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Europeiska kommissionen

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([1]) Text av betydelse för EES

II

(Meddelanden)

MEDDELANDEN FRÅN EUROPEISKA UNIONENS INSTITUTIONER, BYRÅER OCH ORGAN

EUROPEISKA KOMMISSIONEN

Beslut om att inte göra invändningar mot en anmäld koncentration

(Ärende COMP/M.6298 – Schneider Electric/Telvent)

(Text av betydelse för EES)

(2011/C 245/01)

Kommissionen beslutade den 9 augusti 2011 att inte göra invändningar mot den anmälda koncentrationen ovan och att förklara den förenlig med den gemensamma marknaden. Beslutet grundar sig på artikel 6.1 b i rådets förordning (EG) nr 139/2004. Beslutet i sin helhet finns bara på engelska och kommer att offentliggöras efter det att eventuella affärshemligheter har tagits bort. Det kommer att finnas tillgängligt

— under rubriken koncentrationer på kommissionens webbplats för konkurrens (http://ec.europa.eu/competition/mergers/cases/). Denna webbplats gör det möjligt att hitta enskilda beslut i koncentrationsärenden, även uppgifter om företag, ärendenummer, datum och sektorer,

— i elektronisk form på webbplatsen EUR-Lex (http://eur-lex.europa.eu/sv/index.htm) under dokumentnummer 32011M6298. EUR-Lex ger tillgång till gemenskapslagstiftningen via Internet.

IV

(Upplysningar)

UPPLYSNINGAR FRÅN EUROPEISKA UNIONENS INSTITUTIONER, BYRÅER OCH ORGAN

RÅDET

Meddelande till de personer och enheter som berörs av de restriktiva åtgärder som föreskrivs i rådets beslut 2011/273/Gusp och som genomförs genom rådets genomförandebeslut 2011/515/Gusp och i rådets förordning (EU) nr 442/2011 som genomförs genom rådets genomförandeförordning (EU) nr 843/2011 om restriktiva åtgärder mot Syrien

(2011/C 245/02)

EUROPEISKA UNIONENS RÅD

Följande information lämnas för kännedom till de personer och enheter som förtecknas i bilagan till rådets beslut 2011/273/Gusp, som genomförs genom rådets genomförandebeslut 2011/515/Gusp [1], och bilaga II till rådets förordning (EU) nr 442/2011, som genomförs genom rådets genomförandeförordning (EU) nr 843/2011 [2] om restriktiva åtgärder mot Syrien.

Europeiska unionens råd har beslutat att de personer och enheter som förtecknas i ovannämnda bilagor ska föras upp på förteckningen över de personer och enheter som omfattas av de restriktiva åtgärderna enligt beslut 2011/273/Gusp och enligt förordning (EU) nr 442/2011 om restriktiva åtgärder mot Syrien. Skälen för att föra upp dessa personer och enheter på förteckningen återfinns i relevanta avsnitt i bilagorna.

De berörda personerna och enheterna uppmärksammas på möjligheten att vända sig till de behöriga myndigheterna i medlemsstaten/medlemsstaterna i fråga på de webbplatser som anges i bilaga III till förordning (EU) nr 442/2011 med en ansökan om tillstånd att få använda frysta penningmedel för grundläggande behov eller särskilda betalningar (jfr artikel 6 i förordningen).

De berörda personerna och enheterna får till rådet inkomma med en begäran, åtföljd av styrkande handlingar, om omprövning av beslutet att föra upp dem på den ovannämnda förteckningen. Ansökan ska sändas till:

Europeiska unionens råd
Generalsekretariatet
GD K Coordination
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË

Berörda personer och enheter uppmärksammas också på möjligheten att väcka talan mot rådets beslut vid Europeiska unionens tribunal i enlighet med villkoren i artiklarna 275 andra stycket och 263 fjärde och sjätte stycket i fördraget om Europeiska unionens funktionssätt.

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[1] EUT L 218, 24.8.2011.
[2] EUT L 218, 24.8.2011, s. 1.

EUROPEISKA KOMMISSIONEN

Eurons växelkurs [1]

23 augusti 2011

(2011/C 245/03)

1 euro =

	Valuta	Kurs		Valuta	Kurs
USD	US-dollar	1,4462	AUD	australisk dollar	1,3771
JPY	japansk yen	110,72	CAD	kanadensisk dollar	1,4260
DKK	dansk krona	7,4498	HKD	Hongkongdollar	11,2766
GBP	pund sterling	0,87600	NZD	nyzeeländsk dollar	1,7360
SEK	svensk krona	9,1046	SGD	singaporiansk dollar	1,7414
CHF	schweizisk franc	1,1410	KRW	sydkoreansk won	1 558,38
ISK	isländsk krona		ZAR	sydafrikansk rand	10,3816
NOK	norsk krona	7,8080	CNY	kinesisk yuan renminbi	9,2513
BGN	bulgarisk lev	1,9558	HRK	kroatisk kuna	7,4740
CZK	tjeckisk koruna	24,417	IDR	indonesisk rupiah	12 355,53
HUF	ungersk forint	271,78	MYR	malaysisk ringgit	4,2894
LTL	litauisk litas	3,4528	PHP	filippinsk peso	61,206
LVL	lettisk lats	0,7095	RUB	rysk rubel	41,8255
PLN	polsk zloty	4,1499	THB	thailändsk baht	43,140
RON	rumänsk leu	4,2574	BRL	brasiliansk real	2,3111
TRY	turkisk lira	2,5783	MXN	mexikansk peso	17,7768
			INR	indisk rupie	65,9830

[1] *Källa*: Referensväxelkurs offentliggjord av Europeiska centralbanken.

UPPLYSNINGAR FRÅN MEDLEMSSTATERNA

Uppgifter från medlemsstaterna om stängning av fiske

(2011/C 245/04)

I enlighet med artikel 35.3 i rådets förordning (EG) nr 1224/2009 av den 20 november 2009 om införande av ett kontrollsystem i gemenskapen för att säkerställa att bestämmelserna i den gemensamma fiskeripolitiken efterlevs ([1]), har ett beslut fattats om att stänga det fiske som avses i följande tabell:

Datum och tidpunkt för stängning	18.7.2011
Varaktighet	18.7.2011–31.12.2011
Medlemsstat	Nederländerna
Bestånd eller grupp av bestånd	HKE/571214
Art	Kummel (*Merluccius merluccius*)
Område	VI och VII; EU-vatten och internationella vatten i Vb; internationella vatten i XII och XIV
Typ av fiskefartyg	—
Referensnummer	—

Länk till medlemsstatens beslut:

http://ec.europa.eu/fisheries/cfp/fishing_rules/tacs/index_en.htm

([1]) EUT L 343, 22.12.2009, s. 1.

Uppgifter från medlemsstaterna om stängning av fiske

(2011/C 245/05)

I enlighet med artikel 35.3 i rådets förordning (EG) nr 1224/2009 av den 20 november 2009 om införande av ett kontrollsystem i gemenskapen för att säkerställa att bestämmelserna i den gemensamma fiskeripolitiken efterlevs ([1]), har ett beslut fattats om att stänga det fiske som avses i följande tabell:

Datum och tidpunkt för stängning	18.7.2011
Varaktighet	18.7.2011–31.12.2011
Medlemsstat	Nederländerna
Bestånd eller grupp av bestånd	HKE/2AC4-C
Art	Kummel (*Merluccius merluccius*)
Område	EU-vatten i IIa och IV
Typ av fiskefartyg	—
Referensnummer	—

Länk till medlemsstatens beslut:

http://ec.europa.eu/fisheries/cfp/fishing_rules/tacs/index_en.htm

([1]) EUT L 343, 22.12.2009, s. 1.

Uppgifter från medlemsstaterna om stängning av fiske

(2011/C 245/06)

I enlighet med artikel 35.3 i rådets förordning (EG) nr 1224/2009 av den 20 november 2009 om införande av ett kontrollsystem i gemenskapen för att säkerställa att bestämmelserna i den gemensamma fiskeripolitiken efterlevs [1], har ett beslut fattats om att stänga det fiske som avses i följande tabell:

Datum och tidpunkt för stängning	9.7.2011
Varaktighet	9.7.2011–31.12.2011
Medlemsstat	Frankrike
Bestånd eller grupp av bestånd	COD/5BE6A
Art	Torsk (*Gadus morhua*)
Område	VIa, EU-vatten och internationella vatten i Vb öster om 12°00′ V
Typ av fiskefartyg	—
Referensnummer	792761

Länk till medlemsstatens beslut:

http://ec.europa.eu/fisheries/cfp/fishing_rules/tacs/index_en.htm

[1] EUT L 343, 22.12.2009, s. 1

Uppgifter från medlemsstaterna om stängning av fiske

(2011/C 245/07)

I enlighet med artikel 35.3 i rådets förordning (EG) nr 1224/2009 av den 20 november 2009 om införande av ett kontrollsystem i gemenskapen för att säkerställa att bestämmelserna i den gemensamma fiskeripolitiken efterlevs ([1]), har ett beslut fattats om att stänga det fiske som avses i följande tabell:

Datum och tidpunkt för stängning	2.8.2011
Varaktighet	2.8.2011–31.12.2011
Medlemsstat	Portugal
Bestånd eller grupp av bestånd	WHB/8C3411
Art	Blåvitling (*Micromesistius poutassou*)
Område	VIIIc, IX och X; EU-vatten i Cecaf 34.1.1
Typ av fiskefartyg	—
Referensnummer	—

Länk till medlemsstatens beslut:

http://ec.europa.eu/fisheries/cfp/fishing_rules/tacs/index_en.htm

([1]) EUT L 343, 22.12.2009, s. 1

V

(Yttranden)

ADMINISTRATIVA FÖRFARANDEN

EUROPEISKA KOMMISSIONEN

Inbjudan att lämna förslag – Espon 2013

(2011/C 245/08)

Espon är EU:s nätverk av observationsorgan för europeisk regional utveckling och sammanhållning. Det stöder utveckling av politiska åtgärder som rör EU:s sammanhållningspolitik. Espon samfinansieras av Europeiska regionala utvecklingsfonden (Eruf) enligt mål 3 för det europeiska territoriella samarbetet och av 31 länder (de 27 EU-medlemsstaterna samt Island, Liechtenstein, Norge och Schweiz).

Inom ramen för programmet Espon 2013 inleds nu en ny förslagsomgång. Möjliga stödmottagare är offentliga och privata organ från 31 länder (EU:s 27 medlemsstater, Island, Liechtenstein, Norge och Schweiz). Förslagsomgången riktar sig till forskare och forskningsinstitut, högskolor, experter och forskarlag. Inbjudan att lämna förslag om nätverkssamarbete över gränserna inom Espon-nätverket är förbehållet de institutioner som bekräftats som nationella Espon-kontaktpunkter.

1. Inbjudan att lämna projektförslag inom tillämpad forskning:

— Europeiska grannskapsregioner (budget 750 000 EUR)

— Små och medelstora städer i sitt funktionella regionala sammanhang (budget 650 000 EUR)

— Den regionala dimensionen av fattigdom och social utestängning i Europa (budget 750 000 EUR)

— Ekonomiska kriser: Robusta regioner (budget 759 153 EUR)

2. Inbjudan att lämna förslag om målinriktade analyser på grundval av intresseanmälan från berörda parter:

— Tillväxtcentrum i sydöstra Europa (budget 360 000 EUR)

— Nyckelindikatorer för regional sammanhållning och fysisk planering (budget 360 000 EUR)

— Levande landskap för en hållbar regional utveckling (budget 379 796,09 EUR)

— Landskapspolitik för 3-ländersparken (budget 360 000 EUR)

— Nordsjön – Att sprida gränsöverskridande resultat (budget 340 000 EUR)

Ovanstående teman för de målinriktade analyserna gäller förutsatt att ett avtal undertecknas med de parter som står bakom projektidéerna. Temana bekräftas därför först i samband med att förslagsomgången inleds den 24 augusti 2011. Gällande teman publiceras sedan på Espons webbplats: http://www.espon.eu

3. Inbjudan att lämna förslag inom Espons vetenskapliga plattform:

   — EU:s territoriella övervakning och rapportering (budget: 598 000 EUR)

   — Espons atlas över europeiska regionala strukturer och regional dynamik (budget 150 000 EUR)

   — Att upptäcka territoriella möjligheter och utmaningar (budget 350 000 EUR)

   — Regionalpolitiska faktapaket för Eruf-programmen (budget 500 000 EUR)

   — Nätbaserat kartläggningsverktyg för Espon (budget 150 000 EUR)

   — Territoriell övervakning i en europeisk makroregion – ett test för Östersjöområdet (budget 360 000 EUR)

4. Inbjudan att lämna förslag om nätverkssamarbete över gränserna inom nätverket av Espon-kontaktpunkter:

   — Att dra nytta av resultat på gränsöverskridande nivå inom nätverket av Espon-kontaktpunkter (budget 600 227 EUR)

Sista inlämningsdag är den 20 oktober 2011.

En informationsdag och en partnerträff för sökande kommer att anordnas den 13 september 2011 i Bryssel.

Anvisningar för hur man anmäler intresse, regler för stödberättigande, bedömningskriterier och ansökningsblankett finns på Espons webbplats: http://www.espon.eu

FÖRFARANDEN FÖR GENOMFÖRANDE AV KONKURRENSPOLITIKEN

EUROPEISKA KOMMISSIONEN

STATLIGT STÖD – FÖRENADE KUNGARIKET

Statligt stöd SA.18859 – 11/C (f.d. NN 65/10)

Undantag från skatt på ballast i Nordirland (f.d. N 2/04)

Uppmaning att inkomma med synpunkter enligt artikel 108.2 i EUF-fördraget

(Text av betydelse för EES)

(2011/C 245/09)

Genom den skrivelse, daterad den 13 juli 2011, som återges på det giltiga språket på de sidor som följer på denna sammanfattning, underrättade kommissionen Förenade kungariket om sitt beslut att inleda det förfarande som anges i artikel 108.2 i EUF-fördraget avseende ovannämnda åtgärd. Kommissionen uppmanade också Förenade kungariket i överensstämmelse med artikel 11.1 i förordning (EG) nr 659/1999 att inkomma med synpunkter på kommissionens beslut om att inleda det formella granskningsförfarandet.

Berörda parter kan inom en månad från dagen för offentliggörandet av denna sammanfattning och den därpå följande skrivelsen inkomma med sina synpunkter på åtgärden. Synpunkterna ska sändas till följande adress:

European Commission
Directorate-General for Competition
State aid Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Fax +32 22951242

Synpunkterna kommer att meddelas Förenade kungariket. Den berörda part som inkommer med synpunkter kan skriftligen begära konfidentiell behandling av sin identitet, med angivande av skälen för begäran.

SAMMANFATTNING

FÖRFARANDE

Förenade kungariket anmälde en åtgärd i form av undantag från skatten på ballast (*Aggregates Levy*) i Nordirland genom en skrivelse av den 5 januari 2004, som registrerades den 9 januari 2004. Åtgärden anmäldes som en ändring av det ursprungliga undantag från skatten på ballast i Nordirland (stegvis införande av skatten) som godkändes av kommissionen i beslut N 863/01. Den 7 maj 2004 antog kommissionen ett beslut att inte resa några invändningar mot denna åtgärd. Den 30 augusti 2004 lämnade British Aggregates Association, Healy Bros. Ltd och David K. Trotter & Sons Ltd (nedan kallade de sökande) ett överklagande mot det ovan nämnda beslutet av kommissionen om att inte resa några invändningar. Överklagandet registrerades med nummer T-359/04.

Den 9 september 2010 upphävde tribunalen det ovan nämnda kommissionsbeslutet. Enligt tribunalens dom hade kommissionen inte laglig grund för att anta beslutet att inte resa några invändningar, eftersom kommissionen inte hade prövat frågan om en eventuell diskriminering i skattehänseende mellan ifrågavarande inhemska varor och varor som importeras från Irland. Kommissionen överklagade inte denna dom.

Myndigheterna i Förenade kungariket upphörde med tillämpningen av åtgärden den 1 december 2010 genom att upphäva förordningarna om skatt på ballast (*Aggregates Levy [Northern Ireland Tax Credit] Regulations 2004*).

BESKRIVNING AV ÅTGÄRDEN

Undantaget från skatten på ballast med 80 % tillämpades på naturlig ballast som utvanns och utnyttjades kommersiellt i Nordirland, och bearbetade produkter av ballast som utvanns och utnyttjades kommersiellt i Nordirland.

Skatten på ballast är en miljöskatt som tas ut på kommersiellt utnyttjande av ballast och tillämpas på sten, sand och grus. Den infördes av Förenade kungariket med verkan från och med den 1 april 2002, av miljöskäl, nämligen för att maximera användningen av återanvänd ballast eller andra alternativ till naturlig ballast och för att främja en effektiv utvinning och användning av naturlig ballast, som är en icke förnybar naturresurs.

För att bättre kunna uppnå de uppställda miljömål som inte förverkligats genom skatten på ballast ställde myndigheterna i Förenade kungariket upp som villkor för skatteundantaget att de sökande skulle ingå och efterleva avtal som förhandlats fram med de nationella myndigheterna. Genom avtalen ålades de sökande att genomföra ett program med miljömässiga förbättringar så länge de omfattades av skatteundantaget.

BEDÖMNING

Mot bakgrund av tribunalens dom bedömde kommissionen först om det fanns en inneboende koppling mellan själva stödåtgärden, som beviljats i form av ett skatteundantag, och diskrimineringen i skattehänseende av importerade varor. Eftersom en sådan koppling fastställdes i föreliggande ärende, måste kommissionen bedöma om stödåtgärden innehöll en diskriminerande intern avgift som står i strid med artikel 110 i EUF-fördraget. Kommissionen hänvisar särskilt till rättspraxis rörande nationell lagstiftning om beviljande av skatteförmåner för inhemska varor om vissa miljönormer uppfylls vid tillverkningen. Sådan intern beskattning anses inte vara förenlig med artikel 110 i EUF-fördraget om inte förmånen utsträcks till att omfatta importerade varor som har tillverkats enligt samma normer. Eftersom så inte skedde i fallet med skatten på ballast i Nordirland hyser kommissionen tvivel om huruvida det ändrade skatteundantaget som var tillämpligt i Nordirland var förenligt med EUF-fördraget, särskilt artikel 110.

Detta tvivel på förenligheten med artikel 110 i EUF-fördraget gör att kommissionen på detta stadium inte kan anse att åtgärden är förenlig med den inre marknaden. Kommissionen har beaktat detta tvivel när det gäller åtgärdens förenlighet med reglerna om statligt stöd och bedömde åtgärden i enlighet med miljöstödsriktlinjerna, särskilt de regler som rör stöd i form av befrielse från eller nedsättning av miljöskatter. Det stöd som beviljades genom det ändrade undantaget från skatt på ballast utgör olagligt stöd, eftersom tribunalen förkastade de motiveringar på grundval av vilka stödet ansågs som förenligt med den inre marknaden. Kommissionen har därför bedömt den föreliggande åtgärden på grundval av 2001 års miljöstödsriktlinjer, och från och med den 2 april 2008 på grundval av 2008 års miljöstödsriktlinjer (dvs. från och med den dag då de är tillämpliga).

Vid bedömningen på grundval av 2001 års miljöstödsriktlinjer drog kommissionen slutsatsen att villkoren i riktlinjerna är uppfyllda, men konstaterade än en gång att tvivlet rörande förenligheten med artikel 110 i EUF-fördraget gör att kommissionen på detta stadium inte kan anse att åtgärden är förenlig med den inre marknaden.

Vid bedömningen på grundval av 2008 års miljöstödsriktlinjer drog kommissionen preliminärt slutsatsen att den hyser tvivel om huruvida villkoret om nödvändigt stöd är uppfyllt, särskilt om den betydande ökningen av produktionskostnaderna inte kan föras vidare till de slutliga kunderna utan att försäljningen minskar betydligt. I detta sammanhang noterar kommissionen att de uppgifter som lämnats av myndigheterna i Förenade kungariket visar på en avsevärd ökning av produktionskostnaderna till följd av undantaget från skatten på ballast. Detta innebär vanligen att en sådan ökning inte kan föras vidare utan en betydande minskning av försäljningen. Kommissionen förfogar dock inte över tillräckligt detaljerade uppgifter, och kan därför på detta stadium inte dra slutsatsen att detta villkor för förenligheten är uppfyllt.

På grundval av den preliminära analysen hyser kommissionen följaktligen tvivel om huruvida åtgärden, dvs. undantaget från skatt på ballast i Nordirland (f.d. N 2/04), är förenlig med EUF-fördraget och den inre marknaden. I enlighet med artikel 4.4 i förordning (EG) nr 659/1999 har kommissionen därför beslutat att inleda ett formellt granskningsförfarande, och uppmanar tredje parter att inkomma med synpunkter.

SJÄLVA SKRIVELSEN

"The Commission wishes to inform the UK authorities that, having examined the information supplied by them on the aid referred to above, it has decided to open the formal investigation procedure under Article 108(2) of the Treaty on the Functioning of the European Union (TFEU).

1. **PROCEDURE**

1. The United Kingdom notified the measure at hand by letter of 5 January 2004, registered on 9 January 2004.

2. The measure was notified as a modification of the original relief from the aggregates levy in the Northern Ireland [1] which was approved by the Commission in its Decision of 24 April 2002 in case N 863/01 [2].

3. On 7 May 2004, the Commission adopted a no objections decision with respect to this measure [3].

4. On 30 August 2004, the British Aggregates Association, Healy Bros. Ltd and David K. Trotter & Sons Ltd launched an appeal against the abovementioned Commission Decision (the action was registered under Case T-359/04).

[1] The phased introduction of the AGL.
[2] OJ C 133, 5.6.2002, p.11.
[3] OJ C 81, 2.4.2005, p. 4.

5. On 9 September 2010, the General Court annulled the abovementioned Commission Decision [1]. According to the judgment, the Commission was not entitled to adopt lawfully the decision not to raise objections as it had not examined the question of a possible tax discrimination between the domestic products in question and imported products originating from Ireland. The Commission did not appeal this judgment.

6. On 15 December 2010 and 21 December 2011, the UK authorities submitted additional information concerning the measure at hand, including documents concerning the suspension of the implementation of the measure as from 1 December 2010 by revoking the Aggregates Levy (Northern Ireland Tax Credit) Regulations 2004 (S.I. 2004/1959).

7. The Commission requested additional information by letter of 2 February 2011. The UK authorities submitted further information by letters of 7 March 2011 and 10 June 2011.

2. DESCRIPTION

2.1. The aggregates levy

8. The aggregates levy (hereinafter the "AGL") is an environmental tax on the commercial exploitation of aggregates and is applied to rock, sand or gravel. It was introduced by the United Kingdom with effect from 1 April 2002 for environmental purposes in order to maximise the use of recycled aggregate and other alternatives to virgin aggregate and to promote the efficient extraction and use of virgin aggregate, which is a non-renewable natural resource. The environmental costs of aggregate extraction being addressed through the AGL include noise, dust, damage to biodiversity and to visual amenity.

9. The AGL is applied to virgin aggregate extracted in the United Kingdom and to imported virgin aggregate on its first use or sale in the United Kingdom [2]. The rate at the time of the original notification was GBP 1,60 per tonne [3]. It does not apply to secondary and recycled aggregates and to virgin aggregates exported from the United Kingdom.

2.2. The original AGL relief in Northern Ireland

10. In its Decision of 24 April 2002 (N 863/01), the Commission considered that the phased introduction of the AGL in Northern Ireland was compatible with Section E.3.2 of the Community Guidelines on State aid for environmental protection [4] ("the 2001 Environmental Aid Guidelines"). The approved aid took the form of a five-year degressive scheme of tax relief, starting in 2002 and ending in 2007. The original AGL relief in Northern Ireland covered only the commercial exploitation of aggregate used in the manufacture of processed products.

2.3. The modified AGL relief in Northern Ireland

11. The present Decision concerns exclusively the modified AGL relief in Northern Ireland, which was applied to virgin aggregate extracted in Northern Ireland and commercially exploited there and processed products from aggregate extracted in Northern Ireland commercially exploited there.

2.3.1. *Background*

12. The UK authorities explained that, since the introduction of the scheme in 2002, the levy put firms in the Northern Ireland aggregates industry in a more difficult competitive position than initially anticipated. After the gradual introduction of the levy in Northern Ireland, there has been an increase in illegal quarrying, and an increase in undeclared imports of aggregate into Northern Ireland from the Republic of Ireland. No aggregates levy was paid in either case. Consequently, the legitimate quarries paying the levy are being undercut by illegal sources operating outside the levy and therefore losing sales to these illegal sources. The findings in a report commissioned by the UK authorities from the Symonds' Group (specialist consultants in the quarrying/construction sectors) and other evidence available to the UK Customs and Excise authorities, who were responsible for enforcing the levy, confirmed this development.

13. According to the UK authorities at the time of the original notification, the Quarry Products Association Northern Ireland indicated over 38 quarries which they considered to be operating illegally. There was also evidence, as set out in the Symonds Report, of a significant volume of unrecorded imports of aggregate from the Republic of Ireland, on which the levy was being evaded.

14. Furthermore, the UK authorities explained that, while the AGL is having an appreciable positive environmental effect in Great Britain (details below in points 32-36), it has not been working as intended in Northern Ireland, where the availability of levy-free recycled and alternative materials is very limited and localised, and the infrastructure of collecting and processing such materials is almost non-existent.

2.3.2. *Modification*

15. In order to provide additional time to the aggregate industry in Northern Ireland to adapt and to achieve the intended environmental effects, the original relief scheme (phased introduction of the AGL) was modified. The relief applied to all types of virgin aggregate, i.e. not only to aggregates used in the manufacturing of processed products, as it was the case for the original relief in case N 863/01, but also to virgin aggregates used directly in the raw state [5].

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[1] Case T-359/04 *British Aggregates a. o.* v *Commission*, judgment of 9 September 2010, not yet reported.

[2] The AGL is applied to imported raw aggregate, but not to aggregate contained in imported processed products.

[3] On 2 April 2008, i.e. the day from which the 2008 Environmental Aid Guidelines were applicable, the level of AGL was GBP 1,95/tonne.

[4] OJ C 37, 3.2.2001, p. 3.

[5] The aggregates extracted in Northern Ireland and shipped to any destination in Great Britain were liable to the AGL at the full rate. This was also the case for aggregate extracted in Northern Ireland that was used in the manufacturing of processed products shipped to Great Britain. This ensured that aggregates and processed products from Northern Ireland did not enjoy a competitive advantage in the market of Great Britain.

16. The relief was set at 80 % of the AGL level otherwise payable, and was intended to be a transitional arrangement. It came into effect on 1 April 2004 and was supposed to continue until 31 March 2011 (i.e. nine years from the start of the AGL on 1 April 2002) ([1]).

2.3.3. *Environmental agreements*

17. In order to more effectively achieve the intended environmental objectives, the UK authorities made the relief conditional upon claimants formally entering into and complying with negotiated agreements with the UK authorities, committing the claimants to a programme of environmental performance improvements over the duration of the relief.

18. The key criteria for entry into the scheme were that:

(a) the requisite planning permission(s) and environmental regulatory permits etc. had to be in place for each eligible site; and

(b) the site operator was required to "sign-up" to a regime of environmental audits. The first audit had to be commissioned and submitted within 12 months of the date of entry to the scheme and updated every two years thereafter.

19. Each agreement was individually tailored to the circumstances of the quarry, taking into account, for example, current standards and scope for improvement. The areas of performance covered were: air quality; archaeology and geodiversity; biodiversity; blasting; community responsibility; dust; energy efficiency; groundwater; landscape and visual intrusion; noise; oil and chemical storage and handling; restoration and aftercare; use of alternatives to primary aggregates; surface water; off-site effects of transport; and waste management.

20. The Department of Environment in Northern Ireland was responsible for monitoring these agreements, and the relief is withdrawn for those firms which have significant shortcomings.

2.3.4. *Aggregates production costs, selling price and price elasticity of demand*

21. As regards the aggregates production costs, the UK authorities explained that they vary significantly from quarry to quarry and that the same is valid for the prices ([2]). The average selling price ex-quarry for different classes of aggregates is summarised in Table 1 below ([3]). Profit margins are again variable, but the industry estimates that 2 % to 5 % is a typical level.

Table 1

Selling price

Type of rock	Price ex-quarry before tax (GBP/tonne)
Basalt	4,21
Sandstone	4,37
Limestone	3,72
Sand and gravel	4,80
Other	5,57
Weighted average price	4,42

22. As regards in general the difference in price levels between Northern Ireland and Great Britain, the UK authorities explain that suppliers in Northern Ireland have never been able to charge the same price as in Great Britain. The UK authorities illustrated this by the information presented in Table 2 below. The levy at the full rate would therefore represent a much higher proportion of the selling price in an already suppressed market. This inability to pass on costs to customers has been a significant historic factor in the lack of investment in environmental improvement and is explained by economic (fragmentation of the market) and geological factors.

Table 2

	2001	2002	2003	2004	2005	2006	2007	2008
NI aggregates cost GBP/tonne	2,9	3,1	3,5	3,4	3,9	3,6	4,3	4,3
GB aggregates cost GBP/tonne	7,9	8,4	9,0	7,7	8,8	9,7	9,2	10,9

23. As regards the price elasticity of demand, the UK authorities explained, based on a survey of research literature ([4]), that the price elasticity of demand for aggregates ranges from 0,2 to 0,5. The UK authorities' examination of aggregates quantity and price data for Great Britain and Northern Ireland suggests that for most types of aggregates the price elasticity ranges from close to zero to about 0,52. The UK authorities could therefore conclude tentatively that the demand for aggregates in Northern Ireland is relatively inelastic.

([1]) As referred to above, the implementation of the AGL relief in Northern Ireland was suspended as from 1 December 2010.

([2]) The information was submitted by the UK authorities for the purposes of an assessment of the measure on the basis of the 2008 Environmental Aid Guidelines. DETI Minerals Statement 2009.

([3]) Distribution costs depend on haulage distances, with haulage costs in the range of 15 to 20 pence per tonne per mile, with aggregate being delivered within 10 to 15 miles, depending on local circumstances.

([4]) Ecotec (1998) Report; EEA Report (No 2/2008) effectiveness of environmental taxes and charges for managing sand, gravel and rock extraction in selected EU countries; British Geological Survey (2008): The need for indigenous aggregates production in England.

2.3.5. *Pass-on and sales reductions*

24. As regards the pass-on of increased production costs to final customers and potential sales reductions, the UK authorities referred to the abovementioned Symonds Report. According to the UK authorities, the report demonstrates that, following the introduction of the levy in 2002, the average price of aggregate in Northern Ireland had increased by much less than would have been expected if the AGL had been passed on in full, and that this was linked to a fall in legitimate sales, which was proportionally much larger than the fall recorded in Great Britain.

25. Furthermore, the UK authorities explained that the Symonds Report confirmed that the sales of aggregate, and in particular the sales of low-grade aggregate and fill, fell in the year ending 31 March 2003 compared with the levels experienced in the two pre-AGL years. The Symonds Report showed (see Table 3 below) that the production from legitimate quarries in calendar year 2002 was significantly below the established trend in aggregate sales (generally, over the last 30 years, there had been a rising trend in aggregate sales in Northern Ireland). In Great Britain aggregate production fell in 2002 by 5,7 %, compared with a slight increase the previous year (however, trend analysis showed that in Great Britain the production had generally been in a declining trend over the previous 10 years).

Table 3

A summary of Symonds' assessment of the fall in sales by legitimate quarries in Northern Ireland

Product	2000-2001 (million tonnes)	2001-2002 (million tonnes)	2002-2003 (million tonnes)	Fall, 2001-2003 (%)	Fall, 2002-2003 (%)
Sand and gravel	2,35	2,34	1,91	– 18,7	– 8,4
Crushed rock	7,86	7,88	7,27	– 7,5	– 7,7
Fill material	3,00	3,89	1,71	– 43,0	– 56,0
Total	13,21	14,11	10,89	– 17,6	– 22,8

26. The UK authorities explained in this context that the data provided by Symonds indicated that once the levy had been introduced at GBP/tonne 1,60, the average price of aggregates in Northern Ireland had risen by about 25-30 pence/tonne in 2002 compared with 2001, whereas in Great Britain the price had risen by GBP 1-1,40/tonne. Even allowing for the fact that aggregate used in processed products, which benefited from an 80 % relief under the original 2002 degressive credit scheme in Northern Ireland, is included in that average, that implies that quarry operators in Northern Ireland were having to absorb a substantial proportion of the levy. On the assumption that processed products used half of the aggregate production in Northern Ireland, and that their price was unaffected by the levy in 2002, that still implies according to the UK authorities that, on average, over GBP 1/tonne of the levy had to be absorbed on each tonne of aggregate sold for use in its raw state.

27. As regards specifically the manufacturers using aggregates in their processed products, the UK authorities explained in this context that, because of the original relief for aggregate used in processed products (N 863/01), the additional costs fell very largely on Northern Ireland producers of aggregate for use in its raw state. But importantly the original relief (phased introduction of the AGL) was to be withdrawn by stages. Therefore, if the original relief had not been modified in 2004, the processed products sector too would have begun to suffer from the same economic difficulties of loss of demand and inability to pass on the extra levy costs to its customers.

2.3.6. *Other information*

28. The estimated annual budget (State resources foregone) varied at the time of the original notification between GBP 15 million (2004-2005) and GBP 35 million (2010-2011).

29. As regards the number of beneficiaries, it was estimated that approximately 170 quarry operators would be eligible.

30. The granting authority of the AGL relief in Northern Ireland was Her Majesty's Revenue & Customs.

2.4. **Position of third parties, appreciable positive effects**

31. In the context of the assessment by the Commission of the original notification of the modified AGL relief in Northern Ireland, the British Aggregates Association (BAA), other associations of producers and individual undertakings contested in their letters that the AGL has an appreciable positive impact in terms of environmental protection. The Commission therefore asked the UK authorities to submit additional information concerning this issue.

32. The UK authorities provided in this context empirical information based on the initial assessment of the AGL's environmental impact using all available data. The submitted information suggested that in Great Britain the aggregates levy had appreciable effects.

33. As regards the aggregate production, the UK authorities explained that the amount of virgin material extracted fell significantly in 2002 compared to earlier years and by 5,7 % compared to 2001. In 2002 the production of sand and gravel decreased by 6 % compared to 2001. The production of marine sand and gravel output fell by 5,9 % in 2002 compared to 2001. There was also a gradual decline in the production of crushed rock.

34. As for the aggregate costs, it was explained by the UK authorities that the costs of aggregates subject to the levy were significantly higher than the costs of aggregates that were not subject to the levy — by about GBP 1,40 per tonne for crushed rock and just over GBP 1 per tonne for sand and gravel. It therefore appeared that the environmental costs of the supply of aggregates were passed on, to a large extent, to the consumers. This is consistent with the objective of incorporating the negative environmental externalities of the quarrying the aggregates into the cost of those aggregates.

35. With respect to the substitution by recycled and alternative materials, the UK authorities mentioned that the scope of the levy is encouraging the substitution of virgin aggregate by recycled or secondary aggregate products. In particular, the sales of slate waste and china clay waste increased, reducing both the demand for virgin aggregates and the tipping of such alternative materials. Aggregates recycling companies reported sales increases for 2002 and 2003.

36. Finally, as regards the investments in recycling, the UK authorities mentioned that the AGL had an effect in reinforcing and supporting the active considerations by the construction industry of recycled aggregates in the construction market. A new recycling plant was opened in South Yorkshire and an East Midlands road construction company also opened a new recycling facility.

3. ASSESSMENT

3.1. State aid within the meaning of Article 107(1) of the TFEU (ex Article 87(1) EC) [1]

37. State aid is defined in Article 107(1) of the TFEU as 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 in so far as it affects trade between Member States.

38. The AGL relief was granted through State resources, in the form of a tax rate reduction, to companies situated in a defined part of the territory of the UK (Northern Ireland), favouring them by reducing the costs that they would normally have to bear. The recipients of the aid are involved in the extraction of aggregates or in the manufacturing of processed products, which are economic activities involving trade between Member States.

39. Accordingly, the Commission concludes that the notified measure constitutes State aid within the meaning of Article 107(1) of the TFEU (ex Article 87(1) EC).

[1] The definition of State aid laid down in Article 107(1) of the TFEU did not change from the one contained in Article 87(1) EC which was in force when the original notification was submitted in 2004.

3.2. Lawfulness of the aid

40. Despite the fact that the measure at hand was notified to the Commission and put into effect only after the Commission adopted a positive decision, the recipients of the aid cannot entertain any legitimate expectations as to the lawfulness of the implementation of the aid, since the Commission's decision was challenged in due time before the General Court [2]. Following the annulment by the General Court of the Commission's no objections decision, that decision must be considered void with regard to all persons as from the date of its adoption. Since the annulment of the Commission's decision put a stop, retroactively, to the application of the presumption of lawfulness, the implementation of the aid in question must be regarded as unlawful [3].

3.3. Compatibility of the aid

41. It is a matter of settled case law that although Articles 107 and 108 of the TFEU leave a margin of discretion to the Commission for assessing the compatibility of an aid scheme with the requirements of the internal market, this assessment procedure must not produce a result which is contrary to the specific provisions of the TFEU. The Commission is obliged to ensure that Articles 107 and 108 of the TFEU are applied consistently with other provisions of the TFEU. This is according to the General Court all the more necessary where those other provisions also pursue the objective of undistorted competition in the internal market [4].

42. Furthermore, the General Court recalled that the power to use certain forms of tax relief, particularly when they are aimed at enabling the maintenance of forms of production or undertakings which, without those specific tax privileges, would not be profitable due to high production costs, is subject to the condition that the Member States using that power extend the benefit thereof in a non-discriminatory and non-protective manner to imported products in the same situation [5].

43. The Commission refers in this context to the fact that Article 110 of the TFEU [6] [7] ensures the free movement of goods between the Member States in normal conditions of competition by the elimination of all forms of protection that may result from the application of internal taxation that discriminates against products from other Member States.

[2] See Case C-199/06 *CELF* [2008] ECR I-469, paragraphs 63 and 66 to 68.

[3] See Case C-199/06 *CELF*, cited above, paragraphs 61 and 64.

[4] Case T-359/04 *British Aggregates a. o.* v *Commission*, cited above, paragraph 91.

[5] Case T-359/04 *British Aggregates a. o.* v *Commission*, cited above, paragraph 93.

[6] "No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.
Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products."

[7] The rules for national internal taxation as laid down in Article 110 of the TFEU did not change from those contained in Article 90 EC which was in force when the original notification was submitted in 2004.

44. As set out above, the aid is provided in the form of a tax rate reduction from an environmental tax, the AGL, to companies established in Northern Ireland which have entered into environmental agreements. This provides these companies with an advantage by reducing the costs that they would normally have to bear. The relief was introduced to provide additional time to the aggregate industry of Northern Ireland to adapt, as the introduction of the AGL had put firms in Northern Ireland in a more difficult competitive situation than initially anticipated.

45. Aggregate producers established in Ireland may not, under the United Kingdom legislation, enter into an environmental agreement and are not otherwise eligible to benefit from the AGL exemption scheme by showing, for example, that their activities comply with the environmental agreements which aggregates producers in Northern Ireland may conclude. Since aggregate products imported from Ireland are therefore taxed at the full AGL rate, and this differentiated taxation of the same product results from the AGL scheme itself, there is an intrinsic link between the aid measure, granted by way of a tax relief, and the discriminatory tax treatment of imported products.

46. Therefore, in the present case, the Commission considers that it must also assess whether the aid measure complies with the rule laid down in Article 110 of the TFEU. In these circumstances, a violation of Article 110 of the TFEU would preclude the Commission from finding the measure compatible with the internal market. As the General Court stated in its judgment of 9 September 2010 in relation to the present case, aid cannot be implemented or approved in the form of tax discrimination in respect of products originating from other Member States ([1]).

3.3.1. *Compliance with Article 110 of the TFEU*

47. According to settled case-law, charges resulting from a general system of internal taxation applied systematically, in accordance with the same objective criteria, to categories of products irrespective of their origin or destination fall within the scope Article 110 of the TFEU. It should therefore be ascertained whether a levy such as the AGL constitutes internal taxation within the meaning of Article 110 of the TFEU. In this respect, the Commission notes that the AGL, which is of a fiscal nature, is levied on virgin aggregate extracted in the United Kingdom and to imported virgin aggregate on its first use or sale in the United Kingdom. It applies to imported aggregates in the same way as it applies to aggregates extracted in the United Kingdom. Consequently, a levy such as the AGL amounts to internal taxation, for the purposes of Article 110 of the TFEU.

48. According to settled case-law, the first paragraph of Article 110 of the TFEU is infringed where the tax levied on the imported product and that levied on the similar domestic product are calculated in a different manner on the basis of different criteria which lead, if only in certain cases, to higher taxation being imposed on the imported product. It follows that a system of taxation is compatible with Article 110 of the TFEU only if it is so arranged as to exclude any possibility of imported products being taxed more heavily than domestic products and, therefore, only if it cannot under any circumstances have a discriminatory effect.

49. Under the AGL relief applicable in Northern Ireland, a reduced rate is levied on virgin aggregates extracted there by producers having entered into environmental agreements.

50. Virgin aggregates extracted in other Member States are not eligible to benefit from the AGL relief, since aggregate producers established in other Member States may not, under the United Kingdom legislation, enter into an environmental agreement. Producers of such aggregates do not even have the possibility to show, for example, that their activities comply with the environmental agreements that aggregate producers in Northern Ireland may conclude. Accordingly, identical products imported from other Member States are taxed at the full AGL rate.

51. Such distinction cannot in the Commission's view be justified on the grounds that the UK authorities cannot conclude environmental agreements with producers of aggregates established outside the United Kingdom, because those authorities have jurisdiction in the United Kingdom only. The UK legislation might have for example given importers the opportunity to demonstrate that the aggregates imported into Northern Ireland had been produced in a way that they comply with the environmental requirements imposed on beneficiaries in Northern Ireland in the agreements.

52. Furthermore in this context, the Commission recalls the case-law concerning national legislation providing tax advantages to domestic products in case they are produced under certain environmental standards. Such internal taxation is not considered compatible with Article 110 of the TFEU if the advantage is not extended to imported products manufactured under the same standards ([2]).

53. Finally, the Commission points out that Article 110 of the TFEU targets the level of taxation imposed directly or indirectly on the products concerned ([3]), i.e. the tax burden each of the products has to bear. Thus, the focus is on the fact that the tax forms a cost element relevant to the formation of the price, and thus to the competitive position of the product vis-à-vis similar products ([4]). It follows that the identity of the taxpayer is not at the core of the assessment.

54. Accordingly, the Commission doubts whether the modified AGL relief applicable in Northern Ireland complies with the Treaty, in particular Article 110 of the TFEU. These doubts preclude the Commission from finding the measure compatible with the internal market at this stage.

([1]) Case T-359/04 *British Aggregates a. o.* v *Commission*, cited above, paragraph 92.

([2]) Case 21/79 *Commission* v *Italy* [1980] ECR p. 1, paragraphs 23 to 26; and in particular Case C-213/96 *Outukumpu* [1998] ECR I-1777, paragraphs 30 et seq.

([3]) The identity of the taxpayer as such is therefore of limited importance.

([4]) "Thus *[Article 110]* must guarantee the complete neutrality of internal taxation as regards competition between domestic products and imported products." (Case 252/86 *Bergandi* [1988] ECR p. 1343, paragraph 24).

3.3.2. *Compatibility of the measure under the Environmental Aid Guidelines*

55. Considering the environmental objective of the measure and notwithstanding the doubts expressed above (point 54), the Commission has assessed the compatibility of the measure at hand according to Article 107(3)(c) of the TFEU and in the light of the Guidelines on State Aid for Environmental Protection.

56. The Commission originally assessed the measure under the 2001 Environmental Aid Guidelines. In the meantime, the 2008 Environmental Aid Guidelines have been adopted. As noted in point 40 above, the result of the annulment of the Commission Decision of 7 May 2004 is that the measure as it has been applied since that date (and until its suspension on 1 December 2010) must be considered as being unlawful. The Commission has stated that it will always assess the compatibility of unlawful State aid with the internal market in accordance with the substantive criteria set out in any instrument in force at the time when the aid was granted [1]. Nothing in the 2008 Environmental Aid Guidelines suggests that this rule should not be applied to the present case. Those Guidelines specify, in point 204, that Commission decisions on notifications taken after the publication of the Guidelines in the *Official Journal of the European Union* will be based exclusively on that text, even if the notification predates that publication. And point 205 simply restates the position set out in the notice as regards aid that has not been notified (and is therefore unlawful).

57. Considering that the aid was granted during the period covering the applicability of the 2001 Environmental Aid Guidelines as well as after the publication of the 2008 Environmental Aid Guidelines, the Commission will assess the measure at hand pursuant to:

(a) the 2001 Environmental Aid Guidelines; and

(b) the 2008 Environmental Aid Guidelines as from 2 April 2008.

Ad (a) Compatibility of the measure under the 2001 Environmental Aid Guidelines

58. Section E.3.2 of the 2001 Environmental Aid Guidelines concerns rules applicable to all operating aid in the form of tax reductions or exemptions.

59. The AGL was introduced in April 2002. That the rate effectively applicable was not 100 % for all operators across all of the United Kingdom does not alter this fact or the principle that the new tax should apply to the entire territory. The Commission will therefore treat the AGL as an existing tax in the sense of the distinction made in the abovementioned section between new and existing taxes. Furthermore, there is no harmonisation at EU level of this type of tax.

60. Point 51(2) provides that:

"The provisions in point 51.1 may be applied to existing taxes if the following two conditions are satisfied at the same time:

(a) the tax in question must have an appreciable positive impact in terms of environmental protection;

(b) the derogations for the firms concerned must have been decided on when the tax was adopted or must have become necessary as a result of a significant change in economic conditions that placed the firms in a particularly difficult competitive situation. In the latter instance, the amount of the reduction may not exceed the increase in costs resulting from the change in economic conditions. Once there is no longer any increase in costs, the reduction must no longer apply.".

61. Point 51(1) provides that:

"These exemptions can constitute operating aid which may be authorised on the following conditions:

1. When, for environmental reasons, a Member State introduces a new tax in a sector of activity or on products in respect of which no Community tax harmonisation has been carried out or when the tax envisaged by the Member State exceeds that laid down by Community legislation, the Commission takes the view that exemption decisions covering a 10-year period with no degressivity may be justified in two cases:

(a) these exemptions are conditional on the conclusion of agreements between the Member State concerned and the recipient firms whereby the firms or associations of firms undertake to achieve environmental protection objectives during the period for which the exemptions apply or when firms conclude voluntary agreements which have the same effect. Such agreements or undertakings may relate, among other things, to a reduction in energy consumption, a reduction in emissions or any other environmental measure. The substance of the agreements must be negotiated by each Member State and will be assessed by the Commission when the aid projects are notified to it. Member States must ensure strict monitoring of the commitments entered into by the firms or associations of firms. The agreements concluded between a Member State and the firms concerned must stipulate the penalty arrangements applicable if the commitments are not met.

These provisions also apply where a Member State makes a tax reduction subject to conditions that have the same effect as the agreements or commitments referred to above;

(b) these exemptions need not be conditional on the conclusion of agreements between the Member State concerned and the recipient firms if the following alternative conditions are satisfied:

— where the reduction concerns a Community tax, the amount effectively paid by the firms after the reduction must remain higher than the Community minimum in order to provide the firms with an incentive to improve environmental protection,

[1] Commission Notice on the determination of the applicable rules for the assessment of unlawful State aid, OJ C 119, 22.5.2002, p. 22.

— where the reduction concerns a domestic tax imposed in the absence of a Community tax, the firms eligible for the reduction must nevertheless pay a significant proportion of the national tax.".

62. With respect, first, to point 51(2), the Commission notes that the tax is levied on activities for reasons of environmental protection. Its aim is to protect the environment by contributing to reducing the extraction of virgin aggregates and encouraging the use of alternative materials (point 51(2)(a)).

63. Given that, at the time of the notification of the amendment in 2004, the measure had already been in operation for two years, the UK was able to provide empirical information on the effects of the AGL (described above in points 32-36). It is therefore clear that the AGL has appreciable positive environmental effects in the majority of the territory of the UK in line with the requirement of point 51(2)(a) of the 2001 Environmental Aid Guidelines. What is more, the environmental agreements concluded with aggregates companies in Northern Ireland benefiting from 80 % AGL relief clearly have positive environmental effects and do not in any way undermine the objectives pursued by the AGL. On the contrary, they aim to encourage those companies to pay at least a part of the tax and contribute to improving environmental performance, rather than becoming a part of the illegal aggregates market.

64. The Commission also notes that the fundamental decision to relieve certain firms in Northern Ireland from the AGL was already taken when the tax was introduced on 1 April 2002 (point 51(2)(b), first sentence).

65. In the light of the above, the Commission considers that the conditions of point 51(2) of the 2001 Environmental Aid Guidelines have been fulfilled.

66. In relation to point 51(1), tax exemption decisions covering a 10-year period with no degressivity may be justified in two cases. The UK authorities submitted that both grounds for justification were fulfilled. That said, despite the introduction of compulsory environmental agreements in 2004 (point 51(1)(a)), the arguments of the UK authorities submit focus on the other scenario: the reduction concerns a domestic tax imposed in the absence of a Community tax and the firms eligible for the reduction nevertheless pay a significant proportion of the national tax (point 51(1)(b), second indent).

67. In the present case, the relief does indeed concern a domestic tax imposed in the absence of a Community tax. The UK authorities proposed to maintain the tax at the level of 20 % of the full rate, which the Commission considers significant ([1]).

68. For these reasons, the compatibility conditions laid down in the 2001 Environmental Aid Guidelines may be considered as being fulfilled. However, it is recalled that in view of the doubts expressed in point 54 in relation to Article 110 of the TFEU, the Commission is precluded from finding the measure compatible with the internal market on the basis of the 2001 Environmental Aid Guidelines at this stage.

Ad (b) Compatibility of the measure under the 2008 Environmental Aid Guidelines

69. Considering the form of the aid (tax rate reduction) granted under the measure at hand, the compatibility assessment basis of the 2008 Environmental Aid Guidelines is Chapter 4 regarding "Aid in the form of reductions or of exemptions from environmental taxes" (points 151-159).

70. As there is no EU harmonisation for taxes such as the AGL, the measure at hand has been assessed pursuant to the rules for non-harmonised environmental taxes.

Environmental benefit

71. Pursuant to point 151 of the 2008 Environmental Aid Guidelines, aid in the form of reductions of or exemptions from environmental taxes will be considered compatible with the common market provided that it contributes at least indirectly to an improvement in the level of environmental protection and that the tax reductions and exemptions do not undermine the general objective pursued.

72. As regards the direct effect of the AGL, the Commission notes, as in the case of the assessment under the 2001 Environmental Aid Guidelines, that the tax is levied on activities for reasons of environmental protection. Its aim is to protect the environment by contributing to reducing the extraction of virgin aggregates and encouraging the use of alternative materials.

73. Furthermore, with respect to the presence of at least an indirect contribution of the AGL relief to an improvement in the level of environmental protection, the Commission notes that the UK authorities decided to grant the 80 % AGL relief to companies from the aggregates industry in Northern Ireland as due to several factors described above the AGL failed to deliver the planned environmental benefits in Northern Ireland. The UK authorities therefore opted for an alternative approach for Northern Ireland in the form of the conclusion of environmental agreements with the beneficiaries while the AGL continued to be fully applicable in Great Britain. It can be therefore concluded that the AGL relief in Northern Ireland contributes at least indirectly to an improvement in environmental protection and that it does not undermine the general objective pursued by the AGL.

Necessity of the aid

74. According to point 158 of the 2008 Environmental Aid Guidelines, the three following cumulative criteria should be fulfilled to ensure that the aid is necessary.

(1) *Objective and transparent criteria*

75. Firstly, the choice of beneficiaries must be based on objective and transparent criteria and aid should be

([1]) See for instance Commission Decision on case N 449/01 (Germany) — Continuation of the ecological tax reform (OJ C 137, 8.6.2002, p. 34). Furthermore, this position was confirmed in the 2008 Environmental Aid Guidelines where the payment of 20 % of the tax was explicitly "codified" as a proportionality condition of the aid granted in the form of exemption or reduction from environmental taxes (point 159(b)).

granted in the same way for all competitors in the same sector if they are in a similar factual situation, in line with point 158(a) of the 2008 Environmental Aid Guidelines.

76. The eligibility for relief is based on certain types of activity (extraction of aggregates and production of processed products from aggregates) and is pre-defined by legislation. The Commission finds that the beneficiaries of the relief are defined using criteria that are objective and transparent.

(2) *Substantial increase in production costs*

77. Secondly, the tax without reduction must lead to a substantial increase in production costs, in line with point 158(b) of the 2008 Environmental Aid Guidelines.

78. The UK authorities did not provide information on the production costs, but rather on the levels of the ex-quarry selling price for different types of aggregates. Considering that the levels of profit margin was provided, the Commission is able to make an approximate calculation and conclude that the lowest possible share of the full AGL in relation to the production costs is almost 30 % ([1]).

79. Even these approximate calculations allow the Commission to conclude that the tax without reduction leads to the substantial increase in production costs required by point 158(b) of the 2008 Environmental Aid Guidelines.

(3) *Impossibility to pass on the substantial increase in production costs*

80. Thirdly, according to point 158(c) of the 2008 Environmental Aid Guidelines, compliance with the necessity criteria requires that the abovementioned substantial increase in production costs cannot be passed on to customers without leading to important sales reductions. In this respect, the Member State may provide estimations of inter alia the product price elasticity of the sector concerned in the relevant geographic market, as well as estimates of lost sales and/or reduced profits for the companies in the sector or category concerned.

81. The Commission notes in this context that the arguments of the UK authorities that the increase in production costs cannot be passed on without leading to important sales reductions are based on a comparison between the increase in price due to the introduction of the AGL (about 25 to 30 pence/tonne in 2002 compared with 2001 in Northern Ireland, whereas in Great Britain the price had risen by GBP 1-1,40/tonne). As regards the reduction in (legitimate) sales in Northern Ireland, the Commission notes that they varied in total for all types of aggregates between – 17,6 % (2001-2003) and – 22,8 % (2002-2003) and are proportionally much larger that those recorded in Great Britain. The Commission considers that these arguments can be considered as an indication of the difficulties encountered in passing on the increased production costs in Northern Ireland.

82. The Commission nevertheless points out in this context that the UK authorities did not provide sufficiently detailed data demonstrating/quantifying the impact on these arguments of the fact that the manufacturers of processed products from aggregates had never paid the full AGL as its introduction in the Northern Ireland was phased.

83. Furthermore, with respect to the demonstration of sales reductions, the UK authorities did not provide explanations concerning the development of the aggregates markets in Northern Ireland after 2002. Figure 2 of the QPA Northern Ireland Report to the OFT Market Study into the UK aggregates sector as submitted by the UK authorities shows increase in production as from 2004 to 2007.

84. In this context, the UK authorities also stated in their submission that the "costs increase affected operators' turnover and reduced their profits". Nevertheless no data supporting that statement were provided.

85. With respect to the demonstration of compliance with this compatibility condition, the UK authorities submitted only data on the overall industry level, no representative samples of individual beneficiaries based e.g. on their size were provided.

86. Finally, the Commission notes that the UK authorities' observations suggest that for most types of aggregates the price elasticity ranges from close to zero to about 0,52, i.e. seems to be relatively inelastic, what would in principle mean that the increase in production costs can be passed on to final customers. The UK authorities did not provide any further explanations/calculations concerning specifically the impact of the relative inelasticity as concluded on the arguments provided with respect to (the inability to) pass on the production costs increase to final customers.

87. Although the information provided by the UK authorities shows a very significant increase of the production costs due to the AGL, which would normally make it likely that such increase cannot be passed on without important sales reductions, in the light of the above, in particular the insufficiently detailed information, the Commission at this stage cannot conclude that this compatibility condition is met.

Proportionality of the aid

88. With respect to the proportionality of the aid, each beneficiary must according to point 159 of the 2008 Environmental Aid Guidelines fulfil one of the following criteria:

(a) it must pay a proportion of the national tax which is broadly equivalent to the environmental performance of each individual beneficiary compared to the performance related to the best performing technique within the EEA. The beneficiaries can benefit at most from a reduction corresponding to the increase in production costs from the tax, using the best performing technique and which cannot be passed on to customers;

(b) it must pay at least 20 % of the national tax unless a lower rate can be justified;

([1]) The highest selling price (GBP 5,57/tonne), the lowest profit margin (2 %) and the level of the AGL as originally notified in 2004 (GBP 1,6/tonne) are assumed. If the AGL level on 1 April 2008 (GBP 1,95/tonne) is applied, the share increases to approximately 36 %. Any other combination of price and profit margin necessarily results in the AGL presenting more then 30 % of the production costs.

(c) it can enter into agreements with the Member State whereby they commit themselves to achieve environmental objectives with the same effect as what would be achieved under points 1 or 2 or if the Community minima were applied.

89. The condition of proportionality of the aid is complied with as the beneficiaries of the AGL relief in Northern Ireland still pay 20 % of the tax.

3.4. **Conclusions**

90. On the basis of this preliminary analysis, the Commission has doubts as to whether the measure "Relief from aggregates levy in Northern Ireland (ex N 2/04)" complies with the Treaty, in particular Article 110 thereof. These doubts preclude the Commission from finding the measure compatible with the internal market.

91. The Commission also has doubts as to whether the measure complies with the necessity condition of the 2008 Environmental Aid Guidelines, in particular that the substantial increase in production costs cannot be passed on to customers without leading to important sales reductions, as required by point 158.

92. Consequently, in accordance with Article 4(4) of Council Regulation (EC) No 659/1999 [1] the Commission has decided to open the formal investigation procedure and invites the United Kingdom to submit its comments on that decision.

4. **DECISION**

93. In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the TFEU, requests the United Kingdom to submit their comments and to provide all such information which may help to assess the measure, within one month of the date of receipt of this letter. It requests that your authorities forward a copy of this letter to the potential recipients of the aid immediately.

94. The Commission notes that the United Kingdom has already suspended the implementation of the measure by revoking the Aggregates Levy (Northern Ireland Tax Credit) Regulations 2004. The Commission would draw your attention to Article 14 of Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

95. The Commission warns the United Kingdom that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month from the date of such publication."

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[1] OJ L 83, 27.3.1999, p. 1.

STATLIGT STÖD – TYSKLAND

(Artiklarna 107–109 i fördraget om Europeiska unionens funktionssätt)

Statligt stöd MC 15/09 – LBBW Deka divestment

(Text av betydelse för EES)

(2011/C 245/10)

Kommissionen underrättade genom en skrivelse av den 14 januari 2011 Tyskland om sitt sui generis-beslut om stöd MC 15/09.

SJÄLVA SKRIVELSEN

"I. **FÖRFARANDE**

(1) Genom beslut av den 15 december 2009 godkände kommissionen ett kapitaltillskott på 5 miljarder EUR och lättnader för osäkra tillgångar på 12, 7 miljarder EUR för en strukturerad portfölj som täcker tillgångar på 35 miljarder EUR till förmån för *Landesbank Baden-Württemberg* (nedan kallad *LBBW*) i mål C 17/09 (nedan kallat *LBBW-beslutet*) ([1]). Godkännandet var kopplat till ett antal åtaganden från Tysklands sida. Ett av åtagandena var att LBBW skulle sälja sin andel i *Deka Bank Deutsche Girozentrale* (nedan kallat *Deka*) före (*) […].

(2) Den 13 december 2010 lämnade Tyskland in en skrivelse från LBBW i vilken man förklarade att Deka inte kunde avyttras före […]. Den 21 december 2010 hävdade Tyskland att förvaltaren ([2]) och finansministeriet i delstaten Baden-Württemberg bekräftade att LBBW hade gjort vad man kunnat för att avsluta försäljningen inom den givna tidsfristen. Den 22 december 2010 inkom Tyskland med en begäran om uppskov för avyttrandet till […]. Den 5 januari 2011 översände Tyskland ytterligare upplysningar.

(3) Den 22 december 2010 meddelade Tyskland kommissionen att man med tanke på ärendets brådskande karaktär accepterar att detta beslut antas på engelska.

II. **SAKFÖRHÅLLANDEN**

(4) LBBW-beslutet grundar sig på olika åtaganden. Strecksats c i punkt 5 i skäl 38 i LBBW-beslutet innehåller Tysklands åtagande att LLBW skulle sälja sin andel i Deka före […]. Beslutet medger inte uttryckligen någon förlängning av tidsfristen.

(5) Deka är en offentligrättslig institution (*Rechtsfähige Anstalt des öffentlichen Rechts*) som via dotterbolag sköter de privata investeringsfonderna för Tysklands sparbanker. Ena halvan ägs av Tyska sparbanksföreningen (*DSGV*) och den andra halvan ägs av deltstatsbanker (*Landesbanken*) genom ett holdingbolag (nedan kallat *holdingbolaget*). LBBW:s indirekta andel i Deka uppgår till 14,8 %. De respektive ägarna har teckningsrätt om en av parterna vill sälja sin andel.

(6) DSGV lade ett bud på LBBW:s andel i Deka som var giltigt till […]. För att försäljningen skulle gå i lås skulle budet accepterats av alla övriga delstatsbanker som har en andel i Deka, även Deka och dess generalförsamling.

(7) Tyskland har informerat kommissionen om att alla delstatsbanker med andelar i holdingbolaget har för avsikt att sälja sin andel till DSGV, vilket skulle innebära att DSGV blir ensam ägare av Deka. Ett bindande beslut av dessa försäljningar väntas ske inom […], trots att det inte går att utesluta ytterligare en försening till […] med hänsyn till den komplexa beslutsprocessen. Enligt Tyskland skulle det bana vägen för och påskynda försäljningen av LBBW:s andelar i Deka om delstatsbankerna sålde sina andelar i holdingbolaget.

(8) Tyskland har även informerat kommissionen om att DSGV har förlängt sitt erbjudande om att köpa LBBW:s andelar i Deka till och med […].

(9) Bortsett från en begäran om uppskov av fristen för avyttringen av Deka, hävdar man från tysk sida att LBBW har gjort allt man kunnat för att se till att försäljningen kommer till stånd. Förvaltaren som övervakar LBBW:s avyttringar, vilket Tyskland inom ramen för LBBW-beslutet förbundit sig att göra, bekräftar den bedömningen.

III. **BEDÖMNING AV STÖDET**

(10) Detta beslut gäller genomförandet av den omstruktureringsplan som godkändes i LBBW-beslutet. Tyskland begär att tidsfristen för försäljningen av Deka skjuts upp med tre månader, […].

([1]) EUT L 188, 21.7.2010, s. 1.

(*) Delar av denna text har utformats så att konfidentiella uppgifter inte ska röjas. Dessa delar har markerats med tre punkter i hakparentes.

([2]) Utnämnd i enlighet med LBBW-beslutet för att övervaka att de åtaganden som gjorts med avseende på avyttrandena genomförs korrekt och fullt ut.

(11) Kommissionen kan förlänga fristen för avyttringar. Trots att detta inte uttryckligen föreskrivs i förordning (EG) nr 65919/99, kan kommissionen medge en förlängning så länge detta inte hindrar genomförandet av LBBW-beslutet ([1]).

(12) Kommissionen noterar att LBBW redan har inlett ett aktivt försäljningsförfarande vad gäller Deka genom att säkra ett erbjudande från DGSV. Med hänsyn till detta noterar kommissionen ståndpunkten från både Tyskland och förvaltaren att LBBW har gjort allt man kunnat för att påskynda försäljningen.

(13) Dessutom verkar det enligt Tyskland som om det finns en stor sannolikhet att delstatsbankerna som äger andelar i holdingbolaget också kan komma att sälja sin andel, vilket underlättar hela försäljningsförfarandet för LBBW:s andel i Deka.

(14) Slutligen finns det övertygande argument för att försäljningen kommer att gå i lås inom den föreslagna tidsfristen, senast den […]. Det verkar i synnerhet som om […]. Detta beslut ger LBBW möjlighet att sälja sin andel i Deka, även om delstatsbankernas försäljning av sina andelar i Deka skulle dröja längre än vad som var tänkt.

(15) En förlängning av försäljningsfristen med tre månader påverkar inte genomförandet av den genomgripande omstruktureringsplan (till 2014) som godkänts i LBBW-beslutet. Förlängningen kommer också att hjälpa LBBW med att ingå de nödvändiga överenskommelserna med de övriga delstatsbankerna och därmed underlätta försäljningen, antingen gemensamt eller enskilt. Därför borde den förlängda tidsfristen göra det möjligt för LBBW att sälja sina andelar i Deka före […]. Detta gör det möjligt för LBBW att klara av de ovannämnda hindren, som i huvudsak påverkas av yttre faktorer, och slutföra avyttringen av Deka i enlighet med LBBW-beslutet. Kommissionen anser därför att en begäran om en relativt kort förlängning av tidsfristen till […] är motiverad, i synnerhet med hänsyn till Dekas särpräglade juridiska form. Med tanke på omständigheterna i ärendet innebär en sådan förlängning inte att den tidsplan som antogs från början har blivit försenad och att det skulle motsvara en minskning av stödbeloppet ([2]).

IV. **SLUTSATS**

(16) Av de skäl som nämns ovan anser kommissionen att en förlängning av tidsfristen med tre månader i fråga om försäljningen av Deka är nödvändig för att möjliggöra, inte hindra, att LBBW:s omstruktureringsplan genomförs ordentligt.

V. **BESLUT**

Kommissionen förlänger tidsfristen för försäljningen av Deka till och med den 31 mars 2011.”

([1]) Europaparlamentets och rådets beslut av den 21 december 2010 i mål MC 8/09 WestImmo.

([2]) Kommissionens riktlinjer för statligt stöd till undsättning och omstrukturering av företag i svårigheter, EUT C 244, 1.10.2004, s. 2, punkt 52 d.

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