

Structure of presentation

Part I:

Recapitulation

- Basic framework of European rules on state aid
- Applying Art. 87
- Sources of law
- Notification duties

Part II:

State aid concerning small and medium-sized enterprises

Part III:

State aid concerning sensitive sectors

Article 87

1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.
2. The following shall be compatible with the common market:
 - (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
 - (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
 - (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.
3. The following may be considered to be compatible with the common market:
 - (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
 - (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
 - (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
 - (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest
 - (e) such other categories of aid as may be specified by a decision of the Council acting by a qualified majority on a proposal from the Commission.

Structure of Art. 87

- Substantive Law -

Paragraph (1):

Principle: State aid is “forbidden”

Basic idea: Fair, undistorted competition, no discrimination

Problem: How can state aid be defined?

Paragraph (2):

Principle: In some *exceptions* state aid may be granted

The commissions is *without discretion*

Categories: (a) Aid to consumers (with a social character)

(b) Natural disasters etc.

(c) ...

Paragraph (3):

Principle: In some *exceptions* state aid may be granted

The commission can exercise *discretionary power*

Categories: (a) Regional aid (“3A areas”):

- abnormally low living standards

- serious underemployment

(c) Regional aid (national “problem regions” – “3C areas”):

- development of certain economic areas or activities

- ...

(e) Categories as specified by Council decision

Defining State Aid (1)

Transfer of State resources:

- state resources
 - aid has to be financed out of State resources (according to the ECJ)
 - “state” to be understood in the broadest possible sense
 - including central government and all levels of regional and local government

- “in any form whatsoever”
 - the form, which the advantage takes as well as the objective which the State is pursuing are completely irrelevant
 - it is the effect that matters
 - directly or indirectly (via a private or public intermediate)

Economic advantage

- advantage that the undertaking would not have received in the normal course of business
- for examples see below

Defining State Aid (2)

Selectivity

- “favouring”
- affecting the balance between certain firms and their competitors
- has to be distinguished from “general measures” (measures applying across the board to all firms in all sectors of economic activity in a Member State)
- aids for certain regions are also selective

Potential effect on competition and trade:

- most important: “de minimis-rules”

“undertakings or the production of certain goods”

- includes production, services or distribution
- commercial, cultural or activities of other kind
- public enterprises and other activities are as well included

Examples (1)

Types of aid

Subsidies

Interest-free loans; Low-interest loans; Interest rate subsidies

Guarantees on preferential terms

Relief from taxes or parafiscal charges

Supply of goods or services on preferential terms

Capital injections on preferential terms

For example:

- paying less or getting more than market price
- free or cheap access to state services (infrastructure etc.)

Categorisation by purpose

Particular sectors (sectoral rules)

- Shipbuilding
- Steel
- Synthetic fibres
- Motor vehicles
- Coal and steel sectors
- Agriculture
- Other sectors

Examples (2)

Horizontal objectives

Cross-industry or “horizontal” rules set out the Commission’s position on particular categories of aid which are aimed at tackling problems which may arise in any industry and region.

- Research and Development
- Environment
- Small and medium-sized enterprises
- Trade
- Energy saving
- Other objectives (mainly rescue and restructuring)
- Aid for the rescue and restructuring of firms in difficulty
- Aid to employment
- Aid for undertakings in deprived urban areas
- Training aid

Regional objectives

- Regions falling under Article 87(3)a
- Regions falling under Article 87(3)c

Specifying the rules of State Aid

- Problem:** Art. 87 contains general clauses and discretionary powers (paragraph 3)
These have to be specified for practical use
- Commission's approach:** "Decision *practice*": Various documents, laying down rules for the application of Art. 87/88 ("guidelines", "public notices", "annexes", "communications", "guidance notes", "letters" ...)
- Role of the ECJ:** All documents issued by the Commission must be covered by (within) Art. 87, 88. This is controlled by the European Court of Justice. The ECJ lays down rules for the application of Art. 87, 88.
- Conclusion:** European state aid law was "developed" by an interaction of ECJ-judgements and the Commission's practise. Until recently, the only written law was – slightly simplified– Art. 87/88.
- Practical consequences:** High complexity of the current legal situation
Very dynamic, continuously changing legal situation
Necessity to carefully watch current changes (esp. new rules and judgements)
→ part II of this presentation

Procedure

- Prior notification for all other measures-

Art. 88 (3):

Content: **Principle of advance vetting**
 Necessity of *prior* notification
The commission decides (controlled by the ECJ),
 not the member state
Prohibition from putting plan into effect
 Otherwise *unlawful*, has to be *repaid*
 immediately (irrespective of Art. 87 (2), (3))
 The duty of notification has *direct effect*
 Only “exemption”: de minimis-aid

Reg. 994/98: **Group exemptions**

- designed for certain groups of horizontal aids
- ex-post supervision
- national measures for the control of state aid
 become possible (Reg. is *directly applicable*)
- allows the commission to concentrate on
 really crucial cases

Aid for small and medium-sized enterprises

Aid to SME is in principle caught by Art. 87

- Fall under Art. 87 (also trade between member state affected),
- possible exemption: micro-enterprises; de-minimis is applicable

Art. 87 (3) allows for exemptions, reaction of the commission:

- Community guidelines on State aid for small and medium-sized enterprises (OJ C 213, 23.7.1996, p. 4)
- Draft Commission Regulation on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (different versions and articles! – actual version on the net!)
- Commission recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises (OJ L 107, 30.4.1996, p. 4)
- *! general remarks !*: necessity to translate, actual version only in internet; the rest is very easy, everything is in there

Political background:

- - General Importance of SMEs
- Whereas the threshold of 500 employees is not truly selective, since it encompasses almost all enterprises (99.9 % of the 14 million enterprises) and almost three quarters of the European economy in terms of employment and turnover; (recommendation 1996)
- Creation of jobs
- Long tradition in supporting SMEs (tax, labour, competition, Bilanzen usw), “start-up”

However:

- not everything that is allowed, must be advisable:

Recommendation 1996: Whereas, given that a certain degree of *flexibility* must be permitted to the Member States, the EIB and the EIF to fix thresholds lower than the Community thresholds if they wish to direct their measures towards a specific category of SME, these thresholds represent *only maximum limits*

- *operating aid* (generalisieren – wichtiger Gedanke)

It must under no circumstances have the sole effect of continuously or periodically reducing the costs which the enterprise would normally have to bear, while otherwise leaving the status quo untouched, as in the case of operating aid

- *Necessity, in Community interest; Proportionality*

Aid must be necessary in order to achieve objectives which market forces alone would not secure.

The objectives pursued must be in the Community interest. Lastly, the aid must be proportionate to the handicaps which have to be overcome in order to secure the socio-economic benefits deemed to be desirable on grounds of the Community interest: the positive effect must outweigh the damaging effect which State aid has on competition and trade.

Excluded areas (naja):

- especially sensitive sectors (steel, coal, shipbuilding, synthetic fibres, motor industry, fisheries and transports ...)

Defining SME's

Background

Statistic, supranational organisation, statistic etc.

0; 1-9; 10-49; 50-249; 250-500; 500+ employees

Not always the case with international agreements (OECD; WTO)

Definition (cumulative criteria):

'SMEs' are defined as enterprises which:

- have fewer than 250 employees, and
- have either,
 - an annual turnover not exceeding ECU 40 million, or
 - an annual balance-sheet total not exceeding ECU 27 million,

'small enterprise' is defined as an enterprise which:

- has fewer than 50 employees and
- has either,
 - an annual turnover not exceeding ECU 7 million, or
 - an annual balance-sheet total not exceeding ECU 5 million,

,micro-enterprises'

- Where it is necessary to distinguish micro-enterprises from other SMEs, these are defined as enterprises having fewer than 10 employees. (recommendation 1996, Annex, Art. 1 (5))
- Often these enterprises do not affect trade between member states (e.g. when providing local service – Barbor-shop etc.)

Independence (for all forms)

Principle:

Independent enterprises are those which are not owned as to 25 % or more of the capital or the voting rights by one enterprise, or jointly by several enterprises, falling outside the definition of an SME or a small enterprise, whichever may apply.

Exemption:

- if the enterprise is held by *public investment corporations, venture capital companies or institutional investors*, provided no control is exercised either individually or jointly,
 - *Explanation* (according to commission recommendation 1996): Whereas stakes held by public investment corporations or venture capital companies *do not normally change the character of a firm* from that of an SME, and may therefore be disregarded; the same applies to stakes held by institutional investors, who usually maintain an *'arm's-length' relationship* with the company in which they have invested;)
- if the capital is spread in such a way that it is *not possible to determine by whom it is held* and if the enterprise declares that it can legitimately presume that it is not owned as to 25 % or more by one enterprise, or jointly by several enterprises, falling outside the definitions of an SME or a small enterprise, whichever may apply.

Relevant period (losing the status of SME)

Once an enterprises falls below the above mentioned thresholds at the final balance-sheet date this has to be repeated over two consecutive financial years (recommendation 1996, Art. 1 (6)) – “quite fair”

Definitions (Art. 2 of draft):

Categories of expenditures:

- material investment (land, buildings, plant/machinery) – tangible assets
- immaterial investment (expenditure entailed by technology transfer) – intangible assets
- soft aid (consultancy services, dissemination of knowledge)

investment in tangible assets:

Draft: "investment in tangible assets" shall mean an investment in *fixed assets* relating to the creation of a new establishment, the extension of an existing establishment, or the engagement in an activity involving a fundamental change in the product or production process of an existing establishment (in particular through *rationalisation, diversification or modernisation*). An investment in fixed assets undertaken in the form of the *take-over* of an establishment which has closed or which would have closed had it not been purchased is also to be regarded as tangible investment;

old definition:

See the definition laid down in the principles of co-ordination of regional aid systems OJ C 31, 3.2.1979, p.9

‘investment’ must be investment in fixed assets:

- ‘in the creation of a new establishment, the extension of an existing establishment or in engaging in an activity involving a fundamental change in the product or production process of an existing establishment (by means of rationalisation, restructuring or modernisation)’, or
- ‘by way of take-over of an establishment which has closed or which would have closed had such take-over not taken place.’

The intensity is to be calculated by reference to the eligible costs, namely the actual costs of land, buildings and plant. In the case of a take-over of an establishment the selling price of the assets should be looked at.

intangible investments

"investment in intangible assets" shall mean *investment in transfer of technology by acquiring patent rights, licences, know-how or unpatented technical knowledge;*

Idea behind: The Commission's White Paper on growth, competitiveness and employment stresses the important role which the *promotion of intangible investment* has to play in a general policy on competitiveness and recommends that the tests of the acceptability of aid to industry be reviewed in order to eliminate the bias in favour of tangible investment. The Commission's *sympathetic approach* to aid for R&D, training and consultancy should accordingly be broadened to include aid that is designed to encourage SMEs to use advanced technology which they would not have been able to develop themselves, by authorising limited assistance towards the transfer of technology to SMEs from research laboratories or from other firms. Again, *inequality in the information available* to licensors and licensees regarding new technology, and *other types of market imperfection* associated with technology transfers, along with the *irrecoverable character* of the costs of acquiring specific technology or know-how, may provide justification for public assistance towards spending of this kind by SMEs, while limiting the impact on competition.

"gross aid intensity"

"gross aid intensity" shall mean the aid amount expressed as a *percentage of the project's eligible costs*. All figures used shall be *before any deduction for direct taxation*. Where aid is awarded in a form other than a grant, the aid amount is the grant equivalent of the aid. Aid receivable in several instalments shall be discounted to its value at the moment of its granting. The interest rate to be used for discounting purposes and to calculate the aid amount in a soft loan shall be the reference rate applicable at the time of grant;

"net aid intensity"

"net aid intensity" shall mean the aid amount *net of tax* expressed as a percentage of the project's eligible costs;

"number of employees"

Draft: "number of employees" shall mean the number of annual labour units (ALU), i.e. the number of persons employed full time in one year, part-time and seasonal work being ALU fractions.

(recommd. 1996: Art. 1 (7): The number of persons employed corresponds to the number of annual working units (AWU), that is to say, the number of full-time workers employed during one year with part-time and seasonal workers being fractions of AWU. The reference year to be considered is that of the last approved accounting period.

Distinctions (according to objective of aid):

With regard to aid for SMEs, different categories of aid have to be distinguished:

Investment aid

(Investment in tangible and intangible assets inside or outside the community)

Exemption also from notification requirements

- outside areas qualifying for domestic regional aid (Art. 4 (2) of draft)

The gross aid intensity may not exceed

- (a) 15% in the case of small enterprises; or
- (b) 7.5% in the case of medium-sized enterprises.

- areas qualifying for regional aid (Art. 4 (3) of draft)

Aid intensity may not exceed the level of regional investment aid determined in the map approved by the Commission for each Member State by more than:

- (a) 10 percentage points gross in areas covered by Article 87(3)(c), provided the total net aid intensity does not exceed 30%; or
- (b) 15 percentage points gross in areas covered by Article 87(3)(a), provided the total net aid intensity does not exceed 65%.

Condition:

- The higher regional aid ceilings apply only if the aid is granted under the condition that the investment is maintained in the recipient region for at least five years and that the recipient's contribution to its financing is at least 25%.

- The aid ceiling will apply regardless of whether the aid is provided entirely from domestic sources or is part-financed by the Community from the Structural Funds, and more especially the European Regional Development Fund (ERDF).

- Art. 4 (4-6) of Draft: details of calculation

Aid to Consultancy and other services and activities (“soft aid”)

Exemption also from notification requirements

Art. 5 draft

(a) for services provided by *outside consultants* the gross aid does not exceed *50% of the costs of such services*. The services concerned *shall not be a continuous* or periodic activity nor relate to the enterprise’s usual operating expenditure, such as routine tax consultancy services, regular legal services, or advertising

(b) for *participation in fairs and exhibitions* the gross aid does not exceed *50% of the costs of renting, setting up and running the stand*. This exemption shall only apply to the *first participation* of an enterprise in a certain fair or exhibition.

Comment to Art. 5 of the draft

New, as compared to the SME guidelines, is the *express authorisation* of aid for the participation in *fairs and exhibitions*. This is *confirming past practice* of the Commission. The exemption only applies to the first participation in a certain event, in order to make sure that the aid is not just contributing to reduce the cost of periodic activities that the beneficiary would already engage in under market conditions.

Guidelines:

4.2.3. Consultancy services, training and dissemination of knowledge

Aid of up to 50 % gross will generally be allowed for consultancy services provided by outside consultants to new or established SMEs or for the training given to their staff in such fields as management, financial matters, new technology (especially information technology), pollution control, protection of intellectual property rights or the like, or for the purpose of assessing the feasibility of new ventures. But *each scheme will be judged on its merits*, with particular reference to the *distance of the activity from the market place*, any cost ceilings for individual firms, any possibilities of combination with other forms of aid, and other relevant factors. In certain exceptional circumstances, the Commission *may allow aid of more than 50 %*. *Assisted areas are one such case*. Aid for *general information campaigns* may also qualify for a higher intensity if the financial benefit to the individual firm is small.

It is important to specify that such measures do not cover:

- aid relating to investment liable to be entered on the assets side of the enterprise's balance sheet as intangible assets (costs of R&D, concessions, patents, licences, etc.) and dealt with at points 4.2.2 and 4.2.5, or
- continuous or periodic aid not acting as an incentive and relating to the enterprise's usual operating expenditure (routine tax consultancy services, regular legal services, advertising, etc.).

Summary

- general rule: 50% gross of investment
- higher where recipient is a small or medium-sized enterprise and where it is located in an area qualifying for regional aid

Large individual aid grants

(Art. 6 of the draft)

This Regulation shall not exempt an individual aid grant where either of the following two criteria are met:

(a) the total project cost is at least 50 million and the aid intensity is at least 50% of[^] the aid ceiling in the area concerned and aid per job created amounts to at least 40 000; or

(b) the total aid is at least 50 million.

	Non-assisted regions	Art. 87 (3) a)	Art. 87 (3) c)
Investment	7.5% for small 15% for medium-sized enterprises	Regional aid ceiling +15%	Regional aid ceiling + 15%
Soft aid	up to 50% (in exceptional cases even more)	50% and up	50% and up

Cumulation of aids:

Principle: Art. 8/7 of the draft

1. The aid ceilings fixed in Articles 3 and 4 shall apply *regardless* of whether the support for the aided project is financed entirely from State *resources* or *is partly financed by the Community*.
2. Aid exempted by this Regulation *shall not be cumulated* with other State aid within the meaning of Article 87(1) of the Treaty or other Community funding, if such cumulation would result in an aid intensity *exceeding that fixed by this Regulation*.

Repetition: SME and regional aid

Same rules for investment in tangible and intangible assets

SME and R&D

- see also community framework for state aid for R&D.
- this aid may be granted *up to 10 percentage points gross above* the rate ordinarily allowed in the case of large enterprises

SME and Environmental Aid

- see also guidelines on environmental aid
- maximum intensity *15%/30% gross of eligible costs*

Environment + SME + regional

- no, maximum intensities applying to regional aid apply *provided they are more favourable*

SME and aid for employment

- see the guidelines on aid to employment
- Commission is “*favourably disposed* towards aid to create new jobs in SMEs”

SME and aid for other purposes:

The majority of the aid schemes for SMEs which are notified to the Commission fall into the categories listed above. But the Commission *may be prepared to authorise aid towards other justified measures* designed to help SMEs, e.g. by encouraging co-operation between them, or towards measures to promote *culture and heritage conservation*, provided that they do not affect trading conditions and competition within the Community to an extent that is contrary to the common interest.

“Sensitive Sectors”

What are sensitive sectors, why special treatment?

Historically, fields with problems

The ECSC-Treaty (European Coal and Steel Community):

Historical background:

1952 ECSC, founded by Benelux, Italy, France and Germany (signed 1951)

1958 Euratom, EEC (European Economic Community)

- *Goals of the ECSC:* creation of a common market; economical expansion, job increases etc.; but also peace-keeping; war-making industries, common control, much more than economic objectives
- The ECSC is *running out soon* (July 22nd 2002), but this will not change so much

Relation to the EC-treaty:

EU-treaty (Maastricht): - now there are four treaties

Three pillars:

- Common Foreign and Security Policy
- Co-operation in the field of Justice and Home Affairs
- the three treaties

The commission has *competence* for all three treaties (“high authority”)

Connections: various interdependencies, e.g. if markets are related to each other, or undertakings operate on different markets (ECSC and non-ECSC).

Provisions of the ECSC Treaty

Article 4

The following are recognised as incompatible with the common market for coal and steel and shall accordingly be abolished and prohibited within the Community, as provided in this Treaty:

- (a) import and export duties, or charges having equivalent effect, and quantitative restrictions on the movement of products;
- (b) measures or practices which discriminate between producers, between purchasers or between consumers, especially in prices and delivery terms or transport rates and conditions, and measures or practices which interfere with the purchaser's free choice of supplier;
- (c) *subsidies or aid granted by States, or special charges imposed by States, in any form whatsoever;* (in principle forbidden, less exemptions)
- (d) restrictive practices which tend towards the sharing or exploiting of markets.

Article 54

The High Authority may facilitate the carrying out of investment programmes by granting loans to undertakings or by guaranteeing other loans which they may contract.

With the unanimous assent of the Council, the High Authority may, by the same means, assist the financing of works and installations which contribute directly and primarily to increasing the production, reducing the production costs of facilitating the marketing of products within its jurisdiction.

In order to encourage co-ordinated development of investment, the High Authority may, in accordance with Article 47, require undertakings to inform it of individual programmes in advance, either by a special request addressed to the undertaking concerned or by a decision stating what kind and scale of programme must be communicated.

The High Authority may, after giving the parties concerned full opportunity to submit their comments, deliver a reasoned opinion on such programmes within the framework of the general objectives provided for in Article 46. If application is made by the undertaking concerned, the High Authority must deliver a reasoned opinion. The High Authority shall notify the opinion to the undertaking concerned and shall bring the opinion to the attention of its government. Lists of such opinions shall be published.

If the High Authority finds that the financing of a programme or the operation of the installations therein planned would involve subsidies, aid, protection or discrimination contrary to this Treaty, the adverse opinion delivered by it on these grounds shall have the force of a decision within the meaning of Article 14 and the effect of prohibiting the undertaking concerned from drawing on resources other than its own funds to carry out the programme.

The High Authority may impose on undertakings which disregard the prohibition referred to in the preceding paragraph, fines not exceeding the amounts improperly devoted to carrying out the programme in question.

Article 95

In all cases not provided for in this Treaty where it becomes apparent that a decision or recommendation of the High Authority is necessary to attain, within the common market in coal and steel and in accordance with Article 5, one of the objectives of the Community set out in Articles 2, 3 and 4, the decision may be taken, or the recommendation made with the unanimous assent of the Council and after the Consultative Committee has been consulted.

Any decision so taken or recommendation so made shall determine what penalties, if any, may be imposed.

If, after the end of the transitional period provided in the Convention on the Transitional Provisions, unforeseen difficulties emerging in the light of experience in the application of this Treaty, or fundamental economic or technical changes directly affecting the common market in coal and steel, make it necessary to adapt the rules for the High Authority's exercise of its powers, appropriate amendments may be made; they must not, however, conflict with the provisions of Articles 2, 3 and 4 or interfere with the relationship between the powers of the High Authority and those of the other institutions of the Community.

The amendments shall be proposed jointly by the High Authority and the Council, acting by an eight-ninths majority of its members, and shall be submitted to the Court for its opinion. In considering them, the Court shall have full power to assess all points of fact and of law. If as a result of such consideration it finds the proposals compatible with the provisions of the preceding paragraph, they shall be forwarded to the Assembly and shall enter into force if approved by a majority of three-quarters of the votes cast and two-thirds of the members of the Assembly.

Steel

Although the Community iron and steel market has been improving since 1987, the *long and serious crisis* it experienced from the 1970s onwards, the chief features of which were a *constant fall-off in demand* and the *collapse of prices*, produced grave problems of *over-capacity*, *low plant utilisation rates* and prices which did not cover production costs. Firms were no longer viable.

→ very typical

Relevant document laying down principles:

- COMMISSION DECISION No 2496/96/ECSC OF 18 DECEMBER 1996 establishing Community rules for State aid to the steel industry
- to be translated

Basic ideas:

- To ensure fair competition
- Aim is firstly not to deprive the steel industry of aid for *research and development* and for *environmental protection*. The rules also authorise social aid to encourage the *partial closure of plants* or *finance the definitive cessation* of all ECSC activities
- same principles as Art. 87 only *fewer exemptions*
 - in the form of acquisitions of shareholdings or provisions of capital or similar financing, must be subject to the same procedures as aid

R&D; environmental protection:

- the compability of the aid with the common market should be assessed *in the light of the existing Community framework* for State aid for research and development and the Community guidelines on State aid for environmental protection – see Art. 2 (r&d) and Art. 3 (environmental protection) of the decision
- Environmental protection:
 - *Adaption to new mandatory standards:* in interpreting the guidelines above the following has to be taken into account:
 - additional aid intensity only for SMEs, not on regional grounds (compare Art. 3 (2) (A) of these guidelines)
 - in case of *replacement of existing plant* or equipment the costs will be analysed by independent experts, and the Commission will analyse the economic and environmental background
 - *Significant improvements* on mandatory standards
 - *allows for higher aid* for investments that lead to a protection of the environment significantly exceeding the minimum standards.
 - that a lower-cost solution existed which would meet the new environmental standards. In any event, the higher aid level will only apply to the additional environmental protection achieved.
- Furthermore, it opens some limited possibilities for *operating aid*, in particular for relief from environmental taxes in cases where it is necessary to prevent firms from being placed at a *disadvantage compared with their competitors in countries that do not have such measures*.
not unproblematic!

Cessation of capacities, closures:

- *Principle:* Where an undertaking ceases all ECSC activity, aid for closure may be paid without restriction as to the nature of its steel production
- *early retirement of workers:* , Art. 4 (1) of decision; provided that the payments actually arise from the partial or total closure of steel plants that have been in regular production (Art. 4 (1) (a))
- *aid for undertakings permanently ceasing production* of iron and steel products (Art.4 (2) of decision) provided that
 - among others:
 - became legal entity before Jan 1 1996
 - have been regularly producing ECSC-goods
 - not have reorganised their production of plant structure since Jan. 1 1996
 - they close and destroy the installations used for the production of ECSC iron and steel products within six months after the cessation of production or six months after the approval of the aid by the Commission, whichever is the later;
 - Amount is limited in Art. 4 (2) of decision
- “*Conglomerates*” (Art. 4 (3)) of decision
 - Idea: this decision should also allow closure aid for *companies that belong to a group with other steel firms*, provided that it is effectively separated and that the group does not increase its remaining capacity throughout a period of five years. – Conditions:
 - effectively and legally separated from the corporate structure at least six months before the payment of the aid;

- the accounts of the undertaking to be closed have been independently certified to be a true and accurate account of the assets and liabilities
- amount is limited again

Art. 6 contains detailed rules on the whole procedure (notification etc.)

Steel sectors not covered by the ECSC-Treaty

- There are no specific Community rules on aid to *non-ECSC steel sectors*; aid may be granted on the basis of Articles 92 and 93 of the EC Treaty under general, specific or regional aid schemes.
- In addition to the particularly sensitive nature of competition in the non-ECSC steel sectors, the Commission considers that *these sectors represent a risk to its ECSC steel aid policy*, inasmuch as aid awarded to subsidiaries of steel groups for non-ECSC activities could ultimately benefit ECSC activities.

The examination of the inherent sensitivity and degree of risk was based on *four main parameters*:

- (i) *Degree of integration* of each sector with ECSC activities: only where there is a significant degree of integration is there a risk that aid will be transferred from one sector to another. Only seamless tubes, large welded pipes ($\text{Ø} > 406.4 \text{ mm}$) and heavy open-die forging, followed by wire-drawing, are extensively technically integrated with ECSC steel activities.
- (ii) *Financial and economic position of the sector*: in theory, the ailing sectors are more likely to benefit from substantial aid. Tubes, heavy open-die forging, mild steel drawing and foundries are experiencing problems of

over-capacity and are therefore in serious economic and financial difficulties.

- (iii) *Structure of the sector*: sectors where there is a strong concentration of activities in a few major groups merit closer attention than those with a more fragmented structure where firms respond more flexibly to situations of surplus capacity. Only pipes and tubes, heavy open-die forging and mild steel wire-drawing are in the first category, while the dominant feature of the others is their fragmentation.
- (iv) *Degree of economic activity* in relation to ECSC steel: the volume of steel consumption is one of the parameters used to assess the economic size of a sector in relation to the non-ECSC steel industry as a whole. According to that parameter, only tube firms with 43 % consumption, and wire and rod drawing with 22 %, are of any significant size.

In short, therefore, the analysis shows that among the *most sensitive subsectors*:

- (a) seamless tubes and large welded tubes and pipes ($\text{Ø} > 406.4 \text{ mm}$) run a major risk of benefiting from considerable aid and possibly of allowing such aid to be transferred to ECSC steel activities;
- (b) small and medium-sized welded tubes, heavy open-die forging, mild steel wire-drawing and foundries run a smaller risk;
- (c) the other subsectors do not at present appear to be facing any great risk.

Synthetic fibres

What is synthetic fibres?

In terms of generic types of fibres and yarns, their polymeric basis and their end-uses, the measures apply to all generic types of staple fibre and filament yarn based on *polyester, polyamide, acrylic or polypropylene*, irrespective of the products' end-uses.

Background:

Recognition of the *low average rate of capacity utilisation* for the production of synthetic fibres and yarns, the consequent *job losses* and the risk that further aid would exacerbate the situation and *distort competition*, in terms of competition in the internal market *except where there is a structural shortage of supply* of the relevant product.

History: 1977: measures, “*code on aid to the synthetic industry*”

- The Commission has decided that it should continue to exercise control through the introduction of *new industry-specific measures* rather than by a further extension of the period of validity of the current code.
- The *objective* of these *new measures* is *to prevent the distortion of competition* in the internal market with regard to the synthetic fibres industry,

Scope (nichts neues):

The measures apply, *irrespective of the size of the prospective beneficiary*, to all categories of aid, except aid for *vocational training/retraining* awarded under *schemes* that have been *authorised by the Commission* or aid awarded under schemes that have been authorised by the Commission and falling within the scope of either the Community guidelines on State aid for *environmental protection* or the Community framework for State aid for *research and development* .

Notification:

In *addition* to the information normally supplied when a proposal to award aid is notified to the Commission, Member States are asked to supply the following information:

- current *capacity*, capacity in each of the previous three years and the capacity it would have after undertaking the investments
- a *statement of the purpose* of the investments
- a *statement* as to whether or not the *machinery could be adapted to produce different generic types of products* with the same polymeric basis, or products based on different polymers,

Relation to SME-aid:

However, in line with the Community guidelines on State aid for small and medium-sized enterprises (SMEs), *SMEs* will be able to receive aid at a *higher intensity than larger firms*. The measures also provide for SMEs to receive aid at an *even higher rate* if it would support the production of an *innovative product*.

Specific criteria with regard to synthetic fibres (three stages-approach):

- The *fundamental consideration* is the *effect* of that aid on the markets for the relevant products, namely the fibre/yarn whose production would be supported by the aid. Average capacity utilisation rates in many sectors remain unsatisfactory and the effect of State aid in support of production will *generally be negative in terms of competition*.
- The Commission will seek *specialist advice* and data where necessary
- The implementation of investments supported by authorised aid totalling \geq ECU 50 million will be subject to *ex-post monitoring* to demonstrate that the conditions of authorisation have been respected.

Stage1: *state of the markets* for the relevant products

In determining the state of the market for each of the relevant products — that is the structural balance between supply and demand — the Commission will consider the evidence e.g. under the aspects of (list is not exhaustive):

- the *average capacity utilisation rate* for production of the fibre or yarn, averaged on an annual basis over the previous two years, which would be expected to be $\geq 90\%$ if there were a *structural shortage of supply*,
- the *level of imports* of the fibre or yarn into the EEA, capacity and consumption volumes within the EEA, exports and prices and sales margins in the current year,
- for the prospective beneficiary (and/or, if appropriate, the group to which it belongs) its *share of the market* for the fibre or yarn in the current year and in each of the previous three years.

Stage 2: *effect* the aid would have *on the relevant capacity*

The relevant capacity is the total viable capacity of the prospective beneficiary (and/or, if appropriate, the group to which it belongs)

Stage 3: depending on the outcome of the first two stages and the size of the company, the *innovative character of the relevant products*.

Nature and structure and forecast development of the market for the specific product, the *ease* with which the equipment concerned *could be adapted to produce standard or less significantly innovative products* and the cost of such adaptation, and whether the product was *distinctly and significantly different* from any other product or simply the result of product diversification through only marginal variation in the technical characteristics of an existing product.

Criteria with regard to size of undertaking:

Larger firms (no SMEs):

- Up to 50% of the “applicable aid ceiling” if:
 - the aid would result in a *significant reduction* in the relevant capacity, *or*
 - the market for the relevant products was characterised by a *structural shortage of supply* and the aid would not result in a significant increase in the relevant capacity;

SMEs:

- up to 75 % of the applicable aid ceiling if the market for the relevant products was characterised by a *structural shortage of supply* and the aid would not result in a significant increase in the relevant capacity;
- up to 100% of the applicable aid ceiling:
 - if the aid would result in a *significant reduction in the relevant capacity*, *or*
 - if the market for the relevant products was characterised by a structural shortage of supply and the aid would not result in a significant increase in the relevant capacity *and the relevant products were innovative*.

“Applicable aid ceiling”

- in case of regional aid under schemes authorized by the Commission the applicable aid ceiling is *that for the scheme in question*
- For proposals to award regional investment aid outside the scope of authorised schemes, and which do not come within the scope of the Community guidelines on State aid for rescuing and restructuring firms in difficulty the applicable aid ceiling is *that for the region concerned*.

„Significant change in capacity“

Consideration will include (list is not exhaustive):

- for the prospective beneficiary its *current capacity*; its *share of the market* for each of the relevant products; its *size* — that is, whether it is an SME or a larger firm and its viability;
- the *average capacity utilisation rate* for production of each of the relevant products,
- the *expected effect* of the aid on the region concerned in terms of the *structural handicaps of that region*.

Ship Industry

Background:

- Whereas a satisfactory *balance* between supply and demand in *world shipbuilding* has still not been fully established, so that *prices remain depressed*; whereas the *competitive pressures* on Community shipbuilders are expected to grow further as overall ship *demand* after the year 2000 is *predicted to fall* and available world *shipbuilding capacity* is *expected to continue to rise*;
- Whereas, although Community yards have made progress in improving competitiveness, the rate at which they are improving *productivity needs to be increased* in order to close the gap with their international competitors, particularly in *Japan and Korea*;
- Whereas a *complete abolition of aid* to the sector is *not yet possible* in view of the difficult market situation and the need to encourage yards to make the necessary changes to improve competitiveness;

OECD-agreement

- not yet in force (US failed to ratify) – thus Reg. designed for implementation not yet in force

Relevant regulation

COUNCIL REGULATION (EC) No 1540/98 OF 29 JUNE 1998 establishing new rules on aid to shipbuilding

Former war in Yugoslavia – case of Art. 87 (1) (c)?

Transportation on Danube river was stopped due to the war in former Yugoslavia. The shipyards were in difficulties – this might be an example for this provision

Operating aid

Whereas operating aid will therefore *end on 31 December 2000*;

Art. 3: *Until 31 December 2000*, production aid in support of contracts for shipbuilding and ship conversion, but not ship repair, may be considered *compatible* with the common market *provided that ...*

Closure aid (Art. 4)

Aid to defray the normal costs resulting from the *total or partial closure* of shipbuilding, ship repair or ship conversion yards may be considered compatible with the common market provided that the *resulting capacity reduction is of a genuine and irreversible nature*. Allowed::

- *payments to workers* made redundant or retired before legal retirement age,
- the costs of *counselling services to workers* made or to be made redundant or retired before legal retirement age,
- payments to workers for *vocational retraining*,
- *redevelopment of the yard(s)*, its buildings, installations and infrastructure

In addition, in the case of undertakings which *totally cease* shipbuilding, ship repair or ship conversion, further aid specified ...

In order to establish the irreversible nature of aided closures, the Member State concerned *shall ensure that the closed* shipbuilding, ship repair and ship conversion *facilities remain closed* for a period of *not less than ten years*.

Restructuring aid (Art. 5)

May exceptionally be considered compatible with the common market provided that it complies with the Community *guidelines on State aid for rescuing and restructuring firms* in difficulty

Additional specific conditions:

- *one-off* operation
- genuine and *irreversible* reduction
- must remain closed *for at least 10 years*
- re-used for *alternative purposes* only if *independent* of the shipyard in question

Innovation (Art. 6)

Principle: Up to a maximum aid intensity of 10 % *gross*, provided that it relates to the industrial application of *innovative products and processes* that are *genuinely and substantially new*, i.e. are not currently used commercially by other operators in the sector within the Community, and which *carry a risk of technological or industrial failure*, subject to the following *conditions*:

- the aid is limited to supporting expenditure on investments and engineering activities directly and *exclusively related to the innovative part* of the project,
- the amount and intensity of the aid is limited to the *minimum necessary* taking account of the degree of risk associated with the project.

Regional investment aid (Art. 7)

Aid granted for investment in *upgrading or modernising existing yards*, not linked to a financial restructuring of the yard(s) concerned, with the objective of *improving the productivity* of existing installations, may be deemed compatible with the common market provided that:

- in *regions* meeting the criteria for the option contained in *Article 92(3)(a)* of the Treaty and complying with the map approved by the Commission for

each Member State for the grant of regional aid, the intensity of the aid does not exceed 22.5 %,

- in *regions* meeting the criteria for the option contained in *Article 92(3)(c)* of the Treaty and complying with the map approved by the Commission for each Member State for the grant of regional aid, the intensity of the aid does not exceed 12.5 % or the *applicable regional aid ceiling, whichever is the lower*,
- the aid is limited to support eligible expenditure as defined in the applicable Community guidelines on regional aid.

R&D (Art. 8)

Aid granted to defray expenditure by shipbuilding, ship repair or ship conversion undertakings on *research and development projects* may be considered compatible with the common market if it is in compliance with the rules laid down in the *Community framework for State aid for research and development*, or any successor arrangements.

Environmental protection (Art. 9)

Aid granted to defray expenditure by shipbuilding, ship repair or ship conversion undertakings for environmental protection may be considered compatible with the common market if it is *in compliance with the rules laid down in the Community guidelines on State aid for environmental protection*, or any successor arrangements.

Motor industry

Background:

- The motor vehicle industry is of *great importance* to the Community's economy. Experts reckon that as many as *10 jobs depend on each job in that industry*; it employs, directly and indirectly, *nearly 10 % of the active population*. Furthermore, the industry is experiencing *faster globalisation* of its markets.
- *Production capacity utilisation rate* has been below 80 % since 1993 among most of the major European manufacturers.
- Problem is getting lesser, industry is in good shape, less reasons for aid; *situation has changed, to be born in mind*
- Connection with *competition law – group exemptions*

Notification

- Aid under approved scheme (Art. 2..2)
Even then to be notified when nominal amount exceeds 50 Mio ECU or total gross aid for the project: 5 mio ECU
- Ad hoc aid (outside a scheme)
 - must be notified in advance
- Rescue and restructuring
 - must be notified in advance

Assessment of aid

The assessment of aid must take account of *general economic and industrial factors, sectoral considerations* and *regional, environmental and social factors*.

The Commission's aim continues to be to make sure that motor vehicle manufacturers in the Community *operate in a climate of fair competition*.

Thus the *criteria* which the Commission uses to assess aid *vary* according to the objectives of the aid in question.

It checks, however, that in every instance the aid granted is *both proportional* to the gravity of the problems to be resolved and is *necessary for the realisation* of the project. *Both tests*, proportionality and necessity, *must be satisfied*.

Aid for modernisation and rationalisation (no!)

If an undertaking competing on an international market is *unable to finance its own modernisation and restructuring*, its ability to compete and its viability will eventually disappear. *No aid* for modernisation or rationalisation *may therefore be granted* to undertakings in the motor vehicle industry.

Operating aid

No new operating aid will therefore be authorised by the Commission, even in assisted areas.

Rescue and restructuring:

Rescue and restructuring aid is assessed under the *Community guidelines* on State aid for rescuing and restructuring firms in difficulty; has in principle to be a *one-off-operation*

! As structural over-capacity in the motor vehicle industry is set to continue until the end of the decade, the *Commission will prohibit State aid which is aimed at a net increase in production capacity*. In addition, the *Commission will usually require a reduction in installed capacity*.

Regional Aid

The motor vehicle industry *may benefit* from regional aid to assist new plants and the extension of existing ones in the assisted areas of the Community, thus making a valuable contribution to regional development

Look for notes

- necessity
- eligibility of costs
- proportionality
- analysis of effects on industry and competition
- intensity

R&D

- Aid for R&D will be assessed under the *Community framework* for State aid for research and development
- ! The Commission carries out a *thorough analysis of the breakdown of costs* between the different categories of R&D; investors *must clearly distinguish industrial research and genuine pre-competitive* development from the introduction of new technology in the form of productive investment or competitive development.

Investment aid for innovation

- Investment aid for innovation will therefore be *authorised only in duly justified* cases, as an incentive to *industrial or technological risk-taking*.
- The *maximum intensity* of such aid is set at *10 % of all eligible costs*, corresponding to engineering activities and investments of direct and exclusive relevance to the innovative part of the project.
- An innovative project *must concern only one plant location* within the same group in the motor vehicle industry; no aid will be granted for parts of the project carried out in other branches of a group.

Aid for environmental protection and energy saving

- Aid to combat pollution in general, that is aid granted under the *Community guidelines* on State aid for environmental protection, may be regarded as compatible.
- It should be noted that those guidelines *involve complex technical evaluations* of such things as the 'ecological' costs incurred by the investor. Moreover, when it assesses the compatibility of aid, the Commission makes a *thorough study of the cost savings on energy, raw materials and so on* which the investor has secured as a result of the environmental protection component in the project.

Aid to vocational training

The Commission will soon adopt a Community framework for training aid which will also apply to the motor vehicle industry.