Subject: State Aid N 385/2002 – United Kingdom
Support for Land Remediation

Sir,

1. PROCEDURE

By letter dated 7 June 2002, registered at the Commission on 10 June 2002, the UK authorities notified, pursuant to Article 88(3) EC, the “Support for Land Remediation” scheme.


On 4 February 2003, a meeting between representatives from the UK authorities and the Commission took place. Following this meeting, the UK authorities submitted supplementary information on the above-mentioned scheme by letters dated 20 March 2003 and 14 April 2003, registered at the Commission on 20 March 2003 and 23 April 2003.

The Right Hon Jack Straw MP
Secretary of State for Foreign and
Commonwealth Affairs
Downing Street
LONDON SW1A 2AL
The scheme has the following characteristics:

2. **OBJECTIVE OF THE SCHEME**

The objective of the “Support for Land Remediation” scheme is to bring contaminated land, brownfield land and derelict land back into productive use by addressing the detrimental effects of previous usage. The remediation of such land would enable the UK authorities to increase the supply of land suitable for subsequent development while simultaneously reducing the pressure for development on greenfield land. By protecting scarce natural resources and by removing contamination, pollution and dereliction, the scheme promotes important Community objectives such as environmental protection and sustainable economic development.

3. **DESCRIPTION OF THE SCHEME**

3.1. **Rationale for the scheme**

3.1.1. **Terms and definitions**

*Contaminated land* is any land which appears to be in such a condition - by reasons of substances in, on or under the land - that

- significant harm is being caused or there is a significant possibility of such harm being caused; or

- pollution of controlled waters is being, or is likely to be caused.

*Brownfield land* – more recently referred to as ‘previously developed land’ - is land which is or was occupied by a permanent structure and associated fixed surface infrastructure. Previously developed land may occur in both built-up and rural settings. The definition includes defence buildings and land used for mineral extraction and waste disposal where provision for restoration has not been made through development control procedures.

*Derelict land* is land that is so damaged by industrial or other development such that it is incapable of beneficial use without treatment.

*Greenfield land* is land that has not previously been developed.

The terms outlined above are fundamentally different, but not mutually exclusive, and are often used to describe the same piece of land. For example, land can be derelict, brownfield and contaminated at the same time. On the other hand, not all brownfield or derelict land is contaminated, although it is frequently the case that some contamination is present.

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3.1.2. **Contaminated, brownfield and derelict land: More than just a hazard to the environment**

The harmful effects of contaminated land, brownfield land and derelict land go significantly beyond their obvious impact on the physical environment. In urban areas in particular, these sites have often been left as unsightly wasteland or derelict buildings that have an environmental, economic and social detrimental effect on the surrounding area. Surrounding communities often suffer from a decline in business activity, lost employment opportunities, reduced tax revenues, as well as a tarnished community image.

3.1.3. **Remediating contaminated, brownfield and derelict land**

Remediating contaminated land, brownfield land and derelict land regularly involves transforming land in order to make it suitable for new uses like housing.\(^2\)

Research has demonstrated that a large proportion of contaminated land, brownfield land and derelict land in the UK justifies remediation. Nevertheless, such land is particularly difficult to develop compared with greenfield land that has not been used previously, which places it at a competitive disadvantage.

3.1.4. **Encouraging the reuse of contaminated, brownfield and derelict land: Protecting greenfield land**

As part of the UK Government’s urban renewal process, the reuse of contaminated land, brownfield land and derelict land is strongly favoured to using greenfield land. Recently released figures indicate that around 66,000 hectares of contaminated, brownfield and derelict land are still available for redevelopment in England. The UK Government has set a national target to increase the proportion of new homes built on such land to 60 per cent by 2008.

3.1.5. **The UK approach to remediation: Involving market participants**

The UK Government’s approach to the remediation of contaminated land, brownfield land and derelict land builds upon close cooperation with market participants.

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\(^2\) Due to inadequate access or harmful neighbour uses such as heavy industry, not all sites are suitable for sensitive uses like housing. They will then be remediated for a wide range of industrial and commercial purposes.
the public sector often lacks the commercial skills to effectively engage in remediation and redevelopment activities on a significant scale.

The partnership approach with the private sector advocates the time-limited use of public funding in order to lever resources from the private sector to address remediation. By leveraging private sector money, a relatively small amount of public money can bring in significant amounts of private money and private sector knowledge which might be lost were the process to be led exclusively by the public.

3.1.6. Overcoming private risk-aversion

The remediation of contaminated land, brownfield land and derelict land is severely complicated by the increased risks associated with real or perceived contamination. And contamination is only one of many physical characteristics that may prove to be an obstacle to the reuse of contaminated, brownfield and derelict land.3

The perceived costs of treatment act as a significant barrier to successful remediation and redevelopment. The risk profile for private sector participants - caused by contamination, the need to remove old and derelict structures before developing the sites and the difficulties in determining the full extent of potential liabilities - becomes unacceptable.

The UK Government intends to introduce public money to overcome these barriers and to attract market participants to the remediation and redevelopment of contaminated, brownfield and derelict land. Public funds will only be made available for the cleaning up of such land prior to any further redevelopment and any potential increases in the value of the land after remediation will be clawed-back.

3.1.7. The outcome desired: A regenerated physical and socio-economic environment

The public-private partnership approach to remediation delivers a stimulus to private sector participants to engage in the redevelopment of contaminated land, brownfield land and derelict land. The redevelopment goes hand in hand with the cleaning up of the land, thereby reducing pressure on the development of greenfield land.

At the same time, the redevelopment and remediation of contaminated, brownfield and derelict land fosters the physical transformation of surrounding areas, the reconstruction of their economic base and the improvement of social conditions for local communities. As a result, land and

3 Such sites may also include structures requiring demolition, old foundations causing obstructions, redundant or current services, or presence of rubble or infill of unacceptable quality in terms of stability or structural properties.
property values will increase and a lasting momentum for private sector led development - without further need for public assistance - will be built. The consequent change of the image and perception of the areas will create a level of confidence in their future, which will in turn secure future private sector investment. Public money is used to kick-start this process.

3.2. Administration of the scheme

The scheme will be implemented at national, regional and local government level by the following administrative bodies (hereafter referred to as “regeneration bodies”) as well as by the Scottish local authorities:

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3.3. Legal basis of the scheme


3.4. Duration of the scheme

Aid under this scheme may be granted until 31 December 2006.

3.5. Budget of the scheme

The budget of the scheme is estimated at £94 million (EUR 147 million) per year.

3.6. Aid instruments under the scheme

The scheme provides for two types of aid instruments: “Dereliction Aid Grants” and “Relocation Aid Grants”.

3.6.1. Dereliction Aid Grant

The “Dereliction Aid Grant” will be available for the remediation of contaminated land, brownfield land and derelict land. The “Dereliction Aid Grant” will be directed towards an identified and approved remediation programme in order to make the land suitable for new use.

In general, those who undertake such remediation will be commercial, property and land development companies, but the scheme is open to anyone carrying out the activities it covers.

Contaminated land, brownfield land and derelict land will include:

(a) Polluted industrial sites
(b) Land on which there are buildings, structures or works that are derelict or otherwise unsuitable for any new use and where the costs of adapting them are such that it is more cost-effective for them to be demolished so that the land can be re-used
(c) Land damaged from or suffering risk of subsidence.

3.6.2. Relocation Aid Grant

The “Relocation Aid Grant” is complementary to the “Dereliction Aid Grant” as described under point 3.6.1 above. It will support the relocation of businesses established in an urban area or in a Natura 2000 designated area which lawfully carry out an activity that creates major pollution and must move from their actual place of establishment to a more suitable area. The “Relocation Aid Grant” will free up the vacated land for new uses better suited to environmental, economic and social regeneration aims.

The following criteria must be met at the same time:

– The change of location must be dictated on environmental protection grounds and must have been ordered by a judicial or administrative decision
– The business must comply with the strictest environmental standards applicable in the region where it is relocated.

3.7. **Eligible costs and aid intensities under the scheme**

The definition of eligible costs and the aid intensities to be applied will be presented for the two types of aid instruments: “Dereliction Aid Grants” and “Relocation Aid Grants”.

3.7.1. **Dereliction Aid Grant**

The eligible costs will be equal to the *cost of the work less the increase in the value of the land*. In the case of *submeasure (b)* for land on which there are buildings, structures or works that are derelict or otherwise unsuitable for any new use and *submeasure (c)* for land damaged from or suffering risk of subsidence, eligible costs will be deemed to include a reasonable level of profit.

Independent Chartered Surveyors will verify the cost of all work undertaken towards the remediation. All expenditure incurred in the remediation, whether or not such expenditure can be shown as a fixed asset on the balance sheet of the company concerned, will be considered eligible costs.

The applicable aid intensity will be *up to 100% of the eligible costs*. In the case of *submeasure (a)* for polluted industrial sites, a bonus of 15% of the cost of the work may be added. The total amount of aid will in no case exceed the actual expenditure incurred in the remediation.

3.7.2. **Relocation Aid Grant**

In calculating the eligible costs, the following will be *included*:

– The market or actual value of the new site

– The construction or purchase of a new plant which has the same capacity as the abandoned plant

– Any penalties imposed on the undertaking as a result of early termination of a contract for the renting of land or buildings.

The following will be *deducted* when calculating the eligible costs:

– The yield from the sale or renting of the plant or land abandoned

– The compensation paid in the event of expropriation
– Any other gains which result from the transfer of the plant such as an improvement of the technology used or accounting gains associated with better use of the land.

Where the cost of investment in environmental protection cannot be easily identified in the total cost, the regeneration body will take account of objective and transparent methods of calculation. In all cases, eligible costs must be calculated net of any benefits accruing from any increase in capacity, cost savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period.

All valuations of land or property will be undertaken by an independent Chartered Surveyor and in accordance with the standards of the Royal Institution of Chartered Surveyors.

The applicable aid intensity will be up to 30% gross of the eligible costs. Where the relocation is carried out by small or medium-sized enterprises⁴, an increase of 10 percentage points may be authorised.

3.8. **Complementary provisions of the scheme**

3.8.1. **Dereliction Aid Grant**

3.8.1.1. **Limitation of aid to the minimum amount necessary**

“Dereliction Aid Grants” will be limited to the minimum amount necessary to bring the contaminated land, brownfield land or derelict land up to a condition where it is suitable for any new use.

All applicants must demonstrate that their application will deliver value for money outcomes and must explain how the application fits into the physical, social and economic regeneration context.

The regeneration body will have a rigorous project appraisal process in place to ensure that the public sector support is the minimum necessary to enable the remediation to proceed.

3.8.1.2. **Open and transparent competition**

To obtain value for money from the public investment, potential remediation projects are subject to open competition between prospective applicants and applications must demonstrate - wherever practicable - all works have been competitively procured at all levels. The UK authorities have confirmed that the EU procurement rules will be respected at all levels.

⁴ The definition of small and medium-sized enterprises applied by the UK authorities for the purposes of the scheme is always in line with the definition given in Annex I to the ‘Commission Regulation No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10, 13.1.2001, p. 33)’.
3.8.1.3. The applicant as owner of the land

Where the owner of contaminated, brownfield or derelict land does not wish to sell it, but uses a contractor to do the work, that work will be competitively procured and contracted on normal commercial terms.

In the case of contaminated, brownfield or derelict land identified for specific regeneration reasons by the regeneration bodies and already in the ownership of applicants who do not wish to sell it and who wish to undertake the remediation themselves without engaging a sub-contractor, competitive tendering is not possible. In such cases, the regeneration bodies will conduct verification with advice from independent members of the Royal Institution of Chartered Surveyors to certify that:

- The works proposed for remediation are reasonable to remove the costs of former occupation of the site, and
- The market would not deliver remediation of the site in a manner compatible with the local or regional regeneration strategy without the offer of public funds to overcome the specific costs associated with former usage of the site, and
- The costs of such works are at, or below, the prevailing market rate.

In all cases where open and transparent competition to carry out the remediation work has not been possible, a member of the Royal Institution of Chartered Surveyors will independently assess the cost of remediation to a state where the land is ready for a wide range of new uses.

3.8.1.4. The polluter pays principle

Where the person responsible for causing the pollution is clearly identified, that person must finance the rehabilitation in accordance with the polluter pays principle and there will be no public support. Where the person responsible for the pollution is not identified or cannot be made to bear the cost, the person undertaking the rehabilitation work may receive public support. By ‘person responsible for pollution’ is meant the person liable under the law applicable in each Member State.

According to the polluter pays principle in the UK, those responsible for causing the pollution are obliged to make the land safe for its current use. Public support will not be available under the scheme in such cases unless the polluter cannot be identified or made to bear the cost.

The scheme foresees public support to further work to the land in order to make it safe for any new use, for example to bring land up to the higher environmental standards required for the
construction of new housing. In such cases, independent surveyors will calculate the additional cost of making the land safe for any new use. They will ensure that there is a clear distinction between works that are necessary to make the land safe for its current use and works that are required to make it safe for any new use. Public money will only be available for the additional cost of making the land suitable for any new use.

Where land is both polluted and derelict, the polluter pays principle will apply to the polluted element of the land.

3.8.1.5. Cumulation of aid

Remediation projects covered by this scheme will be treated as separate, discrete projects from any subsequent development of the land in question. Grants under the scheme cannot be cumulated with any other form of aid towards the same eligible costs.

3.8.2. General provisions applicable to “Dereliction Aid Grants” and “Relocation Aid Grants”

3.8.2.1. Exclusion of companies in difficulties

Applicants must be of proven financial standing. Public support will not be granted to companies in difficulties. Remediation projects, which have started before an application for grant is submitted, are not eligible for support.

3.8.2.2. Payment of grants

Grants will be paid at an agreed rate, normally milestone payments across the duration of the project. Grant awards will be discretionary.

3.8.2.3. Repayment conditions

The UK Government has powers to suspend or cancel grants and to clawback grants and aid given by the regeneration bodies. Repayment may be sought in the event of fraud or breach of conditions of the award. The regeneration body may require an enforceable, contractual obligation for repayment and, where practicable, seek tangible security. Projects shall be subject to repayment where costs are lower than projected and market values are higher than projected within a specified period of 5 years.

3.8.2.4. Proof of incentive effect via annual reports

The UK Government will submit an annual report on the implementation of the scheme, which will enable the Commission to verify that, for each project, the incentive to those carrying out the remediation and enabling relocation of polluting businesses was the minimum necessary for the project to proceed. The UK Government will also ensure that any plans to modify this aid scheme are notified to the Commission.
3.8.2.5. *Cumulation of aid*

Grants under the scheme cannot be cumulated with any other form of aid towards the same eligible costs.

**Assessment of the scheme:**

4. **LEGALITY**

By notifying the scheme as a draft, the UK respected its obligation under Article 88(3) EC.

5. **EXISTENCE OF AID AND COMPATIBILITY**

In the following, the results of the assessment will be presented separately for the different aid instruments as described under point 3.6 above.

5.1. **Relocation Aid Grant**

The Commission examined the measure pursuant to Article 87 of the EC Treaty and in particular in light of the ‘Community guidelines on State aid for environmental protection (hereafter referred to as ‘Community Guidelines’)’

5.1.1. **Existence of aid within the meaning of the Treaty**

The Commission has come to the conclusion that the measures under the “Relocation Aid Grant” constitute aid within the meaning of Article 87(1) EC. The “Relocation Aid Grant” involves the use of State resources as UK public funding is made available for the relocation of firms to new sites. The measure is selective as it is limited to undertakings established in specified areas (urban areas and Natura 2000 areas) and fulfilling specified conditions (lawfully carrying out an activity that creates major pollution, administrative or judicial decision to change location on environmental protection grounds). The measure has the potential to affect trade between Member States as it cannot be excluded that enterprises benefiting from the measure will be engaged in activities which are subject of trade between Member States. The measure distorts competition by conferring an advantage on the beneficiaries.

5.1.2. **Compatibility of the measure**

Point 39 of the ‘Community Guidelines’ states that, in general the Commission takes the view that the relocation of firms to new sites does not constitute environmental protection and does not therefore give entitlement to aid under the ‘Community Guidelines’.

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5 OJ C 37, 3.2.2001, p. 3
The granting of aid may, however, be justified when a firm established in an urban area or in a Natura 2000 designated area lawfully carries on an activity that creates major pollution and must, on account of this location, move from its place of establishment to a more suitable place.

The Commission considers the “Relocation Aid Grant” to be compatible with the common market pursuant to Article 87(3)(c) EC as the measure satisfies the conditions outlined under point 39 of the ‘Community Guidelines’:

− The measure is restricted to beneficiaries established in an urban area or in a Natura 2000 designated area who lawfully carry on an activity that creates major pollution and must, on account of this location, move from their place of establishment to a more suitable place.

− The change of location will always be dictated on environmental protection grounds and will have been ordered by administrative or judicial decision

− Firms affected by relocation will in every case comply with the strictest environmental standards applicable in the new region where they are located

− All beneficiaries satisfying these conditions may receive investment aid of up to 30% gross of the eligible investment costs. Where these investments will be carried out by small or medium-sized enterprises within the definition of SMEs given by the Commission, an increase of 10 percentage points gross may be authorised.

− The determination of eligible costs for the purpose of relocation aid will take into account the following elements:

  − The yield from the sale or renting of the plant or land abandoned

  − The compensation paid in the event of expropriation

  − The costs connected with the purchase of the land or the construction or purchase of new plant of the same capacity as the plant abandoned

  − Other gains connected with the transfer of the plant, notably gains resulting from an improvement, on the occasion of the transfer, in the technology used and accounting gains associated with better use of the plant

  − Investments relating to any capacity increase will not be taken into consideration in calculating the eligible costs

  − If the administrative or judicial decision ordering the change of location results in the early termination of a contract for the renting of land or buildings, any penalties imposed on the firm for having

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6 See FN 4
terminated the contract may be taken in consideration in calculating the eligible costs.

5.2. **Dereliction Aid Grant**

5.2.1. **Existence of aid within the meaning of the Treaty**

The Commission has come to the conclusion that the measures under the “Dereliction Aid Grant” constitute aid within the meaning of Article 87(1) EC. The “Dereliction Aid Grant” involves the use of State resources as UK public funding is made available for the remediation of contaminated land, brownfield land and derelict land. The measure is selective, as it is limited to undertakings engaging in the remediation of contaminated land, brownfield land and derelict land. The measure has the potential to affect trade between Member States as it cannot be excluded that enterprises benefiting from the measure will be engaged in activities which are subject of trade between Member States.

The measure distorts competition by conferring an advantage on the beneficiaries. According to the Court of Justice, the concept of aid embraces “interventions which, in various forms, mitigate the charges which are normally included in the budget of an undertaking”7. The Commission considers that the costs of remediating contaminated land, brownfield land and derelict land constitute costs normally faced by undertakings and included in their budget. When these costs are totally or partially supported by the public, the beneficiaries of such measures receive an advantage as the charges normally faced by them are mitigated.

The fact that the eligible costs are equal to the cost of the work less the increase in the value of the land – and will also include a reasonable level of profit – may reduce the level of aid granted by the Member State, but it does not alter the classification of such measures as being State aid. The method of calculation does not change the fact that the companies concerned will not bear the totality of the costs they would normally have to bear. Consequently such companies will receive an advantage.

This assessment is also consistent with the traditional assessment of the Commission as outlined in the ‘Community guidelines on State aid for environmental protection’, particularly with regard to aid for the rehabilitation of polluted industrial sites.

5.2.2. **Compatibility of the measure**

The compatibility of the proposed measures under the “Dereliction Aid Grant” has been separately assessed for the three types of submeasures as foreseen by the scheme and as described under point 3.6.1 above, namely aid to remediate: (a) polluted industrial sites; (b) land on which there are buildings, structures or works that are derelict or otherwise unsuitable for any new use and where the costs of adapting them are such that it is more

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7 Judgement of the Court of 15 March 1994, Banco Exterior de Espana Case C-387/92, paragraph 13. See also Case C-200/97 Ecotrade v Altiforni e Ferriere di Servola, paragraph 34.
5.2.2.1. Polluted industrial sites

Point 38 of the ‘Community guidelines on State aid for environmental protection’ states that interventions made by firms repairing environmental damage by rehabilitating polluted industrial sites may come within the scope of the ‘Community Guidelines’. The environmental damage concerned may be damage to the quality of the soil or of surface water or groundwater.

The submeasure aimed at remediating contaminated polluted industrial sites under the “Dereliction Aid Grant” of the scheme is deemed to be compatible with the common market pursuant to Article 87(3)(c) EC as the measure satisfies the conditions outlined under point 38 of the ‘Community Guidelines’:

- The measure is confined to interventions made by firms repairing environmental damage by rehabilitating polluted industrial sites. The environmental damage concerned will be damage to the quality of the soil or of surface water or groundwater.

- Where the person responsible for the pollution is clearly identified, that person must finance the rehabilitation in accordance with the ‘polluter pays principle’, and no aid will be given. By ‘person responsible for the pollution’ is meant the person liable under the law applicable in the UK, without prejudice to the adoption of Community rules in the matter.

- Where the person responsible for the pollution is not identified or cannot be made to bear the cost, the person responsible for the work may receive aid.

- Aid for the rehabilitation of polluted industrial sites may amount to up to 100% of the eligible costs, plus 15% of the cost of the work. The eligible costs are equal to the cost of the work less the increase in the value of the land.

- The total amount of aid will under no circumstances exceed the actual expenditure incurred by the firm.

5.2.2.2. Derelict land and land damaged from subsidence

In the case of the remaining two submeasures of the “Derelict Aid Grant”, namely aid to remediate land on which there are buildings, structures or works that are derelict or otherwise unsuitable for any new use and where the costs of adapting them are such that it is more cost-effective for them to be demolished so that the land...
can be re-used and aid to remediate land damaged from or suffering risk of subsidence, the Commission has assessed the compatibility of these measures along the following line.

(a) Exemption grounds

Article 87(2) EC provides that certain types of aid are compatible with the common market. In view of the nature and purpose of the aid, as well as the geographical coverage, the Commission considers literae (a), (b) and (c) are not applicable to the submeasures in question.

Article 87 (3) EC specifies other forms of aid, which may be regarded as compatible with the common market. In view of the nature and purpose of the aid, the Commission considers that literae (a), (b) and (d) are not applicable to the submeasures in question.

In assessing whether the exemptions provided for in Article 87(3)(c) EC may apply, the European Court of Justice has consistently held that Article 87(3) “gives the Commission a discretion the exercise of which involves economic and social assessments that must be made in a Community context”\(^9\). For certain aid categories, the Commission has defined how it will exercise these discretionary powers, be it in the form of block exemptions or by frameworks, guidelines or notices. Where such texts exist, the Commission must follow them in its assessment of aid measures.

The Commission therefore assessed whether the submeasures foreseen by the “Dereliction Aid Grant” under the scheme qualify for exemption under one of these texts and has come to the conclusion that none of these guidelines, frameworks or regulations is applicable to the submeasures in question.

(b) Applicability of the ‘Environmental Aid Guidelines’

Although the submeasures in question have a clear environmental objective as they intend to grant aid to the remediation of land on which there are buildings, structures or works that are derelict as well as land damaged from or suffering risk of subsidence, the ‘Community guidelines on State aid for environmental protection’\(^10\) do not seem to be applicable.

Point 38 of the ‘Community guidelines on State aid for environmental protection’ foresees the compatibility of aid

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\(^10\) See FN 5
measures aiming at repairing environmental damage by rehabilitating polluted industrial sites, given that all other conditions are fulfilled. At the same time, the definition of pollution as outlined under point 38 of these guidelines seems to be restricted to damage to the quality of the soil or of surface water or groundwater.

The submeasures in question under the “Derelict Aid Grant” are aimed at the remediation of land damaged from or suffering risk of subsidence and of derelict land. Although such land clearly poses risks to the environment and to human health, it is nevertheless simply not possible – in view of the characteristics of such land as described under point 3.1.1 above - to subsume these damages under the strict definition of environmental damage as outlined under point 38 of the ‘Community guidelines on State aid for environmental protection’.

(c) Ensuring environmental protection and sustainable development

Point 3 of the ‘Community guidelines on State aid for environmental protection’ states that under Article 6 of the EC Treaty, environmental policy objectives must be integrated into the Commission’s policy on aid controls in the environmental sector, in particular with a view to promoting sustainable development.

In line with point 4 of the ‘Community guidelines on State aid for environmental protection’, taking long-term environmental requirements into account does not mean that all aid must be authorised. Consideration has to be given to the effects the aid may have in terms of sustainable development and full application of the ‘polluter pays principle’.

The Commission’s approach therefore consists in determining whether - and under what conditions - State aid may be regarded as necessary to ensure environmental protection and sustainable development without having disproportionate effects on competition and economic growth.

(d) Compatibility with Article 87(3)(c) EC

The submeasures in question clearly pursue an environmental objective and present clear-cut benefits to the physical environment. However, although applying the logic of point 38 of the ‘Community guidelines on State aid for environmental protection’ on the rehabilitation of polluted industrial sites would seem to be appropriate, the submeasures in question are not unequivocally being taken into account by the current ‘Community guidelines on State aid for environmental protection’.
The Commission has accordingly assessed the submeasures under the “Derelict Aid Grant” with regard to their necessity to ensure environmental protection and sustainable development without having disproportionate effects on competition and economic growth as stipulated under point 5 of the ‘Community guidelines on State aid for environmental protection’.

i. Contribution to Community objectives

The contribution of the submeasures in question to the achievement of the Community objectives of environmental protection and sustainable development are underlined by the following:

– The ‘Green Paper on the Urban Environment’ postulates that industrial development should not take place on greenfield land. It stresses the need to redevelop already derelict land. According to the ‘Green Paper on the Urban Environment’, the many tracts of abandoned land, disused industrial sites, railway sidings, docks and military facilities in urban areas offer valuable opportunities for redevelopment, thereby saving existing recreational and open space within cities and its outskirts from encroachment by development. At the same time, it is emphasised that the problems posed by contaminated land as well as complex ownership patterns are such that the firm lead from public authorities will often be required.11

– The ‘Structural Fund Guidelines’ accentuate environmental quality as a major factor in regional development and competitiveness. The integration of environmental quality in productive investment is deemed to ensure a rational use of resources, enhancing economic performance and competitiveness and maintaining and creating employment. The combination of environmental improvement and investment in industry and services should include industrial sites. Priority should be given to the rehabilitation of derelict industrial sites and brownfields over the development of greenfield sites.12

– The ‘URBAN II Guidelines” highlight mixed-use and environmentally friendly brownfield redevelopment - including the protection and improvement of buildings and open spaces in rundown areas and the preservation of the historic and cultural heritage - as one of the priorities of the


URBAN II Community initiative, leading to reduced pressures on greenfield development and urban sprawl.\textsuperscript{13}

- The ‘Commission Communication: Sustainable Urban Development in the European Union: A Framework for Action’ regards the promotion of resource-efficient settlement patterns that minimise land-take and urban sprawl as important objective for the protection and improvement of the urban environment and the attainment of local and global sustainability.\textsuperscript{14}

- The specific objective of LIFE-environment, one of the three major areas of action of LIFE, the Financial Instrument for the Environment of the Community, is to contribute to the further development of Community environment policy. Projects which integrate environmental considerations and sustainable development aspects in land-use development and planning, including in urban areas, are considered to add to the overall objective of LIFE-environment.\textsuperscript{15}

\textit{ii. Exclusion of disproportionate effects on competition and economic growth}

The provisions of the scheme pertaining to the two submeasures in question will ensure that the aid given will be the minimum necessary in order to attain the stated policy objective of remediating derelict land and land suffering from subsidence and to support the Community objectives of environmental protection and sustainable development:

- Aid granted for the remediation of derelict land and land suffering from subsidence will be limited to the minimum amount necessary to bring the land up to a condition where it is suitable for any new use.

- The regeneration body will have a rigorous project appraisal process in place to ensure that the public sector support is the minimum necessary to enable the remediation to proceed.

- To obtain value for money from the public investment, remediation projects are subject to open competition between

\textsuperscript{13} Communication from the Commission to the Member States of 28 April 2000 laying down guidelines for a Community initiative concerning economic and social regeneration of cities and of neighbourhoods in crisis in order to promote sustainable urban development (URBAN II) (OJ C 141, 19.5.2000, p. 8)

\textsuperscript{14} Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions: Sustainable Urban Development in the European Union: A Framework for Action (COM(98) 605)

prospective applicants and applications must demonstrate that all works have been competitively procured at all levels.

- The polluter pays principle will always be respected.
- The eligible costs will be equal to the cost of the work less the increase in the value of the land. Any potential increase in the value of the land after remediation will be deducted.
- Independent Chartered Surveyors will verify the cost of all work undertaken towards the remediation.

(e) Conclusion

The Commission therefore concludes that the two submeasures of the “Dereliction Aid Grant” relating to the remediation of land on which there are buildings, structures or works that are derelict or otherwise unsuitable for any new use and land damaged from or suffering risk of subsidence are compatible with Article 87(3)(c) EC as aid to facilitate the development of certain economic activities or of certain economic areas without adversely affecting trading conditions to an extent contrary to the common interest.

6. DECISION

On the basis of the foregoing assessment, the Commission concludes that the “Support for Land Remediation” scheme is compatible with the common market pursuant to Article 87(3)(c) EC.

The Commission reminds the UK Government to submit an annual report on the implementation of the scheme. The report should allow the Commission to verify that for each project the incentive was the minimum necessary for the project to proceed.

The Commission further reminds the UK Government that all plans to modify this aid scheme have to be notified to the Commission.

If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://europa.eu.int/comm/secretariat_general/sgb/state_aids/. Your request should be sent by registered letter or fax to:

European Commission
Yours faithfully,

For the Commission

Mario MONTI
Member of the Commission