities of approximately DEM 31 million. On 13 March 2000 GMH revised its offer, excluding liabilities, to DEM 45 million,

— Max Aicher group (hereafter Aicher group) made an offer on 14 March 2000 of DEM 35 million including an envisaged additional take-over of liabilities and cash.

(18) The creditor's committee asked on 30 March 2000 the receivers of Gröditzer and its subsidiaries to negotiate bilaterally with the three parties who made an offer until the deadline expired. The best possible offer for the creditors was then to be chosen. Bilateral negotiations on the basis of a draft sales contract took place between April and June 2000. During these negotiations the bidders were again informed, that insolvency law prohibited a take over of liabilities as it could favour certain creditors.

(19) Schumacher informed the receivers in May 2000 that from his offer approximately DEM 23 million had to be deducted as he envisaged costs for the take over of staff as provided by the German law, for certain other fees and for unspecified burdens of the past. This would have led to a negative sales price. The receiver informed Schumacher again on 5 June 2000 that the asset sale had to follow German insolvency law, which did not provide for a negative sales price. As no reaction of Schumacher was received, the receiver considered the negotiations as failed.

(20) On 21 June 2000 the Aicher group withdrew from its offer by a letter. As reason it stated that it needed its financial capacity to bid for the assets of Bayerische Maxhütte as the receiver had put them for sale.

(21) GMH remained the only bidder. The negotiations were concluded on 7 July 2000 and resulted in an approximate purchase price of DEM 59 million ⁽¹⁰⁾.

(22) The (various) sales contracts contain a clause that their entry into force is subject to Commission approval. This clause also states that the contractual parties shall request a Commission decision which ensures, that the buyer will not be liable for responsibilities of the seller resulting from recovery of incompatible aid.

⁽¹⁰⁾ The final sales price will be adjusted to take into account the value of claims and inventories on the day the sales contract enters into force. The claims will be valued at 80 % and the inventories with DEM 26,3 million, provided the value differs not by more than 10 %.

3. THE PROCEDURE

(23) The formal investigation procedure was initiated as the Commission had doubts

(a) whether the sales procedure could be regarded as open, transparent and unconditional and whether therefore the final sales price offered from GMH could be regarded a market price;

(b) whether GMH did or would not benefit in the future from State aid by the award of the management contract; and

(c) whether GMH had benefited from the incompatible aid granted to Gröditzer in relation to its privatisation in some other way.

(24) The Commission had therefore doubts whether the asset sale might contain State aid to GMH and whether such aid would be compatible with the EC Treaty and the ECSC Treaty.

4. COMMENTS FROM GERMANY AND OTHER INTERESTED PARTIES

(25) The United Kingdom Steel Association and the United Kingdom Permanent Representation support the initial doubts raised by the Commission. The United Kingdom steel association also submitted information indicating that the bidding procedure was not carried out in an open and transparent manner, as the opportunity to carry out a full and proper appraisal of the Gröditzer business was not given in a timely manner to all interested parties. The difference from the sales price to the expert estimate of DEM 103 million for the assets would therefore contain State aid to GMH. The United Kingdom Steel Association and the United Kingdom Permanent Representation indicate further that, in case the terms of the management contract are not market conform, they also would contain State aid to GMH. Moreover, as Gröditzer was already integrated in the GMH group since 1997, the incompatible aid granted to Gröditzer in relation to its privatisation should also be recovered from GMH.

(26) Germany and the beneficiary undertaking GMH provided the following comments:

(27) *Sales procedure:* The sales procedure was open, transparent and unconditional. It was conducted by the receivers of Gröditzer who have to obtain the best result in the interest of all creditors, including the State. The sales procedure was similar to sales procedures previously approved by the Commission. All bidders had enough time and information to conduct due

diligence in order to prepare their bids. A sale only on basis of the offers in the tender would not be possible, as the value of a company is, contrary to a sale of buildings, not static. Therefore negotiations had to take place. In the final negotiations GMH was not aware that it was the only remaining bidder. As the best and only offer was accepted, the price paid by GMH is to be considered the market price.

(28) *Management contract:* The management contract was concluded at market conditions. Therefore the contract did not contain State aid to GMH.

(29) *Spill over:* The incompatible aid in relation to the privatisation of Gröditzer was not used in the interest of GMH. Gröditzer was never integrated into the GMH group. GMH never obtained legal ownership. The right to manage Gröditzer was limited as important management decisions had to be taken by the board of managers (where only one out of 12 members came from GMH). Investments were undertaken as foreseen in the investment programs from 1993 and 1995, which was drafted by the public predecessors of BvS. Also the main part of the incompatible (operating) aid was used before the conclusion of the privatisation agreement.

(30) An expert appraisal, conducted on the request of GMH, was submitted on the question, whether GMH profited from the aid in relation to the privatisation of Gröditzer⁽¹¹⁾. The experts confirm in their appraisal that Gröditzer was neither legally nor economically integrated in the GMH group. They also confirm that the investments were undertaken on basis of the investment concept of the public predecessors of BvS. Business transactions between GMH and Gröditzer were conducted at arm length. The scope of concluded business is insignificant (between 2,6 and 5,6 % of Gröditzers turnover). As also no direct or indirect transfer of liquid funds to GMH took place, the experts find that GMH did not benefit from the State aid granted in relation to the privatisation of Gröditzer.

(31) *Recovery:* Germany and GMH submitted further information on the measures taken to comply with Decision 1999/720/EC, ECSC. Furthermore, as the entering into force of the sales contract is subject to Commission approval, Germany requested again a Commission position on the question, whether GMH is aid recipient in the meaning of Decision 1999/720/EC, ECSC.

5. ASSESSMENT OF THE MEASURE

(32) The Commission considers that GMH Holding GmbH is not an ECSC steel company. However, it is a mere holding company of a group of which the majority of the turnover is generated by ECSC steel companies. It cannot be excluded that the ultimate beneficiaries of the notified measures may be ECSC steel companies. The measure is therefore assessed according to Article 88 (3) EC Treaty and Article 6 of the Steel Aid Code.

(33) BvS and its predecessors are public institution, which form part of the German administration. BvS is the sole shareholder and largest creditor of Gröditzer. It is also under an obligation to recover debts from Gröditzer pursuant to Decision 1999/720/EC, ECSC. The Commission notes therefore that, if the assets of Gröditzer were sold at a price below market price, this would entail a transfer of state resources to GMH.

(34) In view of the above the Commission must assess whether the assets were sold by the receiver at market price, either by selling them as a going concern or in a break up alternative. Otherwise the asset sale might involve State aid in favour of GMH.

5.1. Were the assets sold at market conditions?

(35) As far as concerns the sales procedure, the German authorities contend that the procedure was open, transparent and unconditional. It was conducted by the receivers of Gröditzer who have to obtain the best result in the interest of all creditors, including the state. By selling the assets as a going concern the more favourable alternative was chosen compared to selling the individual assets. As the best and only offer was accepted, the price paid by GMH is to be considered the market price.

(36) The Commission notes that the negotiated sales price for a going-concern asset sale is between the estimated market value (approximately DEM 103 million) and the estimated value for a break-up asset sale (approximately DEM 18 million). It appears that no bid was made for a break-up asset sale.

(37) Considering that the negotiated sales price (DEM 59 million) for a going concern sale does not correspond to the estimated market value (DEM 103 million), the Commission needs to establish whether the sales procedure was appropriate for achieving the market price for the assets.

⁽¹¹⁾ Arthur Andersen, July 2001.

- (38) The investigation procedure was opened as the Commission had doubts whether the sales procedure was open, transparent and unconditional and that therefore the final sales price could be regarded a market price. GMH was managing the company since 1997. It was provided with the possibility to conduct its due diligence under operating conditions. Germany did not provide enough information as to the basis on which due diligence investigations were offered to the other bidders. Hence, the Commission could not conclude whether all bidders were offered sufficient time and information in order to prepare their bids. Furthermore, it was doubtful, whether the fact that the negotiations were only concluded after it appeared that GMH was the only remaining bidder, had a negative impact on the final sales price.
- (39) The United Kingdom Steel Association and the United Kingdom Permanent Representation support the initial doubt raised by the Commission. The United Kingdom Steel Association also claims that the bidding procedure was not carried out in an open and transparent manner, as one of its members was not given the opportunity to carry out a full and proper appraisal of the Gröditzer business in a timely manner.
- (40) Germany and GMH maintain that the receivers offered to all interested bidders the possibility to carry out a proper valuation of the assets in a timely manner as the basis for their bids. They indicated that every bidder had the possibility to conduct due diligence investigations between 7 January 2000 and 28 February 2000. At the same time visits to Gröditzer premises were offered. Germany also submitted a list of the information, which were provided to interested bidders in order to enable them to undertake a proper valuation of the assets.
- (41) As to the comments of United Kingdom Steel Association, Germany indicated that the interested company in question visited Gröditzer on 21 February 2000. The receivers offered the necessary information for a proper appraisal of the assets. The company was also informed about the extended deadline for submitting a bid. However, on 1 March 2000 the company wrote to the receiver that, after having reviewed the gathered information, it would not provide a bid for the assets.
- (42) On basis of the information available the Commission notes that the tender procedure including the way the call for tender has been announced, the possibility to bid for the assets in a break-up asset sale or as a going-concern, the time given to interested parties in order to carry out a proper valuation of the assets can be considered as an open tender procedure.
- (43) The Commission also notes that no other condition than the take over of staff, as provided by German law (Subsection 613a Civil Code), were imposed on the buyer in the sales procedure. According to the information provided by Germany, every bidder was made aware that in a going-concern asset sale the legal consequences of Subsection 613a would have to be applied. Accordingly, every buyer was aware of the additional costs, which might be associated with the application of this article. The buyer could reflect these costs by adjusting its offer for the assets. Thus the final offer shall take into account these costs for the buyer.
- (44) The Commission takes into account that according to information provided by Germany interested bidders had the possibility to conduct due diligence investigations between 7 January 2000 and 28 February 2000 at the premises of Gröditzer. This possibility was later extended until 14 March 2000. About 10 companies showed an interest in the due diligence investigations. It also appears from the submitted information that the bidders were offered the necessary information in order to enable them to undertake a proper valuation of the assets.
- (45) The Commission notes further that the interested member of United Kingdom Steel Association wrote on 1 March 2000 to the receiver that it would not submit a bid in the sales procedure. It did not indicate that its decision was influenced by the sales procedure. In view of this and the information provided the Commission considers that all interested bidders were given an opportunity to carry out a proper valuation of the assets as the basis for their bids.
- (46) The Commission notes that the bidding procedure led to a situation where GMH remained as the sole bidder. According to the information available, the circumstances, under which the two other bidders Max Aicher group and JP Schumacher withdrew appears to be independent from the sales procedure or the fact that GMH was managing Gröditzer since 1997. The Commission takes the view that the mere fact, that the other bidders withdrew shall not lead to the conclusion that the assets were not sold to the highest bidder.
- (47) The Commission notes furthermore that the negotiations with GMH increased the sales price from DEM 45 million to 59 million DEM. Thus the sales price shifted in the direction of the evaluated market price. Due to the increase of the sales prices, the amount of aid, which can be recovered in the insolvency, should also increase.

- (48) In view of the above and by taking into account the final sales price, the Commission concludes that the sales price can be considered to be the market price for the assets of Gröditzer.

5.2. Does the management contract contain State aid?

- (49) In the opening procedure the Commission noted further that GMH might, by the award of the management contract, have benefited from incompatible aid which could have had an influence on the outcome of the sales procedure.
- (50) The Commission took on 28 November 2001 a final decision on the question whether the management contract contains aid to GMH. In its decision it comes to the conclusion that the award of the management contract did not contain State aid to GMH. Insofar GMH did not benefit from State aid granted to Gröditzer by the award of the management contract.

5.3. Did GMH benefit from the incompatible aid granted to Gröditzer?

- (51) The Commission had further doubts whether GMH did or might benefit in the future from the illegal and incompatible aid granted to Gröditzer. The doubts related to the fact that neither the privatisation agreement nor the management contract was awarded to GMH following an open, transparent and unconditional procedure. Both agreements provided however that GMH could manage and integrate Gröditzer since 1997 into its group.
- (52) The United Kingdom Steel Association and the United Kingdom Permanent Representation supported this initial doubt of the Commission, stating that GMH benefited from the incompatible aid to Gröditzer as it was managing it since 1997.
- (53) In its comments Germany and GMH reiterate their position that Gröditzer was never integrated into the GMH group. They also indicated that GMH never obtained legal ownership or economic control. Moreover, Germany submitted an expert appraisal from which it appears that GMH did or would not benefit from the incompatible aid granted to Gröditzer in relation to its privatisation.
- (54) The Commission notes that, according to the submitted expert appraisal, all business transactions between

Gröditzer and GMH were conducted at 'arm length'. The scope of these transactions was with 2,6 % — 5,6 % of Gröditzers turnover and 3 % of its material costs rather insignificant.

- (55) The Commission also takes into account that investments at Gröditzer were mainly undertaken on basis of the investment plans of EREL and BMGB, both public predecessors of BvS. Both investment concepts were drafted before the privatisation agreement with GMH was concluded. It does not appear that they were undertaken for purposes, which are in GMH's rather than Gröditzers interest.
- (56) By also taking into account that no other direct or indirect transfer of liquid funds of Gröditzer to GMH took place the Commission considers that, on basis of the information provided by Germany, GMH does not benefit from the incompatible aid granted to Gröditzer in relation to its privatisation.

5.4. The recovery

- (57) On 19 October 2001 Germany submitted information on the recovery of the incompatible aid of DEM 239 million. It indicated again that the sales contract would only enter into force in case the 'buyer of the assets of Gröditzer is not, in respect of the Commission Decision 1999/720/EC, ECSC, responsible for liabilities of the seller or its legal predecessors resulting from the recovery of incompatible aid.' Germany requested therefore again a Commission position on the question whether GMH would be liable for the recovery claim of Gröditzer.
- (58) The Commission recalls that the question of who is recipient of the incompatible aid granted to Gröditzer Stahlwerke GmbH was laid down in the Commission Decision 1999/720/EC, ECSC. It was explicitly stated in that decision that the term 'recipient' comprises not only Gröditzer Stahlwerke GmbH but also any other undertaking to which assets have been transferred in such a way as to deprive the recovery of incompatible aid of effect.
- (59) As stated already in the opening decision, the Commission cannot take in the present case a final position on the question, whether Germany has taken all the measures to comply with Commission Decision 1999/720/EC, ECSC.
- (60) The Commission reiterates that it will cooperate with Germany on basis of Article 10 EC Treaty in view of the implementation of that decision.

6. CONCLUSION

Implementation of the measure is accordingly authorised.

- (61) The Commission finds that the measure described above does not constitute State aid in the meaning of Article 87(1) EC Treaty or Article 4(c) of the ECSC Treaty,

Article 2

This Decision is addressed to the Federal Republic of Germany.

HAS ADOPTED THIS DECISION:

Article 1

Done at Brussels, 20 December 2001.

The measure, which Germany is planning to implement in favour of Georgsmarienhütte Holding GmbH, does not constitute aid within the meaning of Article 87(1) of the EC Treaty or Article 4(c) of the ECSC Treaty.

For the Commission

Mario MONTI

Member of the Commission
