II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 11 March 2008

on a State aid scheme implemented by Italy for the aeronautical industry (C 61/03 (ex NN 42/01))

(notified under document number C(2008) 845)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2008/806/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 those provisions ([1]),

Whereas:

(1) The measure under assessment concerns individual aid for research and development projects in the aeronautical industry. The aid was granted by Italy on the basis of the Law of 24 December 1985, No 808, laying down measures to develop and enhance the competitiveness of manufacturers in the aeronautical industry (Law No 808/1985). The Commission approved the scheme in 1986 ([2]).

1. PROCEDURE

(2) On 7 October 1999, and again on 12 January 2001, the Commission received a complaint alleging that Italy had unlawfully granted aid to individual research and development (R & D) projects carried out by the Italian aeronautical industry.

(3) The Commission sent a request for information on 8 May 2000, to which the Italian authorities replied on 1 August. The complainant provided additional information by letters of 27 April 2001 and 30 May 2002.

(4) On 1 February 2001 the Italian authorities provided the Commission with information concerning non-notified aid granted by Italy to 13 individual R & D projects.

(5) By letters of 14 August and 24 August 2001 the Commission wrote to the Italian authorities asking for further information on the projects. Italy replied on 31 October, supplying additional information regarding six cases.

(6) In 2002 the Commission asked independent experts to evaluate the six projects. The reports were delivered to the Commission on 7 April and 23 April 2003.

(7) Two meetings were held, at the request of the Italian authorities, on 27 May and on 30 June 2003.

(8) On 1 October 2003, the Commission initiated the formal investigation procedure (the first initiating decision) with regard to six cases of substantial aid to R & D projects that had not been individually notified by Italy, contrary to the rules governing aid to R & D, that is to say to the 1996 Community framework for State aid for research and development (the 1996 Framework) ([3]) and the 1986 Community framework for State aids for research and

([1]) OJ C 16, 22.1.2004, p. 2, and OJ C 252, 12.10.2005, p. 10.

([2]) Case N 281/84, letter SG(86) 5685 dated 14.5.1986.

([3]) OJ C 45, 17.2.1996, p. 5.

development (the 1986 Framework) ([4]). In all six cases, the Commission raised doubts concerning compatibility with the rules governing aid to R & D ([5]).

(9) After the first initiating decision, the following parties submitted comments:

a) Italy, by letter dated 3 February 2004, registered by the Commission as incoming mail on 4 February; Italy submitted a revised version of its comments by letter of 18 February, registered by the Commission as incoming mail on 23 February;

b) France, by letter of 20 February 2004, registered by the Commission as incoming mail on the same day;

c) Finmeccanica, by letter of 20 February 2004, registered by the Commission as incoming mail on 23 February;

d) an interested third party, who wished to remain anonymous, by letter of 23 February 2004, registered by the Commission as incoming mail on the same day.

(10) By letter of 22 March 2004, the comments received by the Commission were forwarded to Italy.

(11) By letter of 26 May 2004, registered by the Commission as incoming mail on 28 May, Italy replied to the comments.

(12) By letter of 1 July 2004, registered by the Commission as incoming mail on 6 July 2004, the anonymous third party submitted additional information regarding the application of Law No 808/1985, which is the approved aid scheme under which the six measures referred to in the first initiating decision were taken.

(13) By letter of 3 August 2004, registered by the Commission as incoming mail on 4 August 2004, Italy submitted additional information on Law No 808/1985 and its application to the cases that were the subject of the original investigation proceedings.

(14) By letter of 19 August 2004, registered by the Commission as incoming mail on 20 August 2004, the anonymous third party submitted additional information on Law No 808/1985 and its application to individual cases.

(15) By letter of 13 September 2004, the Commission asked Italy for further information on the cases that were the subject of the original investigation.

(16) By letter of 20 September 2004, registered by the Commission as incoming mail on 22 September 2004, the anonymous third party submitted additional information on Law No 808/1985 and its application to individual cases.

(17) By letter of 30 September 2004, registered by the Commission as incoming mail on 1 October 2004, Italy replied to the Commission letter of 13 September 2004.

(18) By letter of 12 October 2004, the Commission warned Italy that it considered that Italy had provided incomplete answers to the Commission letter of 13 September 2004. The Commission reiterated its request, and warned Italy that failing a complete reply the Commission would issue an information injunction in accordance with Article 10(3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (the Procedural Regulation) ([6]).

(19) By letter of 15 October 2004, registered by the Commission as incoming mail on the same day, and letter of 22 October 2004, registered by the Commission as incoming mail on 25 October 2004, Italy replied to the Commission letter of 12 October 2004.

(20) On 10 December 2004 the Commission decided to issue an information injunction ([7]) requiring a complete answer to the questions raised in its letter of 13 September 2004.

(21) By letter of 19 January 2005, registered by the Commission as incoming mail on 21 January 2005, Italy replied to the information injunction.

(22) By letter of 10 March 2005, registered by the Commission as incoming mail on 14 March 2005, Italy added information to its reply to the information injunction.

(23) By decision of 22 June 2005 ([8]), the Commission decided to extend the scope of the proceedings (the second initiating decision). On 12 October 2005, the second initiating decision was published in the *Official Journal of the European Union* ([9]).

(24) By letter of 17 June 2005, the Italian authorities observed that the scope of the two initiating decisions touched on issues that were sensitive for national security.

(25) By letter of 15 July 2005, the Commission replied that the Commission's investigation would be confined to civilian aspects and that the assessment of projects that were a matter of national security would be carried out precisely in order to exclude them from the scope of the final decision.

([4]) OJ C 83, 11.4.1986, p. 2.
([5]) See footnotes 3 and 4.
([6]) OJ L 83, 27.3.1999, p. 1.
([7]) Commission letter ref. C(2004) 5009, 10.12.2004.
([8]) C(2005) 1813 final.
([9]) OJ C 252, 12.10.2005, p. 10.

(26) At the request of the Italian authorities, the Commission, by letters of 6 September 2005 and 18 November 2005, transmitted to Italy all the documents mentioned in the second initiating decision, namely those submitted by the anonymous third party.

(27) On 24 October 2005, the Italian authorities submitted initial observations on the second initiating decision, dealing mainly with the functioning of the overall scheme.

(28) On 30 November 2005 the Italian authorities submitted further observations, which they supplemented with a number of annexes on 6 December 2005.

(29) On 11 November 2005, the anonymous third party submitted observations on the second initiating decision. On 19 December 2005 those observations were transmitted to the Italian authorities, who commented on them by letter of 6 March 2006.

(30) On 3 May 2006 a meeting took place between the Commission and the Italian authorities. Following that meeting, by letter of 23 May 2006, the Commission asked for supplementary information, and reminded the Italian authorities of the requests for information in the second initiating decision.

(31) On 5 May 2006, the Italian authorities submitted observations on the nature of part of the information, and in particular the question whether the list of projects in the anonymous third party's submission could be attributed to the Italian Court of Auditors.

(32) On 29 June 2006, the Italian authorities further transmitted the decision of the Interministerial Committee for Economic Programming (CIPE) adopted on 22 March 2006, which they said was intended to ensure that the scheme complied with the rules on state aid to R & D.

(33) On 11 July 2006, the Italian authorities provided initial observations on the Commission's letter of 23 May 2006.

(34) On 17 October 2006, the Italian authorities completed their observations on the Commission's letter, and provided a list of projects financed under the scheme. On 24 October 2006 they provided annexes that had been mentioned in the previous letter.

(35) By letter of 12 December 2006, the Commission requested supplementary information on the reimbursement schedules for the projects in the list provided by the Italian authorities, and suggested discussions at technical level on the granting and reimbursement schedules for each of the projects.

(36) On 24 April 2007, following a meeting on 30 March, the Italian authorities provided information concerning a full computation for the projects, along with two notes concerning two projects referred to in the second initiating decision (A139 and BA609).

(37) On 4 May 2007, following a meeting on 26 April 2007, there was a meeting on the premises of the Italian Permanent Representation to the EU, where the Italian authorities allowed a delegation from the Commission to consult documents concerning these two projects, which were classified for national security reasons.

(38) On 23 May 2007 there was a final meeting on the reimbursement schedules for the individual projects.

(39) By letter of 21 June 2007 the Commission requested certain information. The letter had attached the schedules for the individual R & D projects, including the conditions for the reimbursement of the loans.

(40) Italy replied to this letter on 1 August 2007, indicating its agreement to the schedules annexed to the Commission's most recent letter, and providing information on the other issues raised in that letter. Further supplementary information was submitted on 1 October 2007.

(41) Another meeting with the Italian authorities took place on 5 October 2007, attended by Commissioner Kroes and Minister Bersani.

(42) The Italian authorities provided further information by letters of 29 October 2007, 27 November 2007 and 12 December 2007.

(43) The Commission requested supplementary information by letter of 23 November 2007.

(44) Meetings with France and with the anonymous third party took place on: 21 March 2006, 18 October 2006, 10 November 2006, 22 May 2007, 5 July 2007, 6 September 2007, 14 and 19 November 2007 and 11 February 2008.

2. THE SCHEME APPROVED IN 1986

(45) As mentioned in recital 45, the Commission approved the scheme of assistance to R & D in the Italian aeronautical industry in 1986. In its decision, the Commission took note of the fact that the precise mechanisms of the state financing, in particular as regards reimbursement, would be determined for each specific project at a later stage.

(46) In the decision the Commission pointed out that under point 5.5 of the 1986 Framework, individual aid measures had to be notified if they exceeded a threshold of ECU 20 million in eligible costs ([10]).

(47) The Italian authorities never notified any individual case of application of Law No 808/1985 to the Commission under Article 88(3) of the EC Treaty.

(48) Law No 808/1985, as notified to the Commission, provided for a budget of ITL 690 billion for these measures, to be spent during the period 1985-1989. The scope of the Law originally notified was extended several times after 1989 in new budgetary decisions taken by the Italian Government. None of these extensions were notified to the Commission under Article 88(3) of the EC Treaty.

(49) When the 1996 Framework entered into force ([11]) the Italian authorities accepted the appropriate measures ([12]), including new notification thresholds of ECU 25 million in eligible costs and ECU 5 million in aid.

(50) In 2001 and 2002, the Commission and the Italian authorities exchanged correspondence on the scheme ([13]). This concerned changes to be made to the scheme to bring it into line with the criteria of the 1996 Framework.

(51) The correspondence resulted in the adoption by Italy of a measure aimed at implementing the criteria of the Framework ([14]). This document was sent to the Commission on 22 November 2002, and the Commission accepted the Italian commitments by letter of 18 December 2002.

(52) Law No 808/1985 provided for three types of State assistance to companies in the aeronautical industry. Of the three there remains only one, which is the subject of the present decision, namely assistance under Article 3(a) of the Law.

(53) This assistance consists in the financing by the State of part of the costs of aeronautical R & D projects carried out by Italian companies in collaboration with foreign companies.

3. DOUBTS EXPRESSED IN THE FIRST INITIATING DECISION

(54) The first initiating decision concerned 13 individual R & D projects.

(55) In the decision the Commission expressed doubts regarding the compatibility of a number of large R & D projects (listed below in recital 60, table 1) that had not been notified in accordance with the rules governing aid to R & D (the 1986 Framework and the 1996 Framework) ([15]).

(56) In particular, the Commission doubted:

a) that part of the work packages of several projects could be classified as precompetitive development: A109 X, A109 D/E/F, MD95 ([16]), MD11, DO328 Panels and DO328 Extended Capacity;

b) that the aid to several projects had had an incentive effect: A109 X, A109 D/E/F, MD95, MD11, DO328 Panels and DO328 Extended Capacity.

(57) The Commission raised no objection to four other projects, on the basis on the information available at that time (DO328, MD11 Winglet, ATR72 and EH101).

(58) The Commission accepted that one project fell under Article 296(2) of the EC Treaty ([…] (*).

(59) Finally, the Commission accepted that, on the basis of the information available at that time, two projects were below the thresholds for individual notification (Pressurised Cabins, A119 Koala).

(60) The table below summarises the information concerning these projects:

Table 1

Projects covered by the first initiating decision

Project	Recipient	Comment
1) Pressurised Cabins	Alenia	At that time considered to be below the threshold for individual notification
2) A109 X	Agusta	Doubts regarding classification of R & D activities and incentive effect
3) A119 Koala	Agusta	At that time considered to be below the threshold for individual notification

([10]) See footnote 4.
([11]) See footnote 3.
([12]) Letter ref. A/322247, 27.3.1996.
([13]) Commission letters refs. D/54984, 30.11.2001; D/50557, 11.2.2002; and D/52819, 4.6.2002; letters from Italy refs. A/30747, 1.2.2002; A/31921, 13.3.2002; and A/57170, 18.12.2002. Case E 48/2001.
([14]) Decision (*delibera*) of the Interministerial Committee for Economic Programming (CIPE), 2.8.2002, laying down guidelines for assistance to the aerospace industry.
([15]) See footnotes 3 and 4.
([16]) For this project a doubt was also raised regarding the possibility of classifying some work packages as industrial research.
(*) Confidential information related to the protection of essential interest of national security or business secrets.

Project	Recipient	Comment
4) A109 D/E/F	Agusta	Doubts regarding classification of R & D activities and incentive effect
5) MD95	Alenia	Doubts regarding classification of R & D activities and incentive effect
6) […]	[…]	Falling under Article 296 of the EC Treaty
7) MD11 Lower Panels	Alenia	Doubts regarding classification of R & D activities and incentive effect
8) DO328 Extended Capacity	Aermacchi	Doubts regarding classification of R & D activities and incentive effect
9) DO328 Panels	Aermacchi	Doubts regarding classification of R & D activities and incentive effect
10) DO328	Aermacchi	No objection raised on the basis of the information available at that time
11) MD11 Winglet	Alenia	No objection raised on the basis of the information available at that time
12) ATR72	Alenia	No objection raised on the basis of the information available at that time
13) EH101 Utility	Agusta	No objection raised on the basis of the information available at that time

4. RECIPIENTS

(61) The recipients referred to in the first initiating decision were the following:

a) Agusta, an enterprise belonging to the Finmeccanica group specialising in helicopters, since renamed AgustaWestland following a merger with Westland;

b) Alenia, an enterprise belonging to the Finmeccanica group specialising in aero structures;

c) Aermacchi, an enterprise belonging to the Finmeccanica group since January 2003, which originally specialised in aircraft for military training, and subsequently diversified into aero structures;

(62) On the basis of the information made available after that decision, it emerged that there were two further recipients:

a) Avio, an enterprise specialising in aero engines; Avio was formerly part of the Fiat Group (as FiatAvio); it was subsequently bought by the private equity group Carlyle, with a minority stake held by Finmeccanica; in 2006 Avio passed under the control of the private equity group Cinven, with Finmeccanica having a stake of 25 %;

b) Piaggio Aero Industries (Piaggio), an enterprise active in aero structures and engines; it was established in November 1998 when a group of shareholders acquired the assets and took over the projects of the aerospace business of the firm formerly known as Rinaldo Piaggio SpA, as confirmed by the correspondence provided by the Italian authorities between the Ministry of Industry and Piaggio Aero Industries.

5. ITALYS COMMENTS ON THE DOUBTS EXPRESSED IN THE FIRST INTIATING DECISION

(63) Italy acknowledged that the information available to the Commission on the projects questioned in the first initiating decision was wholly insufficient. Italy also acknowledged that because of this lack of information the Commission was right to express doubts regarding those projects. To dispel these doubts, Italy provided extensive information on the projects, notably concerning the eligibility of costs at the research stages and the incentive effect of the aid.

(64) On the A109 D/E/F project, Italy provided a detailed description of the R & D work with regard to the development of the helicopter, in particular concerning the installation of a new type of engine, the skids, the rotor, the avionic systems, and the fuselage. The Italian authorities also provided the schedule for the projects, showing that the innovations in these components came well before their certification, which took place in 1998, and their incorporation into in the A109 Power helicopter equipped with the Turbomeca engine, which was certified in June 2001. This succession of events, the Italian authorities argued, also showed that the aid did have an incentive effect, as the technologies were new and had not been installed in any aircraft.

(65) On the A109 X project, Italy provided detailed information on the R & D work, in particular concerning the tail rotor, the transmission, the main rotor and the fuselage. Italy indicated that the specific features of the A109 X — the main five-blade rotor, the antitorque rotor integrated into the tail boom, and the reducer with face gears — were not present in any other product made by Agusta. The Italian authorities said that the A109 X project was aimed at developing a new generation of helicopters, to be put on the market after 2009.

(66) On the MD95 and MD11 projects, the Italian authorities acknowledged that the information available to the

Commission at the time of the first initiating decision was not sufficient to distinguish between the two projects, which were separate, even though they both concerned fuselages.

(67) According to the Italian authorities, the MD95 comprised activities classified as industrial research and precompetitive development, because it allowed Alenia to improve its knowledge of fuselages on large aircraft. The activities were concerned in particular with calculation methodologies for the engineering of fuselages, the development of specific codes for the damage tolerance of the fuselages, and the improvement of general knowledge in the company about some engineering aspects such as fireproof structural solutions and corrosion of materials.

(68) Concerning the MD11, the Italian authorities indicated that the R & D activities concerned the development of a prototype with preliminary research. It allowed the establishment of databases and of the development processes for the use of new fuselage technologies, which was a new activity for Alenia.

(69) Secondly, the Italian authorities provided evidence of the incentive effect of the aid concerning these two projects. The aid allowed Alenia to increase its R & D spending significantly over the four years of the projects, from […] of the total turnover of the company. According to Italy, the projects allowed Alenia to improve its technological knowledge beyond its normal level.

(70) The Italian authorities said that the two projects regarding the DO328 were DO328 Panels and DO328 Extended Capacity (EC) ([17]). A project entitled DO328 Basic concerned the development by Aermacchi of technological know-how for civil aviation. Until the end of the 1980s Aermacchi had been working mostly on aircraft for military training.

(71) DO328 Panels concerned the development of shells previously produced by the Korean firm Daewoo. The project also included the development of assembly techniques and technologies, some of which were not used in the final product, and the development of two prototypes.

(72) According to the Italian authorities, DO328 Extended Capacity was aimed at increasing the number of passengers, through the development of a new fuselage, modified wings and modified structures (for instance to take account of different loads), etc. The Italian authorities provided specific information on the work packages singled out in the first initiating decision, detailing the research stages.

(73) Finally, the Italian authorities provided detailed information on the incentive effect of the aid for the two DO328 projects. They drew attention to the importance of the projects to Aermacchi: the projects represented almost half of the entire R & D activities of the company in the period 1996-1999. They also said that Aermacchi would not have been able to fund these R & D projects out of its own resources, and would not have been able to participate in the overall project, which was led by Dornier.

([17]) To distinguish them from the DO328 Basic. The three projects are included in the final list in recital 281, table 4.

6. COMMENTS ON THE FIRST INITIATING DECISION FROM THIRD PARTIES

6.1. Finmeccanica

(74) Finmeccanica submitted observations after the first initiating decision only ([18]), on behalf of all the companies belonging to the group: Agusta, Aermacchi and Alenia. Finmeccanica indicated that it was to all intents and purposes controlled by the Italian State ([19]).

(75) Finmeccanica submitted observations in order to dispel the doubts concerning the six projects expressed by the Commission in the first initiating decision. Finmeccanica wanted to supplement the observations submitted by the Italian Government, with which it agreed and to which it referred, adding the following with reference to the six projects:

a) A109 D/E/F: According to Finmeccanica the three versions of the project comprised different technological innovations (rotor, landing gear), and were equipped with different engines (Allison, PW and Turbomeca respectively), and this had led to different certification processes for the different versions.

b) A109 X: Finmeccanica argued that this helicopter was not simply a different version of the A109, but was a radically new helicopter, which the company intended should be the first of a new generation of twin-engine helicopters to be placed on the market as of 2009.

c) MD95: Finmeccanica gave a detailed explanation of why in its view the activities carried out by Alenia in the work packages did indeed qualify as R & D expenditures.

d) MD11: Finmeccanica gave a detailed explanation of why in its view the activities carried out by Alenia in the work packages did indeed qualify as R & D expenditures.

e) DO328 Panels: On this Aermacchi project, Finmeccanica referred to the observations of the Italian authorities.

f) DO328 Extended Capacity: On this Aermacchi project, Finmeccanica referred to the observations of the Italian authorities. It added that the project was

([18]) Letter dated 20.2.2004.

([19]) Latest information available on the website of the company indicates that the Italian State controls 32,45 % of the shares of the company, which is listed on the Milan Stock Exchange. The rest of the shares are in the hands of private and institutional investors.

fundamentally different to the preceding one, as it led to the production of two prototypes, which could still be seen on the companys website.

(76) Concerning the incentive effect of the aid received for these projects, Finmeccanica submitted the following:

a) For the two helicopters (A109 D/E/F and A109 X), Finmeccanica submitted that in its view the company would not have been able to carry out the projects without the aid, because of the risks involved, associated with the prospect of return only over a long period of time. Second, Finmeccanica submitted that the expenditure and personnel devoted to R & D at Agusta had increased by four percentage points in the period from 1995 to 1999.

b) Finmeccanica said that the avionics projects conducted by Alenia (MD11 and MD95) had enabled Alenia to specialise in the development of fuselage sub-systems. Alenia had had to significantly upgrade its technological know-how for prototyping and testing in both development processes.

c) The avionics projects conducted by Aermacchi (DO328 Panels and DO328 Extended Capacity), Finmeccanica said, were not part of the core business of the company, which was specialised in the military sector, and especially aircraft for the training of pilots. The aid had enabled Aermacchi to embark upon R & D in the civilian area which was clearly additional to the R & D otherwise carried out by the company.

6.2. **France**

(77) The French authorities submitted observations after the first initiating decision only ([20]). The French authorities raised three issues: a) they drew attention to the aid instrument, which in their view was a repayable advance; b) they asked that reimbursement be ensured; and c) they indicated a number of projects not mentioned in the decision which might potentially have received aid under the scheme and which they believed Italy had failed to notify individually.

6.3. **The anonymous third party**

(78) The anonymous third party submitted observations in the proceedings twice, once after the first initiating decision and again after the second initiating decision.

(79) Its observations on the first initiating decision were as follows.

([20]) Letter dated 20.2.2004

(80) The third party confirmed that in its view the doubts expressed by the Commission regarding the six projects were well founded.

(81) It said that the Commission ought to widen the scope of the investigation to include various other projects (including the AB139, BA609 and A119 helicopters).

(82) The third party asked the Commission to verify that aid granted under Law No 808/1985 had indeed been applied to the projects in question, and that other projects had been excluded because of a lack of prototypes or a lack of participation on the part of Italian industry.

(83) It asked the Commission to verify the amounts of money actually associated with the six projects under assessment.

(84) It asked the Commission to request Italy to suspend payment in respect of the projects under way.

(85) It asked the Commission to verify the aid instrument used under Law No 808/1985, and on that basis to request the repayment of aid paid unlawfully.

(86) It asked the Commission to ensure that Law No 808/1985 was amended so as to ensure repayment on financial terms consistent with the R & D framework.

(87) It asked the Commission to impose a yearly reporting obligation, together with effective auditing measures to be carried out by the Commission if necessary.

(88) With its observations the anonymous third party supplied a number of documents, among others the reports on the state of the aerospace industry made by the Minister of Industry to the Italian Parliament, years 1996 to 2001. From the information in those reports the anonymous third party also argued in particular that the number of non-notified projects was much larger than the six projects under assessment in the proceedings.

7. **OBSERVATIONS FROM ITALY REGARDING THE COMMENTS FROM THIRD PARTIES ON THE FIRST INITIATING DECISION**

(89) Italy did not put forward any observations regarding the comments from Finmeccanica.

(90) Regarding the comments from France and the anonymous third party, Italy observed, first, that they went far beyond the scope of the proceedings. Italy complained that these attempts to widen the scope of the proceedings were not supported by evidence.

(91) Italy reiterated that in its view the scheme constituted existing aid, because it had been approved in 1986 ([21]), and because the Commission had accepted in 2002 that it had in effect been brought into line with the rules now governing aid to R & D (see recital 50). As it had been declared compatible, the scheme could not then be challenged in proceedings that were concerned only with individual measures adopted under it, unless it was shown that the original decision to approve the scheme was based on faulty information, in which case the decision might be revoked in accordance with Article 9 of the Procedural Regulation.

(92) Second, Italy said that in its view the aid instrument was compatible with the EC Treaty.

(93) The anonymous third party, Italy argued, was wrong to base itself on the reports to Parliament on the implementation of Law No 808/1985, because the figures indicated in the reports were not those actually granted for the projects. In the reports the Ministry had included its own targets for projects that could be financed under Law No 808/1985. However, in the budgetary process, the normal practice was that these targets were not covered by the available funding, which had been at levels far below those indicated in the abovementioned reports. The amounts indicated in the reports for the individual projects were also merely targets, because the Ministry decided the amount of aid actually to be granted to the individual project only after it had received the final budget, which, as already said, was usually normally far below the levels called for.

(94) Italy contested the argument put forward by France and by the anonymous third party according to which aid recipients might not be required to reimburse the aid. According to Italy, reimbursements had to be made in accordance with the schedules laid down in the granting decisions. Under domestic law the State could renounce such a claim only in the specific case of liquidation of a company.

(95) The payments had been made using what were known as 'commitment limits' *(limiti d'impegno)*, under which payments were made to the recipient after the expenses were incurred, beginning the year after the first year of expenditure and continuing for a period of 10 to 15 years. Reimbursement started one year after the end of the period of payment, that is to say 11 or 16 years after the start of the project.

(96) Concerning the comments made by the anonymous third party on the specific R & D projects, Italy in the first place referred back to the observations it had submitted in response to the initiating decision.

(97) Second, in reply to the comments of the anonymous third party, Italy provided observations on the specific projects. Concerning the A109 X, Italy indicated that the project concerned the development of technologies that would be applied in helicopters only after a long period of development. The name A109 X was used as a generic name; when the development was finished, the resulting helicopter would be radically new.

(98) The A109 Power project had been considered at one point, but had never been supported under Law No 808/1985.

(99) As regards the funding for the A109 X, the figure referred to by the anonymous third party was only a forecast. The aid actually granted towards the project was EUR 33,6 million; the additional ITL 49 billion for the period 2002-2005 which the anonymous third party had referred to had never been paid.

(100) Concerning the A109 D/E/F, Italy contested the argument put forward by the anonymous third party that this in reality related to the A109 Power, certified in 1996. The main objective of the project was to develop the new A109 F version, with a new engine, rotor and skids, which was subsequently certified in June 2001, 30 months after the end of the R & D project.

(101) In reply to the allegations by the anonymous third party regarding the development of Agusta, Italy wrote that the information and data provided by the anonymous third party were not correct. Agusta had an average share of around [20-30 %] of the European market for light twin-engine helicopters in the period 1994-2000, compared to over 60 % for its main competitor, Eurocopter ([22]). Its turnover derived mainly from the military sector ([> 70 %]). In terms of products, Agusta had only one helicopter in two of the segments, compared to Eurocopters three or four in each of these segments. In the view of the Italian authorities, Agusta was a company that had been able to develop from being a minor player in the sector into a full competitor, thanks to legal and compatible aid towards R & D, to strategic alliances and to technological innovation.

(102) Finally, the observations from France and the anonymous third party concerning the existence of other non-notified projects were based on a misinterpretation of the reports to Parliament. Italy also commented on some of the projects referred to by the anonymous third party.

(103) According to Italy, some of these projects had never been funded; some had received aid below the threshold for individual notification; some were military; some others were already within the scope of the proceedings (MD95 and MD11); while another had been excluded by the Commission in the decision to open proceedings.

([21]) Letter ref. SG(86) D/5685, 14.5.1986.

([22]) A European competitor of Agusta in the helicopter industry.

(104) Given the doubts raised in the second initiating decision, and the subsequent discussions on the final list of non-notified projects, it is not necessary to detail these projects at this stage in the Decision.

8. FRESH DOUBTS

(105) In the first initiating decision the Commission expressed doubts regarding the R & D content of six projects and regarding their incentive effect.

(106) The Commission there pointed out that its assessment of the R & D projects had to take account of the following factors:

a) the time that had passed since the date of the granting;

b) the difficulty of making a reasonable assessment of the incentive effect of the projects at that stage (in 2003), applying the criteria of the 1986 and 1996 Frameworks in the scientific, technical and economic context of the aeronautical industry 10 to 15 years before;

c) the general terms in which some of the rules in the 1986 Framework were expressed.

(107) The Italian authorities provided detailed information about the activities eligible for aid. They acknowledged that on the basis of the information available to the Commission at the time the Commission's doubts were justified.

(108) With the information provided, the Commission was now in a better position to understand the content of the different projects and in particular of the work packages that were identified in the first initiating decision.

(109) As regards the classification of the activities as eligible R & D activities, the Commission could now say that the information provided by Italy on each project allowed a clear distinction to be made between industrial research and precompetitive development.

(110) The Commission also accepted that the information supplied by Italy concerning the incentive effect of the aid given for these projects was sufficient to show that the recipients would not have carried out the projects without the aid.

(111) However, this assessment was made on the basis of the information available at the time, notably concerning the number of projects to be assessed.

(112) When it reached these conclusions, the Commission took it that the Italian authorities were right to describe the form of the aid as that of a soft loan, with the principal always being fully reimbursable.

(113) This assumption was a decisive factor in the Commission's assessment, in particular because when it has to be determined whether an individual aid measure exceeds the notification threshold it is essential to establish the gross grant equivalent of the aid.

(114) Since the Commission began investigating the original complaint regarding the application of Law No 808/1985, the Italian authorities have maintained that at least in the 13 cases referred to in the first initiating decision aid has been granted in the form of soft loans, which are interest-free but always reimbursable in full.

(115) France and the anonymous third party challenged this understanding of the matter, contending that the principal had to be repaid only to the extent the programmes concerned were commercial successes ([23]).

(116) The Commission tried to establish which view was the correct one, at least for the six cases that were the subject of the proceedings in which France and the anonymous third party had intervened.

(117) The Commission accordingly had to turn to the detailed implementing mechanisms which, as provided in the original Law No 808/1985 and in the Commission's 1986 decision on the Law ([24]), were to be determined in further rules.

(118) In order to ascertain in detail whether and in what way the loans had to be repaid, the Commission asked the Italian authorities to provide it with a copy of each of the decisions *(provvedimenti di concessione)* granting aid in the six cases.

(119) The Italian authorities first provided the Commission with extracts from the granting decisions. Among other things the extracts did not include the recitals to the decisions. The Italian authorities maintained that the recitals could not be provided to the Commission for reasons of national security. The recitals of granting decisions under Law No 808/1985, they said, were common to civilian and military projects. Even though the six cases related to civilian aircraft, therefore, the recitals to the granting decisions also referred to matters of national security.

(120) The extracts from the granting decisions provided by the Italian authorities did not enable the Commission to arrive at a definitive view of the conditions for the reimbursement of the loans.

(121) In particular, the clause concerning reimbursement ([25]) was worded in an ambiguous manner: it first stated that the aid 'will be reimbursed in progressive instalments computed on the basis of revenues deriving from sales' (verrà restituito mediante quote progressive calcolate sulla base degli incassi

([23]) No-one denied that the loans were interest-free.

([24]) Letter ref. SG(86) D/5685, 14.5.1986.

([25]) Numbered Article 3 in all the granting decisions.

relativi alle vendite), but then added that this would be done in accordance with the mechanisms laid down in the granting decision, which included a chart with a fixed schedule for reimbursement of 100 % of the principal.

(122) No provision that might reconcile these two apparently inconsistent aspects appeared in any of the extracts provided.

9. INFORMATION INJUNCTION

(123) Since a provision of this kind might appear in the missing parts of the decisions, the Commission issued an information injunction requiring that the full texts of the decisions be produced ([26]).

(124) Italy replied to the information injunction ([27]) by stating that in its view it had sent the Commission all the relevant information concerning the granting decisions. It added that the recitals to the decisions referred to matters of national security, which could not be disclosed to any third party, and not even to the recipient of the aid. Italy concluded that in its view the recitals could not in any circumstances contain any clause additional to those in the main text.

(125) It should be pointed out that Italy had not responded positively to the information injunction. In other words, it continued to refuse access to the full text of documents requested by the Commission.

(126) However, when it subsequently submitted observations in reply to the extension of the proceedings, Italy did in fact transmit all the requested documents. In the last analysis, therefore, it can be said that Italy did comply with the information injunction.

(127) To conclude on this point, the Commission would observe that Italy's reply did not satisfy the requirements of Article 12 of the Procedural Regulation. In addition, the argument that the recitals concerned matters of national security, and consequently could not be disclosed to the recipient, has been proved wrong, because from the copies that Italy subsequently sent the Commission it is clear that the recipients received — and signed — full copies of the granting decisions.

(128) However, Italy did eventually provide the information requested.

([26]) Commission letter ref. C(2004) 5009, 10.12.2004.

([27]) Letter by Mr Marzano, Minister for Productive Activities, to Ms Kroes, dated 14.1.2005, forwarded to the Commission by the Italian Permanent Representation by letter dated 19.1.2005.

10. DOUBTS EXPRESSED IN THE DECISION TO EXTEND PROCEEDINGS (THE SECOND INITIATING DECISION)

(129) As explained in the second initiating decision, several new issues arose in the course of the proceedings ([28]).

(130) First, the Commission became aware of the existence of two documents indicating that the loans were not being reimbursed.

(131) The first document was submitted by the anonymous third party ([29]). This was a report by a major commercial bank concerning Finmeccanica's financial position. In this report, dated 12 August 2004, [the investment bank] wrote that Finmeccanica had stated that 'the principal has to be repaid only once deliveries exceed a certain ([…]) volume, so that Finmeccanica has very low repayments in the first 15 years and is much less likely to have to repay all of the advance'.

(132) The second document was a report of the Italian Court of Auditors *(Corte dei Conti)* on the application of Law No 808/1985 ([30]). In section 6 of this document, the Court of Auditors analysed the position regarding the reimbursement of loans.

(133) The report referred to a ministerial order ([31]) that laid down the precise mechanism for the reimbursement of loans granted under Law No 808/1985. The order has never been provided to the Commission by the Italian authorities, and does not seem to have been made public even in Italy. The Court of Auditors referred to it only by the number of its registration at the Court.

(134) According to the Court of Auditors, the mechanism laid down in the ministerial order required in particular that the planned reimbursements be set out in a chart showing the instalments to be paid back to the State. However, this schedule of repayments did not have to be adhered to if the programme was not technically or economically successful in the manner originally expected.

([28]) See in particular section 2.3 of the second decision.

([29]) Letter dated 20.9.2004, registered by the Commission as incoming mail on 22.9.2004. The document was subsequently transmitted to Italy.

([30]) Corte dei Conti, *Indagine sulla promozione dello sviluppo tecnologico dell'industria aeronautica ed aumento dei livelli occupazionali nel settore di cui alla legge 24 dicembre 1985, n. 808*. Available at that time on the website of the Court of Auditors at http://www.corteconti.it/Ricerca-e-1/Gli-Atti-d/Controllo-/Documenti/Sezione-ce1/Anno-2003/Secondo-co/allegati-d7/indagine-industria-aeronautica.doc_cvt.htm.

([31]) Order (*decreto*) of the Minister for Industry, Commerce and Crafts of 14 March 1988, registered at the Court of Auditors the following 20 July, registration number 11 ind. fg. 154. According to annexes to several annual reports to Parliament on the application of the Law, the title of the order was 'General criteria for the mechanisms and schedule for the granting of funding under Article 3 of Law No 808 of 24 December 1985 and conditions and manner of repayment' (Criteri generali per modalità e tempi di erogazione, condizioni e modo di restituzione dei finanziamenti ex art. 3 della legge 808 del 24 dicembre 1985).

(135) The report of the Court of Auditors also stated that the proportion of loans actually reimbursed ranged from 0,86 % to 80,18 %, and that the overall proportion of reimbursement of the total loans paid out was 68,92 %; the Court said that in some cases reimbursements had been delayed or had not taken place ([32]).

(136) Second, France and the anonymous third party submitted lists of other projects which they said had received aid and which Italy had failed to notify. The figures they gave were for the amounts of the loans rather than gross grant equivalents. The relationship between the amounts of loans and their gross grant equivalents depends on the manner of reimbursement of the aid. As has been explained in paragraphs 0 to 0, the third parties and the Italian authorities disagreed on these mechanisms.

(137) In reply to question on this point the Italian authorities explained that the figures from the third parties were at least in part incorrect. In particular, the reports that the anonymous third party cited as its main sources merely set out hypotheses for possible future aid. Not all the projects considered for aid in this report had actually been launched. Some of the projects that had in fact been initiated had not received aid, or had received less than was initially foreseen in the reports. Lastly, some of the projects were of a military nature.

(138) Third, the Commission learned of two further projects — the AB139 and BA609 — and raised doubts in particular as to whether they could be classified as military, as the Italian authorities claimed.

(139) To summarise, since the information available was not conclusive, and since the Commission had become aware of documents and information that raised new issues, the Commission decided to widen the scope of the Article 88(2) proceedings (in the second initiating decision).

(140) In the second initiating decision, the Commission expressed three main concerns.

(141) The first was a question as to the nature of the aid instrument, namely whether the loans provided under Law No 808/1985 were always fully reimbursed.

(142) The Commission also seriously doubted whether the Italian authorities had informed it of all individual cases exceeding the thresholds for individual notification, under the terms of the initial decision of 1986 and of the appropriate measures accepted by Italy in 1996.

(143) Finally, the Commission seriously doubted whether the AB139 and BA609 projects could be qualified as military, as the Italian authorities claimed.

([32]) It is unclear however which individual cases the Court of Auditors was referring to, and what was the basis for the computation of the average.

(144) The second initiating decision stated clearly that, although the original investigation concerned only six cases, and although the comments provided by third parties were submitted within the scope of those proceedings, it was clear that the new doubts raised in the comments submitted went beyond the six cases.

(145) The doubts now expressed related to the entire application of Law No 808/1985. Thus they concerned all individual cases in which the Law had been applied, and among them all of the 13 cases ([33]), including those that had been considered not to require prior notification and those to which the Commission had raised no objection in its decision of 1 October 2003.

(146) The second initiating decision did not concern projects below the thresholds for individual notification, with the following exception. The Commissions doubts did apply to the application of Law No 808/1985 including all individual decisions granting aid below the individual notification threshold that had been taken since 22 November 2002.

(147) Finally, the second initiating decision indicated clearly that its scope was limited to individual aid measures for civilian projects.

(148) The Commission observed that, at that stage of its analysis, it considered that projects which consisted in modifying a military product to adapt it to civilian use should be considered as civilian.

11. ITALY'S OBSERVATIONS ON THE SECOND INITIATING DECISION

a) *Concerning procedure*

(149) In the first place, Italy indicated it was presenting its observations together with Finmeccanica.

(150) Italy pointed out that in the second initiating decision the Commission had acknowledged that the aid scheme introduced by Law No 808/1985 constituted an existing aid measure, as it had been approved by the Commission in 1986 and again in 2002.

(151) Italy observed that the second initiating decision was based either on Article 16 of the Procedural Regulation or on Article 13.

(152) Italy did not agree that there had been misuse of aid: that concept would apply only to misuse by the recipient of the aid it had received. All the aid granted under the scheme had been used for the purpose it was granted for. Italy

([33]) With the exception of the case which was judged to be of military nature.

objected to the term 'misuse' especially with regard to the individual aid granted after 20 November 2002.

(153) If the Commission had wanted to examine the aid granted in each case under the scheme, it should have done so in the context of the constant review of existing aid schemes provided for in Article 88(1) of the EC Treaty.

(154) Proceedings under Article 88(2) of the Treaty were not possible under the Procedural Regulation unless the cases were identified in a precise and specific manner.

(155) Concluding on the procedural aspects, Italy observed that the second initiating decision generated a situation of legal uncertainty because of the lack of a clear definition of its scope.

b) *Development of the scheme*

(156) In its reply to the second initiating decision, Italy clarified the history of the scheme. Military programmes had historically been dealt with partly by the Ministry of Industry.

(157) Italy summarised the way the scheme had been adapted to the 1996 Framework and to the appropriate measures. It sketched the essential outline of the scheme in the future, which still needed to be transposed into a new internal regulation ([34]).

(158) Italy commented on the question of reimbursement. For an authentic interpretation of the Court of Auditors report referred to in the second initiating decision, the Italian authorities had approached the Court itself. In reply the Court said, first and foremost, that the report was concerned only with the period up to 1998. Given the limited period covered, it would be wrong to draw general conclusions.

(159) In the second place, the Court said that the report confirmed that for all projects sales had started and reimbursements had been made, though with some delays.

(160) Lastly, as regards the possibility that the State might renounce its claim (which would be the case if the loans were not to be reimbursed), the Court confirmed that it was a general principle of Italian public administration that claims could not be abandoned. A ministerial order, the Court said, could not make provision for any such abandonment. In the report the Court had not mentioned any possibility that the public administration might renounce its claim to reimbursement.

(161) Italy acknowledged that there had been delays in reimbursement in a few cases, but added that a schedule for reimbursement was laid down in the decision to grant the aid. The recipient had to sign a clause requiring it to repay the principal.

(162) Italy said the Commission had expressed doubts regarding reimbursement partly because of the report from [the investment bank] on Finmeccanica referred to in the second initiating decision.

(163) But that report, according to Italy, made it clear that the sentence quoted in the second initiating decision — 'the principal has to be repaid only once deliveries exceed a certain (high) volume, so that Finmeccanica has very low repayments in the first 15 years and is much less likely to have to repay all of the advance' — was preceded by a sentence that showed that it referred to the companys defence business.

(164) Finally, Italy said, the Commission had doubts regarding reimbursement because it believed Italy had refused access to the full texts of the granting decisions.

(165) Italy reiterated that the recitals to all the granting decisions were identical, and this included those for military projects. Furthermore, in Italy's view the recitals omitted could not contain any conditions additional to what was in the main text of the decisions themselves.

(166) The aid instrument used was a soft loan, with fixed reimbursement schedules that were always adhered to, with a few limited exceptions. Furthermore, the loans had been paid out to recipients under 'commitment limits' over 10 to 15 years, or immediately in a single payment, but in this second case there was involvement on the part of a bank, which had to be discounted. Reimbursement started the first year after the last payment.

(167) To conclude on the aid instrument and the reimbursement, Italy maintained that the instrument used was a soft loan.

(168) Italy also submitted observations on the two helicopters referred to in the second initiating decision (the AB139 and the BA609).

(169) Along with these observations, Italy provided the documents requested concerning the legal basis:

a) decision (*delibera*) of the Interministerial Committee on Economic Programming, dated 15 April 1986, on the initial implementation of Law No 808/1985;

b) order (*decreto*) of the Minister for Industry, dated 8 June 1986, on the mechanisms for the submission of applications for aid;

c) order of the Minister of the Treasury, dated 7 February 1987, on the role of Mediocredito Centrale ([35]);

([34]) Italy submitted a new notification for the future scheme on 22.2.2008 (N 101/08).

([35]) This aspect of the proceedings has been discontinued.

d) order of the Minister for Industry, dated 14 March 1988, detailing further criteria for the implementation of Law No 808/1985 ([36]);

e) press release issued by the Interministerial Committee on Industrial Policy (CIPI), dated 30 May 1991, on collaboration with foreign partners;

f) Law No 181 of 4 June 1991 refinancing the scheme;

g) Law No 237 of 19 July 1993 refinancing the scheme;

h) decision of the Interministerial Committee on Industrial Policy dated 28 December 1993, with new instructions for the implementation of the scheme;

i) Law No 644 of 22 November 1994, converting the aid instrument into commitment limits;

j) order of the Minister for Industry, dated 31 May 1995, on non-R & D aspects of the scheme;

k) decision of the Interministerial Committee on Economic Programming, dated 8 August 1996, modifying the conditions for eligibility and setting priorities;

l) Law No 266 of 7 August 1997 refinancing the scheme; this Law also funded the European fighter aircraft (EFA) programme;

m) decision of the Interministerial Committee on Economic Programming, dated 22 December 1998, amending the priorities and criteria for eligibility;

n) order of the Prime Minister, dated 6 August 1999, keeping the administrative management of the scheme in the hands of the Government;

o) Law No 388 of 23 December 2000 refinancing the scheme;

p) decision of the Interministerial Committee on Economic Programming, dated 2 August 2002, amending the selection criteria, the activities eligible and the intensity of the aid.

(170) Italy also provided a full picture of the overall funding of the scheme, which is shown in the table below (the amounts are expressed in ITL billion):

Table 2

Budget for Law No 808/1985

Law	'93	'94	'95	'96	'97	'98	'99	'00	'01	'02	'03	'04	After	Total
808/85														690
181/91														150
237/93	50	50	50	50	50	50	50	50	50	50				500
237/93		50	50	50	50	50	50	50	50	50	50			500
644/94		25	25	25	25	25	25	25	25	25	25			250
644/94			50	50	50	50	50	50	50	50	50	50		500
266/97						105	105	105	105	105	105	105	315	1 050
488/99									45	45	45	45	495	675
488/99										44	44	44	528	660
388/00										40	40	40	480	600
350/03												19,3	270,2	290
Total														5 865

([36]) This is the order referred to in the second decision.

(171) Up to 22 June 2005, the date of the second initiating decision, out of the total amount of EUR 3 029 million (corresponding to ITL 5 865 billion), according to Italy, EUR 2 878 million had been used, with EUR 151 million not yet committed.

(172) Italy also specified the breakdown of expenditure:

a) EUR 1 311 million had been used for projects relating to national security;

b) EUR 1 327 million had been used for civilian projects approved up to November 2002;

c) EUR 239 million had been used for civilian projects approved after November 2002.

(173) According to Italy, EUR 510 million went to fund projects of European interest.

(174) Italy also responded to the request for a list of all civilian projects funded under Law No 808/1985 that were above the thresholds for individual notification, and a complete list of all projects funded since 22 November 2002. In its letter of 24 October 2005, Italy submitted observations on the projects referred to in the second initiating decision.

(175) Italy stated that there were no other aid projects above the thresholds for individual notification.

(176) Italy provided a table listing the programmes relating to national security which had been funded by the scheme.

(177) Finally, concerning delays in the reimbursement of specific projects, Italy said that there had been difficulties with only two projects, DO328 Panels and DO328 Extended Capacity. The project, conducted by Aermacchi, had had problems because of the failure of the main partner, Fairchild Dornier GmbH.

12. COMMENTS BY THE ANONYMOUS THIRD PARTY ON THE SECOND INITIATING DECISION

(178) The observations and requests put forward by the anonymous third party after the second initiating decision are set out below.

(179) The third party asked the Commission to declare the aid granted under Law No 808/1985 to be unlawful, and accordingly to order its recovery on the basis of Article 11 of the Procedural Regulation.

(180) It asked the Commission to verify the aid instruments used under the scheme.

(181) It asked the Commission to recover any aid granted in violation of state aid rules, on the basis of Article 14 of the Procedural Regulation.

(182) It asked the Commission to require a suspension of future payments under the scheme, on the grounds that there was no proper evidence to show that the aid would be used for R & D purposes.

(183) It asked the Commission to ensure that Law No 808/1985 was amended so that aid was reimbursed on financial terms consistent with the R & D framework.

(184) It asked the Commission to widen its investigation further in order to verify the compatibility with the State aid rules of other schemes applying in the aerospace industry in Italy, and to ensure that such schemes were not used to circumvent the Commission's decision on Law No 808/1985.

(185) It asked the Commission to require the Italian Government to present a full report every year, which the Commission might if necessary ask to have audited.

(186) The anonymous third party annexed a number of documents to its observations, among them the report from the Italian Court of Auditors on the implementation of Law No 808/1985, dated 12 August 2003, with a table referring to 164 projects; the text of the ministerial order dated 14 March 1988; the text of the laws refinancing Law No 808/1985; and extracts from the annual reports of Avio and Finmeccanica for 2003 and 2004.

13. OBSERVATIONS SUBMITTED BY ITALY REGARDING THE ANONYMOUS THIRD PARTYS COMMENTS ON THE SECOND INITIATING DECISION

(187) Following the comments of the anonymous third party, the Italian authorities asked for clarification of the scope of the proceedings: did they relate to the whole scheme, or only to aid granted under the scheme in those cases that had to be notified to the Commission individually?

(188) Italy contended that the figures put forward by the anonymous third party, taken from the Ministry's website, covered ground broader than this particular scheme alone. They included not just aid granted under Law No 808/1985 but also other industrial programmes relating to national security ([…]) which were funded under other legislation.

(189) […]

(190) Italy argued that the fact that the scheme introduced by Law No 808/1985 allowed for funding of both civilian and military programmes had confused the anonymous third party. The Court of Auditors had been similarly misled in its report on Law No 808/1985.

(191) Italy provided the following table comparing the funding referred to in the reports cited by the anonymous third party and the funding provided under Law No 808/1985.

Table 3

Comparison between sources of information on funding under Law No 808/1985

(EUR million)

Commitments	2000	2001	2002	2003
2004 report on incentives (p. 181)	287	492	710	501
Measures under Law No 808/1985	18	94	280	189
Difference	269	398	430	312

(192) Italy also provided a list of relevant military programmes funded in these years, which it said might explain the discrepancies: […].

(193) Concerning the annual report of Finmeccanica for the year 2003 referred to by the anonymous third party, Italy argued that a large part of the increase in R & D expenditures was due to the incorporation of Aermacchi into the company (around […]).

(194) Italy acknowledged that there had been delays in some reimbursements, which it said were due primarily to the long periods of payment (10 to 15 years), so that they should rather be interpreted as late reimbursements.

(195) Italy acknowledged that there were difficulties with one specific project, the DO328 Extended Capacity, but said it was out of the question that the State should abandon any claim.

(196) In reply to the specific points raised by the anonymous third party, the Italian authorities provided the following arguments.

(197) The request by the anonymous third party that the Commission should declare unlawful the aid given to the six projects on which it had raised doubts in the first initiating decision, and require that the aid be recovered, was not acceptable. It was contrary to Article 11 of the Procedural Regulation.

(198) According to Italy, the proceedings were concerned only with individual applications of the scheme, the projects that the Commission had specifically identified, which were the 13 projects referred to in the first initiating decision. Italy had already suspended payments towards those projects pending a final decision by the Commission.

(199) As regards the anonymous third party's request that the Commission impose monitoring conditions and other control measures on a yearly basis, the Italian Government said it was ready to present any report called for under Article 21 of the Procedural Regulation. But the Italian authorities did not agree that additional reporting obligations should be imposed: that would be disproportionate and unfair by comparison with the obligations that other Member States had to comply with in respect of aid schemes in the same industry.

(200) The anonymous third party referred in its observations to the 2004 annual report of Avio, quoting in particular the phrase 'If no revenues are earned, no reimbursement is due'. The Italian authorities said they had asked the company for an explanation. The lawyer consulted by Avio had confirmed that the recipients of aid under the scheme were obliged to reimburse the sums received in full, irrespective of the success of the programme. Avio had stated that the statements in its 2004 annual report were based on an incorrect interpretation of the scheme, and would be modified in the following annual report.

(201) Italy provided information on the other legislation mentioned by the anonymous third party in its observations, indicating that Law No 421/96, Law No 388/00, the 2003 Finance Law and Law No 140/99 (which related specifically to military transport aircraft) were concerned only with the funding of military projects relating to national security.

(202) On the report by the Court of Auditors, Italy first noted that the anonymous third party had annexed to its comments two 'tables or charts extracted from fig. 3 and fig. 5' of the report. These were Excel files that did not appear in the version referred to in the second initiating decision, but only in the Word version of the report. It was not clear by what investigative methods the anonymous third party had secured access to these tables.

(203) Italy stressed that in its view it was completely inappropriate to attribute these figures to the Court of Auditors, given that they did not appear as such in the text of the report.

(204) Nevertheless, Italy did provide some observations on the content of the tables, which referred to 164 granting decisions for a total of around EUR 3 billion.

(205) There were several mistakes in that total, including sums counted twice and figures for aid that had not been granted. The tables also showed projects relating to

national security, including some that were funded under other laws and were thus outside the scope of the scheme. The correct figure for aid granted on the basis of the scheme was the one supplied in the observations submitted by Italy […].

14. ASSESSMENT

(206) In order to assess the case the Commission will first consider whether there is State aid and how its compatibility should be assessed.

(207) Second, the Commission will clarify the scope of these proceedings and the correct procedure to be followed.

(208) Third, the Commission will assess whether the doubts expressed in the first initiating decision can de dispelled.

(209) Fourth, the decision will list the projects to which it relates and on the basis of the information available will assess their compatibility, including any conditions to be imposed in order to ensure that they are properly applied.

(210) Finally, the Commission will draw conclusions on the individual projects, and explain why its conclusions do not concern the two helicopters whose military character was questioned in the second initiating decision.

14.1. Existence of aid within the meaning of Article 87(1) of the EC Treaty and applicable compatibility guidelines

(211) A measure constitutes aid caught by Article 87(1) of the EC Treaty if state resources are used in a manner that distorts or threatens to distort competition by favouring certain undertakings, and trade between Member States is affected.

(212) As indicated in the first and second initiating decisions, the measures under assessment constitute aid. This assessment has not been disputed by Italy, or by any of the parties that have intervened in the proceedings.

(213) The loans provided under Law No 808/1985 are clearly selective, because they benefit only companies operating in the aeronautical sector.

(214) These loans are provided via funds coming from the State budget, and therefore involve the use of state resources.

(215) The loans do not bear interest, thus conferring an advantage on companies receiving them over companies that have to finance their projects on market terms. In a soft loan the element of advantage is the difference between the interest that the undertaking would have to pay on an equivalent loan on commercial terms and the special low interest rate, which in the present case is zero. The principal is always reimbursed according to the schedule fixed at the time of granting, and the aid is the sum of the interest payments forgone by the State.

(216) In most cases, the projects involved here concern products where there is large-scale intra-Community trade (helicopters, small aircraft, or sometimes parts of larger aircraft).

(217) The support granted by Italy to R & D projects in the aeronautical industry under Law No 808/1985 thus falls within the scope of Article 87(1) of the EC Treaty.

(218) Italy and the intervening parties also agree that the compatibility of the aid with the Treaty should be assessed on the basis of the rules concerning the application of Article 87(3)(c) to R & D aid.

(219) The aid under assessment was granted unlawfully, as it was never notified by Italy.

(220) The Community framework for state aid for research and development and innovation (the 2006 Framework) ([37]) clearly indicates, in line with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid ([38]), that in the case of non-notified aid the Commission will apply:

— the 2006 Framework if the aid was granted after its entry into force,

— in all other cases, the framework in force when the aid was granted.,

(221) To assess the compatibility of these projects with Article 87 (3)(c) of the EC Treaty, therefore, the Commission will apply the 1986 Framework or the 1996 Framework as the case may be, depending on the date on which the aid was granted.

14.2. The subject-matter of the Decision

(222) This Decision is concerned only with individual aid granted by Italy to civilian R & D projects in the aeronautical industry under Law No 808/1985.

([37]) OJ C 323, 30.12.2006, p. 1.
([38]) OJ C 119, 22.5.2002, p. 22.

(223) It relates in the first place to the six projects regarding which the Commission expressed specific doubts in the first initiating decision.

(224) It also relates to the other projects referred to in the first initiating decision, in so far as the information subsequently assembled concerning them allows a different assessment to be made, especially as regards the obligation of individual notification.

(225) Third, the Decision relates to other individual aid granted by Italy for projects above the notification thresholds set by the R & D frameworks of 1986 and 1996. These projects were not known to the Commission at the time of the first initiating decision. Some of them were mentioned in the second initiating decision as possible cases of non-notified individual aid.

(226) It cannot be argued, as Italy seeks to do, that investigation proceedings must define from the outset all the projects to which they relate, because when it initiates the proceedings the Commission does not necessarily know how many projects may be concerned.

(227) The present proceedings are concerned with individual applications of a scheme, individual cases that Italy should have notified but did not notify. The scale of Italy's failure to notify is exceptional: among other things, Italy failed to notify any of the projects over a period of more than ten years. As a consequence of this persistent violation of the obligation to notify laid down in Article 88(3), the Commission clearly indicated in the second initiating decision, in the light of the comments received from third parties and on the basis of the information available, that the proceedings related to all individual projects under the scheme that ought to have been notified individually.

(228) The second initiating decision did not set any specific date with effect from which individual projects that had not been notified were to begin to be included in the scope of the proceedings and to be considered individual applications of Law No 808/1985. In any event, the Italian authorities frequently allowed the recipient not to reimburse the aid in full, and this must be considered to constitute new aid.

(229) It is worth drawing attention to the importance of the individual notification of aid above certain thresholds for purposes of state aid control. The 2006 Framework clearly indicates that, in order better to focus the Commission's scrutiny, individual measures above certain thresholds are subject to a detailed assessment by the Commission. The purpose of the individual assessment is to ensure that high amounts of aid for R & D&I work carried out by the same recipient do not distort competition to an extent contrary to the common interest, but rather contribute to the common interest in a proportionate manner.

(230) In the period under assessment the thresholds for individual notification varied. Under the 1986 Framework individual notification was required for projects with eligible costs above ECU 20 million.

(231) Under the 1996 Framework projects were to be notified individually to the Commission if the eligible costs were above ECU 25 million and the aid was above ECU 5 million ([39]).

(232) With regard to the need for the decision initiating the procedure in Article 88(2) of the EC Treaty to indicate the individual projects concerned precisely and specifically, the Commission would make the following observations.

(233) When the Commission initiated the Article 88(2) procedure it precisely identified 13 projects. On the basis of the information available at that time, it expressed doubts with regard to six of these, and raised no objection to the other seven.

(234) It became evident, however, that the aid instrument used by Italy, coupled with the way it was implemented, with delays in reimbursement, were such as to modify the assessment of the 13 projects. Italy has acknowledged that the information available to the Commission at that time was not correct and did not correspond to the real conditions of the aid which had been granted and which had not been correctly reimbursed.

(235) It also became evident that there were other cases which Italy had failed to notify individually, despite the clear statements in the R & D frameworks and the 1986 decision.

(236) It became evident, too, that in most of the cases assessed in this Decision the reimbursements did not follow the initial schedule; delays were allowed, making the terms more generous to the recipient. These new and more generous terms constitute new aid.

(237) To conclude, the present proceedings concern a number of projects to which new unlawful aid has been granted.

([39]) See for instance point 4.7: 'Individual grants of aid under an R & D scheme that has been authorized by the Commission do not, in principle, need to be notified. However, in order to allow the Commission to assess significant amounts of aid under approved schemes and the compatibility of such aid with the common market, the Commission requires prior notification of any individual research project costing more than ECU 25 million and for which it is proposed to provide aid with a gross grant equivalent of more than ECU 5 million. This new notification rule must be regarded as an appropriate measure within the meaning of Article 93(1) of the EC Treaty. Its substance was examined by the representatives of the Member States at a multilateral meeting.'

14.3. The doubts expressed in the first initiating decision

(238) The Commission has assessed the information submitted by Italy on eligible costs and incentive effect for the six programmes referred to in the first initiating decision, which are now included in the list of projects (recital 281, table 4).

(239) The Commission has established that for each project the costs were incurred for industrial research and precompetitive development.

(240) The Commission has established that the aid for each of these six projects had an incentive effect. The assessment was carried out taking into account the time that has elapsed since Italy took the decision to grant the aid.

(241) As described in recitals 105 to 122, however, it appeared that other crucial aspects of these aid measures, notably the aid instrument, were not clearly defined, and did not allow the Commission to take a final view of their compatibility. Before presenting the assessment of the individual projects, therefore, it will be necessary to assess the information available concerning the other doubts expressed in the second initiating decision.

14.4. The doubts expressed in the second initiating decision

(242) In order to arrive at a final conclusion concerning individual aid granted under the scheme it will be necessary, first of all, to assess all of the information concerning the development of the scheme, including the legal basis and the budgetary changes.

(243) Second, it will be necessary to assess the nature of the aid instrument and the implementation of the granting decisions.

(244) Third, it will be necessary to draw up a list of individual projects that Italy has failed to notify, to assess the financial terms for each of these projects, and if necessary to verify the terms of reimbursement and the mechanisms for monitoring compliance with those terms.

(245) Finally, a separate section, in paragraphs 0 0, will be devoted to the assessment of the information concerning the two allegedly military helicopters.

14.4.1. *The development of the scheme*

(246) The Commission now has a clear picture of the development of the overall scheme.

(247) Italy has provided sufficient information on the overall funding of the projects to enable the Commission to form a more general view. This is particularly relevant to the problem that the scheme under assessment has been used by Italy to fund both civilian projects and projects relating to national security. The figures for overall funding would thus be misleading if they were to be interpreted as showing only funding used by Italy towards civilian R & D projects in the aeronautical industry.

14.4.2. *Nature of the aid instrument*

(248) As regards the nature of the aid instrument, the Italian authorities have provided full documentation concerning the projects that Italy should have notified individually on the basis of the thresholds set in the successive R & D frameworks.

(249) The Italian authorities have indicated that the nature of the instrument was hybrid, in the sense that it was a soft loan whose reimbursement schedule was constructed according to the sales forecast for the product being developed. According to the Italian authorities these reimbursement schedules were fixed from the outset.

(250) The loans were granted on the basis of the reference rate at the time of the granting plus a premium.

(251) For each project, the Italian authorities determined a theoretical maximum aid intensity at the moment the aid was granted, calculated on the basis of the eligible costs, with the inclusion of any bonuses that might be relevant.

(252) In some cases, however, this intensity was not complied with, and the aid was granted on terms more favourable to the recipient, at an intensity higher than the maximum intensity allowable under the R & D frameworks.

(253) Moreover, in practice, these schedules were often not adhered to, in two different ways. First, payments to the recipients were late compared to the initial schedules, either because the project was late, or because the State was late in making the payments. In some cases, therefore, the actual intensity of the aid was lower than the initial intensity.

(254) But more importantly, reimbursements did not abide by the initial schedules. As a consequence, in many cases the initial intensity increased as the recipients benefited from the further advantage of late reimbursement.

(255) While Italy has provided the Commission with a number of letters it sent to recipients requesting reimbursement, it is clear that such letters had limited effect. In some instances, several letters were sent to a recipient on the same project,

but no steps were taken effectively to reimburse the loan, and there was no action on the part of the State to recover the claim ([40]).

(256) In conclusion, there were two potential problems with the aid granted to the projects: a) an initial intensity that in some cases was higher than the maximum intensity allowed; and b) insufficient reimbursement that allowed the intensity to increase even further.

(257) The Italian authorities, working together with the Commission, have defined a methodology that allows both problems to be solved. As a first step, a maximum intensity is defined for each project, which is the lower of two intensities, the maximum theoretical intensity ([41]) and the initial intensity. If the initial intensity is the lower, it can be said that the incentive effect of the specific amount of aid granted was sufficient to convince the company to commit itself to the project. Any increase in the intensity over the one fixed initially must necessarily be considered new aid.

(258) The cumulative aid intensity is then calculated. In the year in which this cumulative intensity reaches the level of the maximum intensity defined in recital 257, the recipient has to reimburse the full outstanding principal. If the maximum intensity has already been reached, then compound interest is to be charged on the outstanding debt for the years until the date of the final reimbursement of the entire loan. The level of interest is the reference rate for the year in which the maximum intensity was reached, and then for each year of further delay.

(259) The methodology thus makes it possible to ensure compliance with the maximum intensities defined in the successive R & D frameworks ([42]).

14.4.3. *The list of non-notified projects*

(260) A shared and accurate understanding of the aid instrument made it possible to establish the list of projects that Italy ought to have notified individually. When aid takes the form of a soft loan, the significant value is the amount of interest forgone by the State. The uncertainty surrounding the nature of the aid instrument meant that Italy itself had no clear view of which projects needed to be notified individually ([43]) and which projects had to be included in the ex post list of cases that ought to have been notified..

(261) In order to arrive at a final list, a series of requests for information had to be sent.

(262) Italy initially denied that it had failed to notify any individual project other than those referred to in the first initiating decision. It subsequently acknowledged that the list of non-notified projects was longer, and submitted all the necessary information and evidence.

(263) The difficulty of drawing up the list of non-notified projects can be explained by a conjunction of several factors.

(264) First, the scheme has been applied since 1986.

(265) Second, the number of projects involved is necessarily high. Including those not subject to individual notification, the number of projects funded through the scheme in the period under assessment is well above 100.

(266) Third, the fact that the lists include numerous military projects has increased the confusion. The Commission notes that even in a report by the Italian Court of Auditors there was some confusion as to the nature of the projects.

(267) The information available on the projects supported was piecemeal and often confused, not least because the reporting from the Government itself to the Italian Parliament was in terms of a list of future projects rather than projects actually supported.

(268) There are lists submitted by the anonymous third party, and others referred to directly by the Commission, such as the 13 projects specified in the first initiating decision and the list of projects cited in the second initiating decision.

(269) The report of the Court of Auditors did not contain a list of the projects, but only overall figures, graphs and tables. However, the Word version of the document, available on the Courts website in 2005, allowed the underlying data to be extracted from the overall graphs.

([40]) The Italian authorities have indicated that they have no intention of abandoning their claims on the recipients. However, the number of cases in which letters were sent asking for reimbursement, but no further action was taken, while new aid was granted to the same recipients for new projects, suggests that in some cases at least recipients believed that the aid they had received was not to be reimbursed.

([41]) Being the 25 % or 50 % intensity plus bonuses for precompetitive development and industrial research provided for in the R & D Frameworks.

([42]) The Commission has adopted a similar approach in two cases concerning R & D aid to the aeronautical sector, C27/06 and C 28/06.

([43]) It should be noted, though, that there is no trace in the history of the file of any intention on the part of the Italian authorities to notify any project individually, whatever the size of the project or the amount of the aid.

(270) In its submission of 11 November 2005 the anonymous third party included these data. In its request for information of 23 May 2006 the Commission referred to most of the projects entered on the list submitted by the anonymous third party ([44]) to point out to Italy that in all likelihood there were still a number of non-notified projects on which Italy had not provided the requested information.

(271) Italy denied that the list could be attributed to the Court of Auditors ([45]): it had been derived from the information system of the Court by a person unknown. It would be misleading, therefore, to attribute the list to the Court itself, since it was the result of manipulation of data by a third party. It contained a number of errors and inaccuracies, and it would be wrong to imagine that the Court of Auditors itself was responsible for it.

(272) Ultimately Italy decided that it would itself provide a complete list of individual projects that were subject to individual notification, so that it is not necessary for the Commission to state a view on the accuracy of the information received previously ([46]).

(273) The discussion on the list of non-notified projects was difficult, but after about two years, it enabled the Italian authorities and the Commission to identify a number of individual projects that Italy had failed to notify.

(274) As requested in the second initiating decision, Italy also provided a list of the projects below the thresholds for individual notification that had been approved after 20 November 2002. The Commission finds that that list matches the overall budget for Law No 808/1985 in the period concerned, and that it does refer to projects below the thresholds for individual assessment ([47]).

14.5. Assessment of the final list of civilian projects

(275) The list of projects that Italy failed to notify individually to the Commission contains 17 projects.

(276) The list comprises the projects on which the Commission is able to reach a final conclusion regarding compatibility with the Treaty, but that leaves open the possibility that the Commission may in future take measures in respect of other projects that have not been notified and of which it is not currently aware, or projects of which it is aware but for which it does not possess information sufficient for purposes of a decision, either because the information available is not complete or because the information indicates that the project is currently below the threshold for notification, whereas fresh information may modify this assessment.

(277) For each project the Commission has the initial schedule for disbursement and reimbursement laid down at the time the aid was granted and the real figures for payments by the State and reimbursement by the recipients. The schedules incorporate the corrections imposed by the methodology described above ([48]).

(278) On the basis of the information available on the projects, and bearing in mind that all the projects are individual applications of the same aid scheme, the Commission has no evidence that would lead it to suspect that the aid was aimed at supporting activities that did not qualify as R & D activities under the R & D frameworks.

(279) As regards the incentive effect, the Commission would note, first of all, that point 8.2 of the 1986 Framework required only that the aid should encourage additional effort in the field of R & D or enable the recipients to respond to exceptional conditions for which their own resources were too limited. In point 6 of the 1996 Framework, the incentive effect was to be verified on the basis of quantifiable factors, or other relevant factors indicated by the Member State, showing that the same R & D project would not have taken place without the aid, or that it would have been less ambitious, or that it would not have been carried out at the same pace.

(280) The Commission has no reason to doubt the incentive effect of the aid under assessment. The aid allowed the recipients to engage in R & D activities additional to their normal research, and to undertake R & D projects they would not have been able to undertake alone. Furthermore, consistently with its assessment of similar projects in the aeronautical industry, the Commission finds that the aid to the projects under assessment allowed the recipients to engage in risky projects which they would not have been able to finance alone. Finally, the Commission notes that most of the projects were international projects that required additional collaborative efforts.

(281) Each project is described below with its overall eligible costs and the amount of aid received. For the six projects regarding which the first initiating decision expressed doubts, the assessment also covers the information available on the eligible activities and the incentive effect. For all the projects the consequences of the application of the methodology are detailed in recital 257.

([44]) It excluded those whose military character was evident, either because they had been assessed in the course of the proceedings or because the public information available left their nature in no doubt.

([45]) See letter dated 5.5.2006.

([46]) Irrespective of whether or not it should be attributed to the Court of Auditors.

([47]) The list also shows that Italy has spent a large part of the budget of the scheme on small projects. This allows the overall figures for the budget for the scheme to be reconciled with the number of large projects now known.

([48]) See recitals 248 to 259.

Table 4

List of projects to which this Decision relates

Project	Company	Purpose	Year
A109 D/E/F	Agusta	Helicopter	1997
A109 X	Agusta	Helicopter	1999
A119 Koala	Agusta	Helicopter	1997
DO328	Aermacchi	Aero structure	1991
DO328 Extended Capacity	Aermacchi	Aero structure	1996
DO 328 Panels	Aermacchi	Aero structure	1996
ATR72	Alenia	Aero structure	1988 to 1994 (5 projects)
ATR 42 500	Alenia	Aero structure	1992
MD11 LWRP J/S	Alenia	Aero structure	1996
Falcon 2000	Alenia	Aero structure	1994
MD11 Winglet	Alenia	Aero structure	1989
MD95	Alenia	Aero structure	1996 and 1998
GE90 B	Avio	Engine	1994
GE90 Growth	Avio	Engine	1996
LPT PW308	Avio	Engine	1997
Falcon 2000	Piaggio	Aero structure	1994
Cabins	Alenia	Aero structure	1999

a) *A109 D/E/F project carried out by Agusta*

(282) The project concerned a helicopter, and was carried out by Agusta; it consisted in the development of different versions of the A109, adapting it to different engines in order to satisfy the most stringent criteria in terms of security, flight performance and environmental impact. The D, E and F versions corresponded to engines provided by Allison, Pratt & Whitney and Turbomeca. The D and E versions, according to Italy, were never developed.

(283) The project was listed in the first initiating decision as project No 4. Investments were carried out in the period 1996 to 1998. In the first initiating decision the Commission expressed doubts regarding the classification of R & D activities and the incentive effect.

(284) As regards the R & D activities, the Italian authorities have provided more detailed information on the work packages. The Commission would observe, first, that several prototypes were developed, and that the D and E versions were not completed or marketed.

(285) Second, the Commission notes that the technologies more directly concerned — new engine and skids — were certified only in June 2001. According to Italy, the developments in the rotor still have to be incorporated into the final product, even though the result of the R & D was successful.

(286) The sequence of events would seem to indicate that the aid for the R & D project carried out in the period 1996-1998 enabled Agusta to introduce new technologies, with a time horizon of more than 30 months. The aid consequently had an incentive effect on Agusta.

(287) The eligible investment ([49]) was ITL 69 790 million ([50]). The amount of aid in the form of interest forgone by the State was ITL 24 450 million. Thus, the initial aid intensity was 35,03 %, as compared with a theoretical maximum intensity of 31 % allowed by the 1996 Framework. The year in which the cumulative intensity reached the maximum 31 % allowed was 2004.

(288) In 2007, therefore, Agusta has immediately to repay the outstanding principal (ITL 19 300 million) plus the ITL 7 811 million called for in the reimbursement schedule for the year. Interest has also to be paid from 2005 onwards, amounting on 31 December 2007 to ITL […] million.

(289) The Commission concludes, therefore, that the aid can be considered compatible under the 1996 Framework, since it concerned R & D activities and had an incentive effect on Agusta, on the condition that Agusta immediately reimburses the outstanding principal and the compound interest.

b) *A109 X project carried out by Agusta*

(290) The project concerned an Agusta helicopter. It was listed in the first initiating decision as project No 2. The Commission expressed doubts regarding the classification of R & D activities and the incentive effect.

(291) According to Italy, the project, carried out in the period 1999-2001, aimed at developing an entirely new helicopter, to enter the market after 2009. The helicopter would be in the range between 3 and 3,5 tonnes, and would also be used for developments in the military market.

([49]) For all the projects, all the figures presented here are discounted figures.

([50]) Since all the projects concerned were approved before the introduction of the euro, all granting decisions and all reimbursement schedules are expressed in Italian lire. table 5 in recital 381 shows the impact in euro.

(292) Italy was able to demonstrate that the A109 X was a project totally different from the A109 D/E/F, A109 Power and A119 Koala. The main technological differences related to the five-blade rotor, the tail rotor, and the transmission using face gears.

(293) On the incentive effect, Italy was able to show that the A109 X was a new project, which would not be finalised before 2009. The aid thus enabled Agusta to engage in R & D activities which were very distant from the market and were very risky from a technological point of view.

(294) Eligible investment by the company was worth ITL 67 144 million. Aid received in the form of interest forgone was ITL 13 902 million, giving an intensity of 20,70 %, which is below the maximum initial intensity of 33 % allowable under the 1996 Framework.

(295) The reimbursement schedule has nevertheless been adjusted to take account of the fact that the aid was disbursed in a manner different from what was foreseen, and the fact that the loan was smaller. Reimbursements for this project will follow the adjusted schedule until 2018.

(296) The Commission can therefore conclude that the aid is compatible with the 1996 Framework, since it concerned R & D activities and had an incentive effect, on the condition that that the reimbursement plan is completed in 2018.

c) *A119 Koala project carried out by Agusta*

(297) The project concerned the development of a helicopter by Agusta. The A119 Koala is the utility version of an eight-seat helicopter, powered by a single turboshaft engine, and produced for the civilian market.

(298) It was listed in the first initiating decision as project No 3. On the basis of the information available at that time, the Commission there took the view that the project was not subject to individual notification to the Commission, so that it fell outside the scope of that decision.

(299) Subsequently, it appeared that the amount of eligible investment and the amount of aid were in fact such that the project should have been notified individually to the Commission.

(300) Aid was granted in 1997 for eligible investment of ITL 58 137 million in the period 1997-1999. The aid received had an intensity of 26,92 %, which was below the initial maximum intensity of 32 % allowable under the 1996 Framework.

(301) The reimbursements for this project will thus follow the schedule until 2009.

(302) The Commission can therefore conclude that the A119 Koala project carried out by Agusta is compatible with the 1996 Framework provided that the reimbursement schedule is adhered to.

d) *DO328 project carried out by Aermacchi*

(303) This project concerned the basic version of the DO328 and was carried out by Aermacchi. The DO328 is a regional jet developed by Dornier. Aermacchi was entrusted with the development of two segments of the fuselage and the assembly of the entire fuselage, made up of 13 panels produced for Dornier by the Korean company Daewoo.

(304) The R & D project allowed Aermacchi to acquire the knowledge necessary to develop the two segments and to assemble the fuselage. These activities were new to the company, which until then had concentrated on military training aircraft. The eligible activities were carried out in 1990 and 1991.

(305) The project was listed in the first initiating decision as project No 10. The Commission there decided to raise no objection to the project because, based on the information available, it considered it to be compatible.

(306) But the information submitted by Italy during the proceedings clearly shows that that initial conclusion has to be modified in the light of the financial situation of the project.

(307) The information available today indicates that the eligible investment amounted to ITL 60 722 million, and that the initial maximum intensity was 43 %.

(308) However, there have been numerous delays in the reimbursement, as the Italian authorities themselves have acknowledged. The intensity of 43 % allowable under the 1986 Framework was reached as long ago as 1996. As the maximum intensity has been reached, Aermacchi must immediately repay the outstanding balance, which is ITL 34 019 million. Compound interest has also to be paid on the sums owed by Aermacchi from 1996, amounting to a total of ITL […] million on 31 December 2007.

(309) The Commission concludes that the project relating to the basic version of the DO328 can be considered compatible with the EC Treaty on the basis of the 1986 Framework, on the condition that Aermacchi immediately reimburses the outstanding principal and the compound interest.

e) *DO328 Extended Capacity project carried out by Aermacchi*

(310) The project was to be carried out by Aermacchi, and concerned the development of an extended version of the DO328 regional jet developed by Dornier. The extended version would have allowed the transport of 40 to 50 passengers. The project does not seem to have been finalised, not least because Dornier, or Dornier-Fairchild as it later became, went into liquidation. The project was carried out in the period from 1995 to 1997.

(311) The project was listed in the first initiating decision as project No 8. The Commission expressed doubts regarding the classification of R & D activities and the incentive effect.

(312) On the R & D activities, the Italian authorities were able to demonstrate that extending the jet meant that the firm had to redevelop entire sections of the fuselage, while minimising the impact on the weight of the aircraft and on the costs of the project. During the project Aermacchi developed two prototypes.

(313) On the incentive effect, the Italian authorities demonstrated that the funding for this project (together with the other project, DO328 Panels) allowed a substantial increase in the level of R & D spending by Aermacchi. In the period from 1993 to 1999 (covered by the two projects) the costs for the two DO328 projects amounted to […] % of Aermacchis total R & D expenditures. Italy also argued that owing to its military specialisation, Aermacchi was not used to working on civilian projects, and had to adapt substantially, making additional investments.

(314) Eligible investment in the project amounted to ITL 66 360 million. The maximum initial intensity defined by the Italian authorities at the time the aid was granted was 43,49 % (below the 44 % maximum intensity allowable under the 1996 Framework). The reimbursement schedule indicates that this intensity will be reached in 2010, when the entire outstanding balance will have to be reimbursed to the State.

(315) The Commission thus concludes that the aid given to Aermacchi for the DO328 Extended Capacity project is compatible with the EC Treaty and the 1996 Framework, and that the doubts concerning the eligible R & D activities and the incentive effect have been dispelled. Aermacchi must reimburse the entire outstanding principal by 2010.

f) *DO328 Panels project carried out by Aermacchi*

(316) This project was carried out by Aermacchi in the period from 1993 to 1999, and related to the development of innovative concepts to obtain modular elements of different longitudinal dimensions to serve in the development of fuselages of different lengths, while reducing the development costs.

(317) The project was listed in the first initiating decision as project No 9. The Commission expressed doubts regarding the classification of R & D activities and the incentive effect.

(318) On the R & D activities, the Italian authorities were able to demonstrate that the project was aimed at transferring the development of the fuselage panels from Daewoo to Aermacchi, and rethinking the entire project. The project also concerned the use of composite materials.

(319) On the incentive effect, the Italian authorities provided sufficient information on Aermacchis R & D activities to show that the project involved activities that were new for the company in terms of scale and technology. As mentioned above in connection with the DO328 Extended Capacity project, the Italian authorities also provided information on the development of R & D spending by Aermacchi.

(320) The eligible investment amounted to ITL 51 480 million. Initial intensity at the moment the aid was granted was 42,30 % (below the 44 % maximum intensity allowable under the 1996 Framework).

(321) This intensity was reached in 2006, when the cumulative discounted intensity reached 42,51 %. This means that the entire outstanding balance of ITL 54 454 million (comprising ITL 37 751 million planned for 2007 and ITL 16 703 million outstanding) has to be reimbursed, with compound interest, which on 31 December 2007 totalled ITL […] million.

(322) The Commission thus concludes that the aid given to Aermacchi for the DO328 project can be considered compatible with the EC Treaty and the 1996 Framework, since the doubts regarding the eligible R & D activities and the incentive effect have been dispelled, on the condition that Aermacchi immediately reimburses the entire outstanding balance of the debt with compound interest.

g) *ATR72 project carried out by Alenia*

(323) A project for a regional jet to be conducted by Alenia ([51]) was listed in the first initiating decision as project No 12. On the basis of the information available at the time the Commission did not express doubts regarding the project. It became clear, however, that there were other projects concerning the ATR72 ([52]) in respect of the eligible costs incurred by the company in subsequent years. The final conditions of the various measures to assist the ATR72 were laid down in the last granting decision.

(324) The project concerned the development of aero structures for the regional jet developed by the ATR consortium, which is a 50 % joint venture between Alenia Aeronautica and EADS.

(325) Overall, the eligible investment for the ATR72 amounted to ITL 165 442 million. The maximum initial intensity was 49 %.

(326) However, the aid granted was above that level of intensity. Reimbursements have taken place, but not completely and not according to the schedule. Thus, interest must be charged from the point where the cumulative intensity reached the maximum level of 49 % allowed by the 1986 Framework, that is to say beginning in 1998. Alenia must immediately reimburse the outstanding balance of the loan,

([51]) Initially Aeritalia, subsequently named Alenia Aerospazio.

([52]) Granting decisions were adopted on 8.11.1988, 18.12.1990, 18.12.1991 and 21.12.1991.

amounting to ITL 31 573 million. In addition, Alenia must pay compound interest, which on 31 December 2007 totalled ITL […] million.

(327) On the basis of the new information available, the Commission concludes that the projects concerning the ATR72 carried out by Alenia can be considered compatible with the EC Treaty and the 1986 Framework on the condition that Alenia immediately reimburses the outstanding principal with compound interest.

h) *ATR42-500 project carried out by Alenia*

(328) The project was carried out by Alenia, and concerned the development of the latest version of the ATR42 regional jet, an aircraft capable of transporting up to 50 passengers. The project was not mentioned in the first initiating decision. Aid was granted in 1994.

(329) Overall, the eligible investment was ITL 35 997 million. The initial intensity of the aid was 35,87 % (below the 49 % maximum intensity allowable under the 1986 Framework).

(330) Since reimbursements have been slightly late, and the actual calculation of the intensity brings it to 47,75 %, the application of the methodology requires that the balance of the debt be reimbursed immediately, comprising the reimbursement already scheduled for 2007, amounting to ITL 20 027 million, plus the remaining balance of ITL 17 961 million. Alenia must pay compound interest, which for the period from 2003 until 31 December 2007 totalled ITL […] million.

(331) The Commission concludes that the project concerning the ATR42-500 carried out by Alenia can be considered compatible with the EC Treaty and the 1986 Framework on the condition that Alenia immediately reimburses the outstanding principal with compound interest.

i) *MD11 Lower Panels project carried out by Alenia*

(332) The project, carried out by Alenia, concerned the development and introduction of new processes and concepts of automated development of aero structures, in particular for the nose and the tail of the MD11. The project was carried out in 1996-1997.

(333) The project was listed in the first initiating decision as project No 7. The Commission expressed doubts regarding the classification of R & D activities and the incentive effect.

(334) On the basis of the information supplied by the Italian authorities, the Commission concludes that the work packages in this project do constitute eligible R & D activities, because they relate to developments and processes linked to prototypes.

(335) Concerning the incentive effect, the Italian authorities have been able to show that the aid enabled Alenia to increase its R & D spending to levels comparable with those typical of the industry generally ([…]). Furthermore, the aid enabled Alenia to carry out activities additional to its current ones. Finally, according to Italy, the aid allowed a substantial technological improvement in Alenias work, reducing the need for re-working or re-engineering of panels, and shortening assembly times.

(336) The intended investment amounted to ITL 69 711 million, with an aid intensity of 30,32 %, which was below the 35 % maximum intensity allowable under the 1986 Framework.

(337) However, the scope of the work actually done was much more limited. The investment amounted to ITL 36 266 million. The aid intensity was 15,65 %. The principal was fully reimbursed in 2002.

(338) The Commission is therefore able to conclude that the aid concerning the MD11 Lower Panels (MD11 LWR) project is compatible with the EC Treaty and the 1996 Framework.

j) *Falcon 2000 project carried out by Alenia*

(339) The project was carried out by Alenia, and concerned the aero structure of the Dassault Falcon 2000 business jet. Alenia worked on the rear fuselage, the engine nacelles and engine support pylons, and the wing fairings.

(340) The project was not mentioned in the first initiating decision; it was carried out in the period 1991-1993.

(341) The eligible investment was ITL 30 520 million. The aid intensity of the soft loan was 38,16 %, slightly above the 37,5 % maximum initial intensity allowable under the 1986 Framework.

(342) Since this maximum intensity of 37,5 % was reached in 2006, Alenia must immediately reimburse the entire outstanding principal of ITL 11 605 million (ITL 5 725 million due in 2007 plus the remaining ITL 5 880 million). Furthermore, Alenia has to pay compound interest, which on 31 December 2007 totalled ITL […] million.

(343) The Commission concludes that the support granted to Alenia for the Falcon 2000 project can be considered compatible with the EC Treaty and the 1986 Framework on the condition that Alenia immediately reimburses the entire outstanding principal with compound interest.

k) *MD11 Winglet project carried out by Alenia*

(344) This is a project carried out by Alenia, which concerned the development of calculation methods, the development of new materials characterised by high rigidity, and the development of processes for advanced polymerisation for aeronautical applications. The project also provided for the application of these technologies to the development of a structure that would reduce the turbulence generated by the MD11's wingtips.

(345) The project was listed in the first initiating decision as project No 11. On the basis of the information available at the time the Commission did not express any doubts regarding the project. It became clear, however, that the terms were not those that had been understood from the information available.

(346) The project was carried out in the period from 1987 to 1989. The theoretical maximum intensity allowable for this project under the 1986 Framework was 41 %. The eligible investment was ITL 21 826 million.

(347) But the aid intensity of the loan paid out from 1990 was 48,63 %. The maximum intensity of 41 % was reached in 1995, at which point the debt should have been repaid, and that is the date from which interest has to be charged. As a result, Alenia has to reimburse the outstanding ITL 4 236 million, and to pay compound interest which on 31 December 2007 totalled ITL […] million.

(348) The Commission concludes that the MD11 Winglet project can be considered compatible with the R & D framework on the condition that Alenia immediately reimburses the outstanding principal with compound interest.

l) *MD95 project carried out by Alenia*

(349) This is a project carried out by Alenia which concerned the development and introduction of new processes and concepts for the automated development of large aero structures. The project also provided for the validation of processes and concepts developed in the factory in Nola (in the Region of Campania).

(350) Work on the project was carried out in the period from 1996 to 1999. The project was listed in the first initiating decision as project No 5. The Commission expressed doubts regarding the classification of R & D activities and the incentive effect.

(351) On the R & D activities, the Italian authorities demonstrated that Alenia had invested in new software and calculation methods to be applied to the prototypes. The activities further involved the comparative use of structural solutions for fuselage components and the study of new systems to protect fuselage components from corrosion.

(352) On the incentive effect, the Italian authorities were able to demonstrate that this project, together with the work carried out on the MD11 (see the MD11LWR project), enabled Alenia to develop new knowledge of the development of fuselages. Furthermore, the aid enabled Alenia to increase its R & D spending.

(353) The eligible investment costs for this project were ITL 149 629 million, and the maximum aid intensity allowable under the 1996 Framework was 38 %.

(354) This intensity will be reached in 2009. As a consequence, Alenia has to reimburse the entire outstanding amount of the loan (ITL 96 701 million) at the end of 2008

(355) The Commission takes the view that the doubts concerning the R & D activities and the incentive effect of the aid to the MD95 have been dispelled. The Commission concludes that the aid to the MD95 can be considered compatible with the EC Treaty and the 1996 Framework on the condition that Alenia fully reimburses the entire outstanding amount of the loan at the end of 2008.

m) *Falcon 2000 project carried out by Piaggio*

(356) This is a project carried out by Piaggio, which related to the Falcon 2000 ([53]). Piaggio worked in parallel with Alenia on the project, but on distinct work packages. Piaggio worked especially on the structural analysis (linear and non-linear), the analysis of the damage tolerance of the structure, and the structural analysis of specific events (bird impact, crashworthiness and ditching).

(357) The project, which was not mentioned in the first initiating decision, was carried out in the period from 1991 to 1993.

(358) The eligible investment was ITL 31 038 million. The aid intensity was initially set under the terms of the soft loan at 37,75 %, lower than the 38 % maximum intensity allowable under the 1986 Framework.

(359) Taking account of a different reimbursement schedule, the intensity of the aid has been 33,23 %. According to the schedule, Piaggio can reimburse until 2009.

(360) The Commission concludes that the Falcon 2000 project carried out by Piaggio is compatible with the EC Treaty and the 1986 Framework provided that the reimbursement schedule is adhered to.

n) *GE90 B project carried out by Avio*

(361) This is a project carried out by Avio on the GE90, an engine developed by General Electric. Avio was responsible for 7 % of the engine, a share of the work larger than for previous engines. More specifically, Avio was in charge of the development of large parts of the low pressure turbine.

(362) The project was not mentioned in the first initiating decision; it was carried out in the period from 1991 to 1993.

(363) The eligible investment was ITL 35 674 million. On the basis of the R & D activities carried out, the maximum intensity allowable under the 1986 Framework was 32,5 %.

([53]) See the description of the Alenia Falcon 2000 project above.

(364) However, from the outset the soft loan provided for an intensity higher than this maximum. From the point where the cumulative intensity reached the permissible maximum, therefore, the outstanding principal has to be reimbursed, and interest has to be charged. In this case the initial intensity was reached in 2005. The outstanding balance to be reimbursed immediately by Avio is ITL 40 939 million (ITL 4 688 million due for 2007 plus the outstanding ITL 36 251 million). On 31 December 2007 the interest immediately payable by Avio totalled ITL […] million.

(365) The Commission therefore concludes that the aid given to Avio for the GE90 B project can be considered compatible with the EC Treaty and the 1986 Framework on the condition that Avio immediately reimburses the outstanding principal with compound interest.

o) *GE90 Growth project carried out by Avio*

(366) This is a project carried out by Avio which concerned an upgraded version of the GE90 engine developed by General Electric. The GE90 Growth project consisted of three different engines intended to equip Boeing and Airbus aircraft for flight over the Pacific. Once again Avio was responsible for 7 % of the programme. Here too Avio was in charge of developing large parts of the low pressure turbine.

(367) The project was not mentioned in the first initiating decision; it was carried out in the period from 1996 to 1997.

(368) The eligible investment was ITL 46 434 million. On the basis of the R & D activities carried out, the maximum intensity allowable under the 1996 Framework was 36,25 %.

(369) That intensity was reached in 2006. From that date Avio has to repay to the State the entire outstanding balance of ITL 47 064 million (comprising ITL 2 123 million originally to be reimbursed in 2007 plus the entire balance of ITL 44 941 million) and to pay compound interest.

(370) The Commission concludes that the aid given to Avio for the GE90 Growth project can be considered compatible with the EC Treaty and the 1996 Framework on the condition that Avio immediately reimburses the entire outstanding loan with compound interest.

p) *LPT PW308 project carried out by Avio*

(371) This project was carried out by Avio, and concerned the low pressure turbine of a Pratt & Whitney engine (PW308) for a large business jet (and small regional jets).

(372) The project, which was not mentioned in the first initiating decision, was carried out in the period from 1997 to 1998.

(373) The eligible cost was ITL 30 688 million. The maximum initial aid intensity allowable under the 1996 Framework was 36 %. The aid paid out to Avio and the reimbursement schedule give an intensity of 33,88 %. Avio will reimburse the aid in accordance with the schedule up to the year 2013.

(374) The Commission concludes that the aid granted to Avio for the project concerning the low pressure turbine of the PW308 is compatible with the EC Treaty and the 1996 Framework provided that the reimbursement schedule is adhered to.

q) *Pressurised Cabins project carried out by Alenia*

(375) This is a project carried out by Alenia which concerned pressurised cabins for large civil aircraft.

(376) The project was listed in the first initiating decision as project No 1. On the basis of the information available at that time, the Commission took the view that it was not subject to individual notification to the Commission, and thus fell outside the scope of the decision.

(377) Subsequently, it emerged that the amount of eligible investment planned at the moment of granting and the amount of aid actually granted were such that the project should have been notified individually to the Commission.

(378) The project was carried out in the period from 1999 to 2001. The aid was granted on the basis of expected eligible costs of ITL 67 758 million, with an initial intensity calculated by the Italian authorities at 25,74 % (below the maximum intensity allowable under the 1996 Framework).

(379) However, the actual disbursements of aid and the eligible costs were lower than initially planned; the costs were ITL 27 122 million. The aid will nevertheless reach the initial intensity of 25,74 % in 2008. In 2008, therefore, Alenia will have to reimburse the outstanding principal, worth ITL 29 244 million.

(380) The Commission concludes that the aid granted to Alenia for the project concerning pressurised cabins is compatible with the EC Treaty and the 1996 Framework on the condition that Alenia reimburses the entire outstanding loan in 2008.

Summary of the projects

(381) The following table presents the impact on each project of the methodology adopted, with figures rounded in euro at an exchange rate of ITL 1 936 per euro.

Table 5

List of projects and amounts involved

Project	Company	Reimbursement
A109 D/E/F	Agusta	Balance to be reimbursed immediately (EUR 14 million) with compound interest
A109 X	Agusta	Schedule to be adhered to until full reimbursement in 2018
A119 Koala	Agusta	Schedule to be adhered to until full reimbursement in 2009
DO328	Aermacchi	Balance to be reimbursed immediately (EUR 17 571 million) with compound interest
DO328 Extended Capacity	Aermacchi	Schedule to be adhered to until full reimbursement in 2010
DO328 Panels	Aermacchi	Balance to be reimbursed immediately (EUR 28 127 million) with compound interest
ATR72	Alenia	Balance to be reimbursed immediately (EUR 16 308 million) with compound interest
ATR42-500	Alenia	Balance to be reimbursed immediately (EUR 19 621 million) with compound interest
MD11 Lower Panels	Alenia	Loan fully reimbursed
Falcon 2000	Alenia	Balance to be reimbursed immediately (EUR 5 994 million) with compound interest
MD11 Winglet	Alenia	Balance to be reimbursed immediately (EUR 2 188 million) with compound interest
MD95	Alenia	Schedule to be adhered to until full reimbursement in 2008
GE90 B	Avio	Balance to be reimbursed immediately (EUR 21 146 million) with compound interest
GE90 Growth	Avio	Balance to be reimbursed immediately (EUR 24 309 million) with compound interest
LPT PW308	Avio	Schedule to be adhered to until full reimbursement in 2013
Falcon 2000	Piaggio	Schedule to be adhered to until full reimbursement in 2009
Cabins	Alcatel Alenia	Balance to be reimbursed immediately (EUR 15 105 million)

14.6. **Terms of reimbursement**

(382) As indicated, for most of the projects that Italy failed to notify it has been necessary to adjust the reimbursement schedules. In many cases, the outstanding loan has to be repaid immediately. In some of these cases the recipients have to pay interest, calculated from the year when the maximum allowable intensity was reached. In other cases, the reimbursement of the outstanding debt will be advanced ahead of the schedule originally set out in the granting decisions.

(383) The reimbursement schedule for each of the above-mentioned projects has been arrived at jointly by the Commission and the Italian authorities. In their letter of 31 July 2007 the Italian authorities undertook to ensure that the schedules for the reimbursement of the projects would be adhered to.

(384) Where it is indicated that the recipients must reimburse immediately, this should be understood to mean within a period of two months. That period for repayment is justified by the fact that some components of the aid may have become partially incompatible because the intensity of the aid provided was higher than the maximum intensity allowable (i.e. either the intensity allowed under the R & D frameworks or the intensity set at the time the aid was granted) ([54]). Compound interest is to be charged from the year in which the maximum intensity was reached, in accordance with Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([55]).

(385) The Italian authorities have acknowledged that some projects contained elements of unlawful and incompatible aid. They have agreed to the conditions attached to the present decision to eliminate the distortion of competition by means of effective and immediate recovery of the aid.

(386) The Italian authorities have undertaken to comply with the conditions for the monitoring of all reimbursements of compatible aid by sending an annual report on the payments received from the recipients, certified by auditors.

(387) This will enable the Commission to monitor compliance with the conditions for each of the projects. The monitoring does not impose any additional burden, but merely seeks to ensure that the conditions imposed by this Decision and accepted by Italy are complied with.

(388) The Italian authorities have informed the Commission of Decree-law No 159/07 ([56]), which reallocates the sums that Finmeccanica has to pay on the basis of this Decision pending a payment that is to be made by ENEA, a public

([54]) As explained above with regard to the methodology applied in this case: see the section on the 14.4.2. Nature of the aid instrument, paragraphs 0 to 0.

([55]) OJ L 140, 30.4.2004, p. 1.

([56]) Decree-law No 159 of 1 October 2007, converted into statute, with amendments, by Law No 222 of 29 November 2007, published *Gazzetta Ufficiale*, No 279, 30.11.2007.

body operating in the energy sector, under a settlement with Finmeccanica, following a decision by the Court of Appeal in Rome.

(389) The Commission does not need to assess here whether the arrangements in Decree-law No 159/07 involve the granting of new state aid in order to reimburse the unlawful aid referred to in this Decision. Those arrangements are outside the scope of the present proceedings. This Decision consequently does not prejudice any further investigation that the Commission may decide to undertake into the arrangements made in Decree-law No 159/07.

(390) The Commission recalls that the case-law of the Court of Justice is clear: it was recently summarised in the opinion of Advocate-General Geelhoed ([57]) in the *Lucchini* case ([58]). In that case the Court had to give a preliminary ruling on the question whether a judgment of a national court could prevent the exercise by the Commission of its exclusive power to verify the compatibility of state aid with the single market, and if necessary to order its recovery.

(391) It follows that a state has an obligation to respect the primacy of Community law, and the exclusive power of the Commission to determine the compatibility or otherwise of state aid. A national decision concerning aid (be it a Decree-law or a court judgment) cannot replace the procedure laid down for the valid granting of aid, which is concluded only when the Commission grants its authorisation.

14.7. Conclusion of the assessment of the individual projects

(392) As described in paragraphs 0-0, the methodology adopted ensures that the aid granted to a project does not exceed maximum aid intensity allowed by the applicable R & D frameworks. When assessing aid to large R & D projects, the intensity of the aid — its proportionality — is one of the main factors the Commission takes into account.

(393) The Commission has also verified whether the initial maximum intensity was adhered to. If a soft loan, because of the way it is disbursed or reimbursed, reaches an aid intensity above the level set at the moment of granting, the aid beyond that initial intensity has to be considered new aid. Since this new aid is in all likelihood granted after the project has been terminated, and in any event only as a consequence of late payment, it has no incentive effect on the recipient. Thus it is not compatible under any of the R & D frameworks. If the reimbursement schedules are adjusted to ensure that the maximum allowable intensity is adhered to, then the aid for these projects can be considered compatible.

(394) The Commission further notes that it is a regular feature of the aeronautical industry that projects have a long duration, and that reimbursements take place over periods that can even exceed fifteen years, bearing in mind among other things that projects often show a return only in the long term. In the present case, aid payments have often been spread over several years, with reimbursement starting only after the end of the last payment and lasting more than ten years. Overall the average duration of the projects, calculated from the beginning until final reimbursement, is around eighteen years.

(395) For the 17 projects referred to above, the Commission can conclude that the aid intensity corrected in accordance with the methodology adopted satisfies the requirements of the successive R & D frameworks.

(396) This conclusion has been reached on the basis of the information available and in view of the measures very long duration.

(397) For the six projects regarding which it expressed doubts in the first initiating decision, the Commission has established, taking into account the long time that has elapsed since these projects were carried out, that the classification of the R & D activities was correct and was in line with the Commissions practice.

(398) Finally, the Commission has also established that the six projects had an incentive effect.

15. THE TWO HELICOPTERS DESCRIBED AS MILITARY HELICOPTERS

(399) As Italy explained in its reply of October 2005, the scheme has also been used to fund military R & D. In the first initiating decision it was accepted that one project was to be considered military, and thus fell within the scope of Article 296 of the Treaty.

(400) The Italian authorities have provided some information on the two helicopters referred to in the second initiating decision.

(401) The anonymous third party submitted comments on both helicopters.

(402) In summary, Italy explained the development of the A139 helicopter, and of the number assigned to it, saying that the civilian AW139 helicopter had been developed by Agusta with a number of partners without receiving any state support.

([57]) Opinion of Advocate-General Geelhoed in Case C-119/05 *Ministero dell'Industria, del Commercio e dell'Artigianato* v *Lucchini SpA, formerly Lucchini Siderurgica SpA*.

([58]) Judgment in Case C-119/05 *Ministero dell'Industria, del Commercio e dell'Artigianato* v *Lucchini SpA, formerly Lucchini Siderurgica SpA*, not yet reported.

(403) But Italy stated that Agusta had indeed received assistance to develop a military helicopter, the […], which was in its final phase of development.

(404) The anonymous third party indicated that in its view the A139 was an entirely civilian helicopter.

(405) On the BA609, Italy said that Agustas involvement in the project was targeted at developing a tilt-rotor for military use.

(406) The anonymous third party said, however, that all the information publicly available on the project indicated that the BA609 was a helicopter intended for civilian use.

(407) On the basis of the information available, the Commission cannot reach a conclusion on these two projects. It reserves the right to put further questions to Italy in order to clarify certain aspects of the projects before taking a final decision. The two projects are consequently outside the scope of the present decision, and will be the subject of a separate decision.

(408) In any event, however, the fact that an item of equipment is military in its nature and purpose is not by itself sufficient for an exemption from the Community rules on the basis of Article 296 of the EC Treaty. The measure must also be necessary for the protection of the essential interests of a Member States security. According to the case-law of the Court of Justice, Article 296 must be interpreted strictly, and confined to exceptional, clearly defined cases. Moreover, the burden of proving that the tests for exemption are satisfied rests on the Member State.

16. **CONCLUSION**

(409) Taking account of all the factors set out above, the Commission has decided to close the proceedings under Article 88(2) of the EC Treaty with respect to the 17 individual R & D projects which Italy failed to notify and which were consequently granted unlawfully.

(410) Individual aid within the meaning of Article 1(e) of the Procedural Regulation which was notifiable, but was not notified, constitutes unlawful aid within the meaning of Article 1(f) of the Procedural Regulation. Since this Decision concerns unlawful aid, it will be adopted on the basis of Article 13 of the Procedural Regulation.

(411) Article 13 states that in the case of decisions to initiate the formal investigation procedure, proceedings are to be closed by means of a decision pursuant to Article 7. The present Decision is adopted under Article 7(4) of the Procedural Regulation with respect to all the individual projects referred to above, subject to the conditions of reimbursement indicated for each of the projects.

(412) With regard to the doubts expressed in the first initiating decision in respect of six projects, the Commission concludes that the work packages constituted R & D activities, and that the aid had an incentive effect on the recipients.

(413) The Commission can conclude that the aid instrument used throughout the application of the scheme has been a soft loan with an interest rate of zero. In the operation of the loan mechanism, however, the initial conditions have in several cases not been complied with, and the recipients have been allowed more generous terms.

(414) The Commission and the Italian authorities have been able to define a methodology to correct excessive initial intensities and insufficiently rigorous application of the aid mechanism.

(415) The Commission has received from the Italian authorities a list of non-notified projects, with a reimbursement schedule calculated using this methodology for each project.

(416) The Italian authorities have undertaken to adhere to the reimbursement schedule for each of the projects referred to.

(417) The Italian authorities have undertaken to comply with the monitoring conditions indicated, that is say to ensure that the immediate reimbursements are made within two months from this decision, and that the Commission receives detailed yearly reporting on future reimbursements.

(418) The list of projects is without prejudice to any case in which the Commission may become aware of a project or may receive further information on any project.

(419) The Commission cannot reach a conclusion, however, on the two projects regarding whose military character it expressed doubts in the second initiating decision. The Commission reserves the right to ask Italy for further information on these projects with a view to a decision in the near future,

HAS ADOPTED THIS DECISION:

Article 1

The individual aid to the R & D projects in the aeronautical industry listed in paragraph 2 which was granted by Italy under Article 3(a) of the Italian Law of 24 December 1985, No 808, is compatible with the common market in accordance with Article 87(3) of the EC Treaty, subject to compliance with the conditions set out in Articles 2 and 3.

The projects concerned are the following:

(a) aid to Augusta: the A109 D/E/F, A109 X, and A119 Koala projects;

(b) aid to Aermacchi: the DO328, DO328 Extended Capacity and DO328 Panels projects;

(c) aid to Alenia: the ATR72, ATR42 500, MD11 LWRP J/S, Falcon 2000, MD11 Winglet, MD95 and Pressurised Cabins projects;

(d) aid to Avio: the GE90 B, GE90 Growth and LPT PW308 projects; and

(f) aid to Piaggio: the Falcon 2000 project.

Article 2

For the following projects and recipients the Italian Republic shall ensure that the following conditions are met:

(a) aid to Augusta

(i) for the A109 D/E/F project, the outstanding principal is to be reimbursed immediately, with compound interest;

(ii) for the A109 X project, the reimbursement schedule is to be adhered to until full reimbursement of the loan by 31 December 2018;

(iii) For the A119 Koala project, the reimbursement schedule is to be adhered to until full reimbursement of the loan by 31 December 2009;

(b) aid to Aermacchi

(i) for the DO328 project, the outstanding principal is to be reimbursed immediately;

(ii) for the DO328 Extended Capacity project, the reimbursement schedule is to be adhered to until full reimbursement of the loan by 31 December 2009;

(iii) for the DO328 Panels project, the outstanding principal is to be reimbursed immediately, with compound interest;

(c) aid to Alenia

i) for the ATR72 project, the outstanding principal is to be reimbursed immediately, with compound interest;

(ii) for the ATR42-500 project, the outstanding principal is to be reimbursed immediately, with compound interest;

(iii) for the Falcon 2000 project, the outstanding principal is to be reimbursed immediately, with compound interest;

(iv) for the MD11 Winglet project, the outstanding principal is to be reimbursed immediately, with compound interest;

(v) for the MD95 project, the reimbursement schedule is to be adhered to until full reimbursement of the loan by 31 December 2008;

(vi) for the Pressurised Cabins project, the outstanding principal is to be reimbursed immediately, with compound interest;

(d) aid to Avio

(i) for the GE90 B project, the outstanding principal is to be reimbursed immediately, with compound interest;

(ii) for the GE90 Growth project, the outstanding principal is to be reimbursed immediately, with compound interest;

(iii) for the LPT PW308 project, the reimbursement schedule is to be adhered to until full reimbursement of the loan by 31 December 2013;

(e) aid to Piaggio

(i) for the Falcon 2000 project, the reimbursement schedule is to be adhered to until full reimbursement of the loan by 31 December 2013.

Article 3

1. Immediate reimbursement must take place within two months of this Decision, in accordance with the procedures of national law, provided that they allow the immediate and effective enforcement of the Decision.

2. In the cases of immediate reimbursement the interest applied shall be calculated on a compound basis in accordance with Regulation (EC) No 794/2004.

3. Within two months of notification of this Decision, the Italian Republic shall provide the following information to the Commission:

(a) the total amount reimbursed by the recipients;

(b) a detailed description of the measures taken and to be taken to comply with this Decision;

(c) documents demonstrating that aid has been reimbursed.

4. The Italian Republic shall keep the Commission informed of the progress of the national measures taken to implement this Decision until reimbursement of the aid referred to in Article 2 has been completed.

If so requested by the Commission it shall immediately provide information on the measures already taken and to be taken to comply with this Decision.

It shall also provide detailed information concerning the amount of aid reimbursed and interest paid by the recipients.

5. In those cases where reimbursement schedules continue beyond 2008, Italy shall supply to the Commission an annual report on the payments received by the recipients, certified by auditors.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 11 March 2008.

For the Commission

Neelie KROES

Member of the Commission