II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 22 December 1999

on aid scheme C 39/99 (ex E 2/97) United Kingdom, English Partnerships (EP) under the partnerships investment programme (PIP), hereinafter, 'EP/PIP' scheme

(notified under document number C(1999) 5208)

(Only the English text is authentic)

(Text with EEA relevance)

(2000/389/EC)

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 ([1]), pursuant to the provision cited above and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter of 9 January 1995 the United Kingdom notified to the Commission, in accordance with Article 88(3) of the EC Treaty, the programme of assistance offered under the Single regeneration budget (SRB) (N 31/95). This notification covered a number of schemes, including English partnerships (EP) under the partnerships investment programme (PIP) (the EP/PIP scheme), a regional development scheme, relating to the public financing of regeneration projects in England.

(2) By letter to the United Kingdom of 4 May 1995 (SG(95) D/5602), the Commission approved the SRB on the basis of Article 87(3)(c) of the EC Treaty concerning aid for the development of certain economic areas. In its decision the Commission stated that a number of measures included in the SRB were not caught by Article 87(1) of the EC Treaty. 'Urban regeneration (EP activities)' was mentioned as one of those measures.

(3) The UK authorities have operated the scheme on the basis of the perception that no EP programme concerning funding of regeneration projects involves State aid within the meaning of Article 87(1).

(4) Following the approval of the SRB, the Commission's attention was drawn to certain cases where the beneficiaries of EP assistance were also enterprises competing in intra-Community trade.

(5) In a meeting of January 1996 the Commission asked the UK authorities to provide clarification on the actual functioning of the scheme.

(6) Different aspects of the issue have been further discussed and analysed in meetings and correspondence between January 1996 and February 1998. The Commission first announced its intention to propose appropriate measures on the basis of Article 88(1) of the EC Treaty at a meeting with the UK authorities in September 1997. A visit to the EP headquarters in London took place in October 1997 for further research and discussions concerning a sample of cases, in order to determine more precisely the appropriate measures to be proposed.

([1]) OJ C 245, 28.8.1999, p. 9.

(7) Finally, by letter of July 1998 (SG(98) D/06108) the Commission proposed to the UK authorities, on the basis of Article 88(1) of the EC Treaty, appropriate measures concerning one of EP investment programmes, namely the EP/PIP scheme.

(8) The UK authorities were requested to give their consent to the measures proposed within 20 working days. In April 1999 the UK authorities sent their formal response to the appropriate measures proposed. In that response the authorities did not give their full consent to the measures proposed by the Commission.

(9) As a consequence, in May 1999 the Commission decided to initiate the procedure under Article 88(2) of the EC Treaty in relation to the EP/PIP scheme. The official response of the UK authorities was sent by letter of 29 July 1999. Notice of the Commission's decision was published in the Official Journal on 28 August 1999 ([2]). Eleven interested parties submitted comments within the prescribed period of one month following that publication. The Commission also received comments from many other interested parties after the prescribed period.

II. DESCRIPTION OF THE EP/PIP SCHEME

Status/history of EP

(10) EP was established on 10 November 1993 under powers provided by Part III of the Leasehold Reform, Housing and Urban Development Act 1993. It became fully operational on 1 April 1994.

EP (referred to in the statute as the 'Urban Regeneration Agency') is a permanent, non-departmental public body responsible to the Secretary of State for the Environment. Funding towards EP forms an allocation within the SRB. Its resources comprise grant in aid from the Department of Environment as well as the receipts it generates from its activities, including the sale of assets (primarily the property portfolio it took over from English Estates an agency which it succeeded).

Overall objective of EP ([3])

(11) 'The overall aim of the agency is to secure the regeneration of areas of need through the reclamation, development or redevelopment of land and buildings. Whilst concentrating on the regeneration of land it will, wherever possible, operate within a broader regeneration framework working with local and regional partners, aiming to tackle the problems of an area in the round. Its programme will address the need for land for a variety of purposes, including housing, industrial and commercial premises, the attraction of inward investment, infrastructure, leisure, recreation and environmental improvements.'

Areas covered by EP's funding

(12) EP identifies its own priority areas by drawing up regional strategy documents each year based on an assessment of relevant data and consultation with regional partners. Among other indicators that analysis takes into consideration are prevailing unemployment rates, the outcomes of the most recent national Derelict Land Survey and so forth.

The areas in question are the following:

(a) European Objective 1 and 2 areas;

(b) coalfield closure areas (an important target of EP's activities, not necessarily situated in assisted areas. Owing to the small size and often the geographical isolation of these areas with respect to the travel-to-work-areas (the building-block unit of the UK regional aid map in force up to 31 December 1999), it has been alleged by the UK authorities that it was difficult to incorporate them in the map);

(c) City challenge and other inner city areas;

(d) rural areas of severe economic need, chiefly European Objective 5b areas;

(e) other assisted areas.

As mentioned in the notification of 9 January 1995, 'the above list is not in order of priority and EP has the flexibility to respond to urgent needs outside these areas and to structural shifts in local economy' and therefore, in principle EP is able to fund activities anywhere in England.

Means of action under the EP/PIP scheme in particular

(13) EP acts under different investment programmes. The above information concerning the objective of EP and the geographic areas concerned apply to all EP programmes in general.

(14) However, the present Decision is concerned only with the PIP whereby EP acts in partnership with developers mainly from the private sector.

([2]) See footnote 1.
([3]) Annual Report referring to the year ending 31 May 1997 (Foreward to the financial statements).

(15) Funding under EP/PIP is addressed to developers with a strong economic link to the land to be developed, notably property. The UK authorities have stressed that the land ideally addressed by the scheme, is in private hands. That is the main reason why no public tender procedure can be organised for the allocation of the public funding for development. The economic link between the developer and the land is therefore the basis for the way the EP/PIP scheme functions: applicants present their own regeneration proposal to EP and negotiate with EP the sharing of risks, costs and rewards. That negotiation must result in practice in an agreement on the amount of financing of the development costs, the 'gap funding' (see recital 19).

(16) In practice the assistance may take different forms, including in particular professional and technical advice, rent guarantees to developers, grants and other forms of partnership investment with developers, joint ventures with developers, loans and loan guarantees to developers.

Method and level of assistance under the EP/PIP

(17) According to the UK authorities, it is mainly the PIP model of development which allows EP to obtain real value for money. Candidate projects are strictly vetted (from the point of view of additionality, practicality, probity and private sector leverage) in order to ensure that EP's objectives will be achieved with the minimum public costs.

(18) The UK authorities have emphasised their firm commitment to maintaining such a partnership approach with the private sector. The PIP model is necessary owing to the alleged particularity of the English property market, where much of the underused or derelict land is privately owned. The application of the direct investment Programme, which is the existing alternative to the PIP, would involve EP purchasing private land in every case and taking on the full role of developer. The UK authorities are committed to reducing recourse to the direct investment programme since it involves, they say, a significant increase in the level of public expenditure.

The main features of the EP/PIP scheme

Gap funding

(19) EP's funding is aimed strictly at covering the gap between estimated development costs and estimated final value of the site. This position is based on the assumption that, owing to the nature of projects undertaken, the estimated final value of the completed site is by definition lower than the estimated development costs and that there will always be a necessity for gap funding.

Reasonable margin of profit (profit allowance) for the developer

(20) A 'reasonable' margin of profit for the developer is built into the estimated development costs and, therefore, it is financed by EP, as part of the gap funding. The estimate of 'reasonable' profit is appraised by EP on the basis of the level of project risk and any feasible market comparisons. Specifically, the allowed profit is the minimum the developer would accept in order to go ahead with the project. The figure is reached after negotiation between EP and the developer and reflects a professional judgement by EP's internal valuers about the market profit rates for similar types of projects in similar locations.

Claw-back

(21) A claw-back clause is set to recover excess profit (usually at least 50 % of the excess amount), whereas losses (costs overruns) are to be entirely borne by the developer. In this way, most risk is carried by the developer, including any subsequent failure to achieve estimated final value.

Appraisal of costs and values

(22) All costs and values are appraised to ensure that they reflect prevailing market conditions. Again EP applies its own market analysis. The UK authorities consider that EP's comments on the structure of the English property market are not out of line with analyses produced by independent chartered surveyors or the professional bodies representing valuers and surveyors of property in England.

According to the UK authorities the system guarantees that end users receive no State aid because they pay purchase and rent prices at market rates. In order to determine the gap funding these prices are naturally included in the final value and for this purpose they are estimated by EP's internal valuers.

It should also be stressed that in the way the EP/PIP scheme functions, the combination of interests between the different actors involved (land owners, developers, end users) should be considered the rule, in view of EP's declared preference to assist 'a developer with a permanent interest in the site as initial owner or end-user'. This particular condition raises for the Commission a problem of transparency as regards the identification of the real beneficiay of EP's assistance as well as the quantification of the amount of aid it actually receives.

III. APPROPRIATE MEASURES PROPOSED BY THE COMMISSION PURSUANT TO ARTICLE 88(1) OF THE EC TREATY

(23) For the sake of completeness a brief reference will be made to the measures proposed by the Commission in July 1998 pursuant to Article 88(1) EC procedure in order to help the UK authorities to bring the scheme in line with the rules on State aid.

Working concepts

(24) In the spirit of collaboration between the national authorities and the Commission in the context of the procedure pursuant to Article 88(1) of the EC Treaty and having studied the way the scheme is operated, the Commission identified two working concepts in order mainly to identify the circumstances under which aid within the meaning of Article 87(1) of the EC Treaty may be granted under the EP/PIP:

(a) bespoke development: in cases where the development was designed to suit the needs of an end user known at the moment the development works were undertaken;

(b) speculative development: where the site was to be developed in order to be open to different uses not established at the time when the decision to develop was taken.

(25) The reason which prompted the Commission to propose those concepts is that the current way of applying the scheme does not make it possible always to identify with certainty the actual beneficiary of the aid. The Commission has assumed the end user to be the aid beneficiary of bespoke development and the land owner/developer to be the aid beneficiary of speculative development, given the strong economic link between developer and land.

(26) The UK authorities have not contested those working concepts and assumptions, which formed the basis of all further discussions.

The 'site abnormals' concept

(27) In the advanced stages of discussions, the UK authorities put special emphasis on the fact that the EP/PIP scheme addresses principally sites with serious environmental damage incurred by polluters who are not known. The UK authorities provide a generic definition of 'site abnormals' citing the environmental and infrastructure problems which make the specific site unmarketable. The funding required in order to repair 'site abnormals' cannot be considered State aid, according to the UK authorities, because it is limited to the amount necessary in order to bring the site up to a marketable level.

(28) The Commission proposed a number of appropriate measures.

(29) The UK authorities were asked to operate the EP/PIP scheme as a regional aid scheme in conformity with the relevant State aid rules, notably, the Guidelines on national regional aid [4] and the UK map of assisted areas. Thus, it was suggested that the EP/PIP scheme would allow the UK authorities to grant regional State aid, corresponding to the amount of gap funding. In the case of bespoke development it was suggested that the aid be granted to the.end user directly whereas in the case of speculative development it was suggested that the aid be granted to the developer/land owner.

(30) The Commission suggested that all valuations including costs, estimate final values, the sales/rent prices to end users estimated as part of the gap funding, and the calculation of potential claw-back be carried out by independent chartered surveyors.

(31) The scheme confers no State aid, within the meaning of Article 87(1) of the EC Treaty, according to the Commission, in case the investor (landowner or end user) carries out on the site activities which are not relevant for intra-Community trade.

(32) The Commission suggests that cases where the landowner, the developer or the end user are companies active in sectors subject to special Community State aid rules will necessitate an individual notification.

(33) The possibilities offered by the Community framework on State aid for environmental protection could be exploited the Commission suggested, notably in order to bring under the State aid rules the public financing of correcting 'site abnormals'.

(34) In their response to the appropriate measures, the UK authorities accepted that their own restricted definition of bespoke development should be subject to the regional aid rules.

(35) As regards speculative development, the UK authorities maintained that no State aid is involved in EP funding since the product in question (derelict land in England) is not traded between Member States.

[4] OJ C 74, 10.3.1998, p. 4.

(36) At that stage the Commission considered that the arguments put forward by the UK authorities did not allay its doubts as to the existence of State aid in the EP/PIP scheme and as to its compatibility with the common market. The Commission therefore decided to initiate the procedure under Article 88(2) of the EC Treaty.

IV. COMMENTS FROM THE UK AUTHORITIES

(37) By their letter of 29 July 1999, the UK authorities responded to the Commission's letter opening the procedure under Article 88(2) of the EC Treaty. In that letter, the UK authorities modify certain points of the position expressed in their letter responding to the proposal of appropriate measures.

The overall position of the UK authorities can now be summarised as follows.

Bespoke development

(38) The UK authorities agree to operate such developments in conformity with the guidelines issued by the Commission and within the current and future maps of assisted areas. The authorities include in the concept of bespoke development all industrial and most office uses. The beneficiary of aid in respect of bespoke projects will be the end user on the site.

Where the end user in a bespoke project is a company active in sectors subject to special Community State aid rules, an individual notification will be made to the Commission.

Forms of aid other than grants under the EP/PIP scheme will be explained in order to allow the Commission to measure the aid element in them.

Special rules on State aid to enterprises in difficulty, to SMEs, for environmental protection, and to sensitive sectors will be respected. The sectors of transport, agriculture and fisheries are not concerned by the scheme.

(39) The UK authorities have also proposed to change the valuation process, currently carried out internally by one of EP's professional valuers. They propose that in future each valuation undertaken by EP will be recorded and signed off in the same way as an independent valuation, in accordance with standard industry procedures (as laid down by the professional body, the Royal Institute of Chartered Surveyors) making the professional surveyors personally and professionally responsible for the way they have conducted their valuation. For schemes where it is estimated that the value of the completed development will be above GBP 5 million, a second independent valuation will be required.

(40) In addition it will be a requirement in the future that the developer (not just for bespoke classification projects) must award all 'works' contracts by competitive tender. If the price in the best-value-for-money tender is lower than the costs included in the project appraisal calculation, EP will substitute the tender price, recalculate the funding requirement and amend the development agreement accordingly.

Speculative development

(41) The authorities maintain their position that no State aid is involved. The Commission is obliged according to the judgment of the Court of Justice of the European Communities, Joined Cases 296 and 318/82 *Netherlands and Leeuwarder Papierwarenfabriek* v *Commission* ([5]), to set out the circumstances in which intra-Community trade is affected in the case of financing of speculative development projects. In order to do that, the Commission must, according to the UK authorities, examine the relevant market, the place of the production in question on that market, and the pattern of trade between Member States in the product in question. In the present case, the authorities are of the view that the Commission will be unable to reach the standard imposed upon it by the Court of Justice, because of the negligible intra-Community property development market.

Potential application of environmental aid guidelines

(42) The UK authorities stated their wish to explore whether some aspects of the EP/PIP programme fall under the Community Guidelines on State aid for environmental protection ([6]) with the purpose of covering financing of 'site abnormals' in both bespoke and speculative developments.

V. COMMENTS FROM INTERESTED PARTIES

(43) The following interested parties submitted comments before the deadline of 28 September 1999: English Partnerships, North West Development Agency, Durham County Council, Newcastle City Council, Derwentside District Council, City of Sunderland, One NorthEast, Local Government Association, Advantage West Midlands, Association of North East Councils, East of England Development Agency. Many other parties submitted comments after that deadline. It is noted at the outset that all those who submitted comments are interested public authorities and local or regional development agencies and that their comments largely coincide with the comments of the UK Government.

([5]) [1985] ECR 809.
([6]) OJ C 72, 10.3.1994, p. 3.

The main comments received are summarised as follows

(44) The EP/PIP scheme has been a very successful regeneration programme. It has proved very efficient, compared with the Direct Investment Programme, and has delivered value for money. Without the partnership with the private sector, and EP's agreement to provide the agreed gap funding, many projects would not have taken place. The regional aid rules are not suitable for regeneration purposes, since they would subject EP financing to the regional aid intensity ceilings and to the assisted regions, and therefore would limit substantially the relating amounts and the areas of action. The parties fear that certain brownfield areas which can now be developed through EP financing may not be included in the regional aid map due to the rules in force concerning the methodology for drafting the regional aid map.

(45) The gap-funding mechanism is meant to correct a market failure and bring non-marketable assets up to a marketable level. It is not conceived as an aid to individual enterprises but is concerned with 'project assistance'. Furthermore, the amount of gap funding represents the minimum necessary in order to have the project carried out. In order to calculate the gap funding, EP appraises the project as a whole and its future marketability and ensures that the applicant is left with the 'normal profit he would expect to get elsewhere'.

(46) The EP/PIP scheme does not restrict competition but enhances it. It is a funding programme open to all types of applicants.

(47) One interested party emphasised that the Commission's proposed measures are not clear on the types of beneficiaries (developers, investors, landowners, end users) and on the classes of land to be developed. The application of those proposals, as they stand, would be problematic for 'mixed-use' projects including infrastructure, speculative and bespoke development.

(48) Most interested parties ask for the granting of a transitional period for projects now in phase of assessment and realisation.

VI. ASSESSMENT OF THE AID

Existence of aid

(49) It must be stated at the outset that the following circumstances, invoked by the UK Government or by the interested parties or both, do not automatically exclude the existence of State aid within the meaning of Article 87(1) of the EC Treaty and thus do not preclude reflection on the existence of State aid pursuant to that Article:

(a) the fact that the partnership between the public and private sectors is cost-efficient, in the sense that the operation of the programme in that form reduces the burden on the public purse in comparison with the Direct investment programme. It is noted furthermore, that in the way the scheme is operated there are theoretically no real limits as to the amount of the funding which may be granted in each individual case, or, in other words, as to the gap funding in relation to the investment costs;

(b) the fact that the funding is granted in order to correct a market failure: addressing a market failure through public funding to individual enterprises does not preclude the possibility that enterprises competing in intra-Community trade may receive aid within the meaning of Article 87(1) of the EC Treaty;

(c) the funding is the minimum necessary for the project to proceed. This allegation does not take account of the fact that under certain circumstances (for instance, large enterprises in non-assisted areas) no State aid within the meaning of Article 87(1) of the EC Treaty is possible.

(50) Therefore, the Commission must still examine, taking into consideration the arguments submitted by the UK Government and the interested parties in the course of the procedure, whether the conditions for the application of Article 87(1) of the EC Treaty are fulfilled. The following analysis applies to both categories of bespoke and speculative development unless otherwise specified.

(51) 'Aid': the funding offered by EP provides a quantifiable financial incentive to a developer in order to enable him to carry out development works on a site which, according to EP's words, has 'a problem in its condition or location which does not encourage private investors'. This is emphasised at several points in the papers submitted by the UK authorities:

— investors are given incentives to choose EP's priority sites,

— little would have been invested in these areas without the Agency's involvement,

— EP's assistance serves to liberate the private investor from an unmarketable asset.

(52) The amount which corresponds to the gap funding is initially proposed by the developer himself and finally determined following EP's internal vetting procedure. This amount is eventually considered to address the developer's funding needs (covering part of the project

costs and including a 'reasonable' profit for the developer) in order to undertake the proposed project. The Commission therefore considers that the whole amount aimed at gap funding constitutes the incentive necessary for the project to proceed, i.e. the aid in question.

(53) As regards end users, the assurance given by the authorities that end users pay market prices may exclude the possibility of aid only if such prices are determined by objective valuers and according to objective criteria.

(54) 'Aid granted by a Member State or through State resources': EP is a public body, funded by the Department for the Environment and pursuing public interest and public policy objectives. The fact that certain principles defined as being market-oriented, such as seeking best value for money, are integrated into EP's operating philosophy has no effect on its public status. The public status of EP implies that it may be prone to finance a development proposal which is risky, non-lucrative, or non attractive to private investors, on the basis of the fact that the project meets public interest/policy objectives. Private financing institutions operating under normal market conditions are not expected to incorporate public interest or public policy objectives into the rationale of their decisions.

(55) 'In any form whatsoever': EP's funding is channelled through 'a broad range of mechanisms' including mainly grants, but also rent guarantees, joint ventures with developers which may take the form of an equity stake in a limited company, loans and loan guarantees to developers. The Commission considers that whatever the form of this aid, it is within the scope of Article 87(1) of the EC Treaty.

(56) 'The aid favours certain undertakings'; selectivity criterion: EP grants its assistance selectively to certain developers following examination of a large number of projects submitted. The developer is currently the direct recipient of its assistance and is perfectly identifiable since the proposal for the development comes from him. The selectivity criterion is also satisfied by the fact that EP's assistance is preferably granted to developers who own the land in question in certain priority areas.

(57) In these circumstances the Commission considers that the EP/PIP scheme is liable to place certain undertakings in a more favourable situation than others and thus to fall within the scope of Article 87(1) of the EC Treaty ([7]).

(58) The aid distorts competition 'in so far as it affects trade between Member States'. According to the Court of Justice, whether or not State aid affects trade between Member States does not depend on the purposes for which the aid is granted, but on the effects it has ([8]).

(59) The analysis of the Commission proceeds along the lines of the European Court of Justice judgment in Case 248/84 *Germany* v *Commission* ([9]) which concerns an aid scheme, like the EP/PIP scheme and not an individual case, in which the Court stated:

> 'In the case of an *aid programme* the Commission *may confine* itself to examining the characteristics of the programme in question in order to determine whether, by reasons of the high amounts or percentages of aid, the nature of investments for which aid is granted or other terms of the programme, it gives an appreciable advantage to recipients in relation to their competitors and is likely to benefit undertakings engaged in trade between Member States.'

(60) The EP/PIP scheme is an aid programme meant to address land regeneration and development and is open to all sectors with the exception of companies operating in the transport, agriculture and fisheries sectors. Furthermore, in the case of bespoke development, there have in practice been cases where the recipients of EP funding were companies active in trade between Member States. The scheme also finances speculative development undertaken by any company without sectoral restrictions except those mentioned above for bespoke development. The Commission believes that those affected by EP's discretionary funding are companies which conceive and carry out property developments, an activity which can be very mobile across Member States, and not just companies active in the trade in derelict land in England. Having regard to the general characteristics of the programme the Commission can see grounds for the possibility of the scheme benefiting undertakings engaged in trade between Member States both in cases of bespoke and speculative development.

(61) It follows from the foregoing that all the conditions for the application of Article 87(1) EC, concerning the existence of State aid within the meaning of that Article, are met for both bespoke and speculative development.

([7]) Case C-241/94 *France* v *Commission* [1996] ECR I-4551, paragraphs 22, 23 and 24.

([8]) Case 173/73 *Italy* v *Commission* [1974] ECR 709, paragraph 13.

([9]) [1987] ECR 4013.

(62) As regards the aid beneficiary, with the exception of cases where one of the parties is active in a sector subject to special Community State aid rules, the Commission considers that, at least in the case of the regional aid rules, it may not be essential to identify which of the parties, end user or land owner/developer, is the aid beneficiary. In either case, the regional aid rules will have to be respected. In those circumstances and for the purposes of applying this scheme, the Commission considers that the aid beneficiary may be presumed to be the end user in the case of bespoke development (a proposition with which the United Kingdom agrees) and the land owner/developer in the case of speculative development. In doubtful cases where the determination of the aid beneficiary has further consequences under the State aid rules, individual notification may be made. Where one of the parties is active in a sector subject to special Community State aid rules, the Commission requires separate notification under Article 88(3) of the EC Treaty and reserves its analysis as to the identity of the aid beneficiary or beneficiaries.

Compatibility of the aid

(63) Having established that the EP/PIP scheme involves State aid within the meaning of Article 87(1) of the EC Treaty, the only way to render this scheme compatible with the common market is to apply it in a way that complies with the derogations provided under Article 87(3)(a) and (c) of the EC Treaty.

(64) For this purpose, the scheme, both in cases of bespoke and speculative development should apply in accordance with the relevant State aid rules, notably the Guidelines on national regional aid ([10]), the multisectoral framework on regional aid for large investment projects ([11]), the Commission communication on State aid elements in public land sales ([12]), the Community Guidelines on State aid for environmental protection ([13]), the Community Guidelines on State aid for rescuing and restructuring firms in difficulty ([14]), the Community Guidelines on State aid to SMEs ([15]), the Guidelines on State aid for undertakings in deprived urban areas ([16]), the rules on State aid to particular industries in the sensitive sectors (synthetic fibres, motor vehicle industry, shipbuilding, steel, coal, transport, fisheries, agriculture).

([10]) OJ C 74, 10.3.1998, p. 4.
([11]) OJ C 107, 7.4.1998, p. 1.
([12]) OJ C 209, 10.7.1997, p. 3.
([13]) OJ C 72, 10.3.1994, p. 3.
([14]) OJ C 288, 9.10.1999, p. 2.
([15]) OJ C 213, 23.7.1996, p. 4.
([16]) OJ C 146, 14.5.1997, p. 6.

(65) As regards bespoke development, the UK authorities have agreed to subject the EP/PIP scheme to the rules on regional aid and to other relevant State aid rules. To this extent aid for bespoke development under the EP/PIP scheme becomes compatible with the common market.

(66) However, the UK authorities have not accepted the Commission's proposal for notification in the case one of the actors, (other than the end user), involved in the project (land owner or developer) is active in the sectors subject to the special Community State aid rules.

(67) As regards speculative development, the EP/PIP scheme is being applied as if it did not involve State aid. It is therefore incompatible with the common market because no account of the State aid rules is being taken in its implementation,

HAS ADOPTED THIS DECISION:

Article 1

The EP/PIP scheme, as modified by the partial acceptance of the appropriate measures (as referred to in recital 65) is compatible with the common market provided that:

— the part of the scheme on speculative development is brought under the State aid rules (referred to in recital 64),

— the UK authorities notify on the basis of Article 88(3) of the EC Treaty, both in cases of bespoke and speculative development, all cases where one of the actors involved is active in the sensitive sectors (referred to at the end of recital 64).

Article 2

This Decision terminates the Commission's authorisation of the EP/PIP scheme under the scheme N 31/95 (Single Regeneration Budget) as communicated to the United Kingdom by letter of 4 May 1995. Projects for which at least a formal application has been submitted before the date of adoption of this Decision will be processed as normally under the N 31/95 scheme.

Article 3

The United Kingdom shall communicate to the Commission, within one month after the date of adoption of this Decision, the measures taken in order to comply with this Decision.

Article 4

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 22 December 1999.

For the Commission
Mario MONTI
Member of the Commission