II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 21 January 2003

on the aid scheme 'Stamp duty exemption for non-residential properties in disadvantaged areas' notified by the United Kingdom

(notified under document number C(2003) 41)

(Only the English text is authentic)

(Text with EEA relevance)

(2003/433/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 pursuant to the provisions cited above [1] and after taking those comments into account,

Whereas:

I. PROCEDURE

(1) By letter dated 21 December 2001, and registered by the Commission on 9 January 2002, the United Kingdom authorities notified a scheme proposing to exempt transfers of non-residential property in disadvantaged areas from stamp duty.

(2) By letter of 27 February 2002, the Commission informed the United Kingdom authorities of its decision to initiate the procedure of Article 88(2) in relation to the stamp duty exemption scheme.

(3) The decision to open the procedure was published in the *Official Journal of the European Communities* on 27 April 2002. The Commission invited interested parties to submit their comments on the aid scheme [2].

(4) By letter of 9 April 2002, the United Kingdom authorities requested the Commission an extension of the deadline to submit comments. The Commission granted the extension, and the official response from the authorities was sent on 6 May 2002, registered by the Commission one day later. A second letter providing supplementary information was sent to the Commission on 13 November 2002, registered by the Commission on 27 November 2002. A final letter was sent on 26 November 2002, registered by the Commission on 2 December 2002.

(5) In addition, several meetings took place between the United Kingdom authorities and the Commission on the following dates: 1 August 2002, 10 September 2002, 25 September 2002, 15 October 2002 and 11 November 2002.

[1] OJ C 102, 27.4.2002, p. 22.
[2] See footnote 1.

(6) The Commission received comments from two parties: the Royal Institute of Chartered Surveyors by letter of 27 May 2002 and the British Property Federation by letter of 24 May 2002. The United Kingdom authorities commented on these letters on 26 July 2002.

II. **DESCRIPTION OF THE AID**

(7) The aim of the measure is to contribute to the physical, economic and social regeneration of designated disadvantaged areas by way of reducing the cost of acquiring non-residential property in these areas. The scheme is part of the United Kingdom government's 'Enterprise in disadvantaged communities' initiative.

(8) The proposed aid takes the form of an exemption from stamp duty obligations, namely taxes levied on documents relating to sales and leases of land and buildings and transfers of shares. Stamp duty is a transaction tax imposed on the purchaser or leaser of land or property.

(9) The eligible cost comprises the consideration (the purchase price) of the property (the land and/or buildings) situated in the qualifying area, or the average annual rental for a new lease. Apportionment is required if the property is only partially situated in a qualifying area. Stamp duties vary according to the purchase price of the property and, in the case of leases, according to the average annual rental and the duration of the lease. The rate of the stamp duty and hence the proposed exemption is between 1 % and 4 % of the purchase price in the case of a purchase of a property and between 1 % and 24 % of the average annual rent in the case of a new lease ([3]).

(10) The stamp duty exemption would apply to sales and new leases of non-residential properties located in designated disadvantaged areas in the United Kingdom. The eligible areas, which have an average population of 7 000, are selected on the basis of the most recent indices of multiple deprivation (IMD) developed for each of the four regions of the United Kingdom. These indices are based on income, employment, health deprivation and disability, education skills and training, housing and geographical access to services. In England, Wales and Northern Ireland the geographical units used are the electoral wards or divisions and in Scotland, the postcodes. 2 000 disadvantaged areas have been designated in the United Kingdom, covering 22 % of the total population in England, 18 % in Scotland, 47 % in Wales and 40 % in Northern Ireland. The present list of eligible areas has been set out in 'The Stamp Duty (Disadvantaged Areas) Regulations 2001'. The United Kingdom authorities have indicated that qualifying areas (not more than 2 000) will be kept under review, although changes to the list are likely to be infrequent.

(11) The United Kingdom authorities have estimated that the average proportion of hardcore brownfield (meaning vacant and/or derelict) land in the targeted areas is 2½ times that of other areas.

(12) The scheme applies to undertakings of any size and any location and operating in any sector of the economy. The duration of the scheme would be 10 years.

(13) The budget cost of the scheme is estimated at up to GBP 60 million (around EUR 94 million ([4])) per year.

III. **OPENING OF PROCEDURE**

(14) In its letter of 27 February 2002, the Commission took the view that the notified scheme constituted State aid within the meaning of Article 87(1), since there were State resources involved, there was selectivity through its being targeted towards particular geographic areas, and since it might distort competition and affect trade at Community level.

([3]) The United Kingdom authorities have declared that, 'relative to the present value of the rent that would be paid over the life of the lease, the stamp duty on the rent will be less than 4 % and generally less than 1 %. Hence the effective rate of stamp duty (and thus the aid intensity) on leases overall, will also be less than 4 %.'

([4]) Exchange rate used: 1,5698 from 6.12.2002.

(15) One of the reasons for opening the procedure was that the Commission had doubts whether the notified measure fulfilled the conditions of the Guidelines on National Regional Aid ([5]). The stamp duty exemption, according to the notification, would apply to transfers of non-residential property situated in so-called designated disadvantaged areas, which have been defined on the basis of different indicators and geographical units than these of the United Kingdom regional aid map approved by the Commission. ([6]) In addition, the Commission had doubts whether the transactions envisaged by the scheme would constitute initial investment within the meaning of Article 4.4 of the Guidelines on National Regional Aid ([7]).

(16) Other doubts related to that part of point 4.5 of the Guidelines on National Regional Aid that provides that in the event of a purchase, assets for whose acquisition aid has already been granted prior to the purchase should be excluded. In the notified scheme, however, assets that are the subject of successive transactions are not excluded from the aid. In addition, since the scheme allows cumulation with other aid, the Commission had doubts whether the aid intensities laid down by the Guidelines on National Regional Aid would, at the end of the day, be observed. Finally, since the scheme would be applicable to all sectors, it was unclear how the authorities intended to comply with the rules applicable to certain sectors (including transport, steel, shipbuilding, synthetic fibres, motor vehicles, fisheries and coal), or those applicable to the products listed in Annex I to the Treaty, which are excluded from the scope of those Guidelines.

(17) The Commission also had doubts whether the scheme was in conformity with the Deprived Urban Area Guidelines ([8]). Given the significant number of people living in targeted areas, the Commission wondered whether there was compliance with point 8 of those Guidelines, whereby the total population covered by such areas must not exceed 1 % of the national population. In addition, it was unclear to what extent the areas qualifying under the notified scheme that are outside the regional aid map complied with the other eligibility criteria laid down in point 7 of the Deprived Urban Area Guidelines. Under the Guidelines, only small and medium-sized enterprises (SMEs) could benefit from State aid. However, the proposed scheme did not seem to impose restrictions as to the size of firms.

(18) The Commission further noted that there was no sectoral coverage of the notified scheme, which was not limited to SMEs, nor to firms in difficulty nor to any of the following activities: research and development, environmental protection, training, creation or maintenance of employment.

IV. **COMMENTS FROM THE UNITED KINGDOM**

(19) According to the United Kingdom authorities, the scheme would encourage business establishment and property development in disadvantaged and thus poor areas of the United Kingdom by promoting their physical and economic regeneration.

(20) In that regard, they argue that, for the purposes of regeneration, targeted State aid can effectively help to address market failures. Market failures are identified as those which prevent private enterprises from being engaged with deprived communities and which lead to sub-optimal market solutions; in particular, market failure can lead to dereliction and abandonment, lack of local services and community dislocation as residents commute to find work. Correcting market failures is, arguably, in accordance with the common interest.

([5]) OJ C 74, 10.3.1998, p. 9.
([6]) The United Kingdom Regional Aid Map for the period 2000-2006 was approved by the Commission by letter No SG (2000) D/106296 of 17 August 2000 (N 265/2000).
([7]) According to point 4.4 of the Guidelines, initial investment means 'an investment in fixed capital relating to the setting-up of a new establishment, the extension of an existing establishment, or the starting-up of an activity involving a fundamental change in the product or production process of an existing establishment (through rationalisation, diversification or modernisation).'
([8]) OJ C 146, 14.5.1997, p. 6.

According to the data provided in this regard, there are substantially fewer commercial property transactions in the targeted wards than in the rest of the United Kingdom. The rate of transactions for commercial property in the disadvantaged wards is around six times lower than the rate for wards in the rest of the United Kingdom. Low property transactions are claimed to be the symptom and the perpetuating cause of property market failures (by preventing efficient price formation in the market). The measure, by reducing the cost of transactions in the IMD areas, would address both the symptoms and the causes of market failure.

(21) The areas needing regeneration are microspatial units. These areas are not necessarily those needing regional development. They therefore do not necessarily coincide with the regional map, and targeting entire regions would prove to be ineffective. The United Kingdom admits that neither the Guidelines on National Regional Aid nor the Deprived Urban Area Guidelines are suited for accommodating this kind of measure, which, however, is compatible with Article 87(3)(c) of the Treaty.

(22) According to the United Kingdom authorities compatibility with Article 87(3)(c) can be proved since the 'aid to facilitate development of certain economic areas' can encompass aid targeted at microspatial units suffering from the market failure explained above.

(23) As regards aid 'not adversely affecting trade conditions to an extent contrary to the common interest' this condition would also be met since the aid intensity is very low (maximum 4 % of the investment). In the light of this argument, the United Kingdom authorities also claim that the small aid intensity will not constitute an incentive for undertakings from other Member States to invest, and therefore there would be no significant effect on trade ([9]). Notwithstanding this, the aid would be available to any company from anywhere in the Community or beyond, investing in commercial property in these areas. The non-discretionary way in which the aid is to be applied, the argument runs, also limits the effect on competition.

(24) Even if the United Kingdom authorities acknowledge that the measure does not meet all the requirements of the Guidelines on National Regional Aid, they argue that there is an overlap between the 'disadvantaged areas' and the assisted areas under the United Kingdom regional map.

(25) According to the data provided, in England 62 % of the deprived wards (out of the 15 % constituting the most deprived wards) would fall inside assisted areas ([10]). In Scotland, the overlap with assisted areas would be of 80 %. In Wales, where 42 % of the wards are disadvantaged areas, the overlap is 88 %. Finally, the whole of Northern Ireland is an assisted area, so that all the wards in the country are within the regional aid map.

(26) Even if the measure does not meet the criteria of the Deprived Urban Areas Guidelines either, the authorities say that there is an overlap. In the case of England, 22 % of the most deprived wards, as defined above, fall within the scope of the Deprived Urban Area Guidelines. The disadvantaged areas that are also within the definition of deprived urban areas account for nearly 6 % of England's population ([11]).

(27) Cumulation with other aid is not excluded, but the United Kingdom authorities have pointed out the possibility of verifying that the overall aid intensity ceilings, and in particular the regional ones, are not breached.

([9]) They also ensure that companies benefiting from the stamp duty exemption will have to face, in return, the disadvantages of operating in a less favoured part of the United Kingdom so that the gain to them is likely to be small or non-existent in practice.

([10]) In the light of this data, they argue that more than 84 % of the most deprived wards in England fall within the Community definitions.

([11]) In the light of this, they argue that there is a total (urban and regional) overlap of 20 % of the population in the case of England.

(28) As a final argument, the authorities claim that the scheme is part of a global regeneration strategy undertaken in the whole of the United Kingdom. It is but one element in a package of measures that are being, or will be, adopted in order to regenerate the most deprived areas. Policy interventions are being developed in an important number of fields with a view to ensuring that no one is seriously disadvantaged by where they live. In this regard, the United Kingdom authorities have provided an overview of the measures introduced or about to be introduced to tackle deprivation ([12]).

(29) The United Kingdom authorities have, in the letter dated 26 November 2002, agreed to limit the scheme to a maximum of 2 000 areas.

(30) The authorities, in their letter of 26 November 2002, have also committed themselves to improving their data collection methods so that in the future it will be possible to systematically analyse commercial property transaction data on a ward-by-ward basis. Furthermore, a comprehensive database of all vacant and/or derelict land will be established and the updates will be sent to the Commission as part of the annual report.

V. **COMMENTS FROM THIRD PARTIES**

(31) In its decision to open the procedure, the Commission invited interested parties to submit comments. Two parties submitted their comments.

(32) According to the Royal Institute of Chartered Surveyors, the aim of the measure is to revive the property market in areas where it has ceased to operate effectively. The Institute sought to explain the political rationale of the measure, namely the need to secure regeneration of the most deprived communities. The Institute seems to acknowledge that the measure is not in conformity either with the Guidelines on National Regional Aid or with the former Deprived Urban Areas Guidelines: '(both guidelines) are not designed to accommodate this sort of measure.' However, they add, 'if the United Kingdom stamp duty exemption scheme cannot be approved under the rules as presently drawn, the rules ought to be changed.' As a final point, the Institute claims that the measure will not affect trade to an extent contrary to the common interest and distortion of competition will be minimal. They also argue that the measure is aimed at tackling the existing market failure in the field, since the private sector is failing to engage in some areas of the United Kingdom.

(33) The British Property Federation argued that the areas needing regeneration are to be regarded as suffering from market failure and that in a regeneration context, intervention can enhance the working of the market. In addition, given the small scale of the measure, it is unlikely that it will affect competition to an extent contrary to the common interest.

VI. **ASSESSMENT OF THE AID**

State aid character of the measure

(34) The Commission considers that the measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty for the following reasons:

(a) State resources are involved in the form of a tax exemption;

(b) even if the measure applies to companies of every size, operating in any sector of the economy, there is selectivity since the measure is targeted upon particular geographical areas — areas designated by the IMD — and it favours certain undertakings, namely those investing in non-residential property in those designated areas. Therefore, the measure provides an advantage to such companies over other companies investing in the areas that do not receive the exemption;

(c) the measure covers all sectors, and *a fortiori* sectors where there is intra-Community trade. According to the case law 'where a Member State grants aid to an undertaking, domestic production may thereby be maintained or increased with the result that undertakings established in other Member States have significantly less chance of exporting their products to the market in that Member State' ([13]);

([12]) These measures are in the field of employment and income, health, education and skills, access to services, crime, housing and physical regeneration.
([13]) Case C-303/88 *Italy v. Commission* (1991) ECR I-1433, paragraph 27.

(d) the Commission considers that the amount of aid is small, since it is limited to a maximum of 4 % of the transaction. The estimated taxation relief is GBP 60 million per annum (around EUR 94 million ([14])). Divided by the estimated numbers of annual transactions, 1 200, the average aid per transaction would be GBP 50 000 (around EUR 78 500). However, this aid may still affect intra-Community trade and distort competition. According to case law, 'where the benefit granted by a public authority to an undertaking is small, competition is distorted to a lesser extent, but it is still distorted' ([15]).

It should be underlined that neither the United Kingdom authorities nor the third parties that have submitted their comments have contested the State aid character of the measure. The United Kingdom has chosen not to limit the scheme to the field of Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid ([16]). Should a beneficiary of the aid be engaged in several property transactions, it is not impossible that he may receive more aid than allowed under that Regulation.

Legality of the measure

(35) By notifying the aid scheme as a draft and not putting it into effect until authorised by the Commission, the United Kingdom authorities have complied with the procedural requirements of Article 88(3) of the Treaty on the European Community.

Exemption grounds

(36) (a) Article 87(2) of the EC Treaty provides that certain types of aid are compatible with the common market. In view of the nature and purpose of the aid, as well as the geographical coverage, the Commission considers that subparagraphs (a), (b) and (c) are not applicable to the scheme in question, nor have the United Kingdom authorities argued that this may be the case;

(b) Article 87(3) specifies other forms of aid which may be regarded as compatible with the common market. In view of the nature and purpose of the measure and its geographical scope, the Commission considers that subparagraphs (a), (b) and (d) of Article 87(3) are not applicable either. The United Kingdom authorities endorse this view.

(37) In assessing whether the exemptions provided for in Article 87(3)(c) can apply, the Court has consistently held that Article 87(3) 'gives the Commission a discretion the exercise of which involves economic and social assessments that must be made in a Community context.' ([17]) For certain types of aid, the Commission has defined how it will exercise these discretionary powers, be it in the form of block exemptions or by frameworks, guidelines or notices. Where such secondary texts exist, the Commission must follow them in its assessment of cases of aid. The Commission should therefore firstly establish whether the type of aid provided under the Stamp Duty Exemption Scheme falls under one of these texts. Concerning compatibility with the following guidelines, frameworks or regulations, as was previously mentioned at the opening of the procedure, the measure is not limited to SMEs ([18]) or to firms in difficulty ([19]), nor to any of the following activities: research and development ([20]), training aid ([21]) or employment ([22]). Therefore, none of these guidelines, frameworks or regulations can be applicable to the present case. The Community Guidelines on State aid for environmental protection ([23]) is not applicable either, because the scheme, as such, is not designed for environmental protection. However, it cannot be excluded that the present scheme may have a positive environmental impact as far as rehabilitation of polluted brownfield sites is concerned.

([14]) See footnote 4.
([15]) Case T-55/99 *Confederación Española de Transporte de Mercancías (CETM) v. Commission* (2000) ECR II-3207, paragraph 92.
([16]) OJ L 10, 13.1.2001, p. 30.
([17]) Case C-169/95 *Kingdom of Spain v. Commission* (1997) ECR I-135. See also C-730/79 *Philip Morris v. Commission* (1980) ECR I-2671.
([18]) Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises, OJ L 10, 13.1.2001, p. 33.
([19]) Community Guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 288, 9.10.1999, p. 2.
([20]) Community Framework for State aid for research and development, OJ C 45, 17.2.1996, p. 5.
([21]) Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid, OJ L 10, 13.1.2001, p. 20.
([22]) Guidelines on aid to employment, OJ C 334, 12.12.1995, p. 4.
([23]) Community Guidelines on State aid for environmental protection, OJ C 37, 3.2.2001, p. 3.

Compatibility with the Regional Aid Guidelines

(38) The regions envisaged under the Guidelines on National Regional Aid are undoubtedly different from those envisaged in the Stamp Duty Exemption Scheme.

(39) The Guidelines on National Regional Aid are designated for particular regions. The notion of 'region' in these guidelines covers areas conforming to NUTS level III ([24]) or, in justified circumstances, to a different homogeneous geographical unit. Furthermore, the individual regions, or groups of contiguous regions, must form compact zones, each of which must have a population of at least 100 000. The Commission notes in this context that the Regional Aid Map for the United Kingdom ([25]) is not based on NUTS III areas, but on the concept of 'job opportunity zones' each of which has a population in excess of 100 000.

(40) In contrast, the areas targeted by the Stamp Duty Exemption are isolated, microspatial areas, either wards (NUTS V) or postal code areas, with an average population of 7 000.

(41) The United Kingdom authorities agree that the Guidelines on national regional aid do not apply to Stamp Duty Exemption, even though many of the selected disadvantaged wards do form part of the regional aid map.

Compatibility with the Deprived Urban Area Guidelines

(42) At the opening of the procedure, the Commission took the view that the proposed scheme did not meet the conditions of the Deprived Urban Area Guidelines ([26]), applicable at that time. Those Guidelines, which did focus on microspatial areas, provided that, for aid to be approved, *inter alia*, the total population covered by the deprived areas should not exceed 1 % of the total population and that the only beneficiaries should be SMEs. As was stated in point 10, the amount of population covered by the present scheme far exceeds 1 %. This point has not been contested by the United Kingdom authorities, which agree that the former Deprived Urban Area Guidelines do not accommodate this kind of measure. It should in any event be noted that, after the opening of the procedure, the Deprived Urban Areas Guidelines expired and the Commission issued a notice to that effect ([27]).

(43) In the light of what has been said above, the Commission concludes that the proposed scheme does not fall within the scope and field of application of the existing guidelines, frameworks or regulations developed on the basis of Article 87(3)(c). The Stamp Duty Scheme is focused on areas deprived areas, for which there are, at present, no guidelines or frameworks.

(44) The Commission notice on the expiry of the guidelines on State aid for undertakings in deprived urban areas provides that the guidelines were so restrictive that they could not effectively be used ([28]). However, following the Commission notice, failure to extend the guidelines does not imply that State aid for deprived areas is no longer possible and, depending on the specific circumstances of the proposed aid in question, it may be approved directly upon the basis of Article 87(3)(c). Accordingly, the Commission will examine such cases in the light of Community objectives ([29]).

([24]) Nomenclature of Statistical Territorial Units
([25]) By letter SG (2000) D/106293 of 17 August 2000, the Commission approved the regional aid map for the period 2000-2006 (N265/2000).
([26]) See footnote 8: the Guidelines expired five years after publication.
([27]) The Commission notice on the expiry of the Guidelines for undertakings in deprived urban areas was published in OJ C 119, 22.5.2002, p. 21.
([28]) An OECD report provides that one of the obstacles to promoting the development of brownfield sites is the inflexibility of policy and legislation. See OECD report, 'Urban Brownfields', 1998, DT/UA (98)8.
([29]) Points 3 and 6 of the Commission notice on the expiry of the Guidelines for undertakings in deprived urban areas.

Compatibility with Article 87(3)(c) of the EC Treaty

(45) The Commission considers it appropriate to analyse therefore, first, whether the present scheme falls within the Community's objectives and, secondly, whether trading conditions are adversely affected to an extent contrary to the common interest.

The scheme in the light of Community objectives

(46) It is to be recalled that economic and social cohesion is a Community objective, pursuant to Articles 2 and 3 of the EC Treaty. Strengthening economic and social cohesion implies, in particular, the reduction of disparities between levels of development of different areas.

(47) In this regard, both the Stockholm and the Barcelona conclusions of the European Council have called for a reduction in overall aid levels and for the reorientation of aid towards objectives of common interest, including economic and social cohesion objectives ([30]).

(48) Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds ([31]) provides that Community initiatives in the field of social cohesion should encompass '…economic and social regeneration of cities and of urban neighbourhoods in crisis with a view to promoting a sustainable urban development'. The Commission's Urban initiative, developed on the basis of that Regulation, aims at promoting physical and economic regeneration of cities and neighbourhoods presenting structural problems. Although this initiative is focused upon urban areas, the Commission has highlighted the merits of an integrated approach in order to favour the synergy of urban and rural development ([32]). It can be inferred from the above that the Community objective of achieving social and economic cohesion in the single market encompasses initiatives in the field of both rural and urban regeneration.

(49) As to these target areas of regeneration, the Commission, in a Communication of 14 June 2002 giving an initial assessment of the Urban Initiative ([33]), has recently acknowledged the existence of such problem areas and recently defined them as 'small areas of severe deprivation'. The Commission has stated that, 'the multifaceted nature of urban deprivation necessitates an integrated approach…and this is facilitated by the small sizes of the areas' ([34]). In rural areas, similar considerations apply, as exemplified by initiatives such as Leader + which 'is intended for small rural territories, which form an homogenous unit in physical (geographical) economic and social terms' ([35]). In the light of these statements, the Commission considers that other areas can, when necessary, be targeted for regeneration purposes.

(50) The Commission notes that, in the present scheme, the areas targeted are small areas (microspatial units) of severe deprivation. They have been selected on the basis of the indices of multiple deprivation (IMD) which are based on elements such as low income, long-term unemployment, health deprivation and disability, low level of education and of training, poor housing and geographical access to services. These indicators have strong similarities to the indices adopted by the Commission in its Urban II program in order to identify target areas. These areas, according to the Communication on the Urban Initiative, must comply with at least three of the following criteria: a high

([30]) The declarations of these European Councils are gathered in the Communication from the Commission to the Council entitled, 'Progress report concerning the reduction and reorientation of State aid', Brussels 16 October 2002, COM(2002) 555 final. In addition, the Commission has maintained that a harmonious development of Community territory takes place against a background of greater economic integration: 'this is the case for the interventions of the Structural Funds, notably through their assistance to urban development in an integrated regional approach and to rural development in its double role of contributing to the European agricultural model and to economic and social cohesion.' See Commission Communication concerning the Structural Funds and their coordination with the Cohesion Fund — Guidelines for programmes in the period 2000 to 2006, OJ C 267, 22.9.1999, p. 2.

([31]) OJ L 161, 26.6.1999, p. 1 (amended by Regulation (EC) No 1447/2001 (OJ L 198, 21.7.2001, p. 1)).

([32]) Part 3 entitled 'Urban and rural development and their contribution to balanced territorial development', of the Commission Communication concerning Structural Funds and their coordination with the Cohesion Fund: see footnote 30.

([33]) See the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, 'The programming of the structural funds 2000-2006: an initial assessment of the Urban Initiative', Brussels, 14 June 2002, COM (2002) 308 final. In addition, in its conclusions the Commission has held that the approach developed under Urban and other Community initiatives have many potential lessons for the future of European policy, including 'a focus on relatively small areas which maximises impact, as well as value for money' (see page 6).

([34]) Communication of 14 June 2002, page 7.

([35]) Commission notice to the Member States of 14 April 2000 'laying down guidelines for the Community initiative for rural development (Leader+)', OJ C 139, 18.5.2000, p. 5 (point 14.1 on the areas concerned).

level of long-term unemployment; a low level of economic activity; a high level of poverty and exclusion; a specific need for conversion due to local economic and social difficulties; a high number of immigrants, ethnic and minority groups, or refugees; a low level of education, significant skills deficiencies and high drop-out rates from school; a high level of criminality and deficiency; precarious demographic trends or a particularly run-down environment ([36]).

(51) As was mentioned in the description of the proposed scheme (point 10), the average proportion of 'hardcore' brownfield sites in the targeted areas are two and a half times that of other areas. It is widely acknowledged that urban and rural decline and the loss of functions as a result of decline in traditional industrial sectors have left sites derelict and contaminated. The Commission notes that there is data showing that the United Kingdom is the Member State with the second-highest estimated number of sites requiring remediation ([37]). By their very nature, the sites for which remediation is required are usually those posing the greatest environmental danger ([38]). The Expert Group on the European Environment advising the Commission has also highlighted the environmental threat that brownfield sites may cause, especially if they are contaminated ([39]).

(52) Brownfield sites have been described by the OECD as, 'that which is, or is likely to be, contaminated as a result of former industrial commercial or governmental operations' ([40]).

(53) At the Community level, rehabilitation of brownfield sites is in conformity with both environmental policies and regional objectives. This is reflected in documents such as the communication on the Urban programme, which aims, *inter alia*, at redeveloping mixed use and environmentally friendly brownfield sites ([41]). By the same token, the Commission Communication concerning Structural Funds and their coordination with the Cohesion Fund provides: 'Priority should be given to the rehabilitation of derelict industrial sites (brownfields) over the development of greenfield sites' ([42]). The Commission, in a decision of 25 July 2001 concerning a regeneration scheme, acknowledged that, 'the scheme would promote environmental concerns, notably a more rational use of natural resources such as land' ([43]). The Community interest in brownfield sites has also been recognised by third-party organisations. In its report on urban brownfields, the OECD has acknowledged that the Community is concerned with regeneration and that it plays a particularly important role in relation to the regeneration of brownfield sites, even if, so far '(it has been) more concentrated towards assistance and redevelopment projects and funding and not remediation *per se*' ([44]).

(54) When the proposed scheme promotes rehabilitation of polluted industrial sites, the aid granted could be in line with the provisions of the Community Guidelines on State aid for environmental protection ([45]). The Commission finds that, in these cases, it is possible that the aid will be an incentive for the cleaning-up of polluted sites.

(55) One of the characteristics of the deprivation of the target sites — and in particular brownfield sites — is that there are six times fewer property transactions in these areas than in the remainder of the United Kingdom. Regeneration sites seem invariably to be in areas where the local land and property market has either collapsed or operates at a very low level.

([36]) See point 2.1 of the Communication.
([37]) See the Fourth KfK/TNO Symposium on Remediation of Contaminated Sites, Berlin 1993. In accordance with these data, United Kingdom has an estimated number of contaminated sites of 100 000 and 30 000 sites requiring remediation. The highest was Germany due to the specific regeneration problems prevailing in the new *Länder*.
([38]) See OECD document *in supra*, note 28.
([39]) See Expert Group on the European Environment: Towards a More Sustainable Urban Land Use: Advice for the European Commission for Policy and Action, 2001.
([40]) See the OECD report, 'Urban brownfields', 1998. Other definitions are: 'any land or premises that have been previously used or developed and is not currently fully in use, although it may be partially occupied or utilised. It may also be vacant, derelict or contaminated. Therefore, a brownfield site is not necessary available for immediate use without intervention.' More generally, brownfield has been defined as 'a land and/or buildings, urban or rural that have previously been developed, but are not currently in use. It can also be partially occupied, contaminated or derelict'. See Journal of Environmental Planning and Management. V43 (1), pp 49 to 69: January 2000.
([41]) This encompasses, *inter alia*, measures in the field of reclamation of derelict sites and contaminated land as well as renovation of buildings to accommodate economic and social activities in a sustainable and environmentally friendly manner.
([42]) Under heading C: 'Areas with particular potential: environment, tourism and culture, social economy'.
([43]) State aid N 82/2001 – English Cities Fund: OJ C 263, 19.9.2001, p. 5, at p. 11.
([44]) See page 21 of the OECD document entitled 'Urban regeneration' (1998).
([45]) Point E.1.8: 'Rehabilitation of polluted industrial sites'.

(56) As a regeneration instrument, the stamp duty exemption could fulfil the economic rationale of contributing to reducing risks for investors in brownfield sites. Regeneration has traditionally been perceived as a high-risk, low-return investment, in particular because there is the perception of weak market demand; bureaucratic grant arrangements; unclear procedures in the programmes; and a lack of funding initiatives. Favourable conditions for investment include a perceived total return as well as new business opportunities, transparent exit strategies and the level of risk in the project ([46]).

(57) It is only when the risk is reduced that investment will increase: this would have several spin-off effects such as reducing the exit-costs, which in turn will further reduce the risks of investing in urban regeneration. The temporary exemption of the stamp duty is likely to contribute to activating the market for regeneration and derelict land in deprived areas as well as having spill-over effects. The system itself would be transparent and easy to administer, which matches market demands.

(58) Recent studies demonstrate that, based on past experience, it is extremely unlikely that private-sector involvement in remediation can be expected if there is no public-sector role. This same experience shows that pump-priming brownfield site projects with public funds does stimulate private sector investment ([47]). At the Commission level, this has been acknowledged by the Commission notice on the expiry of the Guidelines on State aid for undertakings in deprived urban areas ([48]).

(59) The Commission endorses the view that to optimise regeneration projects, the public sector role should support measures that are part of an integrated approach tackling the different aspects of severe deprivation. Commission initiatives ([49]) have highlighted that '(regeneration) involves a package of operations that combine the rehabilitation of obsolete infrastructure with economic and labour-market actions complemented by measures to combat social exclusion and to upgrade the quality of the environment' ([50]). The declared objective of the Urban initiative is 'to tackle the problem of urban deprivation *in a holistic way*' ([51]). The need for a holistic approach in the treatment of regeneration and more particularly, urban brownfields, is consistent with the efforts to promote sustainable development following the United Nations 1992 Rio de Janeiro summit and its 1996 Istanbul summit, and accords with the implementation of Agenda XXI on Sustainable Development ([52]). This holistic approach is also based on the assumption that environmental and regeneration policies are deeply intertwined.

(60) The Commission notes that the 'Stamp Duty Exemption for Disadvantaged Areas' is conceived as a part of a global strategy tackling deprivation from different angles and on different fronts — including environmental and social-exclusion objectives. In this regard, the Commission notes that the exemption scheme is part of a wider, coherent programme aimed at regenerating deprived areas. The United Kingdom authorities have therefore adopted a holistic approach.

([46]) Accessing private finance: the availability and effectiveness of private finance in urban regeneration, Royal Institution of Chartered Surveyors, 2002.
([47]) See in particular the OECD report entitled 'Urban Regeneration', 1998.
([48]) See point 6 of the notice: 'The Commission recognises that, in some instances, market forces alone appear to be inadequate to resolve or alleviate the social and economic problems of deprived areas' (see footnote 27). This was also pointed out by the former Deprived Urban Area Guidelines in point 1.
([49]) By the same token, the European Parliament in its resolution Urban II, 'stresses the need for an integrated approach to urban policy as currently this looks to be the only way to address economic, social and environmental problems in urban zones.' A particular concern of the Parliament was that, 'immigrants, refugees and ethnic minorities are often particularly affected by social exclusion.' See OJ C 339, 29.11.2000, p. 47.
([50]) Communication from the Commission to the Member States of 28 April 2000 laying down guidelines for a Community initiative concerning economic and social regeneration of cities and of neighbourhoods in crisis in order to promote sustainable urban development (URBAN II): OJ C 141, 19.5.2000, p. 8.
([51]) See footnote 50. Emphasis added.
([52]) See the OECD document entitled 'Urban Brownfields', 1998.

Affect on trade to an extent contrary to the common interest

(61) The Commission notes that the standard bases for regional aid in the United Kingdom, following the Regional Guidelines are 10 % for land and 20 % for buildings ([53]), that is to say, a maximum aid level of 30 %. The intensity of aid that could be granted under the proposed scheme is between 1 % and 4 %. If related to the standard basis, the aid would only represent between 0,3 % and 1,2 % of the entire investment. In the light of this comparison, trade and competition would only be distorted to a small extent.

(62) The average amount of aid to the individual undertakings in the proposed scheme is GBP 50 000 (around EUR 78 500 ([54])). Aid of this magnitude does not normally distort or threaten to distort competition. In cases where a beneficiary receives the stamp duty exemption several times, or receives it cumulated with other kinds of aid, the aid could be significant and thus affect competition and/or affect trade. It is therefore imperative that the cumulation of aid is closely monitored and controlled.

(63) The Commission finally notes that the parties that have submitted their comments following the opening of procedure have claimed that the distortion of competition and the adverse effect on trade may not be to an extent contrary to the common interest.

VII. **CONCLUSIONS**

(64) In the analysis conducted above it is found that no framework, guidelines or regulations apply to the scheme proposed; therefore, the Commission has considered it appropriate to examine it directly on the basis of Article 87(3)(c). It can be concluded that the proposed scheme would fall within the Community objectives of economic cohesion and sustainable development, and that the scheme would not adversely affect trading conditions to an extent contrary to the common interest.

(65) Because the scheme falls outside the usual frameworks, guidelines and regulations, the Commission considers it appropriate to impose a number of conditions: cumulation with other investment aid above the ceilings applying to normal investment aid must be excluded; monitoring must be ensured; annual reports must be submitted; the beneficial effects of the scheme on physical regeneration — and notably on brownfield sites — have to be demonstrated. The duration of the scheme should be limited to the end of 2006, as after that year new rules will apply to both State aid and structural funds,

HAS ADOPTED THIS DECISION:

Article 1

The aid scheme called 'Stamp Duty Exemption for Disadvantaged Areas' is compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty, provided that the conditions set out in Article 2 are met.

Article 2

1. The United Kingdom shall ensure that any cumulation of aid awarded under the scheme with investment aid awarded under other aid schemes does not exceed the aid ceilings laid down in the regional aid map for the United Kingdom for 2000 to 2006 and in Regulation (EC) No 70/2001.

([53]) OJ C 74, 10.3.1998, p. 6.
([54]) See footnote 4.

2. The scheme shall be limited in time until 31 December 2006.

Any continuation of the scheme after that date shall be notified to the Commission pursuant to Article 88(3) of the Treaty.

3. The United Kingdom shall submit annual reports on the operation of the scheme to the Commission.

The degree of detail of the reports shall be such as to allow an evaluation of the effects of the scheme on the physical regeneration of the areas which benefit from it.

Article 3

The United Kingdom shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 4

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

Done at Brussels, 21 January 2003.

For the Commission

Mario MONTI

Member of the Commission