II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 24 June 1992

concerning aid provided by the Brussels Regional Authorities (Belgium) in favour of the activities of Siemens SA in the data-processing and telecommunications sectors

(Only the French and Dutch texts are authentic)

(92/483/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having given notice to interested parties to submit their comments in accordance with the above Article,

Whereas,

I

In March 1991 the Belgian press published information reporting that the Belgian Audit Court had raised objections to the payment by the Government of the Region of Brussels of a series of aid awards to Siemens SA on the grounds that they had been granted in violation of the provisions of the aid scheme in question, i.e. the Economic Expansion Law of 17 July 1959 (EEL) (1).

Consequently, by letter of 16 April 1991 the Commission requested the Belgian authorities to provide all relevant information.

By letter of 17 May 1991 the Belgian authorities informed the Commission that, in fact, successive Governments of the Region of Brussels had been in dispute with the Belgian Audit Court on the accordance to the provisions of the abovementioned EEL of a series of 17 awards of subsidies decided over the period November 1985 to January 1988, in favour of 17 investment projects of Siemens SA in Brussels.

According to the information initially submitted by the Belgian authorities, the subsidies totalled Bfr 336 million in favour of investment projects whose budget amounted to Bfr 2 559 million, the net-grant equivalent (NGE) of the individual awards ranging from 12 % to 13.5 %.

The table below summarizes the information submitted (2):

Table I

	Investment budget	No of projects	Aid granted (Bfr)
	< ECU 1 million	1	5,8 million
	ECU 2-3 million	3	45,8 million
	> ECU 3 million	13	284,4 million
Total	Bfr 2 559 million	17	336,0 million

(1) By decision of 18 July 1990 the Commission proposed to the Belgian Government the termination of the general aid scheme established by the Law of 17 July 1959.

(2) For the sake of simplicity the projects have been grouped in three categories according to their investment budget in million ecu. The table gives the added value in Bfr of both investment and aid under each category.

The Belgian authorities also indicated that the investment in question covered the acquisition and development of data-processing products, of equipment and machinery (tangible and intangible investment), as well as the acquisition of buildings (1).

The Belgian authorities finally indicated that the litigation procedure with the Belgian Audit Court had been settled by a decision of the Government of the Region of Brussels of 25 October 1990, taken in accordance with Article 14 of the Law of 29 October 1846 on the functioning of the Audit Court, by which the regional Government invited the Audit Court to pass with reservation the payment bills of the aid whose accordance to law was questioned.

After assessment of the information submitted by the Belgian authorities, the Commission judged that the abovementioned 17 aid awards to Siemens SA under investigation appeared to have been granted in violation of the procedural rules of notification established in Article 93 (3) of the EEC Treaty. This preliminary appraisal was based on the evidence, substantiated by the information initially provided, that the aid awards in question either exceeded the notification thresholds established in the relevant Community legislation (see Section II(B) of this Decision) or had assisted expenditures not eligible under the provisions of the EEL authorized by the Commission. Furthermore, the Commission considered that the aid awards in question did not, in principle, qualify for any of the exemptions from the principle of incompatibility provided for in Article 92 (2) and (3).

Accordingly, on 3 July 1991 the Commission decided to initiate Article 93 (2) investigation proceedings in their respect.

II

A. The Commission's decision to initiate Article 93 (2) proceedings was notified to the Belgian Government by letter of 18 August 1991, inviting it to submit its observations and all information it might consider relevant to assess the compatibility with the common market of the 17 aid awards. In this respect, the Commission formulated specific questions. The Commission finally requested the Belgian Government to inform Siemens SA without delay of the initiation of the proceedings and of the fact that it might have to repay aid improperly received.

The other Member States and interested third parties were informed of the Commission decision by publication in the *Official Journal of the European Communities* of the text of the letter sent to the Belgian Government (2).

The Belgian authorities presented their observations by letter dated 23 September 1991. Since the Belgian authorities and replied to only part of the questions put to them by the Commission, they were requested to complete their answer by letter dated 29 October 1991.

By letter dated 28 October 1991, Siemens SA informed the Commission that it had taken due note of the publication in the *Official Journal of the European Communities* of the notice of initiation of the Article 93 (2) proceedings. Siemens SA also stated that it had verified that the Belgian autorities had replied to the Commission within the deadlines established.

By letters dated 20 and 21 November 1991, the Belgian authorities completed their reply.

On 5 February 1992 representatives of the Belgian authorities had a meeting with the responsible Commission department to clarify certain aspects of the information submitted. In light of the conclusions of this meeting, by letter dated 17 February 1992 the Commission requested the Belgian authorities to confirm certain elements which were orally transmitted in the course of the meeting, as well as to provide certain further precisions in their respect. By letter dated 17 March 1992 the Belgian authorities answered the Commission's request.

B. According to the information submitted by the Belgian authorities within the framework of the Article 93 (2) proceedings, the 17 aid awards covered by the investigation can be broken down into several categories :

(a) 11 awards exclusively concern data-processing and telecommunications equipment bought by Siemens SA from other subsidiaries of the Siemens group (mainly from Germany) and intended for leasing to clients ;

(b) five awards concern dossiers involving simultaneously several independent expenditure programmes in the following items : data-processing and telecommunications equipment bought by Siemens SA from other subsidiaries of the Siemens group for internal use in several of its departments ; costs related to projects for the development of software for use in departments of Siemens SA ; costs related to training of staff ; and expenses incurred by Siemens SA in advertising campaigns and market surveys for its own commercial departments ;

(c) one aid award concerns the acquisition of a building to enlarge the departments of the head office of the company in Brussels.

The total budget and aid granted for each of the items is shown in Table II :

(1) The detailed information submitted by the Belgian authorities within the framework of the Article 93 (2) proceedings has proved that the figures concerning budget and aid intensity initially submitted were wrong. This information has proved that the investment projects in question contained normal operating expenses (see Section II(B)).

(2) OJ No C 254, 28. 9. 1991, p. 6.

Table II

(Bfr million)

	Budget	Aid	received	pending
i) Equipment leased to clients	1 849,294	244,631	218,834	25,797
ii) Equipment bought for internal use	432	48,490	39,311	9,179
iii) Development costs of software	206,4	23,015	17,723	5,292
iv) Training costs	18	2,241	1,795	0,446
v) Building acquisition	45	5,789	4,341	1,448
vi) Advertising campaigns	89,6	10,869	7,972	2,897
vii) Market surveys	7	0,945	0,945	—
Total	2 647,294	335,980	290,921	45,059

Table II also indicates the proportion of the aid paid to Siemens SA so far. In this respect, the Belgian authorities have indicated that the schedule for the aid payment was stopped when they were informed by the Commission of the initiation of Article 93 (2) proceedings.

As regards the reasons why the Commission was not notified in advance of the 17 aid awards to Siemens SA, the Belgian authorities have indicated that, in their opinion, they do not constitute significant cases of application within the meaning of the rules applicable to general investment aid schemes established by the Commission (1).

According to these rules, the Commission must be given prior notification of individual cases of application of general aid schemes in the following cases :

— for aid having an intensity in net grant equivalent of over 15 % of investments : all cases,

— for aid having an intensity of over 10 % but not more than 15 % : cases where investment exceeds ECU 3 million,

— for aid having an intensity of over 5 % but not more than 10 % : cases where investment exceeds ECU 6 million,

— for aid having an intensity of 5 % or less : cases where investment exceeds ECU 9 million.

(1) See Commission letter to Member States (SG(79)D/10478), dated 14 September 1979 ; *Competition Law in the European Communities,* Volume II, p. 142, Office for Official Publications of the European Communities, 1990.

The Belgian authorities have made known to the Commission in their observations that, contrary to the information they had submitted before the initiation of the proceedings, none of the 17 aid awards to Siemens SA exceeded the abovementioned simultaneous threshold of a ECU 3 million budget and 10 % aid intensity, because, on the one hand, only 75 % of the investment budget presented by Siemens SA to the Brussels authorities in each one of the 17 dossiers had been taken into account for the granting of the aid, and on the other, because the payment of the individual aid awards had been scheduled in three or four instalments over a period of five to six years. These two facts together mean that the budget of the expenditure supported in each one of the 17 dossiers and their corresponding aid intensity remain below the notification thresholds. In particular, the aid intensity of the awards actually ranged from 4.76 % to 9.98 %, instead of the 12 % to 13.5 % initially communicated to the Commission.

Concerning the reasons why the Belgian Audit Court considered that the 17 aid awards in question violated the provisions of the EEL, the Belgian authorities indicated in their observations that the Court had rejected their eligibility for two reasons. First, the Court considered that Siemens SA could not be understood to be an industrial company from the point of view of the region since it does not produce in Brussels, whereas Article 1 of the EEL provides that only industrial or craft firms may benefit from aid thereunder.

Second, and particularly in respect of the aid awards concerning equipment bought from other subsidiaries of the Siemens group and specifically intended for

leasing to clients, the Court considered that the grant of aid for the sale of own products and consequently, in the Court's view, of commercial stocks, was contrary to the EEL and its implementing regulations. In this respect, the Court remarked that the aid awards in question had enabled Siemens SA to offer its products with a continued price reduction equivalent to the aid since Siemens SA had applied for and received for several years an aid in respect of the value of new contracts for products leased to clients. The Court noted that subsidizing products instead of means of production was contrary to the EEL, which aims to improve the production structure of the recipient of the aid.

The Belgian authorities have informed the Commission that, after examination of the abovementioned objections of the Audit Court, the Government of the Region of Brussels decided not to go back on its previous decisions and, consequently, invited the Court to pass the payment orders for the aid awards as provided by Article 14 of the Law of 29 October 1846 on the functioning of the Belgian Audit Court.

Regarding the first objection of the Belgian Audit Court, the Government of the Region of Brussels considers that regional expansion can be promoted by supporting not only industrial but also commercial activities. In respect of the second objection, the Government of the Region of Brussels considers that the objection of the Court is based on a narrow and rigid interpretation of the concept of investment. The EEL does not define the notion of investment; consequently, the Government of the Region of Brussels considers it legitimate to make use of the concept used in accounting and tax law which defines investment as funds employed in the acquisition or creation of goods engaged durably in the activity of a firm. In this respect, the Government remarks that the structure of balance sheets in Belgium, established by Royal Order of 8 October 1976, classifies equipment leased to clients within the group of fixed assets.

Concerning the distinction made by the Belgian Audit Court for the purposes of the EEL between means of production as licit eligible investments and products or stocks as non-eligible investments, the Government of the Region of Brussels considers that such a distinction is of only relative value because computers and telecommunication systems are products of Siemens, while at the same time being means of production for the companies that buy or lease them. This being so, the EEL should not exclude the grant of aid for the acquisition of equipment that is to be put at the disposal (through leasing or otherwise) of another industrial company whose modernization or restructuring is desired. On this score, the Government of the Region of Brussels remarks that the aid to Siemens SA based on the level of equipment leased to third companies, must be considered as constituting aid to these third companies, which in this particular case are mainly small and medium-sized enterprises (SMEs). In the Regional Government's view, these third companies are the real beneficiaries of the aid because this intervention has made it possible for Siemens SA to develop a commercial policy of leasing which gives SMEs better opportunities to adapt their equipment to the rapid evolution in data-processing and telecommunications technologies. The Government of the Region of Brussels has also remarked that there has been no distortion of competition to the detriment of other competitors of Siemens SA, because the same aid would have been granted to them if they had applied for it.

Within the framework of the Article 93 (2) proceedings, by letter dated 17 October 1991 the Danish authorities expressed their support for the Commission's preliminary opinion that the 17 aid awards to Siemens SA appeared to be incompatible with the common market. Such comment was communicated to the Belgian authorities by letter dated 26 November 1991. The Belgian authorities reacted by letter of 19 December 1991, stating that the abovementioned comment did not contain any further element relevant to the discussion on the compatibility of the aid, since it only expressed a political position of the Danish authorities.

III

In its Decision of 17 June 1975 authorizing the general aid scheme initiated by the Belgian Law of 17 July 1959, the Commission established that public assistance awarded thereunder constitutes aid within the meaning of Article 92 (1) of the Treaty [1].

In the present case the 17 awards of subsidies under investigation have relieved Siemens SA of part of the costs which it would normally have had to bear in its operations. This aid distorts competition and affects intra-Community trade in the data-processing and telecommunications sectors. Where the State strengthens the financial position of an enterprise that competed with others in the Community, it must be deemed to affect these other enterprises (see Judgment of the Court of Justice of 17 September 1980 in Case 730/79, Philip Morris [2]).

[1] OJ No L 177, 8. 7. 1975, p. 13.
[2] ECR 2671 (1980).

In this respect, it should be noted that Siemens SA (Belgium) is a subsidiary of the transnational group Siemens AG. This group, based in Germany, operates all over the world and is one of the most profitable and financially-sound manufacturers in the electronics industry. In 1989/90 its Belgian subsidiary turned over Bfr 31 786 million, with a final profit after taxes of Bfr 1 651 million and 4 906 employees at year's end. Siemens SA (Belgium) is active on the export market, with an average export rate of 25 % of its turnover during the period 1985 to 1990.

For its part, the market for data-processing and office equipment shows substantial flows of intra-Community trade that, in 1989, amounted to ECU 22 853 million. The market share of Siemens in 1989 was estimated at 11.7 % (1).

IV

After detailed examination of the expenditure items of Siemens SA that benefited from the 17 aid awards of the Government of the Region of Brussels (see Table II), the Commission has arrived at the following conclusions:

(a) The expenditure on equipment for internal use and building acquisition (items (ii) and (v) of Table II) constitutes typical investments in material fixed assets explicitly listed as eligible for aid under the EEL. On the other hand, expenditure on development of software for internal use of Siemens SA (item (iii)) can be considered as constituting investment in immaterial fixed assets, which is also eligible for aid under the same Law, since the software in question will be utilized by the company for several years and is therefore subject to depreciation.

Furthermore, the Commission has verified that the volume of the abovementioned investments if formed by independent individual programmes, which do not exceed the notification thresholds established by the Commission (see Section II (B)).

In these circumstances, the corresponding aid to these investments was lawfully awarded by the Government of the Region of Brussels within the limits of the discretionary powers authorized by the Commission for the operation of the general aid scheme established by the EEL. In consequence, the Commission has no observations to make in respect of this aid.

(b) Expenditure on training costs (item (iv)) does not appear listed as an item eligible for aid under the EEL. In these circumstances, the grant of aid by the authorities of the Region of Brussels to Siemens towards expenditure of this nature consistutes an ad hoc intervention which should have been notified in advance to the Commission in accordance with Article 93 (3).

Nevertheless, in the course of the Article 93 (2) proceedings the Commission examined the individual supported programmes of Siemens SA and verified that they constituted vocational training measures and were related to workers being retrained for continued employment in the company and were not linked to investment. The Commission is favourably disposed towards this aid.

In consequence, in spite of the illegal character of this aid to Siemens SA, the Commission has concluded that it qualifies for the exception provided for in Article 92 (3) (c) for aid that facilitates the development of certain economic activities without adversely distorting trading conditions.

(c) The expenditure on advertising campaigns and market surveys (items (vi) and (vii)) are not listed as items eligible for aid under the EEL. Consequently, the grant of aid to Siemens for these purposes constitutes an *ad hoc* intervention which should have been notified in advance to the Commission in accordance with Article 93 (3).

Contrary to the opinion of the Government of the Region of Brussels, the EEL does not consider that expenditure on equipment leased to clients (heading (i)) is eligible for aid. Articles 1 (a) and 2 (a) of the Law provide that aid can be granted for 'direct financing of investments in buildings constructed or to be built, equipment or materials, required ... for the creation, extension, conversion, modernization of industrial or craftman's firms ...'. The Commission considers that equipment bought by Siemens SA intended for leasing to clients does not fit into the abovementioned definition of eligible investment, because such expenditure, regardless of its classification as investment in fixed assets or in stocks, does not contribute to the creation, extension, conversion or modernization of the structure of Siemens SA but of the firms that lease that equipment. The grant of aid for this kind of expenditure actually constituted continued operating aid that has given an undue advantage to Siemens SA in the marketing of its products.

The Commission cannot accept either that this aid paid to Siemens SA has in reality been an aid to the companies that leased the equipment of Siemens. This reasoning

(1) See *Panorama of EC Industry 1991-92*, section 12-32.

cannot be shared by the Commission, since Siemens SA is the recipient of the subsidies and the companies in question pay the full rental that Siemens sets at its discretion in its leasing contracts.

Accordingly, the grant of aid to Siemens SA for its expenditure on equipment leased to clients should have been notified in advance to the Commission according to the procedural rules established in Article 93 (3), as it constitutes an *ad hoc* intervention of the Government of the Region of Brussels outside the scope of the EEL provisions approved by the Commission.

Moreover, quite apart from the question of the eligibility or non-eligibility for aid under the EEL of expenditure on equipment leased to clients, the Commission must stress that, at any rate, the Government of the Region of Brussels should have notified in advance its plan to support this expenditure of Siemens SA, because this intervention actually exceeded the general notification thresholds.

As previously explained in Section II (B), the supported expenditure in question corresponds to aggregate budgets of new equipment bought by Siemens SA and finally leased to clients by a certain date. Siemens SA periodically submitted applications for aid for expenditure budgets slightly exceeding the ECU 3 million threshold. The Belgian authorities have informed the Commission that they were, however, taking into consideration only 75 % of the aggregate budget of the applications for the grant of the subsidy. This subsidy, in view of its deferred payment, finally reached an intensity in terms of net grant equivalent within the range of 4.76 %-6.75 %. The Belgian authorities then conclude that the individual aided programmes did not exceed the general notification thresholds.

The Commission cannot accept the foregoing reasoning of the Belgian authorities for the following reasons :

First, the consideration of just 75 % of an aggregate homogenous body of expenditure for the grant of the aid is completely artificial and based on no economic logic. It should be noted that the Belgian authorities have not offered the Commission any explanation of this arbitrary calculation.

Second, the Commission observes that certain of the expenditure programmes in question were split into several applications for aid which related to a homogenous body of expenditure to be made at the same time and should therefore have been dealt with jointly by the Brussels Government as a single expenditure programme. This is demonstrated by the fact that, for example, between 23 and 31 July 1985, Siemens SA introduced four individual applications totalling Bfr 685,3 million (ECU 15 million) of expenditure in the homogenous form of equipment to be leased to clients ; it should be noted that these applications were signed by two directors of Siemens SA, one of whom appears in all the applications. For a budget of this volume the Commission should have received notification in advance, whatever the intensity of the aid (1). Another example can be found in 1986 when, between 17 and 18 September, Siemens SA presented three individual aid applications for the same kind of homogeneous expenditure which were dealt with by the Government of Brussels independently and whose total budget amounted to Bfr 501,5 million (ECU 11 million). Each of these applications was signed by the same two directors of Siemens SA.

In the light of the foregoing considerations, the Commission must conclude that the subsidies of Bfr 11 814 000 towards expenditure of Siemens SA of Bfr 96,6 million on advertising campaigns and market surveys (items (v) and (vi) of Table II), and the subsidies of Bfr 224 631 000 towards expenditure of Siemens SA of Bfr 1 849 294 000 on equipment leased to clients (item (i)), were unlawfully granted by the Government of the Region of Brussels in excess of the discretionary powers authorized by the Commission for the operation of the EEL.

In addition, after detailed examination, the Commission has also arrived at the conclusion that the illegal aid does not qualify for any of the exceptions from the principle of incompatibility provided for in Article 92 (2) and (3) of the EEC Treaty.

Article 92 (1) provides that aid meeting the criteria laid down therein is in principle incompatible with the common market. The exceptions provided for in Article 92 (2) are not applicable in this case because of the nature of the aid in question, which is not directed towards attainment of such objectives. Furthermore, in their observations the Belgian authorities have not asked for this exception.

Article 92 (3) lists aid which may be compatible with the common market. Compatibility must be determined in the context of the Community as a whole and not of a single Member State.

In order to ensure the proper functioning of the common market and having regard to the principles embodied in Article 3 f of the Treaty, the exceptions provided for in Article 92 (3) must be construed narrowly when any aid scheme or any aid award is scrutinized. In particular, they may be invoked only when the Commission is satisfied that, without the aid, market forces alone would be insufficient to guide the recipient towards patterns of behaviour that would serve one of the objectives of the said exceptions.

(1) See notification thresholds referred to in Section II.

Applying the exceptions to cases which do not contribute to such objectives or where aid is not necessary for those purposes would amount to conferring advantages on the industries or firms of certain Member States, whose financial position would be artificially strengthened, and to affecting trade between Member States and distorting competition without any justification based on the common interest referred to in Article 92 (3).

With regard to the applicability of the exceptions provided for in Article 92 (3) (a) and (c) for aid that promotes the development of certain regions, the Brussels region in which the aid in question was granted does not suffer from an abnormally low standard of living or from serious underemployment within the meaning of the (a) exception ; moreover it does not fulfil the requisite conditions for the (c) exception for aid granted on regional grounds ([1]).

As to the exceptions provided for in Article 92 (3) (b), the facts of the case can provide no grounds whatsoever for considering that those awards were intended to promote a project of common European interest or to remedy a serious disturbance in the Belgian economy. Furthermore the Belgian Government has not presented any such arguments to justify the compatibility of the aid in question.

As regards the exceptions provided for in Article 92 (3) (c) for aid to facilitate the development of certain economic activities, where such aid does not affect trading conditions to an extent contrary to the common interest, it should be noted that part of the aid here in question, in particular that for advertising campaigns and market surveys, falls under the category of operating aid as this expenditure is a typical general operating cost that a company must bear in its normal activities ; furthermore, in the case at issue, this expenditure has not proved to be linked as an essential requirement for the realization of any particular investment project by Siemens SA that could qualify from the abovementioned exception. On the other hand, the remaining and greatest proportion of the aid in question, namely that towards expenditure on equipment leased to clients, is also to be considered as equivalent to operating aid to Siemens SA. As previously explained, the aid to equipment leased to clients in practice constitutes a continued assistance to the commercial activities of Siemens SA in the market of leased products, which has given this company an unfair advantage for the marketing of its products over its competitors.

In view of its direct and ongoing adverse distortive effect on sectoral competition conditions, it is a well-known policy of the Commission to oppose operating aid in normal circumstances, even if this aid would serve one of the objectives of the other exceptions of Article 92 (3). As previously analyzed, the aid in question cannot even be considered as contributing to the attainment of those objectives.

To complete the argument, it should finally be noted that even if this aid had been necessary to facilitate the access of SMEs to new technologies, the Commission, on the basis of the general principle that aid must be granted under those instruments producing the least potential distortive effects on competition, would have never allowed the aid to be granted through the payment of money to a particular equipment supplier, with the resulting abovementioned inadmissible effects on competition, but through the more neutral and adequate way of a scheme of direct aid to SMEs.

In conclusion, the aid in the form of subsidies of Bfr 11 814 000 towards expenditure by Siemens SA of Bfr 96 600 000 in advertising campaigns and market surveys, and the aid in the form of subsidies of Bfr 244 631 000 towards expenditure by Siemens SA of Bfr 1 849 294 000 on equipment leased to clients, was illegally granted by the Government of the Region of Brussels and does not meet any of the conditions which must be fulfilled for one of the exceptions of Article 92 (2) and (3) to apply. Accordingly, it is incompatible with the common market.

V

In case of aid which is incompatible with the common market, the Commission, making use of a possibility given to it by the Court of Justice in its judgment of 12 July 1973 in Case 70/72, Conversion of mining companies in Germany ([2]), confirmed in the judgment of 24 February 1987 in Case 310/85, Deufil ([3]), can require Member States to recover from recipients aid illegally received. The Court has moreover added that the recovery of an aid is the logical consequence of its incompatibility with the common market.

Consequently, Siemens SA must reimburse the aid which it has illegally received.

([1]) See Commission communication on the method for the application of Article 92 (3) (a) and (c) to regional aid (OJ No C 212, 12. 8. 1988, p. 2).

([2]) ECR 813 (1973).
([3]) ECR 201 (1987).

Reimbursement must be made in accordance with the procedures and provisions of Belgian law, in particular those relating to interest on arrears on State liabilities. The interest will be computed from the date on which the illegal aid was received. This is necessary in order to restore the *status quo* by removing all the financial benefit which the recipient of the aid has improperly enjoyed since the date on which the illegal aid was received (see judgment of 21 March 1990 in Case C-142/87, Tubemeuse [1]),

HAS ADOPTED THIS DECISION:

Article 1

Of the total aid under investigation, that is to say Bfr 335 980 000 in the form of subsidies awarded by the Government of the Region of Brussels under the aid scheme established by the Economic Expansion Law (EEL) of 17 July 1959 towards expenditure by Siemens SA totalling Bfr 2 647 294 000:

(a) the aid of Bfr 77 294 000 towards investments in equipment bought for internal use, in building acquisition, and towards expenditure in development of software, is compatible with the common market, since it was awarded within the limits authorized by the Commission in Decision 75/397/EEC for the operation of the aid scheme in question;

(b) the aid of Bfr 2 241 000 towards expenditure in training of workers was illegally awarded in breach of the provisions of Article 93 (3) of the Treaty but, after appraisal, is considered to be compatible with the common market pursuant to the exception of Article 92 (3) (c);

(c) the aid of Bfr 256 445 000 towards expenditure on equipment leased to clients, advertising campaigns and market surveys, was illegally awarded in breach of the provisions of Article 93 (3) and, after appraisal, does not meet any of the conditions which must be fulfilled in order for one of the exceptions of Article 92 (2) and (3) to apply; consequently, this aid is incompatible with the common market within the meaning of Article 92 (1).

Article 2

Since, of the Bfr 256 445 000 of aid declared incompatible with the common market by Article 1 (c), Bfr 28 694 000 is still awaiting payment to Siemens SA, the Government of the Region of Brussels shall refrain from making this payment.

The declaration of incompatibility shall cease to apply upon recovery of the remaining Bfr 227 751 000. Accordingly, the Government of the Region of Brussels shall recover this amount from Siemens SA in accordance with the procedures and provisions of national law, in particular those relating to interest on arrears payable on State liabilities.

Interest shall run from the date on which the illegal aid was received.

Article 3

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

Article 4

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 24 June 1992.

For the Commission

Leon BRITTAN

Vice-President

[1] ECR I-959 (1990).