Commission Decision of 18 July 2007 on State aid C 37/05 (ex NN 11/04) implemented by Greece — tax-exempt reserve fund (notified under document number C(2008) 3251) (Only the Greek version is authentic) (Text with EEA relevance) (2008/723/EC)

COMMISSION DECISION

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(Text with EEA relevance)

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to the provision cited above[1],

Whereas:

I. PROCEDURE

(1) Based on information collected by the Commission, Greece was requested by letter dated 22 October 2003 (D/56772), to provide information about several measures included in a draft law on 'Development and social policy measures — Objectivity of tax controls and other provisions', with a view to establish the extent to which they constitute aid within the meaning of Article 87 of the EC Treaty. Under the provisions of one of these draft measures, certain companies are allowed to set up a special tax-free reserve fund of up to 35 % of their profits in order to carry out investments of an equal amount. The Commission also reminded Greece of its obligation to notify the Commission of any measures constituting aid before their implementation, pursuant to Article 88(3) of the EC Treaty.

(2) By letter dated 27 November 2003 (A/38170) the Greek authorities provided some of the information requested. As the answers were not complete, the Commission reminded the Greek authorities by the letter of 3 December 2003

(D/57817) of its request and of its power to instruct Greece to provide the requested information under Article 10(3) of Council Regulation Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty[2]. Subsequently, the Commission received two letters dated 8 December 2003 (A/38600) and 21 January 2004 (A/30440) in which the Greek authorities provided further information. However, the replies were very general and not sufficiently detailed to allow the Commission to assess the measures in the light of Articles 87 and 88 of the EC Treaty.

(3) On 15 January 2004, Greece enacted Law 3220/2004 on 'Development and social policy measures — Objectivity of tax controls and other provisions', which entered into force on 30 January 2004, on its publication in the Official Journal of Greece No 3220/2004 (FEK A 15).

(4) The Commission, by letter dated 13 May 2004 (COM(2004) 1894), adopted an information injunction pursuant to Article 10(3) of Council Regulation (EC) No 659/1999. The Commission notified the Greek authorities of this decision by letter dated 14 May 2004.

(5) By letter dated 17 June 2004, registered at the Commission on 23 June 2004 (CAB(2004)1647), the Greek authorities provided a part of the information necessary to assess whether the measure in question is in compliance with Article 88(3) of the EC Treaty.

(6) By letters dated 7 September 2004 (D/56332), 21 September 2004 (D/56733) and 27 January 2005 (D/50744), the Commission asked for additional information. Greece provided the Commission with further information by letters dated 6 December 2004, registered at the Commission on 13 December 2004 (A/39659), 11 January 2005, registered at the Commission on 17 January 2005 (A/30523), and 25 April 2005, registered at the Commission on 29 April 2005 (A/33595).

(7) By letter dated 13 July 2005 the Commission informed the Greek authorities of its intention to issue a suspension injunction pursuant Article 11(1) of the Regulation (EC) No 659/1999. By letter dated 25 July 2005, registered at the Commission on 29 July 2005 (A36189) the Greek authorities proposed repealing the measure, however only with effect to revenues and profits accrued after 1 January 2005, while it would stay in force for revenues and profits made before that date.

(8) By letter dated 20 October 2005[3], the Commission informed Greece that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty on the aid measure. In this decision, published in the *Official Journal of the European Union*[4], the Commission invited interested parties to submit their comments on the measure.

(9) By letters dated 18 November 2005 and 21 December 2005, registered at the Commission on 22 November 2005 (A/39597) and 23 December 2005 (A/40796) respectively, Greece requested an extension of the deadline for submitting its observations on the Decision of 20 October 2005.

(10) By letters of 25 November 2005 and 12 January 2006 the Commission granted the respective deadline extensions.

(11) By letter dated 30 January 2006, registered at the Commission on 31 January 2006 (A/30817), Greece submitted further information and requested a third deadline extension, which was not granted by the Commission.

(12) By fax dated 14 February 2006, registered at the Commission on the same day (A/31227), a third party, the Federation of Greek Industries, requested an extension of the deadline for submitting its observations on the Decision of 20 October 2005. The Commission refused to grant this extension by letter of 20 February 2006, as it considered the prescribed period for submitting comments, which according to the Article 6(1) of Regulation (EC) No 659/1999 of 22 March 1999 should normally not exceed one month, as sufficient. Moreover, no particular justification was provided for the deadline extension request.

(13) By fax dated 28 February 2006, registered at the Commission on the same date (A32693), the Federation of Greek Industries (FGI) submitted its comments as an interested third party.

(14) By e-mail dated 6 April 2006, registered at the Commission on the same date (A/32693), and by letters dated 16 June 2006 and 26 October 2006, registered at the Commission on 20 June 2006 (A/34774) and 30 October 2006 (A/38658) respectively, Greece submitted further information. In the letter dated 16 June 2006 Greece declared that the information sent by letter dated 6 April 2006 is to be considered within the framework of this procedure and not as a separate notification.

II. DETAILED DESCRIPTION OF THE AID SCHEME

II.1. Objective of the scheme

(15) Article 2 of Greek Law 3220/2004 (hereinafter referred to as ‘the measure’ or ‘the scheme’) aims at promoting economic development throughout the regions of Greece, at the increase of employment and entrepreneurship and the improvement of the competitiveness of the economy.

II.2. Legal basis of the scheme

(16) The legal basis of the scheme is Greek Law 3220/2004 entitled ‘Development and social policy measures — Objectivity of tax controls and other provisions’[5] (hereinafter referred to as the Law 3220/2004), which entered into force on 28 January 2004, upon being published in the Greek Government

Gazette (FEK A 15). The Greek authorities further stipulate that the relevant eligible cost, aid intensities, eligible undertakings and projects are set out in the regional development law, 2601/1998[6] (hereinafter referred to as the Law 2601/1998).

II.3. Forms of aid

(17) The aid will take the form of a special tax-free reserve fund established by a beneficiary from up to 35 % of its aggregate undistributed profits during 2004. Additionally, the fund can be established from up to 50 % of the profits during 2003 after deduction of the profits from the year 2002 or, if the undertakings made an eligible investment in 2003, the reserve fund can be created up to an amount of that investment but not exceeding 35 % of the aggregate undistributed profits of 2003. Aid is granted at the moment of a beneficiary's tax declaration is accepted by the Greek fiscal authorities. This usually took place in the first half of 2004 and 2005. The fund may be used by the undertakings referred to in Article 3 of Law 2601/1998, irrespective of which category of fiscal books they keep or where they are established. The purpose of the reserve shall be to carry out investments of at least the volume of the fund over the three years following its creation.

(18) After the three-year period from the dated the tax-free reserve fund was created, the total amount of the reserve used for the eligible investments shall be used to increase the capital of the undertaking and shall be exempted from income tax. Within the first year of the three-year period the beneficiaries must spend at least one third of the special reserve fund on carrying out the investment. The part of the fund that will not be used for investment during three years shall be declared as late supplementary income and will be taxed according to the general tax provisions plus legal interest. The legal interest rate will be at least 1 % per month for the amount due, i.e. at least 12 % per year and thus far higher than the reference rate of 4,43 % for aid granted in the year 2004 and 4,08 % for aid granted in year 2005[7].

II.4. Beneficiaries and sectoral delimitations

(19) In order to benefit from the scheme, an undertaking must be active within one of the 23 sectors as defined in Article 3 of Law 2601/1998. The first sector, manufacturing[8], includes the production of textile materials, production of basic metals and manufacturing of automobiles[9]. The other sectors are sustainable energy production[10], applied research and technology development[11], high-tech services[12], software development[13], quality services[14], mining[15], quarrying and treatment of minerals and marble[16], intensive agriculture and fishery[17], agricultural and agro-industrial cooperatives[18], packaging of agriculture products and fish[19], urban development[20], public car parking[21], liquid gas and fuels undertakings[22], transport to remote landlocked areas[23], large joint ventures[24], large international trade companies[25], trade undertakings[26],

therapy and rehabilitation centres and disabled homes[27], specific tourism undertakings[28], monasteries for erecting hostels and cultural centres[29], engineering[30], undertakings in listed buildings or with traditional production or with a name of origin[31]. Companies active in the manufacturing sector, as well as in intensive agriculture and fishery can also use the scheme for its activities outside of Greece[32]. International trade companies can use the scheme for its activities in Greece as well as outside of the Community[33].

(20) Article 3 of Law 2601/1998 also defines for each sector a specific set of expenditure that may be made from the fund. Only firms making investments falling within the categories referred to in Article 3 of the Law 2601/1998 may be beneficiaries of the scheme. The Greek authorities confirmed that the measure applies to all firms established anywhere in Greece without any distinction between domestic and foreign firms or between new and old firms.

II.5. Eligible projects

(21) The aid concerns investment and operating costs linked to the business activities defined in Article 3 of Law 2601/1998. In the case of investment costs, no difference is made between initial investment and replacement investment. Investment projects may concern mainly:

— construction, expansion and modernisation of plants and buildings as well as landscaping[34];
— construction of storage capacity[35];
— purchase of unused buildings[36];
— purchase of industrial space[37];
— purchase of new modern machinery and other equipment[38];
— process-automation systems and related software as well as training[39];
— means of transportation within greater plant area and for staff[40];
— refrigerator trucks[41];
— buildings and equipment intended for accommodation and social needs of workers[42];
— environmentally motivated investments[43];
— investment in renewable energy, combined production for electric power and heat (CHP), energy saving[44];
— establishment, extension or modernisation of laboratories for applied research[45];
— recycling facilities[46];
— investment into efficiency[47];
— construction of water and steam transportation network[48];
— computers[49];
— software[50];
— further development of software, up to 60 % of total investment[51];
— access land works for mines[52];

— equipment and means of transportation to the islands[53];
— transportation equipment[54];
— furniture, equipment[55];
— second-hand trucks[56].

(22) The operating costs may mainly include:
— conversion and repair of old plants or buildings or installations[57];
— leasing costs[58];
— studies for implementation of new technology[59];
— cost of relocation for environmental reasons[60];
— implementation of business plans of over GRD 1 billion (approximately EUR 2,9 million)[61];
— training[62];
— implementation of restructuring business plan to firms that are not in difficulty[63];
— introduction of process and product certification and related studies[64];
— restructuring of plants to be more flexible[65];
— innovation and innovative prototypes[66];
— patent registration[67];
— introduction and adaptation of environmental technologies[68];
— purchase of reproductive proliferating material[69];
— studies on organisation and markets[70];
— studies on eligibility to aid[71].

II.6. Aid intensities

(23) The tax exemption corresponds to the totality of the corporate tax on the profits allocated to the reserve fund. The applicable corporate tax rate is 35 %. At least one third of the reserve must be spent within the fist year of its creation, while the rest must be spent within three years at the latest. In order to calculate the maximum aid intensity, both the aid and the expenditure shall be discounted to the end of the first year. The interest rate to be used is the Community reference and discount rate[72] applicable to Greece on the moment of granting the aid, which was 4,43 % for 2004 and 4,08 % for 2005. The maximum possible aid intensities are thus 37,05 % and 36,89 % respectively[73].

II.7. Cumulation of aid

(24) Law 3220/2004 explicitly excludes cumulation with aid granted under Law 2601/1998. The Greek authorities confirmed that no other aid schemes exist that would support the same eligible costs.

II.8. Duration and budget of the scheme

(25) Firms referred to in Article 3 of Law 2601/1998 may create a special tax-exempt reserve under Article 2 of Law 3220/2004 of profits accrued only during 2003 and 2004. The budget of the scheme is not mentioned and given that the scheme is a tax advantage, the total Government revenue foregone is not limited and depends on the past profits and eligible investments made during the years 2005-07 and the related claims.

III. GROUNDS FOR INITIATING THE PROCEDURE

(26) The Commission considered that the non-notified aid scheme constitutes State aid within the meaning of Article 87(1) of the EC Treaty. It involved State resources, it affords an advantage to the beneficiaries, it is selective and has an effect on trade. Since the measure was new and was put into effect without prior notification to the Commission, it constituted unlawful aid.

(27) The Commission has examined the scheme in the light of Article 87 of the EC Treaty, and in particular, where these provisions apply, under the specific State aid rules. The Commission had serious doubts about whether the measure fulfilled the criteria of any of the applicable rules, and thus about the compatibility of the measure with the common market.

IV. COMMENTS FROM THIRD PARTIES

(28) The Federation of Greek Industries (hereinafter referred to as 'FGI') submitted its comments as an interested third party.

(29) The FGI first argued that the Commission considerably restricted its rights by rejecting its request for an extension of the time limit for the submission of its comments.

(30) The FGI then argued that the measure is of general nature and not selective. Even if some aspects of the measure are selective, the tax-exempt reserve was created with a view to supporting specific types of investment costs of any undertaking, so it should be considered as a general tax measure.

(31) The FGI then claims that the measure is existing aid within the meaning of Article 1(b) of Regulation (EC) No 659/1999. For the Federation, Law 3220/2004 merely adapts the method for the setting up of the reserve, which is part of a State aid scheme established by Law 2601/1998, which was approved by the Commission.

(32) The FGI considers that Law 3220/2004 introduces a technical adaptation, i.e. the possibility to create a tax-exempt reserve before the investment, does not have any concrete influence on the scope, amount or effect of the scheme.

(33) The FGI also holds that neither the existence of a larger group of beneficiaries nor an increase in the budget, nor investments of a higher amount invoked by the Commission would be direct consequences of the change in the method for creating the reserve.

(34) According to the FGI, even if other changes introduced by Law 3220/2004 were to be considered as new aid, it would have to be considered as a severable amendment to the existing aid scheme. In this case, only the new provisions in question would have to be notified and the classification of the amended scheme as existing aid would not be altered[74].

(35) For the FGI, the reasoning in the opening decision is unclear and equivocal, and insofar as the Commission based its decision on other factors, it has not fulfilled its duty to state reasons under Article 253 of the EC Treaty.

(36) The FGI criticises the fact that the opening decision does not explain the calculation of the aid intensity, in order to allow a comparison with the aid intensity which arose under Law 2601/1998.

(37) The FGI then argues that even if the Commission considered that the severable alterations had to be notified as new aid, their compatibility would have to be assessed for each individual beneficiary on a case-by-case basis[75]. When doing that, the Commission has in particular to consider its previous decision — in which Law 2601/1998 was considered to be a compatible aid — as a framework that cannot be amended within this procedure.

V. COMMENTS FROM GREECE

V.1. Law 3220/2004 is existing aid

(38) For the Greek authorities, the fact that the aid under examination was introduced by a different Law to the previous Law 2601/1998 does not suffice for it to be designated a new aid, according to the case law of the Court[76].

(39) Greece claims that Article 2(2) of Law 3220/2004 does not move the point in time at which the investment is carried out.

(40) Moreover, Greece argues that a change in the point in time at which undertakings form the reserve does not have any direct correlation with an increase in the group of beneficiaries.

(41) Greece furthermore considers that there is no direct correlation between the widening of the range of beneficiaries and the distortion of competition.

(42) The Greek authorities also consider it necessary to divide the undertakings which benefit from Law 3220/2004 into two categories:

— those which were already entitled to form a tax-exempt reserve fund under the Law 2601/1998 scheme. In this case there is no new economic advantage so the aid should be considered an existing aid. Hence, the obligation to notify did not apply and there can be no recovery;

— those which did not have entitlement to inclusion in Law 2601/1998, for which that measure could be considered as new aid; that said, the compatibility with the provisions of the EC Treaty should be judged according to each case.

(43) Lastly, Greece argues that the reasons stated by the Commission for describing the measure introduced by Law 3220/2004 as new State aid are unclear and inadequate, which is in breach with Article 253 of the EC Treaty.

V.2. Possibility of inclusion of the measure in the existing Community frameworks for compatible State aid

(44) The Greek authorities consider that investments from the tax-exempt reserve fund qualify for inclusion in the following frameworks of permissible State aid:

— Commission notice on *de minimis* aid[77];

— Guidelines on National Regional Aid (hereinafter 'RAG')[78];

— Multisectoral framework on regional aid for large investment projects (hereinafter 'MSF')[79];

— EFTA Surveillance Authority Decision No 152/01/COL of 23 May 2001 revising the guidelines on the application of the EEA State aid provisions to aid for environmental protection[80], (hereinafter 'Environmental Guidelines');

— Community framework for State aid for Research and Development (hereinafter 'R&D Framework')[81];

— Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid (hereinafter 'Training BER')[82];

— Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (hereinafter 'SME BER')[83];

— the Community guidelines for State aid in the agriculture sector[84];

— the Guidelines for the examination of State aid to fisheries and aquaculture in the wording that is applicable to this aid[85].

(45) Aid to undertakings in difficulty and export aid are excluded, and foreign firms established in Greece can use the measure in question.

(46) The Greek authorities also included in their reply a draft legislative proposal to include the measure in the existing frameworks on State aid. They propose to treat tax-exempt reserve funds retroactively as State aid and to establish a national authority that would examine *ex post* the compliance of each individual case with Community State aid rules.

V.3. Information about investments covered by the Community State aid rules

(47) According to the Greek authorities, 3 315 undertakings have received an amount lower than EUR 100 000, so these cases can be considered as being included in the *de minimis* scheme. As regards the other 320 undertakings, the case-by-case examination had begun and was ongoing.

(48) On the basis of the checks that have already been completed, investments that according to the Greek authorities may comply with the RAG account for:

— the entire tax-exempt reserve fund of 84 undertakings,

— part of the reserve fund of 103 undertakings.

V.4. Financial consequences of a negative decision by the Commission in this matter

(49) The Greek authorities believe that a negative decision and the consequent recovery of the amounts would be disastrous for the country. The Greek authorities put forward that according to ECJ case law, it may, exceptionally, take into account the intolerable financial consequences of its judgment and limit the consequences of the latter[86].

VI. ASSESSMENT

VI.1. Qualification as State aid

(50) The Commission considers that the measure under scrutiny fulfils all the four cumulative conditions to be considered aid within the meaning of Article 87(1) of the EC Treaty, as also explained more precisely in the Commission notice on the implementation of State aid rules to measures related to direct business taxation[87].

(51) The Court of Justice has consistently held that a measure by the means of which the public authorities grant to certain undertakings a tax exemption which, although not involving a transfer of State resources, places the persons to whom the exemption applies in a more favourable financial position than other taxpayers constitutes State aid within the meaning of Article 87(1) of the EC Treaty[88].

VI.1.1. State resources

(52) Firstly, the measure involves State resources, as the Greek State foregoes tax revenues belonging to it.

VI.1.2. Advantage

(53) Secondly, the measure affords an advantage to the beneficiaries as they are allowed to form a tax-free reserve fund from their profits up to 35 % for 2004 (financial year 2005), and up to 50 % for 2003 (financial year 2004) on the remaining profits after the deduction of the 2002 (financial year 2003) profits. The fact that part of the profits of the beneficiaries is not taxed relieves them from charges that are normally born from their budget. If the reserve fund has not been used and no interest or less interest than the Community reference and discount rate for Greece is levied upon the deferred tax payment, the difference between the tax debt including compound reference interest and the actual amount to be paid constitutes a benefit as well.

(54) The reserve fund that was not used must according to the Greek legislation be taxed at the legal interest rate. The legal interest rate will be at least 1 % per month for the amount due, which is at least 12 % per year and thus far higher than the reference rate of 4,43 % for aid granted in the year 2004 and 4,08 % for aid granted in year 2005[89]. Consequently, the tax revenue forgone by the state which has been placed in the fund and which is taxed with the legal interest rate does not constitute advantage and thus does not qualify as State aid in the sense of Article 87(1) of the EC Treaty, as its character is not more advantageous than the one of a loan at market terms, which for loans to undertakings that are not in difficulties is assumed according to the Commission notice on the method for setting the reference and discount rates[90] to amount to the reference rate, plus possibly 400 basis points or more if the liability is unsecured.

VI.1.3. Selectivity

(55) Thirdly, the measure is selective because it favours only the companies performing business activities referred to in Article 3 of the Law 2601/1998. Only the companies in the listed sectors as opposed to sectors that have not been included to the list may benefit from the measure. Moreover, according to Article 3 of the Law 2601/1998 some sectors require secondary legislation in order to become eligible for the advantages. According to the Greek authorities such secondary legislation was not put into force. Finally for each sector a different list of eligible activities applies, with the consequence that companies operating in different sectors benefit of the measure to different extent. Therefore, the measure is selective even among the sectors listed in Article 3 of the Law 2601/1998. The submission of the Greek authorities and the third party, that this scheme constitutes a general taxation measure, is thus unsubstantiated.

VI.1.4. Effect on trade and distortion of competition

(56) Fourthly, the measure has an effect on competition and trade between Member States. As the measure gives an advantage to the beneficiaries, it can distort or threaten to distort competition. Besides, the activities mentioned in Article 3 of Law 2601/1998 are indeed subject to intra-Community trade. Hence beneficiaries of the measure are not excluded from carrying on economic activity involving trade between Member States. Therefore, the aid scheme is liable to affect trade and distort competition.

VI.1.5. Conclusion

(57) It follows from the foregoing that the measure in question constitutes a scheme granting State aid within the meaning of Article 87(1) of the EC Treaty. It is also important to bear in mind that Law 2601/1998, to which the Greek authorities refer, was already deemed to be a State aid scheme by the Commission, yet considered compatible[91].

VI.2. Qualification of the scheme as unlawful aid

(58) According to Article 1(f) of Council Regulation (EC) No 659/1999 'unlawful aid' means new aid put into effect in contravention of Article 93(3) (now 88(3)) of the Treaty. According to Article 1(c) of the same Regulation 'new aid' shall mean all aid which is not existing aid, including alterations of existing aid.

(59) According to European Court of Justice case law, the alteration, as such, of existing aid is to be classified as new aid, and it is only where the alteration affects the actual substance of the original scheme that the latter is transformed into a new aid scheme. There is no substantive alteration of an existing scheme where the new element is clearly severable from the initial scheme[92].

(60) This measure, however, presents several substantial procedural and material differences.

VI.2.1. Procedural changes

(61) Firstly, this measure was not a pure replacement of the existing measures, but a new stand alone measure, as it did not repeal or replace any previous measure. Moreover, the periods of applicability of the measures were not subsequent.

(62) The Greek authorities confirmed, as mentioned above, that the provisions of Article 2, Law 3220/2004 essentially aim to complement Law 2601/1998, which received Commission approval in 1999 in the framework of Case No NN 59/A/1998, as a national regional development system, pursuant to the RAG[93]. It should be noted that Law 2601/1998 has been repealed as from February 2005. Nevertheless, the Commission notes that this measure is new aid.

(63) First of all, Law 3220/2004 applies to a set of projects in a number of sectors. It refers to the list of eligible sectors and projects given in Article 3 of Law 2601/1998. However, it does not explicitly state that it amends the latter. Moreover, the two provisions were in force in parallel, as Law 3220/04 entered into force on 28 January 2004 and the aid measure under the Law 2601/1998 expired on 23 December 2004, while Law 2601/1998 was repealed as from February 2005. Finally, although the period during which the funds were created under the two schemes did not overlap, the periods during which the measures applied overlapped, as both laws applied for the profits of years 2003 and 2004. The fact that the two measures were applied in parallel demonstrates that one did not amend or replace the other. Therefore, temporarily this measure is not pure replacement or continuation of the measure approved under NN Case No 59/A/1998[94], but represents a separate aid scheme.

(64) Secondly, the procedure for granting the aid has been changed, which has consequences on the conditions the companies have to comply with in order to obtain the aid.

(65) Under Law 2601/1998 it was necessary to apply for the aid to the Greek authorities, which had to approve the application before the aid was granted. Under the approval decision for 2601/1998[95], the Greek authorities committed themselves to verifying the limits for cumulation and combination of aid, the respect of the 1996 R&D Framework, the 1994 environmental guidelines, the exclusion of transport equipment in the transport sector and the exclusion of export aid. Additionally, the authorities had the obligation and the possibility, after the reception of the application, of verifying these issues.

(66) Under Law 3220/2004 the creation of a special tax-exempt reserve was permitted directly on the basis of the income tax provisions without any obligation of the beneficiary to declare specific information about the eligible activities towards the Greek authorities. Neither had the Greek authorities the possibility of refusing the aid on the basis of the commitments they made in the procedure that led to the approval of the aid granted under Law 2601/1998.

(67) According to the decision approving Law 2601/1998, the Greek authorities had to certify the completion of the investment in order to allow the formation of the untaxed reserve fund. The beneficiaries thus had first to use own sources of financing before they were eligible for aid. No similar obligation can be found in Law 3220/2004.

(68) Concerning the argument raised by the Greek authorities that at least in some cases, the aid could have been obtained under Law 2601/1998, it must be observed that this argument is irrelevant as the procedure under the new measure was different and lighter and the criteria for receipt of aid as well as the benefits of the aid for all potential beneficiaries were widened.

VI.2.2. Material changes

(69) Firstly, according to the Commission decision in Case No NN 59/A/1998[96], under Law 2601/1998, only initial investment with the only exception of operating aid for relocation into industrial zones was eligible, whereas under Law 3220/2004 operating aid including replacement investment can also be granted and other operating aid for any of the eligible activities. Under Law 2601/1998, the aided investment had to be maintained for five years, while Article 2(9) of Law 3220/2004 only requires maintaining the investment goods or the fixed assets provided for by Article 2(2) for three calendar years.

(70) Besides, under Law 2601/1998, four forms of aid were possible:

(a) direct grant linked to the initial investment;

(b) interest rebate in relation to medium/long-term loans (at least four years) raised in order to finance the initial investment;

(c) grant in favour of leasing costs of new equipment;

(d) tax relief in the form of a tax-exempt fund equal to 40 % to 100 %, depending on sectors and geographical areas, of the amount of the eligible investment costs.

(71) Law 3220/2004 does not provide for the first three forms of aid given above in paragraph 70(a), (b) and (c). Moreover, the tax-free reserves can be used for all eligible expenditures up to 100 %, irrespective of the area and the amount of eligible investment costs.

(72) Secondly, the period during which the tax-exempt fund was set-up as compared to the moment of expenditure on eligible activities was changed. Tax-exempt reserve funds under Law 2601/1998 could have been created in the year of expenditure on the eligible activity or up to 10 years later. The funds under Law 3220/2004 could have been created in the one to three years before the expenditure on the eligible activity. The new measure is much more beneficial for cash flow purposes since it allows the undertakings to benefit from the tax exemption prior to the investment. Furthermore, the functioning of the measure has different consequences on beneficiaries' possibilities to engage in the eligible projects. The number of beneficiaries of the new scheme may be increased by those companies, which under the previous measure had not had enough liquidity to finance their projects beforehand, but with the addition of the tax exemption they were able to do so. In this respect, it is irrelevant whether the total budget of the aid or the benefits to particular undertakings were increased. The fact that, taken as a whole, the overall conditions of the new measure are less restrictive is sufficient to conclude that it constitutes new aid.

(73) In their written comments, the Greek authorities rely heavily on the judgment of 9 August 1994 of the Court of Justice in Case C-44/93 *Namur Les Assurances du credit*[97]. In that case, the Court indicated that the fact that the measure might in hypothetical situations lead to an increase in the aid budget should not be considered as an indication that it is a new aid if the aid is provided under earlier statutory provisions which remain unaltered. However, the Commission considers that the preceding analysis demonstrates clearly that the provisions of Law 3220/2004 are very different from those of Law 2601/1998. Accordingly it does not consider the judgment to be relevant to this case.

(74) The Greek authorities also claim that widening the range of beneficiaries does not lead to distortion of competition. However, it is well established in Court case law and the Commission's practice that any State aid in sectors subject to competition is liable to lead to a distortion of competition. It therefore has

to be notified in order for the Commission to evaluate the compatibility of such aid.

(75) Finally, contrary to the claim of the Greek authorities that the arguments put forward by the Commission in its decision to open the formal investigation procedure is unclear and inadequate, it must be observed that the Commission noted in that decision two reasons for which it considered that the measure is new aid: (1) distinct legal basis and (2) different instrument that uses different timing of creation of the fund, and could therefore have a different consequence on the internal market. The Commission also provided an example: a possible larger group of beneficiaries and increase in budget was provided. The Commission considers that such a statement of reasons was appropriate to the act at issue in that it disclosed in a clear and unequivocal fashion the reasoning followed by the Commission in such as way as to enable the persons concerned to ascertain the reasons for the decision.

VI.2.3. New aid

(76) The Commission considers that the above analysis has identified a number of indicators which suggest that the scheme established by Law 3220/2004 should properly be considered as a new aid scheme. In particular, the scheme created by this Law co-existed for some time with the scheme established by Law 2601/1998, and contains different conditions and procedure for the grant of aid.

(77) However, even if Law 3220/2004 could be considered as an alteration of an earlier scheme, it is clear that the modifications introduced by this law are of substantial nature, as they do affect the evaluation of the compatibility of the aid measure with the common market[98], and are not purely formal or administrative. Moreover, the modifications applied to all beneficiaries and eligible activities. Therefore the new scheme altered the aid instrument as a whole, and thus it cannot be clearly severable from the existing aid.

(78) Contrary to the claims of the Greek authorities the measure therefore constitutes new aid in its entirety.

VI.2.4. Unlawful aid

(79) The Greek authorities did not notify the measure before its implementation and put it into effect in contravention of Article 88(3) of the EC Treaty. Consequently, the measure constitutes unlawful aid in the sense of Article 1(f) of Council Regulation (EC) No 659/1999.

VI.3. Compatibility of the unlawful aid scheme

(80) Having established that the scheme involves State aid within the meaning of Article 87(1) of the EC Treaty, it is necessary to consider whether the measure could be found to be compatible with the common market.

(81) The Commission has examined the scheme in the light of Article 87 of the EC Treaty, and in particular, where these provisions apply, on the basis of:

— the RAG[99];

— the MSF[100];

— Community guidelines on State aid for rescuing and restructuring firms in difficulty (hereinafter 'Rescue and Restructuring Guidelines')[101];

— the Environmental Guidelines[102];

— the R&D Framework[103];

— the training BER[104];

— the SME BER[105];

— the Community guidelines for State aid in the agriculture sector[106];

— the Guidelines for the examination of State aid to fisheries and aquaculture in the wording that is applicable to this aid[107].

The aid was assessed according to the rules that were applicable at the time of granting.

(82) During the preliminary investigation period the Greek authorities made a number of statements concerning the restriction of aid provision in an attempt to mitigate the shortcomings in compatibility with the RAG. Among them, they committed to respect the Multisectoral Framework for large investment projects and not to grant aid to firms in difficulty. However, the advantage is given to the beneficiaries directly by law, without any additional condition or administrative discretion. Only a few supported sectors and projects require secondary legislation in order to be effective. Except in those circumstances where secondary legislation is necessary, it seems impossible for Greek authorities to enforce any commitments against taxpayers invoking the rights recognised by law. Consequently, these commitments cannot be considered in the assessment of the measure.

(83) The Commission cannot accept either the arguments put forward by the Greek authorities or those put forward and the FGI[108]. In particular, as regards, the argument of the Greek authorities that aid to undertakings which were already entitled to form a tax-exempt reserve fund under the former scheme constitutes existing aid, the Commission notes that the fact of being eligible under an existing scheme does not justify aid provided under a new scheme. In its reply to the Commission decision to open a formal investigation procedure, the Greek authorities proposed establishing a national authority that would examine *ex post* the compliance of each individual case with the Community State aid rules. The Commission notes that it is its prerogative to examine the compatibility of the aid and therefore this proposal cannot be accepted.

VI.3.1. Application of de minimis Regulation

(84) The Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid

(hereinafter *de minimis* Regulation[109] cannot be applied to the scheme as a whole. The Law contains no provision limiting the amount of aid a beneficiary can receive to EUR 100 000[110]. Furthermore the provisions of Article 3 of Regulation (EC) No 69/2001 regarding cumulation and monitoring are not respected.

(85) As regards the sectors of fisheries and agriculture, the special provisions for *de minimis* aid are laid down by the Commission Regulation (EC) No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the agriculture and fisheries sectors[111]. This Regulation entered into force on 1 January 2005 and applies to aid granted before its entry into force, if individual aid fulfils all the conditions laid down in its Articles 1 and 3.

(86) Commission Regulation (EC) No 1860/2004 states that aid granted in the fields of agricultural products or fisheries products up to EUR 3 000 per beneficiary over any period of three years, within a maximum amount established for each Member State (being for Greece for agriculture and for fisheries respectively EUR 34 965 000 and EUR 2 036 370) is not State aid within the meaning of Article 87(1) of the Treaty provided it is not fixed on the basis of price or quantity of products put on the market, nor related to export (linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to export activity), nor contingent upon the use of domestic over imported products. Within the framework of the scheme based on Law 3220/2004, aid complying with the above mentioned conditions will not be considered as State aid within the meaning of Article 87(1) of the Treaty.

(87) The law contains no provision limiting the amount of aid a beneficiary can receive to EUR 3 000 or the maximum *de minimis* amount for Greece. Furthermore, the provisions of Article 3 of Regulation (EC) No 1860/2004 regarding cumulation and monitoring are not respected.

(88) Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid[112] may be applicable — according to Article 5(1) thereof — to the transport sector and undertakings active in the processing and marketing of agricultural products, if the aid fulfils all the conditions laid down in its Articles 1 and 2. These Articles require limiting the amount of aid a beneficiary can receive to the maximum eligible amounts as stipulated under Article 2(2), i.e. EUR 200 000 for undertakings active in the processing and marketing of agricultural products and EUR 100 000 for the transport sector. Moreover, it requires excluding undertakings active in the processing and marketing of agricultural products, in cases:

(a) when the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned;

(b) when the aid is conditional on being partly or entirely passed on to primary producers.

Finally, aid for the acquisition of road freight transport vehicles granted to undertakings performing road freight transport for hire or rewards must be excluded.

(89) The Law contains no provision limiting the amount of aid a beneficiary can receive. Furthermore, the provisions of Article 1 and 2 of Regulation (EC) No 1998/2006 are not respected.

(90) It follows that the scheme does not comply with the conditions of the Regulations.

VI.3.2. Compatibility under RAG

(91) The measure should first be examined on the basis of the RAG. Primary production of agricultural products listed in Annex I of the Treaty, the fisheries sector and coal industry are excluded from the scope of application of the RAG. However, under this measure agricultural production is eligible for aid within two sectors, intensive agriculture and fishery, as well as agricultural and agro-industrial cooperatives. Moreover, coal mining can be supported within the sectors mining, quarrying and treating of minerals or marble. Consequently, in any case, aid in these sectors cannot be justified under the RAG.

(92) Under RAG, aid can be allowed subject to various conditions both for initial investment and higher operating costs. This Law does not clarify which of the two would be applicable.

(93) Firstly, following point 4.4 RAG the initial investment must concern fixed capital relating to the setting-up of a new establishment, extension of existing establishment or starting up a new activity, or purchase of an establishment, which has closed or would have been closed had it not been purchased, but which does not belong to a firm in difficulty. The Commission does not consider the eligible investment expenditures under this measure to respect this definition and thus to qualify as initial investment. Replacement investment is not excluded from the eligible investment projects, for example where the projects concern means of transportation within the greater plant area and for personnel, computers, furniture and equipment, access land works for mines or second-hand trucks. Investment into buildings and equipment intended for accommodation and social needs of workers does not seem to be a productive investment. In the sector of transport to landlocked inaccessible remote areas, projects related to transportation equipment include transport equipment into the standard basis, which is contrary to the RAG[113]. Purchase

of software and further development of software up to 60 % of total investment exceeds the limit of 25 % of investment into intangible assets on top of the standard base. Other conditions necessary for inclusion of software among the eligible costs are not imposed either[114]. Moreover, as software development constitutes the current business in the software development sector, it qualifies as operating expenditure in that sector. According to Article 3(2) of Law 2601/1998, investment aid can also be granted for activities outside Greece. However, this is not eligible under the RAG.

(94) Furthermore, the maximum aid intensity, which in this measure is up to 37,05 % and 36,89 % of the eligible costs for 2004 and 2005 respectively, exceeds the maximum aid intensities as defined in the Regional Aid Map for Greece[115]. In particular, it seems that in areas A and B according to the Greek Regional Aid Map the aid intensity ceilings for projects under Article 5 of the Law 2601/1998 (i.e. 35 %), those for any projects co-financed according to the Community Support Framework[116] (i.e. 35 %) and those for other projects (no regional aid provided for areas A, 18,4 % for Areas B) may be exceeded. In areas C and D ceilings for the tourism projects (i.e. 33,2 %) and for other projects (35,1 %) may be exceeded.

(95) The measure does not contain the obligation to maintain the initial investment for at least five years, as required by point 4.10 of the RAG.

(96) Secondly, following point 4.15 of the RAG operating aid can be exceptionally justified in terms of its contributions to regional development, where its level is proportional to the handicaps it seeks to alleviate. However, the Commission did not receive any such indications and has serious doubts that this very broad measure covering the entire territory of Greece and many widely defined sectors can tackle specific regional handicaps.

(97) Therefore, the Commission notes that the scheme as a whole, which does not respect the scope, the definition of initial investment and the aid intensity, is incompatible under the RAG. Moreover, no individual aid granted under the scheme was from the beginning coupled with a legal obligation to maintain the initial investment for at least five years in the assisted region. No individual aid operating aid was from the beginning justified. Hence no individual aid granted under this scheme can be considered as compatible under the RAG.

VI.3.3. Compatibility under MSF (2002)

(98) The MSF (2002) requires notification of all regional aid investment aid if the aid proposed exceeds the maximum allowable aid that an investment of EUR 100 million can obtain under the MSF reduced scale of the regional aid ceilings. This measure neither excludes the large investment aid, nor does it include an obligation to notify such cases individually, nor does it apply lower aid ceilings in such cases.

(99) Consequently, the Commission notes that the measure does not respect the above mentioned conditions of the MSF, and hence, is incompatible under the MSF. Furthermore, in order to be compatible with the MSF (2002), the scheme must comply with the RAG. However, this is not the case as shown in the previous part. In particular, no individual aid granted under the scheme was from the outset coupled with a legal obligation to maintain the initial investment for at least five years in the assisted region. Hence no individual aid granted under this scheme can be considered as compatible under the MSF (2002).

VI.3.4. Compatibility under the Rescue and Restructuring aid Guidelines

(100) The Greek Authorities explained that the measure did not apply to undertakings in difficulties. In fact, it could have been only used by profit making companies. Therefore the compatibility of this scheme under the Rescue and Restructuring aid Guidelines is excluded. Hence, no individual aid granted under this scheme may be declared compatible under these guidelines.

VI.3.5. Compatibility under the Environmental Guidelines

(101) The Commission also assessed whether the aid for some projects could be found to be compatible with the Environmental Guidelines. The following investments could be assessed under the Environmental Guidelines: environmentally motivated investment[117], introduction and adaptation of environmental technologies, investment in renewable energy, combined production for electric power and heat (CHP) and energy saving, as well as the establishment and expansion of recycling facilities.

(102) Point 28 of the Environmental Guidelines allows the granting of investment aid to SMEs within a period of three years from the adoption of new compulsory Community standards. This scheme does not link the aid to the introduction of new Community standards and it does not clearly define investment costs.

(103) Point 29 of the Environmental Guidelines allows the granting of investment aid, if that enables undertakings to reach environmental standards beyond the Community standards. This scheme does not condition the aid with reaching standards beyond the Community standards and it does not clearly define investment costs.

(104) Point 30 of the Environmental Guidelines allows the granting of investment aid into energy savings. This scheme does not clearly define investment costs.

(105) Point 31 of the Environmental Guidelines allows the granting of investment aid to the combined production of electric power and heat, if the conversion efficiency is particularly high. This scheme does not condition the aid with particularly high conversion efficiency, does not clearly define investment

costs and may not respect the relevant maximum aid intensities given in the guidelines.

(106) Point 32 of the Environmental Guidelines allows the granting of investment aid to promote renewable sources of energy in the absence of mandatory Community standards. This scheme, however, does not provide a clear definition of renewable energy sources and therefore it is not clear to what extent point 32 of the guidelines are applicable. Moreover, the scheme does not clearly define investment costs and it is not clear whether the relevant maximum aid intensities are being respected.

(107) Even if the investment were eligible under this point, Greece has not demonstrated that the eligible cost would comply with the conditions of points 36 and 37 of the Environmental Guidelines, which define the underlining investments and the eligible costs.

(108) Point 38 of the Environmental Guidelines allows the granting of aid for the rehabilitation of polluted industrial sites, where the person responsible for the pollution is not identified or cannot be made to bear the cost. This scheme does not condition the aid with the person responsible for the pollution is not identified or cannot be made to bear the cost.

(109) Point 39 of the Environmental Guidelines allows the granting of investment aid if firms established in an urban area or in a Natura 2000 designated area lawfully carry on activities that create major pollution and must, on account of this location move from its place of establishment to a more suitable area. Thereby the change of location must be dictated on environmental protection grounds and must have been ordered by administrative or judicial decision and the firm must comply with the strictest environmental standards applicable in the new region where it is located. The aid intensity may be maximum 30 %, or 40 % for SMEs, of the eligible costs. Eligible costs are those connected with purchase of land or the construction or purchase of new plant of the same capacity as the plant abandoned, less any benefits deriving from the relocation. Any cost savings or benefits accruing from an increase in capacity for the first five years of operation, or costs for a technically comparable investment that does not provide the same degree of environmental protection would have to be deducted from eligible costs of the investment aid. However, this scheme does not provide any such reductions of eligible costs. This scheme does not condition the aid with the above mentioned restrictions with the obligation to relocate and the eligible costs. The maximum aid intensity for large companies of 30 % is not respected by the scheme. Moreover, operating aid for relocation is not excluded.

(110) As regards the expenditure for the establishment and expansion of facilities to produce raw and other materials from packaging and products already consumed, the scheme does not exclude that the aid will be used for recycling materials from sources external to the beneficiary. This is not in

line with the 'polluter pays' principle, which requires that an undertaking invests to improve its own environmental record, and to reduce its own pollution[118]. Consequently, the Environmental Guidelines are not applicable to the establishment and expansion of recycling facilities that will be used for recycling materials from sources external to the beneficiary. In the absence of the possibility to assess this measure under the Environmental Guidelines, the Commission assessed it directly under the Article 87(3)(c) of the EC Treaty. In the past, it has been the Commission's practice to assess such cases under three additional criteria: (1) the aid should not relieve the original polluters from a burden they would have to bear under Community law, (2) the treated materials would otherwise not be collected or would be treated in a less environmentally friendly way, (3) the projects should be innovative, i.e. the technologies should go 'beyond the state of the art'[119]. The scheme does not ensure that aid for expenditure for the establishment and expansion of facilities to produce raw and other materials from packaging and products already consumed fulfils the three above mentioned additional criteria.

(111) Furthermore, it is not excluded that operating aid may be granted in the framework of the introduction and adaptation of environmental technologies. This aid could be justified only if it was given for waste management, energy saving, renewable energy or combined heat and power production. The aid would have to fulfil the conditions under points 43 to 67 of the environmental guidelines. However, the measure neither directs operating aid to the defined purposes nor follows the relevant conditions.

(112) The doubts expressed by the Commission during the opening of the procedure provided for in Article 88(2) of the Treaty persist, therefore the scheme cannot be declared compatible.

(113) Consequently, the Commission notes that the scheme does not respect the above mentioned conditions of the Environmental Guidelines or that of Article 87(3)(c) of the EC Treaty as follows from the Commission's practice, and hence, is incompatible under the Environmental Guidelines and Article 87(3)(c) of the EC treaty. Moreover, the Commission has looked into all points of the Environmental Guidelines and Commission practice under Article 87(3)(c) and found that the Greek authorities did not demonstrate that any individual aid would be from the moment of its granting compatible under these Guidelines or the Commission's practice under Article 87(3)(c) of the EC Treaty[120].

VI.3.6. Compatibility under the R&D Framework

(114) According to the last indent of Section 10.3 of the Community Framework for State aid for Research and Development and Innovation from 30.12.2006[121], the framework applied for the assessment of unlawful State aid is that in force when the aid was granted, i.e. the R&D Framework[122].

(115) Some projects are possibly related to research and development activities and, therefore, the Commission considered them also in the context of the R&D Framework. These are the establishment, extension or modernisation of laboratories for applied research, further development of software, studies for implementation of new technology, innovation and innovative prototypes, and patent registration.

(116) The Commission notes that aid for the above mentioned projects may fall within the material scope of the R&D Framework, only insofar as these projects consist of research activities as defined in Annex I to the R&D Framework. Moreover, the Commission considers that they do not exclusively cover research and development as defined in Annex I to the R&D Framework. From the wording of the law, eligible costs under the measure do not necessarily have to correspond to those under the R&D Framework.

(117) Furthermore, where the research projects or patent developments receiving aid concern pre-competitive development, the generally applicable aid intensity ceiling of Greece of 35 % (25 % basic intensity + 10 % for Article 87(3)a regions) is exceeded where no extra bonuses are applicable, because the maximum aid intensity under the measure is up to 37,05 % and 36,89 % for 2004 and 2005 respectively. According to State aid rules the cost of patent registration is not eligible for aid if the applicant is a large enterprise. However, large enterprises are not excluded from receiving aid for patent registration under the scheme.

(118) The incentive effect in the case of large undertakings must be established and verified before aid is granted. This condition under the R&D Framework was applicable to all R&D aid to large companies, including fiscal aid. However, the scheme does not provide for establishing the incentive effect before granting the aid. As the undertaking receiving aid was not obliged to increase the R&D activities, even the fact that it may in some undertakings result into increase of R&D activities cannot justify the incentive effect, because this may have been a result of factors external to the aid.

(119) Moreover, in the sector of agriculture, no evidence of compliance with the four conditions listed in the Commission communication from 1998 amending the Community framework for State aid for research and development can be observed[(123)].

(120) Consequently, the Commission notes that the scheme does not respect the above mentioned conditions of the R&D Framework, and hence, is incompatible under the R&D Framework. Moreover, no individual aid granted under the scheme to large companies was from the beginning subject to the condition of incentive effect. The Greek authorities did not demonstrate that any individual aid would be from the moment of its granting compatible under R&D Framework. Hence no individual aid granted under this scheme can be considered as compatible under the R&D Framework.

VI.3.7. Compatibility under the Commission Regulation No 68/2001 ('Training BER')

(121) The Commission assessed the aid for training related to the introduction of process automation systems[124], software related training[125] and other training[126] under the Training BER.

(122) From the wording of the law, it cannot be established whether the eligible costs under the measure correspond to those under the Training BER. Where the training receiving aid is company specific, the aid intensity ceiling for large companies of 35 % (25 % basic intensity + 10 % for Article 87(3)a regions) may be exceeded, because the maximum aid intensity under the measure is for years 2004 and 2005 up to 37,05 % and 36,89 % respectively.

(123) Consequently, the Commission notes that the scheme does not respect the abovementioned conditions of the Training BER, and hence, cannot be considered compatible under the Training BER.

VI.3.8. Compatibility under Commission Regulation No 70/2001 ('SME BER')

(124) The Commission notes that the measure does not make any difference between aid amounts or eligible sectors or projects depending on the size of the beneficiary. Therefore, the measure cannot as a whole be considered compatible under the SME BER. However, where aid is granted under the measure to small- and medium-sized enterprises as they are defined in the Annex I to the SME BER, the block exemption regulation may apply.

(125) Investment aid for SMEs in Greece, which is in its entire territory eligible for regional aid under Article 87(3)(a) of the EC Treaty, is subject to aid intensity ceilings 15 % higher than the ceilings under the RAG. This applies to all investment projects as they are included in paragraph 21 of this decision, except of investment in the agriculture sector, investment in means of transportation in the transportation sector[127] and investment directed abroad[128]. The aid intensity ceilings are breached for projects other than tourism, garages in Areas A and B according to the Greek Regional Aid Map (no regional aid is foreseen for areas A, 18,4 % for Areas B and a 15 % top-up for SMEs). Moreover, the condition in order to apply such higher ceiling is to maintain the investment in the recipient region for at least five years. However, this is not required under the measure. In the transport sector, the costs of transport means and transport equipment shall not be included in the eligible costs.

(126) Foreign direct investment outside Greece can only be subject to aid to small enterprises up to the aid intensity ceiling of 15 % and 7,5 % for medium-sized enterprises. However, both these ceilings can be exceeded under the present measure.

(127) Studies for implementation of new technology, studies related to introduction of process and product certification, studies on organisation and markets, and studies on eligibility to aid could be eligible for aid to SMEs. However, the measure does not guarantee that these services are provided by outside consultants. It is not excluded that such studies are a continuous or a periodic activity that would relate to usual operating activity.

(128) Consequently, the Commission notes that the scheme does not respect the above mentioned conditions of the SME BER, and hence, is incompatible under the SME BER.

VI.3.9. Compatibility under the Community guidelines for State aid in the agriculture sector

(129) In the agriculture sector, the analysis must be made at two levels: for processing and marketing activities, on the one hand, and for primary production, on the other hand, being understood that, in both cases, the relevant Community legislation to take into account is the one applicable at the time the aid was granted, i.e. the Community guidelines for State aid in the agriculture sector (hereafter the agricultural guidelines) and Commission Regulation (EC) No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the agriculture and fisheries sectors[(129)].

(130) As far as primary production is concerned, the relevant provisions to take into account, on the basis of the measures, eligible expenses and operating costs defined by Law 3220/2004, are those laid down in points 4.1, 13 and 14 of the agricultural guidelines, dedicated respectively to investment aid, aid to encourage the production and marketing of quality agricultural products, and aid for the provision of technical support.

(131) According to point 4.1 of the agricultural guidelines, eligible expenses within the framework of investments may include the construction, acquisition or improvement of immovable property, new machinery and equipment (including computer software) and general costs (such as architects, engineers and consultation fees, feasibility studies, the acquisition of patents and licences) up to 12 % of the amount corresponding to the other expenses quoted. Aid for the purchase of plants is allowed, except for annual plants. The aid rates laid down in the same point are 40 % of the eligible expenses in the 'normal' and 50 % in the less-favoured areas, with an increase of five percentage points for young farmers carrying out the investment within five years from setting-up.

(132) To be eligible for aid, farms must also comply with minimum standards in the field of environment, animal handling and hygiene and investments must be targeted on products for which normal market outlet can be found, and the total amount of eligible expenses must not exceed the limit for total investment

eligible for support set by the Member State in accordance with Article 7 of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations[130].

(133) In case of relocation of farm buildings, several possibilities may be envisaged:

— where the need to relocate results from an expropriation which, in accordance with the legislation of the Member State concerned gives rise to a right to compensation, the payment of such compensation will normally not be considered as State aid within the meaning of Article 87(1) of the Treaty;

— in other cases, where relocation simply consists of the dismantling, removal and re-erection of existing facilities, aid up to 100 % of the actual costs incurred may be accepted;

— when relocation results in the farmer benefiting from more modern facilities, the contribution from the farmer must be at least equivalent to 60 % (50 % in the case of the less-favoured areas) of the increase in the value of the facilities concerned after relocation (55 % or 45 % respectively in cases where the beneficiary is a young farmer);

— where relocation results in an increase in production capacity, the contribution from the beneficiary must be at least equal to 60 % (50 % in the less-favoured areas) of the corresponding proportion of the expenses (55 % or 45 % respectively in cases where the beneficiary is a young farmer).

(134) When investments are carried out for environmental reasons, point 4.1.2.4 of the agricultural guidelines states that the aid rates of 40 % or 50 % in the less-favoured areas may be increased by 20 or 25 percentage points if the investment goes beyond the minimum Community requirements in force. In that case, the increase must be confined to the extra eligible costs necessary to meet the objective referred to and does not apply in the case of investments which result in an increase in production capacity.

(135) According to point 13 of the agricultural guidelines, aid for introduction of process and product certification and related studies may not exceed EUR 100 000 per beneficiary over any three-year period or, for SMEs, 50 % of the eligible costs, whichever is greater.

(136) According to point 14 of the agricultural guidelines, training aid may not exceed EUR 100 000 per beneficiary over any three-year period or, for SMEs, 50 % of the eligible costs, whichever is greater. Moreover, certain conditions have to be fulfilled: the aid must be available to all those eligible in the area concerned and where the service is provided by producer groups or other agricultural mutual support organisations, it must not be limited to the members of the group or organisation in question and the contribution towards the administrative costs of the group or organisation must be limited to the costs of providing the service.

(137) On the basis of the information available to the Commission, it seems that the aid intensities calculated for the scheme (37,05 % for 2004 and 36,89 % for 2005) do not exceed those established in the various points of the agricultural guidelines mentioned above, but it is not possible to determine whether all the conditions listed in points 131 to 136 of this Decision have been fulfilled, except in the case of relocation measures, where the provisions of the scheme comply with the rules described in point 133. In particular:

— there is no evidence showing that, among the operating costs listed in point 22, leasing operations have been followed by the purchase of the good at the end of the lease;

— there is no evidence showing that costs such as those linked to studies for implementation of new technology, patent registration, studies on eligibility to aid and studies on organisation and markets have been taking into account only up to 12 % of the other eligible expenses listed in point 131 in the calculation of the aid;

— there is no evidence showing that training activities have been supported in conformity with the provisions of point 14.1. of the agricultural guidelines;

— there is no evidence showing that aid linked to introduction of process and product certification and related studies has been granted in conformity with point 13 of the agricultural guidelines;

— there is no evidence that annual plants have been excluded from the scope of the aid earmarked for the purchase of plants;

— there is no evidence showing that all farms having received aids within the framework of the scheme complied with minimum standards in the fields of environment, hygiene and animal handling, and that the investments were focused on products for which market outlets could be found.

(138) The doubts expressed by the Commission during the opening of the procedure provided for in Article 88(2) of the Treaty persist, therefore the scheme cannot be declared compatible.

(139) AIDS for processing and marketing of agricultural products are governed by point 4.2 of the agricultural guidelines, which contains two sets of rules:

— a first set in which aid may be granted up to 50 % of the eligible expenses in Objective 1 regions and 40 % in the other regions, the eligible expense being the construction, acquisition or improvement of immovable property, new machine and equipment (including computer software) and general costs (such as architects, engineers and consultation fees, feasibility studies, the acquisition of patents and licences) up to 12 % of the amount corresponding to the other expenses quoted; in order to be eligible for aid, the beneficiary must, as in the case of primary production, comply with minimum standards regarding the environment, hygiene and animal handling; moreover no aid may be granted unless sufficient evidence can be produced that normal market outlets for the products concerned can be found, and investment projects with

eligible expenses in excess of EUR 25 million or where the aid exceeds EUR 12 million must be specifically notified to the Commission in accordance with Article 88(3) of the Treaty.

— a second set according to which, in the case of State aid for investments in connection with processing and marketing of agricultural products which are granted within the framework of a regional aid scheme which has been previously approved by the Community guidelines on national regional aid.

(140) In the present case, only the first set of rules is applicable, as the scheme under which aids for processing and marketing of agricultural products are envisaged is not approved but contested by the Commission.

(141) As in the case of primary production, the Commission notes that the aid intensities calculated for the scheme do not exceed those established in point 4.2 of the agricultural guidelines, but it is not possible to determine whether all the conditions quoted in the first indent of point 139 of this Decision above have been fulfilled. In particular:

— there is no evidence showing that, among the operating costs listed in point 22 above, leasing operations have been followed by the purchase of the good at the end of the lease;

— there is no evidence showing that costs such as those linked to studies for implementation of new technology, patent registration, studies on eligibility to aid and studies on organisation and markets have been taking into account only up to 12 % of the other eligible expenses listed in point 139 above in the calculation of the aid;

— there is no evidence showing that all companies having received aids within the framework of the scheme complied with minimum standards in the fields of environment, hygiene and animal handling, and that the investments were focused on products for which market outlets could be found;

— there is no evidence showing that all investment projects in processing and marketing of agricultural products were projects with eligible expenses not exceeding of EUR 25 million or where the aid did not exceed EUR 12 million.

(142) The doubts expressed by the Commission during the opening of the procedure provided for in Article 88(2) of the Treaty persist, therefore the scheme cannot be declared compatible.

(143) Consequently, except in the case of relocation measures, the Commission notes that the scheme does not respect the above mentioned conditions of the agricultural guidelines, and hence, is incompatible under the agricultural guidelines. Moreover, the Commission found that the Greek authorities did not demonstrate that any individual aid would be from the moment of its granting compatible under these Guidelines or Commission practice under Article 87(3)(c) of the EC Treaty.

VI.3.10. Compatibility under State aid guidelines applicable to the fisheries and aquaculture sector

(144) Fishing and aquaculture firms can benefit from the measure under scrutiny. Projects of State aid related to fisheries and aquaculture shall be considered in the context of the Guidelines for the Examination of the State Aid to Fisheries and Aquaculture. After the entry into the force of the Greek Law 3220/2004 setting up the scheme of aids at issue, the Guidelines changed from 1 January 2005. It follows that the Guidelines for the Examination of the State Aid to Fisheries and Aquaculture from 2001[(131)] should be applied to aid granted before 1 November 2004. The current guidelines from 2004[(132)] apply to aid granted after 1 November 2004.

(145) In general it should be noted that no State aid may be declared compatible by the Commission if the Member State concerned has not communicated the total amount of aid per measure as well as the aid intensity. The cumulative effect for the recipient of all state subsidies must be taken into account when the scheme is being assessed. The scheme under examination neither provides such details nor allows such an assessment. Moreover, the scheme at issue does not ensure that the Member State will verify the beneficiary's compliance with the rules of the common fisheries policy.

(146) Both versions of the Guidelines provide for a prohibition of aid which does not impose any obligation on the part of the recipient. These Guidelines underscore the enforcement of the control of such aids, especially the ones accorded in form of tax relief. As no information has been provided by the Member State in order to assess the aid to fishery and aquaculture, the Commission must consider them as not compatible.

(147) Investment aids should be checked by the Commission with respect to the different types of beneficiaries (fishermen, aquaculture, processing, and marketing). Every single application of the measure should be assessed separately on the basis of detailed conditions listed in the Guidelines. The information contained in the scheme does not allow such an assessment.

(148) On the basis of the above, the Commission considers the Article 2 of Law 3220/2004, insofar as it concerns fisheries and aquaculture, not to be compatible. The doubts expressed by the Commission during the opening of the procedure provided for in Article 88(2) of the Treaty persist, therefore the scheme cannot be declared compatible. Consequently, the Commission found that the Greek authorities did not demonstrate that any individual aid would be from the moment of its granting compatible under these guidelines[(133)].

VI.3.11. Compatibility under Article 87(2) and (3) of the EC Treaty

(149) None of the exceptions under Article 87(2) of the EC Treaty can be applied in this case, as the measure is not aimed at the objectives listed in these provisions.

(150) Under Article 87(3)(a) of the EC Treaty, aid is considered compatible with the common market when it is designed to promote the economic development of

areas where the standard of living is abnormally low or where there is serious underemployment. The criteria for assessment of the compatibility under this article are reflected in the specific rules as they are discussed above.

(151) As regards Article 87(3)(b) of the EC Treaty, the aid in question is not intended to promote the execution of an important project of common European interest nor to remedy to a serious disturbance in the economy of Greece, nor is it intended to promote culture or heritage conservation.

(152) Article 87(3)(d) of the EC Treaty concerns culture and heritage conservation where such aid does not affect trading conditions and Competition in the Community to an extend that is contrary to the common interest. This can concern aid to monasteries for erecting hostels and cultural centres and undertaking in listed buildings or with traditional production or with a name of origin in respect to the repair and restoration of listed buildings, the investment into traditional machinery or certification of traditional products or processes that are considered as natural heritage. However, the Commission does not have any information concerning nature of these activities as cultural heritage, the extent of the aid and its impact on the trading conditions. Therefore, the Commission cannot conclude on the compatibility of these measures under the Article 87(3)(d) of the EC Treaty.

(153) Lastly, it is necessary to examine whether the aid can qualify for the exception laid down in Article 87(3)(c) of the EC Treaty which states that may be considered compatible an 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. The criteria for assessment of the compatibility under this article are reflected in the specific rules as they are discussed above. Any aid that does not comply with the conditions under the specific rules requires a detailed justification, which is not provided by the Greek authorities. Therefore, the Commission cannot conclude on the compatibility of these measures directly under the Article 87(3)(c) of the EC Treaty.

VI.4. Conclusion

(154) Since the aid scheme, as a whole and in all parts, except for relocation of farm buildings in the agricultural sector, does not qualify for any of the exceptions provided for in the Treaty, the Commission concludes that the aid scheme is incompatible with the common market, except for relocation of farm buildings in the agricultural sector, for which, on the basis of the analysis made above, aid granted:

— does not constitute State aid within the meaning of Article 87(1) of the Treaty, when relocation results from an expropriation which, in accordance with the legislation of the Member State concerned, gives right to compensation; or

— is compatible with the common market in the other cases described in point 133.

(155) Individual aid granted under the scheme may be considered to be compatible with the common market:

— under Regulation (EC) No 69/2001 only if the total amount of aid granted under the scheme combined with all other *de minimis* aid received by the beneficiary in the previous three year period does not exceed EUR 100 000 and respects all material conditions of the regulation;

— under Regulation (EC) No 1860/2004 only if the total amount of aid granted under the scheme combined with all other *de minimis* aid received by the beneficiary in the previous three year period does not exceed EUR 3 000 and respects all material conditions of the regulation;

— under Regulation (EC) No 1998/2006 only if the total amount of aid for undertakings active in the transport sector and in the processing and marketing of agricultural products granted under the scheme combined with all other *de minimis* aid received by the beneficiary in the previous three year period does not exceed EUR 100 000, for the undertakings active in the transport sector, and EUR 200 000, for undertakings active in the processing and marketing of agricultural products, and respects all material conditions of the Articles 1 and 2 of the regulation;

— under any other State aid regulation, or approved aid scheme only if the individual aid complied with all the material conditions of the relevant regulation or scheme at the time it was granted.

(156) All other individual aid awarded under the scheme must be considered incompatible with the common market.

VII. RECOVERY

(157) According to the Article 14(1) of the Council Regulation (EC) No 659/1999, where negative decisions are taken in cases of unlawful aid, the Commission shall decide that Member State concerned shall take all necessary measures to recover the aid from the beneficiary.

(158) Only incompatible aid can be recovered. The compatibility shall be established at the level of the project receiving aid. It shall further be established, whether the aid was compatible under any Community State aid rules or existing aid schemes at the time of granting according to the rules valid at that time.

(159) When the Commission approves a notified aid, the aid measure must assure that all conditions of the applicable rules are met. Not fulfilling a condition would lead to incompatibility. Consequently, an unlawful aid measure shall not receive any better treatment when assessing the compatibility. In order to conclude on compatibility, all material conditions must have been fulfilled since the beginning. It follows that attempts to introduce retroactively further conditions would not heal the incompatibility of the aid measure at the time of granting the aid.

(160) Only aid under *de minimis* Regulations (EC) No 69/2001 and (EC) No 1860/2004, some provisions of SME and Training BER and some provisions of the agricultural guidelines could possibly be considered as fulfilling all material conditions from the moment of granting.

(161) As to the allegations of Greece that the Commission shall limit the scope of recovery because it would have intolerable financial consequences for Greece, the Commission notes that, according to the Court case law[134], Member States can only use the argument of an absolute impossibility as defence not to recover the aid. However, financial difficulties do not constitute such an absolute impossibility.

(162) The Judgments in the cases referred to by Greece[135], referred to the possibility of a potential limitation of the retrospective force of a European Court of Justice ruling, limiting the temporal effects of a judgment, in exceptional cases, if the judgment resulted in serious economic repercussions owing in particular to a large number of legal relationships entered into in good faith and where said practices were adopted due to the uncertainty of Community provisions.

(163) The claims by Greece do not hold in the underlying measure as it concerns a non-notified, and hence, not approved State aid measure. The extenuating circumstances, cited in the case law referred to by Greece[136], of acting in good faith and uncertainty of the Community provisions can therefore not reasonably hold.

(164) As to possible good faith, the beneficiaries cannot claim good faith, where they did not have legitimate expectations to receive the aid. According to settled jurisprudence[137], legitimate expectations as to the lawfulness of the aid can only be created by the Community institutions, whether by an approval decision or by not acting against an incompatible measure although they should have acted. From the procedure, however, follows that the Commission signalled to the Greek authorities its concerns about the compatibility of the measure as soon as it found out about it, only a few months after its entry into force. Thereafter, the Commission pursued its investigation. Consequently, Greece cannot invoke legitimate expectations against a possible recovery. Moreover, the Community provisions on State aid cannot be claimed to be uncertain.

(165) The Commission therefore rejects the possibility of invoking limitations or exceptions to the recovery of the unlawful by Greece,

HAS ADOPTED THIS DECISION:

Article 1

1 The State aid scheme implemented by Greece under Article 2 of the Law 3220/2004 is incompatible with the common market.

2 In the agricultural sector, aid granted for relocation of farm buildings does not constitute State aid within the meaning of Article 87(1) of the Treaty, when relocation results from an expropriation which, in accordance with the legislation of the Member State concerned, gives right to compensation. This aid is compatible with the common market in the other cases of relocation.

Article 2

Individual aid granted under the scheme referred to in Article 1(1) of this Decision does not constitute aid if, at the time it is granted, it fulfils the conditions laid down by a regulation adopted pursuant to Article 2 of Council Regulation (EC) No 994/98[(138)] which is applicable at the time the aid is granted.

Article 3

Individual aid granted under the scheme referred to in Article 1(1) of this Decision which, at the time it was granted, it fulfilled the conditions laid down by a regulation adopted pursuant to Article 1 of Regulation (EC) No 994/98 or by another approved aid scheme is compatible with the common market up to maximum aid intensities applicable to that type of aid.

Article 4

1 Greece shall recover the incompatible aid granted under the scheme referred to in Article 1(1) of this Decision from the beneficiaries.

2 The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiaries until their actual recovery.

3 The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004[(139)].

4 Greece shall cancel all outstanding payments of aid under the scheme referred to in Article 1.1 with effect from the date of notification of this decision.

Article 5

1 The recovery of the aid granted under the scheme referred to in Article 1(1) shall be immediate and effective.

2 Greece shall ensure that this Decision is implemented within four months following the date of notification of this Decision.

Article 6

1 Within two months following notification of this Decision, Greece shall submit the following information:

a the list of beneficiaries that have received aid under the scheme referred to Article 1(1) and the total amount of aid received by each of them under the scheme;

b the total amount (principal and recovery interests) to be recovered from each beneficiary;

c a detailed description of the measures already taken and planned to comply with this Decision; and

d documents demonstrating that the beneficiaries have been ordered to repay the aid.

Greece shall submit this information using the form given in the Annex.

2 Greece shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid granted under the scheme referred to in Article 1(1) has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detail information concerning the amounts of aid and recovery interest already recovered from the beneficiaries.

Article 7

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 18 July 2007.

For the Commission

Neelie KROES

Member of the Commission

ANNEX

INFORMATION REGARDING THE IMPLEMENTATION OF THE COMMISSION DECISION C 37/05 (EX NN 11/04), IMPLEMENTED BY GREECE, [TAX EXEMPT RESERVE FUND]

Information about the amounts of aid received, to be recovered and already recovered

Identity of the beneficiary	**Total amount of aid received under the scheme**[a]	**Total amount of aid to be recovered**[a] **(Principal)**	**Total amount already reimbursed**[a]	
			Principal	**Recovery interest**

a (°) Million of national currency.

(**1**) OJ C 20, 27.1.2006, pp. 16-25.

(**2**) OJ L 83, 27.3.1999, p. 1.

(**3**) C(2005)3873 of 20.10.2005.

(**4**) Cf. footnote 1.

(**5**) Government Gazette No 15A of 28 January 2004.

(**6**) Αναπτυξιακός Νόμος 2601/1998, Greek Government Gazette A 81 of 15 April 1998.

(**7**) EC State aid reference, published on http://ec.europa.eu/comm/competition/state_aid/others/reference_rates.html

(**8**) Article 3.1.a of Law 2601/1998.

(**9**) Article 15 Annex of Law 2601/1998.

(**10**) Article 3.1.b of Law 2601/1998.

(**11**) Article 3.1.c of Law 2601/1998.

(**12**) Article 3.1.d of Law 2601/1998.

(**13**) Article 3.1.e of Law 2601/1998, implementation required.

(**14**) Article 3.1.f of Law 2601/1998.

(**15**) Article 3.1.g of Law 2601/1998.

(**16**) Article 3.1.h of Law 2601/1998.

(**17**) Article 3.1.i of Law 2601/1998.

(**18**) Article 3.1.j of Law 2601/1998.

(**19**) Article 3.1.k of Law 2601/1998.

(**20**) Article 3.1.l of Law 2601/1998.

(**21**) Article 3.1.m of Law 2601/1998.

(**22**) Article 3.1.n of Law 2601/1998.

(**23**) Article 3.1.o of Law 2601/1998, secondary legislation required

(**24**) Article 3.1.p of Law 2601/1998.

(**25**) Article 3.1.q of Law 2601/1998, implementation required.

(**26**) Article 3.1.r of Law 2601/1998.

(**27**) Article 3.1.e of Law 2601/1998.

(**28**) Article 3.1.t of Law 2601/1998.

(**29**) Article 3.1.u of Law 2601/1998.

(**30**) Article 3.1.v of Law 2601/1998.

(**31**) Article 3.1.w of Law 2601/1998.

(**32**) Article 3.2 of Law 2601/1998.

(**33**) Article 3.1.q, last sentence, of Law 2601/1998.

(**34**) Article 3.1.a.i. et al. of Law 2601/1998.

(**35**) Article 3.1.a.ii. et al. of Law 2601/1998.

(**36**) Article 3.1.a.iii. of Law 2601/1998.

(**37**) Article 3.1.a.iv, c.ii. and f.ii. Law 2601/1998.

(**38**) Article 3.1.a.v. and others of Law 2601/1998.

(**39**) Article 3.1.a.vi. and others of Law 2601/1998.

(**40**) Article 3.1.a.ix. and others of Law 2601/1998.

(**41**) Article 3.1.a.x. of Law 2601/1998.

(**42**) Article 3.1.a.xi. and others of Law 2601/1998.

(**43**) Article 3.1.a.xii. and others of Law 2601/1998.

(**44**) Article 3.1.a.xiii. and others of Law 2601/1998.

(**45**) Article 3.1.a.xiv. and others of Law 2601/1998.

(**46**) Article 3.1.a.xxi. of Law 2601/1998.

(**47**) Article 3.1.a.xxii. of Law 2601/1998.

(**48**) Article 3.1.b.ix. of Law 2601/1998.

(**49**) Article 3.1.e.iii. of Law 2601/1998.

(**50**) Article 3.1.e.iii. and p.vi. of Law 2601/1998.

(**51**) Article 3.1.e.iii. of Law 2601/1998.

(**52**) Article 3.1.g.viii. and h.viii. of Law 2601/1998.

(**53**) Article 3.1.n.ii. of Law 2601/1998.

(**54**) Article 3.1.o.i., q.vi., t.v., u.iv., of Law 2601/1998.

(**55**) Article 3.1.p.iv. of Law 2601/1998.

(**56**) Article 3.1.q.vi. of Law 2601/1998.

(**57**) Article 3.1.l.i. last sentence, p.iii, t.i. and ii. where it concerns modernisation, u.i. where it concerns modernisation and ii., as well as w.i. and ii. of Law 2601/1998.

(**58**) Article 3.1.a.v. and others of Law 2601/1998.

(**59**) Article 3.1.a.vii. and others of Law 2601/1998.

(**60**) Article 3.1.a.viii. and i.x. of Law 2601/1998.

(**61**) Article 3.1.a.xv., e.v. (GRD 500 million), g.xii. of Law 2601/1998.

(**62**) Article 3.1.a.xv., e.v. and g.xii. of Law 2601/1998.

(**63**) Article 3.1.a.xvi. of Law 2601/1998.

(**64**) Article 3.1.a.xvii. of Law 2601/1998.

(**65**) Article 3.1.a.xviii. of Law 2601/1998.

(**66**) Article 3.1.a.xx. of Law 2601/1998.

(**67**) Article 3.1.a.xx. of Law 2601/1998.

(**68**) Article 3.1.g.x. and h.xi of Law 2601/1998.

(**69**) Article 3.1.i.vii. of Law 2601/1998.

(**70**) Article 3.1.p.viii. of Law 2601/1998.

(**71**) Article 3.1.p.ix. of Law 2601/1998.

(**72**) Established according to the Commission notice on the method for setting the reference and discount rates, OJ C 273, 9.9.1997, p. 3 and published on http://europa.eu.int/comm/competition/state_aid/others/reference_rates.html

(**73**) The maximum possible aid intensities are calculated as the highest possible percentage of aid in the eligible costs, both discounted to the year of granting the aid:

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(**74**) Commission Report on the implementation of the Commission notice on the application of state aid rules to measures relating to direct business taxation, 9 February 2004, C(200)434, paragraph 56.

(**75**) Commission Report on the implementation of the Commission notice on the application of state aid rules to measures relating to direct business taxation, 9 February 2004, C(200)434, paragraph 51. See also Commission Decisions: 11/07/2001 (OJ L 174, 4.7.2002, p. 31), 20/12/2001 (OJ L 40, 14.2.2003) etc.

(**76**) Case C-44/93 *Namur-Les Assurances du Crédit SA v Office National du Ducroire and the Belgian State*, [1994] ECR II-2309, paragraph 83, Joint cases T-195/01 and T-207/01, *Government of Gibraltar v Commission of the European Communities*, [2002] ECR II-2309, paragraph 109-111.

(**77**) OJ C 68, 6.3.1996, p. 9.

(**78**) OJ C 74, 10.3.1998, p. 9.

(**79**) OJ C 70, 19.3.2002, p. 8.

(**80**) OJ L 237, 6.9.2001, p. 16.

(**81**) OJ C 45, 17.2.1996, p. 5.

(**82**) OJ L 10, 13.1.2001, p. 20.

(**83**) OJ L 10, 13.1.2001, p. 33.

(**84**) OJ C 232, 12.8.2000, p. 17.

(**85**) OJ C 229, 14.9.2004, p. 5 and OJ C 19, 20.1.2001, p. 7.

(**86**) ECJ Decision in Case C-209/03, Bidar v London Borough of Ealing, Secretary of State for Education and Skills [2005] ECR I-2119, paragraph 68-69; Advocate-General Opinion in Case C-475/03, Banca Popolare di Cremona v Agenzia Entrate Ufficio Cremona [2006] ECR I-9373, paragraph 75; Advocate-General Opinion in Case C-292/04, Wienand Meilicke and others v Finanzamt Bonn-Innenstadt, not yet published, paragraph 34.

(**87**) OJ C 384, 10.12.1998, p. 3.

(**88**) Case C-6/97 Italian Republic v Commission [1999] ECR I-2981, paragraph 16.

(**89**) EC State aid reference, published on http://ec.europa.eu/comm/competition/state_aid/others/reference_rates.html

(**90**) OJ C 273, 9.9.1997, p. 3.

(**91**) Commission Decision in State aid Case No NN 59/A/98 (No SG(99) D/884 of 3 February 1999), OJ C 84, 26.3.1999, p. 7.

(**92**) In Joined Cases T-195/01 and T-207/01: Government of Gibraltar v Commission of the European Communities, [2002] ECR 2002, II-2309, paragraphs 109 and 111.

(**93**) See footnote 78.

(**94**) See footnote 91.

(**95**) See footnote 81.

(**96**) See footnote 91.

(**97**) C-44/93, Namur Les Assurances du Crédit SA v Office National du Ducroire and the Belgian State, [1994] ECR I-3829, paragraph 28.

(**98**) For detailed argumentation, see Section VI.3 below.

(**99**) See footnote 78.

(**100**) See footnote 79.

(**101**) OJ C 244, 1.10.2004, p. 2.

(**102**) See footnote 80.

(**103**) See footnote 81.

(**104**) See footnote 82.

(**105**) See footnote 83.

(**106**) See footnote 84.

(**107**) See footnote 85.

(**108**) See Case T-349/03 Corsica Ferries v Commission [2005] ECR II-2197, paragraph 64.

(**109**) OJ L 10, 13.1.2001, p. 30.

(**110**) Case C-172/03, Wolfgang Heiser v Finanzamt Innsbruck [2005] ECR I-1627.

(**111**) OJ L 325, 28.10.2004, p. 4.

(**112**) OJ L 379, 28.12.2006, p. 5. Regulation replacing Regulation (EC) No 69/2001.

(**113**) RAG, footnote 23.

(**114**) RAG, point 4.6.

(**115**) The regional aid map for Greece has been approved by the Commission with State aid Decision N 469/1999 (Commission letter of 21 January 2000, SG(2000) D/100661) and modified with State aid Decision N 349/2002 (Commission letter of 17 July 2002, C(2002) 2604 fin) for the period 2000-2006.

(**116**) Community Support Framework for Greece for the period 2000-2006, Commission Decision E(2000) 3405.

(**117**) That is investments concerning the protection of the environment, the restriction of ground, underground, water and air pollution, the restoration of the natural environment and water recycling.

(**118**) Environmental Guidelines, point 29 in connection with point 18(b).

(**119**) WRAP environmental grant funding and WRAP lease guarantee fund. OJ L 102, 7.4.2004, p. 59 for a general scheme on recycling investments. For cases in related to recycling paper C61/2002 — WRAP published in OJ L 314 of 28.11.2003, p. 26 and Stora Enso Langerbrugge published in OJ L 53, 26.2.2005, p. 66 respectively. The criteria used in these cases are also commented upon in the Annual Competition report of 2004.

(**120**) Case T-176/01 Ferriere Nord v Commission [2004] ECR II-3931, paragraph 94.

(**121**) OJ C 323 of 30.12.2006, p. 1.

(**122**) See footnote 81.

(**123**) OJ C 48, 13.2.1998, p. 2.

(**124**) Article 3.1.a.vi. et al. of Law 2601/1998.

(**125**) Article 3.1.p.vi. of Law 2601/1998.

(**126**) Article 3.1.a.xv., e.v. and g.xii. of Law 2601/1998.

(**127**) Article 3.1.o.i of Law 2601/1998.

(**128**) Article 3.2 of Law 2601/1998.

(**129**) OJ L 325, 28.10.2004, p. 4.

(**130**) OJ L 160, 26.6.1999, p. 80. Regulation replaced by Regulation (EC) No 1698/2005 (OJ L 277, 21.10.2005, p. 1).

(**131**) OJ C 19, 20.1.2001, p. 7.

(**132**) OJ C 229, 14.9.2004, p. 5.

(**133**) Case T-176/01 Ferriere Nord v Commission [2004] ECR II-3931, paragraph 94.

(**134**) See in particular Case C-404/00 Commission v Spain [2003] ECR I-6695, paragraph 45 and Case C-415/03 Commission v Greece [2005] ECR I-3875, paragraph 35.

(**135**) See footnote 88.

(**136**) ECJ Judgement in Case C-209/03, *Bidar v London Borough of Ealing, Secretary of State for Education and Skills* [2005] ECR I-2119, para. 68-69; ECJ Judgment in Case C-292/04, *Wienand Meilicke and others v Finanzamt Bonn-Innenstadt*, not yet published, para. 34.

(**137**) Case C-91/01 *Italy v Commission of the European Communities* [2004] ECR I-4355, paragraph 66.

(**138**) OJ L 142, 14.5.1998, p. 1.

(**139**) OJ L 140, 30.4.2004, p. 1.

Status:
Point in time view as at 31/01/2020.

Changes to legislation:
There are currently no known outstanding effects for the Commission Decision of 18 July 2007 on State aid C 37/05 (ex NN 11/04) implemented by Greece — tax-exempt reserve fund (notified under document number C(2008) 3251) (Only the Greek version is authentic) (Text with EEA relevance) (2008/723/EC).