II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 21 April 1999
on the treatment by the Netherlands tax authorities of a technolease agreement between Philips and Rabobank

(notified under document number C(1999) 1122)

(Only the Dutch text is authentic)

(Text with EEA relevance)

(2000/735/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 93(2), second paragraph,

Having requested the parties concerned to submit their comments pursuant to those Articles,

Whereas:

I. PROCEDURES

(1) By means of press articles dated January/February 1997 mentioning that the Netherlands tax authorities had accepted a technolease agreement between Philips and Rabobank that would impose a large but unspecified burden on the State budget, the Commission was informed that the Netherlands may have been granting aid to Philips and/or Rabobank within the framework of a technolease agreement.

(2) By letter of 24 April 1997, the Commission informed the Netherlands that the procedure provided for in Article 93(2) of the EC Treaty had been initiated in respect of the aid that may have been granted in the form of a tax advantage within the framework of an agreement on sale-leaseback of know-how between Philips and Rabobank (hereafter the technolease agreement).

(3) The Commission has not received any comments from other Member States or third parties concerned.

II. DESCRIPTION

(4) In 1992, Philips sold a defined quantity of its know-how with a value on its balance sheet of NLG 2 200 million to its subsidiary Electrologica. In return Philips received the shares of Electrologica and provided a loan at an annual interest rate of 7 %. Electrologica then leased the know-how to Philips and in turn was compensated by the royalties it received from Philips.

(5) On 30 November 1993 Philips and Rabobank agreed that Philips would sell its shares in Electrologica to Rabobank on 3 January 1994. The market value of the know-how then was estimated NLG 2 800 million. Rabobank paid NLG 640 million in cash to Philips for the shares in Electrologica. In addition, Philips kept its claim on Electrologica, from that moment on a subsidiary of Rabobank. Furthermore Rabobank and Philips agreed that 50 % of the future revenues from sublicensing (parts of) the know-how of Electrologica to third parties would go to Philips and 50 % to Rabobank.

(6) The sale-leaseback contract between Philips and Electrologica provided for yearly interest payments of NLG 154 million by Electrologica to Philips and yearly royalty payments of NLG 140 million by Philips to Electrologica. Furthermore, once 10 years have elapsed after the acquisition of the shares in Electrologica by Rabobank, Rabobank will have for the following 24 months the right to sell the shares in Electrologica to Philips for NLG 50 million.

(7) By the transfer of the shares in Electrologica from Philips to Rabobank, Electrologica is no longer part of the tax group of Philips. This means that the taxable income of Elecrtrologica is no longer consolidated with the taxable income of Philips. After the transfer Electrologica forms a part of the tax group of Rabobank so the taxable income of Electrologica will from then on be consolidated with the taxable income of Rabobank.

(8) Overall the technolease agreement implies a shift in taxable income between the tax group of Philips and the tax group of Rabobank because the exclusive right to depreciate on the know-how is shifted from Philips to Rabobank. In return Philips receives from Rabobank an immediate cash payment of NLG 640 million and an inter-group debt of NLG 2 200 million is converted in a loan to Rabobank which implies a substantial improvement of the figures on the balance sheet of Philips.

(9) Both Philips and Rabobank are private enterprises. Philips is listed at the Amsterdam Exchanges and Rabobank is a cooperative. The Netherlands authorities are not a stakeholder in either one of them. The technolease agreement therefore is a commercial transaction between private parties.

(10) The Commission decided to initiate the procedure pursuant to Article 93(2) of the EC Treaty in connection with the tax treatment of the technolease arrangement because of the following doubts:

— for the assessment whether any burden was imposed on the State budget, information was needed on the depreciation period, the depreciation rate and the basis for depreciation of the know-how,

— the revaluation of the know-how from NLG 2 200 million to NLG 2 800 million lacked a solid basis,

— it was not clear whether taxable profits of Philips in those years would be enough for Philips to realise the full benefit of the depreciation of the know-how itself,

— more information on the tax rules governing sale-leaseback of immaterial assets was necessary to assess whether any discretionary power was used by the Netherlands tax authorities to the benefit of Philips and/or Rabobank.

III. **OBSERVATIONS OF INTERESTED PARTIES**

(11) Commission communication giving the other Member States and third parties notice to submit their observations was published in the *Official Journal of the European Communities* [1] on 8 November 1997. As part of the procedure, no other Member States or third parties submitted any observations to the Commission.

IV. **COMMENTS OF THE NETHERLANDS**

(12) The Netherlands authorities forwarded their observations to the Commission by letter of 28 October 1997. The general position of the Netherlands authorities was that there was no element of State aid in the treatment by the Netherlands tax authorities of the technolease agreement between Philips and Rabobank because it merely applied general tax rules instead of using discretionary power. In

[1] OJ C 338, 8.11.1997.

addition they addressed more specifically the questions put forward by the Commission. At a meeting between representatives of the Netherlands and the Commission that was held on 19 February 1998 in The Hague, the representatives of the Commission were enabled to examine confidential documents. As some information was still missing, the Commission requested additional information by letter dated 24 April 1998. In response, the Netherlands authorities provided all the needed information by letter dated 29 April 1998.

(13) In the observations they submitted, the Netherlands authorities explained that:

— neither civil nor tax law in the Netherlands contains special provisions for the assessment of sale-leaseback transactions. Nevertheless the interpretation of the law by the High Court in the Netherlands ([1]) as found in its jurisprudence makes it clear that sale-leaseback transactions are legally valid under existing law in the Netherlands,

— because no special provisions existed for the assessment by the tax authorities of sale-leaseback of immaterial assets, the technolease agreement between Philips and Rabobank had to be assessed on the basis of the principle of 'sound business practice' that is laid down in the Netherlands tax law. According to the principle of sound business practice the owner of a fixed asset can yearly deduct a certain percentage of the value of the asset from taxable income. The central issue in case of sale-leaseback of immaterial assets is where the ownership actually lies, at the side of the lessor or at the side of the lessee. The assessment of the ownership of the know-how was made in accordance with civil and tax law as well as jurisprudence,

— the Netherlands tax authorities had approved already another case of sale-leaseback of immaterial assets (trade marks) in 1987 merely by interpreting general tax rules,

— the book value of the know-how before the transfer of Electrologica from Philips to Rabobank was based on cost-minus, leaving some cost elements out because of the principle of prudence that rules the concept of sound business practice in the Netherlands. The Netherlands tax law ([2]) prescribes the revaluation of assets from book value to market value at the moment a subsidiary leaves the tax group so any hidden reserves can be taxed. The market value of the know-how of Electrologica at the moment of the transfer to Rabobank was determined on the basis of the OECD-guidelines for transfer pricing ([3]),

— royalty and interest to the amount of NLG 140, respectively NLG 154 million, are fully paid between Philips and Rabobank for a period of 10 years, the length of the contract. However in 1994 and 1995 the royalty payments from Philips to Rabobank are settled with the cash payments from Rabobank to Philips, implying that Rabobank deducted the royalties that Philips owed them from the cash payment to Philips,

— the guidelines for the assessment of sale-leaseback of immaterial assets published in the Directive of 22 August 1994 by the Netherlands tax authorities merely give an interpretation of the general tax law and cannot change the Netherlands tax law. Furthermore it is argued that *a posteriori* application of the Directive to the technolease agreement between Philips and Rabobank would not have altered the outcome.

(14) These arguments were developed in the subsequent correspondence and at the meeting held with the Commission. Furthermore, the Netherlands authorities provided:

— detailed information on the depreciation scheme applying to Philips and Rabobank,

— figures on the taxable income of Philips as well as Rabobank in 1990, 1991, 1992 and 1993,

— the contracts underlying the technolease agreement between Philips, Rabobank and Electrologica.

V. **APPRAISAL**

V.1. **V.1. Technical appraisal of the operation**

(15) The Commission takes into consideration that the sale-leaseback of assets is widely used as a financing scheme in the Member States of the European Community as well as abroad. One consequence of sale-leaseback of assets is that the lessor that acquired the ownership of the asset obtains the exclusive right to depreciate on the acquired asset for tax purposes. The examination of tax legislation in Member States leads to the conclusion that this holds in the vast majority of the Member States.

([1]) BNB95/116 Keereweer-Sogelease where the High Court in the Netherlands decided that the sale-leaseback of printing presses was legally valid under Dutch law.
([2]) Standard Conditions (i.e. No 16) in the Annex to Article 15, Law on Corporation Tax.
([3]) OECD-report 'Transfer pricing guidelines for multinational enterprises and tax administrations'.

(16) The Commission supports the notion made by the Netherlands authorities that the exploitation of immaterial assets does not in principle differ from the exploitation of other assets. However, because of the special properties of immaterial assets special conditions may apply to the exploitation of immaterial assets ([1]). In this respect the publication of the Netherlands tax authorities' Directive with guidelines on sale-leaseback of immaterial assets cannot be considered at odds with applying general tax rules.

(17) By the transfer of the shares in Electrologica from Philips to Rabobank, Electrologica is no longer part of the tax group of Philips. This means that the taxable income of Electrologica is no longer consolidated with the taxable income of Philips. After the transfer, Electrologica forms part of the tax group of Rabobank so that the taxable income of Electrologica will, from then on, be consolidated with the taxable income of Rabobank. Furthermore, the technolease agreement has the following implications. First, the exclusive right to depreciate on the know-how (as deductible tax allowance) is shifted from Philips to Rabobank. Hence, the technolease agreement decreases taxable income of Rabobank and increases taxable income of Philips, allowing Rabobank to pay less tax than it would have without the technolease agreement while Philips at the same time pays more tax. Second, due to the technolease agreement, Philips makes a (taxable) book profit of NLG 600 million that it would not have realised without the sale of its subsidiary Electrologica to Rabobank.

(18) The Dutch tax authorities provided all the information that enabled the Commission to certify that neither Philips nor Rabobank had unsettled fiscal losses at the time of the technolease agreement. The figures on taxable income of Philips and Rabobank in 1990, 1991, 1992 and 1993 lead the Commission to the conclusion that Philips and Rabobank both were in the position to benefit fully from the depreciation of the know-how. Moreover the prospects on future profits were promising to Philips as well as to Rabobank. Every change in taxable income therefore results accordingly in a change in overall tax revenues for the State.

(19) In detail, the shift in taxable income for Philips and Rabobank, and thus in tax revenues for the State, is as follows (see also table below):

— without the sale of Electrologica to Rabobank, the tax group of Philips could have depreciated on the know-how linearly from 1994 in 4 years on the basis of the book value of NLG 2 200 million. Missing the depreciation on the know-how increases the taxable income of Philips with NLG 550 million per year over four years at a tax rate of 35 %,

— after the sale of Electrologica to Rabobank, the fiscal depreciation on the know-how is based on a book value of NLG 2 800 million and over six years consists of depreciation of 25 % of the remaining book value (reducing balance method) in each year, followed by linear depreciation over four years. The depreciation on the know-how decreases the taxable income of the tax group of Rabobank with NLG 700 million the first year (25 % of NLG 2 800), NLG 525 million in the second year (25 % of NLG 2 100) down till NLG 125 million in year 10, at a tax rate of 35 % ([2]),

— royalty and interest payments between Philips and Rabobank take place for a period of 10 years, the length of the contract. As far as the royalty payments from Philips to Rabobank have been settled out of the cash payments from Rabobank to Philips for the purchase of Electrologica, no actual transfer of money is made between Philips and Rabobank,

— Philips and Rabobank agreed that the loan of NLG 2 200 million by Philips to Electrologica could be redeemed at the end of the contract. The debt conversion is tax neutral according to vast jurisprudence in the Netherlands ([3])

— any revenues from sublicensing the know-how of Electrologica to third parties during the contract are divided equally between Philips and Rabobank and taxed accordingly. From the information received these revenues are expected in the second half of the duration of the contract (i.e. from 1999 on).

([1]) Commission Regulation (EEC) No 556/89 of 30 November 1988 on the application of Article 85(3) of the Treaty to certain licensing agreements (OJ L 61, 4.3.1989, p.2).

([2]) The differences between the depreciation schemes for Philips and Rabobank have been ascribed by the Netherlands authorities to the fact that the know-how played a significantly different role as a capital asset to Philips from the role it played Rabobank, for whom it was a purely financial asset.

([3]) BNB1969/202, BNB1978/140 for the creditor and BNB1993/237 for the debtor.

(20) The first column of the first table below shows the increase in taxable income of the tax group of Rabobank resulting from the royalty payments made by Philips to Electrologica. The second and third columns show the decrease in taxable income of the tax group of Rabobank resulting from interest payments made by Electrologica to Philips and the depreciation on the know-how of Electrologica. The fourth column shows the decrease in taxable income of the tax group of Philips resulting from the royalty payments by Philips to Rabobank. The following three columns show the increase in taxable income of the tax group of Philips respectively due to the interest received from Electrologica, missing the depreciation on the know-how and finally the book profit Philips made on the know-how by selling Electrologica to Rabobank. The last column of the first table sums the shifts in taxable income. The last row of the first table shows the present value of all shifts in taxable income in 1994. The second table shows the impact of the changes in taxable income on overall tax revenues, based on a tax rate of 35 %.

(21) As follows from the second table, the technolease agreement has the effect that overall tax revenues rise in the short term and fall in the long term. The shift over time in tax revenues can be attributed to two circumstances. First, because Electrologica leaves the Philips tax group in 1994 prior to the transfer to Rabobank, the previously hidden reserves on the know-how are realised and are subsequently taxed in that year. Second, because of the differences in depreciation schemes between Philips and Rabobank, depreciation on the know-how is to some extent decelerated.

Any future tax revenues from sublicensing the know-how to third parties will be left aside in the following overview. For the purpose of overall tax revenue it is irrelevant whether the revenues will be received by Philips (in case the know-how would not have been sold to Rabobank) or the revenues will be divided between Philips and Rabobank (as Philips and Rabobank agreed to under the terms of the technolease agreement).

Table 1

Shifts in taxable income due to technolease (1994 = year 1)

	Rabobank			Philips			Total	
Year	Royalties	Interest	Depreciation	Royalties	Interest	Depreciation	Book profit	
1	140	– 154	– 700	– 140	154	550	600	+ 450
2	140	– 154	– 525	– 140	154	550	—	+ 25
3	140	– 154	– 394	– 140	154	550	—	+ 156
4	140	– 154	– 295	– 140	154	550	—	+ 255
5	140	– 154	– 220	– 140	154	—	—	– 220
6	140	– 154	– 166	– 140	154	—	—	– 166
7	140	– 154	– 125	– 140	154	—	—	– 125
8	140	– 154	– 125	– 140	154	—	—	– 125
9	140	– 154	– 125	– 140	154	—	—	– 125
10	140	– 154	– 125	– 140	154	—	—	– 125

Present Value (in year 1 = 1994 at a discount rate of 1,06):

1	1 031	– 1 133	– 2 279	– 1 031	1 133	1 906	+ 566	+ 193

Table 2

Shifts in tax revenues (effective tax rate 0,35) due to technolease (1994 = year)

	Rabobank			Philips			Total	
Year	Royalties	Interest	Depreciation	Royalties	Interest	Depreciation	Book profit	
1	49	– 54	– 245	– 49	54	192	210	+ 157
2	49	– 54	– 184	– 49	54	192	—	+ 8
3	49	– 54	– 138	– 49	54	192	—	+ 54
4	49	– 54	– 103	– 49	54	192	—	+ 89
5	49	– 54	– 77	– 49	54	—	—	– 77
6	49	– 54	– 58	– 49	54	—	—	– 49
7	49	– 54	– 44	– 49	54	—	—	– 44
8	49	– 54	– 44	– 49	54	—	—	– 44
9	49	– 54	– 44	– 49	54	—	—	– 44
10	49	– 54	– 44	– 49	54	—	—	– 44
Present Value (in year 1 = 1994 at a discount rate of 1,06):								
1	411	– 452	– 798	– 411	452	667	198	+ 68

(22) Overall, the technolease agreement can be expected to benefit the State budget in the sense that tax revenues are accelerated rather than decelerated. The discounted value of this benefit in 1994 amounted to NLG 68 million at a discount rate of 1,06 [1]. The tax benefit to Rabobank should therefore be fully paid up for by Philips paying more taxes. The tax benefit to Rabobank can be considered to be part of the fee Philips is paying for the financial services supplied by the Rabobank.

(23) Any estimation made at the time by the Dutch administration, as mentioned in press articles, suggesting that the technolease agreement imposed a burden to the State resources appears to have overlooked the tax consequences of the technolease agreement at the side of Philips.

V.2. **Application of Article 92(1) of the EC Treaty to the tax treatment of the operation**

(24) The technolease agreement must be assessed on the basis of the criteria laid down in Article 92(1) of the EC Treaty. For any element of State aid to be present in the technolease agreement some advantage must be given at the expense of State resources. Furthermore, to be considered an aid, the advantage must be specific or selective in that it favours certain enterprises or certain productions. Finally it has to be established that competition and trade between the Member States are affected.

a) *Effect on trade*

(25) As stated in the opening of the procedure, Philips and Rabobank both operate outside the Netherlands on the Community market. So, if aid were available for these companies, it would place them in a better position to compete with their products and services in other Member States. It would also be more difficult for competitors from other Member States to compete against them in the Netherlands. Any aid given to Philips and/or Rabobank will therefore affect trade between Member States.

[1] Discounting at a lower rate than 1,06 would result in a smaller benefit to the State budget.

b) *Possible selective character through the use of discretionary power*

(26) The treatment of economic agents on a discretionary basis may mean that the individual application of a general tax measure takes on the features of a selective measure ([1]). With regard to the doubts whether the Netherlands tax administration has exercised any discretionary power to the benefit of Philips and/or Rabobank or whether it merely has applied general tax rules, the Commission has considered the following.

(27) In favour of the assumption that the tax administration exercised to some extent discretionary power to the benefit of Philips and/or Rabobank is the fact that the government intervened in the dossier. This intervention seems however to have been prompted by the pressure exercised by Philips to put an end to the conflict that took place inside the fiscal administration. This conflict was merely bearing on the interpretation of the general tax rules which was delaying an answer to the transaction submitted to it.

(28) As neither civil nor tax law in the Netherlands contain specific provisions for the assessment by tax authorities of sale-leaseback transactions, assessment had to be based on the general principle of 'sound business practice' laid down in Dutch tax law. Applying this principle to the technolease agreement, the main question is whether Rabobank actually obtained the ownership of the know-how merely by the purchase of shares in Electrologica and was therefore justifiably benefiting from the depreciation on the know-how ([2]). To be regarded the economic owner of an asset it is necessary for the owner to bear some risk (positive or negative) with regard to the end value of the asset. Rabobank was entitled to the surplus value of the know-how over the book value at the end of the contract as well as to 50 % of the revenues from sublicensing the know-how to third parties. On the basis of the information available to it the Commission concludes that under Netherlands law and jurisprudence this would be considered sufficient for establishing risk and therefore ownership.

(29) Also the Directive on sale-leaseback of immaterial assets that the Netherlands tax authorities published in August 1994 concentrates on conditions regarding economic ownership. The Directive presents guidelines for the interpretation of Netherlands tax law and can not make any change to the law. Because the Directive was not published until after the technolease agreement between Rabobank and Philips, it can only be tested whether the technolease agreement satisfies *a posteriori* the conditions laid down in the Directive. Doing so does not invalidate the conclusion that general tax rules have been applied.

(30) According to the Directive sale-leaseback of immaterial assets depends on meeting overall sufficiently five conditions:

1. the original owner may not stipulate an exclusive right of use of the asset by which also the question who has the factual power to dispose of the immaterial asset at the end of the lease-period is relevant;

2. the duration of the lease must be shorter than the lifetime of the know-how;

3. the depreciation must be in relation with the lease payments and take into account a just end value;

4. the transfer price should be at arm's length and the tax administration should be able to test this;

5. the lease payments plus other benefits to the lessor should enable the lessor to make up for its costs including depreciation and interest.

(31) According to the Directive the conditions 1, 2 and 5 do not have to be fully met, as long as not meeting one of the conditions is compensated by meeting more other conditions. Overall the five conditions must be sufficiently met.

([1]) Commission notice on the application of the State aid rules to measures relating to direct business taxation, (OJ L 384, 10.12.1998, p. 3).

([2]) The mere fact that know-how is an immaterial asset does not prohibit it being transferred.

(32) Applying the conditions *a posteriori* to the technolease agreement between Philips and Rabobank yields the following results.

1. The lease-back to Philips is in principle exclusive. However, the agreement explicitly foresees the possibility that Philips capitalises the know-how by handing out licenses to third parties. With regard to the case that Philips hands out licenses to third parties, the agreement provides that Rabobank is entitled to 50 % percent of the revenues. There is a mutual interest for both Philips and Rabobank to engage in handing out licences. At the time Philips was going through a major reorganisation, going back to core business and closing down some of its production lines. For this reason Philips is actually a stakeholder in handing out licenses to third parties. From the information received it can be concluded that sublicensing of know-how to third parties is common practice to Philips.

   Furthermore the Directive specifically provides that also the question who has the factual power to dispose of the immaterial asset at the end of the lease-period is relevant for deciding whether to qualify an agreement as 'exclusive'. It is clear that it is Rabobank who will have this power. As was noted above, Rabobank has only the right, but not the obligation, to sell the shares in Electrologica back to Philips at the end of the lease-period. Moreover, it can terminate the lease-back agreement between Electrologica and Philips as of 1 January 2004.

2. The duration of the lease is 10 years. The Commission has no reason to suspect that the expected lifetime of the know-how is less than the duration of the lease period.

3. The depreciation on the acquired asset in 10 years by Rabobank can be regarded as normal in the light of its function as long-term funding.

4. The transfer price of the know-how is based upon the OECD Transfer Pricing Guidelines, which are applicable to the transfer of the know-how. Furthermore the tax administration has tested and approved the transfer price of the know-how using the normal cost-minus method applied for that purpose in the Netherlands. The Commission considers the DECD Guidelines a useful basis for the valuation of the know-how.

5. Given a commercial net calculation, Rabobank can be considered to have made a commercially sound transaction. Beyond that, there is a possibility of extra revenues for both Rabobank and Philips from licensing to third parties as well as the revaluation of the know-how at the end of the lease contract.

(33) The Commission concludes that the technolease agreement between Philips and Rabobank *a posteriori* can be regarded as sufficiently meeting the conditions laid down in the Netherlands tax authorities Directive on sale-leaseback of immaterial assets.

(34) Besides the aforementioned conditions concentrating mainly on the ownership of the asset, the Directive demands that there is an economic rationale to the sale-leaseback of immaterial assets in order to prevent any (ab)use of sale-leaseback for the purpose of tax avoidance.

(35) The economic rationale for the technolease agreement is found in Philips' aim for an immediate improvement of its funding and its balance sheet figures and Rabobank's interest in a long-term funding operation. Crucial to the technolease agreement between Philips and Rabobank seems to have been the urgent need for cash flow at the side of Philips. Because the liquidity ratio of Philips was falling short at the time it was in danger of losing its AA-ranking as a debtor. The financial consortium behind Philips was no longer prepared to supply cash. Hence the liquidation of hidden reserves was some kind of last resort.

(36) The fact that in 1987 the tax authorities had already approved a sale-leaseback of immaterial assets by merely interpreting general tax rules gives further evidence in favour of the conclusion that the tax authorities merely have applied general tax rules.

(37) Another way to establish whether general tax rules have been applied is by checking whether other enterprises actually could engage in sale-leaseback of immaterial assets. The Netherlands authorities have supplied the names of enterprises that following Philips used sale-leaseback of immaterial assets in order to generate cash flow. These cases date from before as well as after the Philips/Rabobank agreement. Furthermore from press releases it can be concluded that other enterprises comparable to Philips also felt that sale-leaseback of immaterial assets was open to them.

(38) Furthermore, the economic rationale cannot be put in doubt by a possible fiscal gain over the sale-leaseback operation since, as shown in point V.l., it can be expected that there will not be any actual loss of tax revenues for the State. On the contrary, a tax benefit should result whose discounted value in 1994 amounts to NLG 68 million.

c) *Use of State resources*

(39) As has been pointed out, the tax treatment of the technolease agreement will not impose any burden on State resources.

VI. **Conclusion**

(40) In the light of the aforementioned considerations, the Commission concludes that, as the Netherlands authorities have not selectively granted a fiscal advantage to Philips nor Rabobank through any discretionary interpretation of their fiscal law nor at the expense of any State resources, there is no element of State aid falling under Article 92(1) to either party involved in the technolease agreement between Philips and Rabobank. The Commission therefore,

HAS ADOPTED THIS DECISION:

Article 1

The treatment by the Netherlands tax authorities of a technolease agreement between Philips and Rabobank does not constitute an aid within the meaning of Article 92(1) of the EC Treaty.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 21 April 1999.

For the Commission

Karel VAN MIERT

Member of the Commission