RAGS AND LIPS: NEW WEAPONS IN THE COMMISSION'S REGIONAL AID CONTROL ARMOURY

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Regional and Industrial Research Paper Series

Number 31

November 1998

Published by:

European Policies Research Centre
University of Strathclyde
40 George Street
Glasgow G1 1QE

ISBN: 1-871130-09-3

ABSTRACT

This paper provides an overview and assessment of two major new developments in European competition policy as it relates to States aids. The Regional Aid Guidelines (RAGS) published in March 1998 radically alter the framework and parameters within which national regional policymakers determine assisted areas for regional development purposes. Set to apply from the start of 2000, the Guidelines anticipate the redrawing of the assisted areas maps by all Member States by 31 March 1999. In parallel, and in force since September 1998, the Multisectoral Framework on Regional Aid for Large Investment Projects (LIPS) will limit the scope for regional aid to be used to attract and retain large investment projects.

ACKNOWLEDGEMENTS

This paper was prepared for the meeting of the Regional Policy Research Consortium of the European Policies Research Centre at Ross Priory, Loch Lomondside, 5-6 October 1998. The author can be contacted at the following address:

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1. INTRODUCTION

The last year or so has been an active period in policymaking with respect to the most high profile aspect of Community cohesion policy, the Structural Funds. Following the publication of Agenda 2000, the Commission's forward look at Community policies across a range of areas and the implications of enlargement, preparations for the next round of Structural Funds plans are underway. These developments have attracted considerable media and academic attention as nations and regions consider how the changes will affect their jurisdictions and gear up for the intensive negotiations over eligible areas and financial allocations due to take place during the Austrian and German (and even the Finnish) presidencies. At the same time, but attracting little publicity, the competition directorate of the European Commission, DGIV, has issued new Guidelines on National Regional Aid (RAGS), involving significant changes and set to apply from the start of the year 2000; in parallel, a new Framework will limit the scope for regional aid to assist large investment projects (LIPS). As a regulatory rather than a spending policy, the competition rules lack the glamour of the Structural Funds and their ability to complement national policy efforts with potentially significant contributions from the Community budget. However, there is evidence of policymaker disquiet at the nature of the new rules and their potential implications for national and Community regional policies alike. Moreover, as the prospect of eastern enlargement looms, and Structural Funds contributions to the current membership decline, some have recognised that the rules governing the operation of national regional policy may be of longer-term significance than Community regional policy *per se*.

Against this background, this paper reviews recent developments in competition policy controls over regional aid, focusing on the Guidelines on National Regional Aid and the Framework on Regional Aid to Large Projects in turn. A concluding section draws out some key issues for debate.

2. THE GUIDELINES ON NATIONAL REGIONAL AID

Article 92(1) of the Treaty of Rome provided for a general ban on so-called State aids "which distort or threaten to distort competition by favouring certain undertakings or the production of certain goods" to the extent that trade between Member State is affected[1]. Article 92(3) provides for two regional policy related exceptions to this prohibition in subparagraphs (a) and (c). These provisions have been the subject of extensive interpretation over the past thirty years or so[2]; the most recent expression of Commission policy being the 1988 Communication on the method for the application

[1] See Evans, A. (1997) *European Community Law of State Aid*, Clarendon Press, Oxford for a full discussion.

[2] See Yuill *et al* (1997) European Regional Incentives 1997-8, 17th edition, Bowker-Saur, London and Wishlade, F. (1998) 'EC Competition Policy: the Poor Relation of EC Regional Policy?' *European Planning Studies,* Vol6(5), Carfax.

of Article 92(3)(a) and (c) to regional aid[3]. Following discussions with Member States in the course of multilateral meetings the Commission recently adopted revised Guidelines on National Regional Aid[4] which it intends should be applicable from 1 January 2000.

In part, the new Guidelines are intended to consolidate the large number of existing texts related to regional aids[5]. In addition, the new Guidelines involve the formalisation of the Commission's current practice, which is itself a significant departure from the approach outlined in its 1988 Communication (supposedly still in place)[6]. However, the Guidelines also introduce significant new provisions which will impact on the conduct of national regional policies.

In introducing these changes, the Guidelines conform to the policy framework trend of growing tougher with maturity[7]. In addition, the Guidelines need to be seen in the context of the new Article 94 Regulation[8]. This Regulation enables the Commission to adopt Regulations that exempt certain categories of aid from prior notification and approval by the Commission under Article 93. Among the categories envisaged for this "group exemption" approach is "aid that complies with the map approved by the Commission for each Member State for the grant of regional aid". In other words, the Article 94 Regulation could be used to give the national assisted areas maps an "independent" existence, impacting directly on other policy areas (such as SME policy) and local authority intervention.

According to the Commission, the new Guidelines are founded on four essential principles[9]:

- *concentration* - that assistance should be focused on the poorest regions in order to improve their efficiency, on the grounds that a scattered pattern of assisted areas is inefficient and may give rise to a "cancellation" effect

- *reduction in the total volume of aid* - partly reflecting Commission concerns at the distribution of regional aid expenditure between the so-called Cohesion countries, on the one hand, and the richer Member States, on the other

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[3] OJEC C212; 12 August 1988.

[4] OJEC C74; 10 March 1998.

[5] See European Commission (1995) Competition law in the European Communities, Volume IIA: Rules applicable to State aid, OOPEC, Luxembourg.

[6] In practice, as can be seen with respect to regional aid values, the Commission often does not actually follow the terms of the Communication - see Wishlade, F. and Yuill, D. (1997) 'Regional Incentive Policies in the European Union: Rates of Award and Award Values', *Regional and Industrial Research Paper Series*, 23, European Policies Research Centre, University of Strathclyde, Glasgow.

[7] Rawlinson, F. (1993) 'The Role of Policy Frameworks, Codes and Guidelines in the Control of State Aid' in Harden, I. (ed) *State Aid: Community Law and Policy*, Trier Academy of European Law, Bundesanziger Verlasges MbH, Köln, Germany.

[8] Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid, OJEC L 142; 15 May 1998.

[9] DGIV (1998) *Competition Policy Newsletter*, No. 1, February.

- *a consideration of the real effect on employment* - reflected in the scope to provide a temporary wage-related subsidy in place of investment-related aid

- *coherence* - that the spatial coverage and timing of changes to national and Community regional policies should be co-ordinated.

In addition, the Commission draws attention to the need to counter the negative implications of “delocalisations”. Finally, the Commission notes that among the new elements of the Guidelines is that regional policy assisted areas will be determined within the context of a Community ceiling on population coverage which will in turn give rise to population ceilings within each Member State.

This presentation of the Guidelines is striking for a number of reasons. First, it makes no mention of the perceived need to control regional aid in the context of distortions of competition or trade between the Member States; this is, after all, the key function of the competition rules. Second, it is very much concerned with the *substance* of regional policy, focusing on issues of efficiency or problems of relocation; these are properly concerns of *national* regional policymakers, but surely not of *Community* competition authorities. Third, although the reduction in the volume of aid appears as a principle, there is nothing in the Guidelines to impose a reduction in overall spending. Last, and most importantly of all, the Commission’s presentation of the Guidelines conceals some fundamental changes in its approach to controlling regional aids and ones that have far-reaching practical implications. These are essentially four-fold.

First, in respect of spatial coverage, the Commission proposes to reduce overall assisted area coverage to 42.7 percent of the Community population, compared with the current 46.9 percent; an absolute reduction of around 15.7 million persons[10]. The definition of Article 92(3)(a) areas is aligned with that of Objective 1 for Structural Fund purposes; this in turn determines the coverage of Article 92(3)(c) areas across the Community as a whole (in that the Article 92(3)(c) areas are 42.7 percent of the EC population, less the population of those areas eligible for Article 92(3)(a)). National “quotas” of Article 92(3)(c) are determined by internal (national) disparities in GDP per head and unemployment rates at NUTS III[11].

Second, Member States are “free” to designate areas up to this population ceiling, subject to a range of stringent parameters to which their area designation methodologies must conform.

Third, the provisions of the Guidelines and the broader commitment to “coherence” between the national and the Structural Fund assisted areas favour a situation in which only areas that are designated for national regional policy can qualify for the Structural Funds.

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[10] As mentioned earlier, this ceiling of 42.7 percent is given in the Commission press release and in the draft Structural Fund Regulation, as well as in the letter to the Member States, but not in the Guidelines themselves.

[11] NUTS refers to the Nomenclature of Territorial Units for Statistics established by EUROSTAT. Examples of NUTS III regions are the French *départements* and the Italian provinces; NUTS II regions are typically larger, for example, groups of counties in the UK or Autonomous Communities in Spain.

Last, maximum rates of award are reduced for all eligible regions; combined with the Multisectoral Framework for Large Investment Projects discussed below, this could reduce aid intensities for some large projects to levels that may undermine the incentive aspects of regional aid altogether.

Reflecting these key areas of change this section explores some of the issues arising from the Guidelines and their potential impact on the Member States. It begins by outlining the action sought by the Commission from the Member States, highlighting some concerns with respect to consultation and transparency. It goes on to review issues associated with the timing and implementation schedule for the new rules. The remainder of this section focuses on the *substance* of the changes proposed, namely: spatial coverage; area designation systems; and award values.

2.1 Consultation and Transparency

The careful browser of DGIV's WebSite[12] may have noted that the new Guidelines featured on the legislation page were labelled as Annex A and attributed this to a mere typographical error. However, this label is absent from the version of the Guidelines published in the Official Journal, which appears as a free-standing document. In fact, these published Guidelines constitute Annex A to a letter sent to each of the Member States on 24 February 1998; also appended to the letter was an Annex B. Importantly, both the letter and Annex B contain information which is specific to each Member State, as well as more general provisions especially in relation to timing; the only *wholly* common element is Annex A. Moreover, and of key importance to third parties (*including other Member States*), the letter contains information without which the overall impact of the published Guidelines (ie. Annex A) is difficult, if not impossible to assess. It is unclear what the underlying rationale is for some of the provisions to be contained in a private letter to individual Member States and others to be in the public domain, but it is clear that this approach lacks transparency and engenders a degree of confusion that cannot be in the interests of legal certainty.

Under Point 6 of the Guidelines, the Commission makes clear that it intends to propose so-called "appropriate measures" under Article 93(1) to limit the eligibility of the current assisted areas to 31 December 1999 and to amend current regional aid schemes "so as to make them compatible with these Guidelines from 1 January 2000". In the letter to the Member States, governments are invited to submit their observations on these measures within two months of the date of the letter[13]. Should they be unable to agree to the measures concerned, the Commission indicates in the letter that it may initiate the Article 93(2) procedure. Member States are further requested to communicate to the Commission, within six months of the date of the letter, the changes envisaged in order to render existing aid schemes compatible with the Guidelines from 1 January 2000.

This draconian style contrasts sharply with the past approach to disciplining regional aids; the 1988 Commission Communication supposedly set out the Commission's

[12] http://europa.eu.int/en/comm/dg04/dg4home.html

[13] The letter is dated 24 February 1998.

methods of assessment “in order to promote a greater understanding and transparency of the decisions taken by the Commission under Articles 92 and 93”[14].

The new Guidelines are of an altogether different character and clearly intended to have legal effect rather than representing an elucidation of Commission policy: Member States are invited to submit their observations within two months; should they be unable to agree with the Guidelines, the Commission may initiate the Article 93(2) procedure, effectively imposing the Guidelines upon them.

Under Article 93(1) of the Treaty the Commission has a duty to keep “under constant review all systems of aid” existing in the Member States. This task must be carried out “in cooperation” with Member States. Article 93(1) further charges the Commission with proposing any “appropriate measures required by the progressive development or functioning of the common market”. A series of ultimately rather inconclusive cases concerned with the binding effects of sectoral frameworks have considered the notion of “cooperation” in this context[15] and the circumstances in which consent is required in order for the frameworks to take on a binding character. However, what does appear to be clear is that Member States must have been consulted over the appropriate measures.

In the present context, this raises a number of interesting questions. First, although the Guidelines have been discussed in a number of multilateral meetings[16], the last version of the text was issued to the Member States in Spring 1997[17] and the published version differs from that earlier version. Aside from substantive differences, the present Section 6 “Entry into force, implementation and review”, which provides for appropriate measures under Article 93(1) to be applied to current and future regional aid schemes, was completely absent from the previous version; in other words, earlier versions gave no indication of the legal basis of the Guidelines.

Second, national authorities in one Member State learned that there had been substantive changes to the Guidelines between July 1997, when it had given its formal approval to them, and November 1997. Officials from the country concerned complained and were rewarded with a revised version of the outcome of the application of the Guidelines[18] which was supplied informally by DGIV; however, there has been no formal response to the written complaint from the national authorities to the Commissioner for Competition Policy. Moreover, it seems that the revised outcome was not supplied to all other Member States.

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[14] In practice, however, the Commission has not, especially recently, followed the method outlined in the Communication, rather undermining the objective of transparency. See Yuill, D *et al* (1997) *op cit* at p137-143 for a discussion of Commission policy trends.

[15] See Bevis, W. (1997) *State Aid Control - “The Rule of Law” or Governance by Guideline?* paper to European Community Studies Association Biennial Conference, 29 May to 1 June 1997, Seattle, Washington, USA.

[16] In May 1996, May 1997 and July 1997, according to the letter to the Member States.

[17] An amended annex containing a revised method for determining the population coverage of the assisted areas under Article 92(3)(c), together with a table showing the outcome, was provided in July 1997 when Member States were asked for their views; although relegated to an annex, this method is key to determining the impact of the Guidelines on Member States’ regional policies.

[18] That is, a revised version of the table mentioned in Footnote 17.

Third, and related, as noted, each Member State has received a letter and an Annex B which is specific to national circumstances; no Member State can readily know the totality of the impact of the new rules since they have no information on the impact of the rules in other Member States. In earlier multilateral meetings, all the Member States were given the same information about the impact of the proposed new Guidelines on spatial coverage across the Community as a whole. On the basis of their own letter and Annex B, the Member States lack the information to assess whether the Commission is acting in the Community interest - for example, they cannot readily know whether some countries are carrying a greater burden than others in the reduction of assisted areas which the Commission is seeking, in other words, whether the principle of equal treatment is respected.

This raises two fairly basic points. First, how far can a text differ from a previous version in order for consultation still be said to have taken place in relation to it? Second, what actually constitutes the Guidelines: is it the Official Journal C Series published version, which does not contain all the information necessary to understand the impact of the rules; or is it the letter and the Annexes combined, which differ between Member States?[19] In short, does the notification of what could be interpreted as an incomplete and different document from the one last discussed in July 1997 constitute consultation for the purposes of the cooperation requirement of Article 93(1)?

More generally, this "divide and rule" strategy - providing each Member State with only a partial view of the changes proposed - is quite at odds with the approach outlined in the Commission announcement of the new Guidelines:

> "the overall ceiling at European level and each of the individual national ceilings determined by the Commission will be sent to the Member States. This 'multilateral' method of determining the ceiling is much more transparent and equitable than the current method, which is strictly bilateral".[20]

Of course, transparency can be open to different interpretations. It is true that the published Guidelines provide an explanation of how the Commission has arrived at the national population ceilings on regional aid areas which it has notified to each Member State. Moreover, the statistical data used is in the public domain. On the other hand, because the published Guidelines do not specify the overall population ceiling for the Community, it is impossible to calculate the national ceilings, unless one assumes that the ceilings mentioned in the press release or in the draft Structural Fund Regulations are in fact what the Commission intends to use[21]. In any case, a considerable investment in time and money[22] - and some knowledge - are required to

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[19] The Commission letter refers to the Guidelines as Annex A, suggesting that it does not view the letter and Annex B as an integral part of the Guidelines.

[20] RAPID (1997) *State aid for the regions: focus to be on the poorest regions and the real effect on jobs to be taken into account,* IP/97/1137.

[21] Assuming too that third parties are diligent enough to make the connection between the documents - the Guidelines do not refer to these documents, give no ceiling and simply state that "to guarantee effective control of regional aid... …the Commission sets an overall ceiling for the coverage of regional aid in the Community in terms of population".

[22] The exercise effectively requires the purchase of EUROSTAT's REGIO database.

replicate the methodology, which is rather ambiguous in places. Furthermore, not all of the data required for the application of the methodology are actually available[23]. Calculations of the population ceilings undertaken for the purposes of this paper have, in some cases, produced a different national population ceiling from that notified to the government concerned. Such outcomes must stretch notions of transparency beyond reasonable limits.

A further consideration is which aspects of the Guidelines might be open to challenge. For example, the new Guidelines continue to determine Article 92(3)(a) areas according to levels of GDP per head measured in purchasing power standards (PPS). This is highly questionable because the Treaty refers to:

> "areas where the standard of living is abnormally low or where there is serious underemployment."

However, the Commission considers that GDP "is capable of reflecting synthetically both the phenomena concerned"[24]. This raises two substantive points. First, does the "synthesis" refer to the capacity of GDP per head to reflect *both* low standards of living *and* underemployment at one and the same time? If so, this is as odds with the Treaty which appears to treat these features as alternatives, rather than requiring them to be present simultaneously in order for Article 92(3)(a) to apply. Second, (and related, if "synthetic" does *not* mean both features combined) regional GDP per head simply does not measure standards of living[25]; to claim that it does is a manifest error in the assessment of the facts.

Be that as it may, the Commission has used GDP per head in PPS for the purposes of determining eligibility for Article 92(3)(a) since the publication of the 1988 Communication. Arguably, it was incumbent on Member States to challenge that Communication, or decisions referring to it, within due time; in consequence, the repetition of the criterion in the new Guidelines raises some rather esoteric points about the extent to which the act can be considered to be "new" and whether all aspects can be challenged or only those that are making a first appearance in Commission policy. On the other hand, in CIRFS[26] Advocate-General Lenz considered that the Member States' silence in relation to the *Faserwerk Bottrop* decision, which the Commission had argued altered the scope of the Synthetic Fibres Code, did not amount to consent:

> "The Member States could not have been aware that their 'silence' would trigger such a legal consequence. It cannot therefore be regarded as consent".[27]

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[23] For example, there is no NUTS III GDP data for Italy and no unemployment rate information for Portugal at NUTS III.

[24] Footnote 14 to the Guidelines.

[25] See Wishlade, F., Yuill, D., Davezies, L. and Prud'homme, R. (forthcoming 1998) 'Agenda 2000 and the Targeting of EC Cohesion Policy' in *Regional Information Serving Regional Policy in Europe*, EUROSTAT, OOPEC, Luxembourg, for an in-depth discussion.

[26] *CIRFS and Others* v *Commission* [1993] ECR I-1125.

[27] At 1175.

In addition, in the same case, the ECJ held that:

> "Neither the principle of equal treatment nor that of the protection of legitimate expectation may be relied upon in order to justify the repetition of an incorrect interpretation of a measure."[28]

Aside from this, it may well be valid to challenge the use of GDP measured in PPS terms on the grounds that circumstances have changed since its use was first proposed in 1988 (and EMU was at most a distant prospect); the new Guidelines are set to apply in the context of a Monetary Union covering most of the Member States - in no other single currency union is it customary to adjust GDP for purchasing power standards.

Even this brief consideration of some of the issues suggests that there may be grounds for the Member States to challenge the Guidelines. At the time of writing, it remained to be seen whether any government (or third party with standing) would do so.[29]

2.2 Timing

The new Guidelines and the associated letter to the Member States contain an array of provisions related to the implementation schedule for the new rules, the duration of the Guidelines and the updating of data on which the Commission analysis is based. Some of these are contained in the letter and others in the published Guidelines themselves. Concern has been expressed above about the lack of transparency in the Commission approach of restricting some information to unpublished letters. As will be seen, this is not merely a moot legalistic point, but rather a detail with potentially wide ramifications for the substance of policy.

2.2.1 Implementation Schedule

The letter to the Member States requests that countries submit their observations on the proposed appropriate measures within two months of the date of the letter (ie. by 24 April 1998). By that date, all Member States except Germany had agreed to accept the Guidelines, although many had serious misgivings about the new rules and expressed these in their response to the Commission. The letter indicates that should Member States be unable to accept the Guidelines, the Commission might initiate the procedure provided for in Article 93(2). At the time of writing, no such action had been taken against the German regional aid schemes in respect of the Guidelines on National Regional Aid[30].

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[28] At 1188.

[29] The German authorities declined to accept the Guidelines within the deadline set by the Commission. It is understood that negotiations have taken place, but that no conclusion has been reached. The Commission has not opened the Article 93(2) procedure against the relevant German schemes; however, were it to do so, and subsequently reach a negative decision effectively imposing the Guidelines on Germany by means of a final negative decision under Article 93(2), then this could create an opportunity for the Guidelines to be challenged.

[30] The Commission has, however, opened the procedure in respect of the Framework on Large Investment Aids (OJEC No. C 171; 5 June 1998) and apparently reached a final negative decision against the schemes in question (Commission press notice IP/98/666; 14 July 1998).

Within six months of the date of the letter (ie. by 24 August), Member States were asked to communicate to the Commission the changes envisaged in order to make existing regional aid schemes compatible with the new Guidelines from 1 January 2000.

According to the letter, the Commission will notify any changes to the population ceilings contained in each letter by 1 January 1999, at the latest.

By 31 March 1999, Member States are to notify to the Commission the methodology for establishing assisted regions in force from 1 January 2000, the list of regions that qualify on this basis and the ceilings applicable.

For those assisted area maps without an expiry date, the Commission is to propose as an appropriate measure that their validity be limited to 31 December 1999.

2.2.2 Duration

The letter to the Member States provides for a maximum of 42.7 percent of the Community population to be contained in national assisted areas. This ceiling is set for the period 2000-2006. For the same period, the letters specify the coverage of areas eligible under Articles 92(3)(a) and (c), calculated on the basis of the methodology set out in the published Guidelines.

According to the published Guidelines (point 6.4), the Commission proposes to review the Guidelines within five years of their becoming applicable (ie. before 1 January 2005) and "may decide to amend them at any time, if this should be necessary for reasons associated with competition policy or in order to take account of other Community policies and international commitments". Otherwise, the implication of the Guidelines is that the population ceiling for each Member State and across the Community applies for the period 2000-2006; although Member States may request changes to the assisted areas map if "it is shown that socio-economic conditions have changed significantly", the possible inclusion of new regions must be offset by the exclusion of regions with the same population (point 5.6).

2.2.3 Data Analysis and Updating

According to the Commission letter, the calculation of the ceilings given in the letter use unemployment data for the period 1994-6 and GDP data for 1993-5. Importantly, the letter states that "The Commission retains the right, where appropriate, to update the abovementioned ceilings on the basis of the latest data available on 15 October 1998". The implication of this is that the ceilings contained in the letter *may* be subject to adjustment on the basis of more recent information, but that the Commission would not be obliged to adjust them. This is quite at odds with the Guidelines which, in the context of Article 92(3)(a), state that "The GDP/PPS of each region and the Community average to be used in the analysis *must* relate to the last three years for which statistics are available" (point 3.5) [emphasis added]. It is unclear from the terms of the letter and Guidelines whether the Commission might use data which became available after 15 October 1998 in order to update the ceilings; this too is important since there is some uncertainty surrounding whether data for all Member States can be available by that date.

This has significant practical implications for some Member States. For example, three Spanish regions, accounting for some 10 percent of the national population, are at the margin of eligibility for Article 92(3)(a). The Commission's current calculations, as notified to the Spanish authorities, suggest that the regions concerned *would* qualify for Article 92(3)(a); however, calculations based on more recent data are likely to exclude them[31]. In this context, the legal status of the letter, where the Commission "retains the right where appropriate" to update the ceilings may be of critical importance.

In similar vein, the letter makes clear that any updated data for calculating the ceilings should use the same NUTS II and III regional breakdown as pertained at 15 October 1997. It is widely known that the United Kingdom Office for National Statistics has agreed a new NUTS structure with EUROSTAT, involving significant changes to the configuration of the breakdown[32]; of particular note, two new NUTS II regions (Cornwall and West Wales) seem likely to fall within the Article 92(3)(a) threshold where they would not do so at present. It seems probable that the Commission will be under pressure to use the new structure, but it is unclear whether the letter is binding on the Commission, and, therefore, whether a decision *not* to impose the current structure on the UK would be in breach of the Guidelines. Certainly, other Member States with NUTS II regions on the fringes of Article 92(3)(a) eligibility, will have a vested interest in ensuring that the Commission abides by the terms of its letter.

2.2.4 Further Considerations

It is clear from the above discussion that there are a number of major concerns associated with issues of timing under the new Guidelines and the letter. First, the population ceilings that have been notified to the Member States are not necessarily an accurate guide to what coverage will ultimately be assigned; moreover, there is a degree of uncertainty created by the discrepancies between the letter and the Guidelines with respect to the obligation to use up-to-date data. In practice, it seems that revised ceilings may be notified to the Member State as late as 1 January 1999, leaving just three months for countries to finalise proposed area designation methodologies and eligible areas; for countries where there is a tradition of consultation, subnational level involvement or where lengthy parliamentary procedures are required to amend regional policy intervention, this schedule is likely to prove a challenge.

Second, the Commission itself has a tight timetable in which to approve the revised assisted areas, given that it has at the least a duty of care to ensure that the Guidelines

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[31] See Section 2.3.2, below and Wishlade, F. (forthcoming 1999) 'Competition Policy, Cohesion and Coherence? Member State Regional Policies and the New Regional Aid Guidelines' in Bilal, S. and Nicolaides, P. (eds.) *EC Policy on State Aid: Rules, Procedures, Results and Evolution*, Kluwer.

[32] Office of National Statistics (1998) *European Classification of UK Geographic Areas: New Regional Structure for the United Kingdom,* Press release, 29 June.

are adhered to, it must review the methodologies and eligible regions of 14 Member States (assuming that Greece remains wholly concerned with Article 92(3)(a)) in some detail. The issue is all the more acute since the Commission has proposed that the validity of any current map be limited to 31 December 1999; in consequence, should the Commission and any given Member State fail to agree by that date, the country concerned could not legally continue to operate regional incentives.

Third and related, this schedule is further complicated by the process of area designation for the Structural Funds and Commission emphasis on "coherence" between the two sets of assisted areas. The timetable for Structural Funds area designation is anyway tight, but becomes particularly ambitious if the Regulations are to be agreed prior to the European Parliament elections.

2.3 Spatial Coverage

2.3.1 Coverage, Data and Indicators

The Commission's approach to controlling the spatial coverage of assistance represents the most fundamental change introduced by the new Guidelines. The Commission has long considered EC wide and national spatial coverage of regional aids (as a percentage of the relevant population) as a measure of the discipline to which regional aids are subjected; in particular, there is a view that in the more prosperous countries, the assisted areas should include a lower proportion of the national population.

Under the new Guidelines, population coverage takes on a pre-eminent role in regional aid discipline. The starting point is the Commission view that, across the Community, spatial coverage should amount to less than 50 percent of the population; in practice, as noted, it seems that the Commission has established a ceiling of 42.7 percent for EU15[33].

As is well known, two separate provisions of Article 92(3) provide scope for regional aids to be considered compatible with the common market: Article 92(3)(a) and Article 92(3)(c). Reflecting this, the next stage in defining coverage is the determination of areas eligible under Article 92(3)(a); the total coverage of areas eligible under Article 92(3)(c) is, in effect, determined by the coverage of Article 92(3)(a) areas (ie. 42.7 percent of the population, less Article 92(3)(a) areas).

The following sections of this paper trace through the process of determining Article 92(3)(a) areas and the coverage of Article 92(3)(c) for each country. The procedure adopted is based on the information contained in the published Guidelines and uses the March 1998 edition of EUROSTAT's REGIO database.

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[33] This appears to have been calculated to accommodate the entire populations of the five CEE countries expected to join during the 2000-6 period (all of which would be expected to fall within the Article 92(3)(a) derogation) whilst remaining within a ceiling of 50 percent of an enlarged Community (ie. EU21).

2.3.2 Article 92(3)(a)

Article 92(3)(a) provides that "aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment" may be considered compatible with the common market.

Article 92(3)(a) is clearly aimed at areas that are particularly disadvantaged. More specifically, the ECJ has emphasised that:

> "the use of the words 'abnormally' and 'serious' in the exemption contained in Article 92(3)(a) shows that it concerns only areas where the economic situation is extremely unfavourable *in relation to the Community as a whole*."[34] [emphasis added]

The new approach to designating areas under Article 92(3)(a) is substantially the same as that under the 1988 Communication; however, there are differences in approach which will impact on some areas that currently qualify under this derogation. Under the new Guidelines Article 92(3)(a) areas are defined as:

- NUTS II regions
- with GDP per head measured in purchasing power standards (PPS) of less than 75.0 percent of the Community average[35]
- where the regional and the Community averages relate to the last three years for which data are available.

Previously, the basic unit for designation was the NUTS III level, although account was taken of the situation of the NUTS II level for determining eligibility; the new Guidelines focus exclusively on NUTS II. In addition, the 1988 Communication extended eligibility to Northern Ireland "because of its particularly difficult situation" and to Teruel (Spain), even although neither met the stated criteria[36]; this discretionary approach is absent from the new Guidelines which take account only of quantitative criteria.

Applying the methodology described in the Guidelines suggests that some 19.26 percent of the Community population would be covered by the Article 92(3)(a) derogation. The distribution by country is set out in Figure 1. A listing of eligible regions is given in Annex I to this paper; Annex II provides a ranking of NUTS II regions by GDP (PPS) per head.

It should be noted that these results appear to differ from some of the indications given in Annex B to particular Member States. The reasons underlying this are not

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[34] Case 248/84 *Federal Republic of Germany* v *Commission of the European Communities* [1987] ECR 4013 at 4042.

[35] Mention has already been made of the fact that this is an unsuitable indicator of "standard of living" and that the use of PPS in a monetary union may not be considered relevant (see p4 *et seq*, above).

[36] Article 92(3)(a) does not appear to afford the Commission the discretion to do this.

known; however, the implications of any discrepancy are significant in several respects. First, these calculations have been made with the latest official data available and apparently in accordance with the method described; if the results differ, then this implies either that different data have been used or that the methodology has not been followed as intended (with implications for the transparency of the Guidelines). Second, as noted earlier, coverage of Article 92(3)(a) effectively determines the population quota available for Article 92(3)(c), so that any discrepancies in the determination of Article 92(3)(a) impact directly on the coverage of Article 92(3)(c).

In contrast with the present situation, in which Article 92(3)(a) includes all of Greece, the Republic of Ireland and Portugal, ***Greece*** is now the only country covered in its entirety by the derogation. In ***Portugal***, the Lisbon region is now over the threshold; none of the ***Republic of Ireland*** qualifies since the country as a whole is a NUTS II region and national GDP per head in PPS exceeds 75.0 percent of the Community average.

In ***Spain,*** the principal difference between the present situation and that implied by Figure 1 is the exclusion of Cantabria and Valencia from Article 92(3)(a)[37]. Significantly, Canarias also fail to qualify on the basis of the quantitative criteria. However, as an "outermost" region, the draft Structural Fund Regulations propose to *include* Canarias in Objective 1, with some implications for the objective of coherence.

Figure 1: Population Qualifying under the Article 92(3)(a) Derogation

	Situation under new Guidelines		**Current situation**
	EC Pop (%)	**National Pop (%)**	**National Pop (%)**
Austria	0.07	3.41	3.5
Germany	3.81	17.39	20.8
Spain	4.66	44.34	59.6
Finland	0.19	13.83	0.0
France	0.43	2.73	2.5
Greece	2.80	100.00	100.0
Italy	4.81	30.73	34.2
Portugal	1.77	66.62	100.0
UK	0.73	4.66	2.9
Total Pop in 92(3)(a)	19.26		23.6

Notes: The Commission has recently qualified 13.9 percent of the Finnish population as covered by Article 92(3)(a) so that the Finnish total is in fact unchanged; in addition to the countries listed, the total population of Ireland is currently designated under Article 92(3)(a).

Sources: Own calculations from REGIO based on method described in Guidelines; Yuill *et al* (1997).

[37] Teruel had already been "downgraded" to Article 92(3)(c) status in 1997 (OJEC C25; 31.1.96).

In ***Italy***, Article 92(3)(a) would apply to just five regions; in the 1988 Communication all eight regions of the "classic" *Mezzogiorno* were eligible. Abruzzi and Molise were "downgraded" to Article 92(3)(c) status in 1995; the calculations also suggest that Sardegna would cease to be eligible for the Article 92(3)(a) derogation from 1 January 2000.

Article 92(3)(a) would continue to include the new *Länder* in ***Germany*** (but excluding Berlin) and Burgenland in ***Austria***, as at present. Also unchanged would be the status of *départements d'outre mer* in ***France*** and of Itae-Suomi in ***Finland,*** for which Article 92(3)(a) status was recently approved until 31 December 1999.

In contrast, according to Figure 1, there would be significant changes in the ***United Kingdom***. This results from the inclusion of Merseyside and South Yorkshire in the Article 92(3)(a) derogation. On the other hand, Northern Ireland does not meet the 75 percent per capita GDP (PPS) cut-off; however, the Guidelines state[38] that "In view of its particularly difficult situation, Northern Ireland will retain its status as an exceptional region and its ceiling will be 40%". This appears to imply that, although Northern Ireland will not qualify for the Article 92(3)(a) derogation, it will not be subject to the same progressive reduction in aid intensities that will apply to other regions losing Article 92(3)(a) status.

In the remaining Member States - ***Belgium, Denmark, Luxembourg, the Netherlands*** and ***Sweden*** - there would be no areas covered by the Article 92(3)(a) derogation (as at present).

2.3.3 Article 92(3)(c)

The classification of 19.26 percent of the Community under the Article 92(3)(a) derogation would leave around 23.44 percent of the population as a "quota" for Article 92(3)(c) to be distributed among the regions *not* covered by Article 92(3)(a).

Article 92(3)(c) has potentially wider scope than Article 92(3)(a):

> "inasmuch as it permits the development of certain areas without being restricted by the economic conditions laid down in Article 92(3)(a), provided such aid 'does not affect trading conditions to an extent contrary to the common interest'. That provision gives the Commission power to authorize aid intended to further the economic development of areas of a Member State which are disadvantaged *in relation to the national average*".[39] [emphasis added]

It is in applying Article 92(3)(c) that the key difference between the new Guidelines and the 1988 Communication emerges. Under the 1988 Communication the measurement of internal regional disparities in GDP per head and unemployment rates

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[38] Footnote 44 to point 5.7.

[39] Case 248/84 *Federal Republic of Germany* v *Commission of the European Communities* [1987] ECR 4013 at 4042.

constituted the first stage in determining *which regions* could qualify for regional aid under Article 92(3)(c); in contrast, under the new Guidelines, a broadly similar mechanism is used to determine *what share of the overall total of Article 92(3)(c) regions* a given Member State will be allocated. Under this new approach, the Member States determine the actual areas to be designated, subject to Commission approval both of the area designation methodology and of the regions proposed by the Member States. *This is a fundamental change in the approach hitherto undertaken.*

The allocation of an Article 92(3)(c) quota to each Member State involves a decidedly arcane and laborious process which has, as far as possible, been replicated for the purposes of this paper. The principles and stages of this process are as follows:

- the basic principle is that only NUTS III regions which have either GDP per head of less than 85 percent of the national average or unemployment of more than 115 percent of the national average will be taken into account in determining the national share of the Article 92(3)(c) quota

- the basic threshold (ie. the 15 percent disparity in GDP per head or unemployment) against which NUTS III regions are measured is adjusted to take account of the national situation in relation to the Community average; in consequence, the higher the per capita GDP of a *Member State* in relation to the *Community* average, the lower must be the GDP per head of a *region* in relation to the *national* average in order for the region to count towards the quota

- the outcome of this exercise determines the basic share of the Article 92(3)(c) quota by Member State; this basic share is subject to a series of adjustments to ensure the following:

  – that each Member State has at least 15 percent of the population not covered by Article 92(3)(a) assisted under the Article 92(3)(c) derogation

  – that no Member State Article 92(3)(c) areas exceed 50 percent of the population not covered by Article 92(3)(a)

  – that there is sufficient population coverage to include all the regions which have just lost Article 92(3)(a) status and areas with a low population density

  – should these adjustments result in the overall (ie. EC-wide) ceiling for Article 92(3)(c) being exceeded, then those Member States *not* affected by the adjustments share the burden of a reduction in their assisted areas in order to bring the total EC-wide assisted area population coverage down to the ceiling set by the Commission.

The sections which follow describe how the national thresholds are calculated, the process of determining national quotas of Article 92(3)(c) coverage and the final adjustments required to remain within the ceiling and take account of specific conditions. For each aspect, calculations based on the method described in the Guidelines and on the latest REGIO data are included.

2.3.3.1 Calculation of National Thresholds[40]

As already noted, only the population of NUTS III regions displaying at least a 15 percent disparity in GDP per head or unemployment rates is taken into account in determining the national share of the Article 92(3)(c) quota. However, the so-called basic threshold is adjusted for each country, depending on the national situation in relation to the Community average. The calculation of the adjusted thresholds is very similar to the method outlined in the 1988 Communication, the results of which are supposedly published on an annual basis[41]. The key differences concern: the degree of disparity, which is set at 10 percent in relation to unemployment under the 1988 methodology; and a five-year time period under the 1988 Communication as opposed to three years in the new Guidelines.

Unhelpfully, the new Guidelines do not actually present the adjusted thresholds, but contain only an explanation of what is rather a cumbersome methodology. Moreover, although a three-year time period is specified, it is not clear whether the latest data should be used for each indicator (GDP and unemployment rates) or whether the same time period should be used for both sets.[42] The formula for establishing the adjusted GDP per head and unemployment thresholds is set out in Figure 2.

Figure 2: Formula for Calculating Adjusted Thresholds

Adjusted threshold = 0.5 x ((basic threshold) + (basic threshold x 100/European index))

where:

- the "basic threshold" is 85 for GDP per head and 115 for unemployment
- the "European index" is the three-year average of GDP per head (in PPS) or unemployment as a percentage of the corresponding Community average

This formula is applied to each country for both GDP per head and unemployment rates and produces the results set out in Figure 3.

[40] The figures in this section have been rounded from spreadsheet calculations. It is not known at what juncture the Commission "rounds" its figures for these purposes or what approach it adopts.

[41] The Commission has become more consistent in producing these thresholds annually of late. See OJEC C98; 28 June 1997 for the current version.

[42] For the purposes of the calculations in this article, it has been assumed that the latest data are used: 1993-5 in the case of GDP per head and 1994-6, in the case of unemployment rates.

Figure 3: Calculation of Adjusted GDP and Unemployment Thresholds

	GDP (PPS) PER CAPITA		UNEMPLOYMENT RATES	
	1993-5 average (ie. European Index)	**Adjusted GDP Threshold**	**1994-6 average (ie. European Index)**	**Adjusted Unemployment Threshold**
EU15	100		100	
Belgium	114	**80**	88	**123**
Denmark	111	**81**	72	**138**
Germany	109	**81**	78	**131**
Greece	65	**108**	85	**126**
Spain	77	**98**	212	**85**
France	107	**82**	108	**111**
Ireland	88	**91**	118	**106**
Italy	102	**84**	107	**111**
Luxembourg	167	**68**	29	**150**
Netherlands	105	**83**	62	**150**
Austria	111	**81**	38	**150**
Portugal	69	**104**	65	**146**
Finland	93	**88**	157	**94**
Sweden	99	**85**	88	**123**
UK	98	**86**	82	**128**

Source: Own calculations based on New Guidelines (Annex III) and REGIO

In the case of unemployment, the threshold is subject to a ceiling of 150, in order for it not to become “too rigorous”. This ceiling bites in the case of Austria, Luxembourg and the Netherlands.

2.3.3.2 Determining National Shares of the Article 92(3)(c) Quota

The basic national share of the Article 92(3)(c) population coverage total is determined by the extent to which NUTS III regions display disparities in GDP per head or unemployment which exceed the adjusted thresholds on the basis of three-year averaged data. So, for example, in order for a UK NUTS III region to count towards the UK share of the Article 92(3)(c) quota, the region concerned must have an unemployment rate that is more than 28 percent above the UK average, and/or must have GDP per head of less than 86 percent of the UK average. Regions which meet both thresholds are counted only once. Regions or parts of regions which qualify for Article 92(3)(a) do not count towards the Article 92(3)(c) quota.

This exercise is hampered by gaps in the data available[43]. For example, there are no NUTS III level GDP per head data for Italy[44]. In consequence, (in the absence of any

[43] More generally, it is amusing to note that dividing total GDP by population within the different data sets of REGIO produces results that differ from the GDP per head data given within the REGIO database. In consequence, the only workable means of producing population coverage figures is to derive a population figure by dividing GDP by GDP per head. This approach was followed after confirmation from EUROSTAT that this was the only feasible way to proceed.

guidance on this in the Guidelines) the basic Italian share of Article 92(3)(c) coverage has been determined solely on the basis of regional disparities in rates of unemployment. Similarly, there are no NUTS III unemployment data for Portugal, so its share of Article 92(3)(c) areas has been determined in relation to disparities in GDP per head at NUTS III.

It must be remembered that this exercise is used solely to determine each Member State's share of Article 92(3)(c), and *not* the actual regions that will ultimately be designated. Nevertheless, both GDP per head and unemployment rates display some curious disparities at NUTS III. For example, according to the calculations done for this paper, East Sussex, Essex and Greater London account for the bulk of the UK share of Article 92(3)(c) coverage (Strathclyde and Lancashire, in contrast, do not "contribute" at all!). Similarly, in Belgium, Brussels counts as a qualifying region for the purposes of determining the quota; and in Denmark, Copenhagen accounts for most of the national share of Article 92(3)(c) coverage. A full listing of the NUTS III regions "responsible" for generating the Article 92(3)(c) quotas is given in Annex III.

These examples reinforce the view that the whole process of determining population quotas is quite arbitrary. The relevance of GDP per head at NUTS II is highly questionable; at NUTS III it is surely unsustainable. With respect to unemployment, the absence of functional units (eg. labour market areas) and the fact that the data is static (ie. it takes no account of migration or unemployment "turnover", which can be viewed as a measure of buoyancy in a local economy) undermines its value as an indicator of regional disparity in any meaningful sense.

Also important, the output of the exercise could be politically sensitive for Member States since regions which have been "responsible" for generating the national quota of Article 92(3)(c) areas might reasonably expect to be candidates for (or even entitled to) assisted area status at the area designation stage. Moreover, domestic tensions are likely to be heightened when subnational authorities become aware that the Commission's view is that eligibility for *national* regional policy is essentially a prerequisite for eligibility for the Structural Funds and that their lobbying efforts might therefore be better directed at their own governments than at "Brussels".

The output from the exercise described above gives each Member State a share in the quota of Article 92(3)(c) areas. In Figure 4, this is expressed as a percentage of the total, which is in turn used as an "allocation key" to determine the basic coverage of Article 92(3)(c) areas for each Member State.

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[44] It seems difficult to justify the use of an indicator, for Community-wide purposes, which is not available for all countries; in this context, it is important to note that Member States are not yet obliged to supply GDP at NUTS III level to EUROSTAT.

Figure 4: Shares of Article 92(3)(c) Coverage (% of EC total)

Belgium	4.7
Denmark	1.3
Germany	18.0
Greece	0.0
Spain	16.0
France	29.0
Ireland	1.6
Italy	3.2
Luxembourg	0.0
Netherlands	1.8
Austria	2.9
Portugal	1.4
Finland	2.3
Sweden	0.9
UK	17.0
EU15	100.0

Source: Own calculations based on New Guidelines (Annex III) and REGIO

These percentages are used to determine the “share” of the total Article 92(3)(c) coverage (ie. 23.4 percent of the EC population) assigned to each Member State. This coverage is then subject to a series of “corrections” in order to ensure that certain conditions are met. The outcome of this process is set out in Figure 5.

Figure 5: Assisted Area Coverage Calculations and Adjustments

	Current coverage[a]	92(3)(a) (% of pop)[b]	Unadjusted 92(3)(c)[c]	Corrected 92(3)(c)[d]	New total coverage
Belgium	35.0	0.0	40.4	37.6	37.6
Denmark	20.0	0.0	22.0	20.4	20.4
Germany	38.1	17.4	19.3	16.8	34.2
Greece	100.0	100.0	0.0	0.0	100.0
Spain	76.0	44.3	35.6	27.8	72.2
France	42.4	2.7	43.6	40.3	43.1
Ireland	100.0	0.0	38.8	100.0	100.0
Italy	48.9	30.7	4.8	10.4	41.1
Luxembourg	42.7	0.0	0.0	32.0	32.0
Netherlands	17.3	0.0	10.1	15.0	15.0
Austria	35.1	3.4	31.1	28.7	32.1
Portugal	100.0	66.6	12.3	33.4	100.0
Finland	41.6	13.8	39.5	35.8	49.6
Sweden	18.5	0.0	9.1	15.0	15.0
UK	38.2	4.7	25.4	23.3	28.0
EU15	46.9	19.3		23.4	42.7

Notes: (a) These figures are taken from (unpublished) Commission information produced in November 1997. **(b)** See Figure 1. **(c)** This figure results from "sharing out" the Article 92(3)(c) total (23.4 percent of the EC population) in proportion to the national share of NUTS III regional population that is below the relevant national GDP and unemployment thresholds (see Figure 4). **(d)** A series of adjustments, described below, are applied to the original Article 92(3)(c) figure.
Source: Own calculations from REGIO and Guidelines on National Regional Aid, Annex III.

Again, it must be stressed that these are in no sense "official" figures, but merely the output from following the process described in the Guidelines. Moreover, the results obtained for any given country, and changes to those results, impact on virtually every other country because the calculations are undertaken within the context of an overall population ceiling which is "shared" between countries; one Member State's gain is, quite simply, at the expense of the others.

A general point to note is that, unlike earlier versions of the Guidelines, the requirement that no Member State should increase its coverage has been omitted, with the result that for ***Belgium, Denmark*** and ***Finland***, assisted area coverage calculated in Figure 5 is *higher* than that at present (significantly so for Finland). In a further three countries ***Greece, Ireland*** and ***Portugal***, there would be no change in combined coverage (which would remain at 100 percent in all three cases), though - as noted earlier - Article 92(3)(a) coverage has been cut back significantly in Portugal and is no longer applicable to Ireland. The remaining nine Member States all experience a *reduction* in assisted area coverage under this methodology (a direct consequence of the fact that the Commission has imposed an overall EC-wide ceiling of 42.7 percent in contrast with current coverage of 46.9 percent of the EC population). In considering the impact of the new methodology on the assisted area coverage of the Member States, it is useful to review the different adjustments made to the initial figures arrived at according to the methodology.

The first adjustment is made in order to ensure that every Member State has Article 92(3)(c) coverage of at least 15 percent of the areas not covered by Article 92(3)(a). This "floor" test affects ***Italy*** (bringing the new Article 92(3)(c) ceiling to 10.4 percent), ***Luxembourg, the Netherlands*** and ***Sweden*** (bringing the new total to 15 percent in all three cases).

A second adjustment concerns the upper limit on Article 92(3)(c) coverage outside Article 92(3)(a) areas; this should not exceed 50 percent of the national population. This "ceiling" test affects ***Spain,*** reducing Article 92(3)(c) coverage to 27.8 percent from an initial total of 35.6 percent.

A third adjustment concerns areas that were formerly covered by Article 92(3)(a). The Guidelines specify that there should be sufficient Article 92(3)(c) coverage to enable regions which have just lost Article 92(3)(a) status and low population density regions to be covered in Article 92(3)(c). For ***Ireland*** and ***Portugal***, the impact of this is clear; the entire territories of those countries were previously Article 92(3)(a) areas so that the entire countries must now be covered by either Article 92(3)(a) or, if they fail to qualify, by Article 92(3)(c). In both cases, this is a highly dubious interpretation of Article 92(3)(c). It will be recalled from the discussion above that the European Court of Justice has ruled that:

> "That provision [Article 92(3)(c)] gives the Commission power to authorize aid intended to further the economic development of areas of a Member State which are disadvantaged *in relation to the national average*".[45] [emphasis added]

It is difficult to see how the Commission approach can be justified, given this case law: it is logically impossible for the whole of Ireland to be disadvantaged in relation to the national average; the Lisbon region is known to be the most prosperous area in Portugal. For two other countries, the wording is ambiguous. In ***Italy,*** as noted, Sardegna loses Article 92(3)(a) status under the new methodology; clearly, there is sufficient Article 92(3)(c) qualifying population to include the region, but it is unclear whether the population of the region should be added to the Article 92(3)(c) quota or if the conditions are met simply if the Article 92(3)(c) quota is larger than the population of the "losing" region (which it is). The same principle and ambiguity applies to the sparsely populated regions of ***Sweden***; with the exception of Norrbotten, these are different from the regions which "contributed" towards the Swedish population quota; should their population be added to the existing quota (less Norbotten) or does the fact that the population "floor" of 15 percent is greater than the population of the NUTS III areas with low population density (about 13.7 percent) mean that these areas are considered to be covered?

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[45] Case 248/84 *Federal Republic of Germany* v *Commission of the European Communities* [1987] ECR 4013 at 4042.

A fourth adjustment involves comparing the total coverage of the Article 92(3)(a) and Article 92(3)(c) areas under the new methodology with the current coverage. The Guidelines state that any reduction will be limited to 25 percent of the current coverage. This impacts on ***Luxembourg*** where coverage is adjusted upwards to meet this condition.

For the most part, these various adjustments result in an increase in coverage, requiring further corrections in order for the initial ceiling to be respected. The changes required to do this are shared by the countries *not* affected by the adjustments to the Article 92(3)(c) areas described above. These are: ***Belgium, Denmark, Germany, France, Austria, Finland*** and the ***United Kingdom.*** The results obtained for these countries have been obtained by distributing the adjustment required in proportion to their share of Article 92(3)(c) areas[46]. Ironically, in the case of the UK, this results in a reduction of more than 25 percent of the previous coverage.

2.4 Area Designation Methodology

A key change introduced under the Guidelines is that Member States are required to notify to the Commission under Article 93(3) the methodology and quantitative indicators which they wish to use to determine the eligible areas for Article 92(3)(c), as well as the list of regions they propose for the Article 92(3)(c) derogation. More specifically:

- the *methodology* must be objective, enable socio-economic disparities to be measured, highlighting significant differences, and it must be presented in a clear and detailed manner to enable the Commission to "assess its merits"

- up to five simple and combined *indicators* may be used. They must be:

  - objective and relevant

  - based on time series including "at least the three years prior to the moment of notification" or derived from the latest survey, in the case of non-annual surveys

  - drawn up by reliable statistical sources.

- the *regions* must fulfil the following conditions:

  - be NUTS III, or, where justified, a different homogeneous unit - importantly, however, only one type of unit may be used by each Member State

  - individual regions or groups of contiguous regions must generally have a minimum population of 100,000; a fictitious population of 100,000 will be imputed to calculate the population coverage if the population is less. Exceptions to this are:

[46] The Guidelines are ambiguous on what "proportional" relates to; however, it seems most rational to assume the share of Article 92(3)(c) areas rather than, for example, national population or total assisted area coverage.

  * NUTS III regions with a population of less than 100,000

  * islands and "other regions characterized by similar geographical isolation"

  * Luxembourg

- the list of regions "must be arranged on the basis" of the chosen indicators; the selected regions must show "significant disparities (half of them the standard deviation) compared with the average of the potential 92(3)(c) regions of the Member State concerned"

- subject to the population ceiling, regions with a population density of less than 12.5 km^2 may also qualify for the Article 92(3)(c) derogation

- regions eligible under the Structural Funds may also qualify, subject to the population ceiling *and* to the conditions set out in the second indent of the condition relating to eligible regions, ie. that designated areas must generally involve a minimum 100,000 population.

These conditions seem likely to place significant constraints on the area designation process. Insistence on the use of the *same* territorial unit for all indicators is likely to be problematic. In many countries, labour market areas are used for measuring employment-related trends; other indicators are not always available at this level. The imputation of 100,000 inhabitants to areas containing less than this figure, together with the general emphasis on the use of NUTS III regions, will impinge negatively on Member States' legitimate policy designs. Moreover, the emphasis on *quantitative* systems of area designation is at odds with traditions in many Member States. Last, the link with Structural Funds area designation raises some difficult issues for national and subnational authorities alike.

2.5 Award Values

In contrast with the new provisions in respect of spatial coverage, the changes related to award values are relatively uncontroversial; maximum award values have tended not to constrain decision-makers in setting award offers. On the contrary, the emphasis has been increasingly to use policymaker discretion to offer the lowest possible award while ensuring that the project goes ahead. The key features of the Guidelines with respect to award values are, first, an overall lowering of maximum rates of award across the board; and second, an extension of the definition of eligible expenditure to include a proportion of intangible assets and the capacity to relate aid to employment creation. More generally, this aspect of the Guidelines is characterised by the decision to retain some of the more arcane and arbitrary methods of calculating award values where this might have been viewed as an opportunity to overhaul and simplify the approach.

2.5.1 Rates of Award

In the past, a notable aspect of Commission control over maximum rates of award was its lack of consistency[47]; there is no clear relationship between the level of prosperity and the aid intensity which the Commission would allow. The pattern of award values seems to have evolved as a product of history and bilateral negotiations.

Although it is not explicitly acknowledged in the Guidelines, the approach adopted seeks to address some of the inconsistencies that have emerged. With respect to maximum rates of award, these are explicitly related to different categories of problem region, levels of GDP per head and unemployment rates, as Figure 6 shows.

Figure 6: Maximum Rates of Award under the New Guidelines

Assisted area type	**General maximum rate (% nge)**	**SME supplement (% gross)**
Article 92(3)(a) (outermost)	65	15
Article 92(3)(a) (standard)	50	15
Article 92(3)(a) (outermost with GDP > 60% EC average)	50	15
Article 92(3)(a) (GDP > 60% EC average)	40	15
Article 92(3)(c) (Northern Ireland)	40	10
Article 92(3)(c) (low population density)	30	10
Article 92(3)(c) (standard)	20	10
Article 92(3)(c) (GDP > EC av. & unemployment < EC av.)	10	10

Importantly, however, these figures are *upper limits*. According to the Guidelines:

> "Beneath these ceilings, the Commission will ensure that the regional aid intensity is adjusted to reflect the seriousness and intensity of the regional problems addressed when examined in a Community context."

The implications of this are that the Commission reserves the discretion to set lower ceilings on a case-by-case basis.

Overall, these rates suggest a substantial reduction in the ceilings applicable. In the past, in general, the Commission would authorise up to 75 percent net grant-equivalent in Article 92(3)(a) areas and up to 30 percent net grant-equivalent in Article 92(3)(c) areas. The SME ceiling were previously 10 and 15 percentage points gross, but subject to the NGE limits mentioned. In consequence, for regions where the

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[47] See Wishlade, F. and Yuill, D. (1997) *Regional Incentive Policies in the European Union: Rates of Award and Award Values,* Regional and Industrial Research Paper Series, 23, European Policies Research Centre, University of Strathclyde.

maximum was authorised, the SME supplements could bring no further benefits. This anomaly is resolved under the new Guidelines where the SME supplements are genuinely additional.

More curious, perhaps, is the Commission's continuing attachment to calculating award values in net grant-equivalent terms (although as can be seen from Figure 6, this approach is not taken for SME aid). The justification for this is that it enables the calculation of comparable aid values between Member States and between different types of instrument. In practice, however, the method for calculating NGE values largely undermines any notion of comparability because of the assumptions required in the method.

2.5.2 Eligible Expenditure

With respect to eligible expenditure, there are two main changes in the Guidelines. First, investment can include certain categories of intangible investment; and second, aid can be related to job creation linked to an investment project.

The new Guidelines allow for specified intangible investment equal to up to 25 percent of the so-called "standard base" for large firms.[48] Eligible intangible expenditure is limited to technology transfer through patents, operating or patented know-how licences and unpatented know-how. In order to prevent leakage of aided assets to other regions, especially non-assisted areas, intangible assets must also fulfil the following conditions:

- they must be used exclusively in the establishment receiving the regional aid;
- they must be regarded as amortizable assets;
- they must be purchased from third parties under market conditions
- and they must be included in the assets of the firm and remain in the establishment receiving regional aid for at least five years.

As far as job creation is concerned, the new Guidelines provide for aid to take the form of a wage subsidy calculated over a period of two years. The subsidy amounts to a percentage of the gross wage bill (ie. before tax and compulsory social security contributions) associated with new job creation linked to an investment project. The percentage is the rate of award set for fixed asset investment purposes. This provision seems likely to impact most on service sector activities and other low capital-intensity activities. It would appear, however, that absolute values of aid under this provision are likely to be higher in the problem regions of the more prosperous Member States than in the so-called Cohesion countries, largely reflecting general different in wage levels.

[48] The standard base comprises land, plant and building; the proportion assigned to each varies by country.

3. THE MULTISECTORAL FRAMEWORK ON REGIONAL AID FOR LARGE INVESTMENT PROJECTS

3.1 Background and Rationale

In the field of regional aid, the Commission has had considerable influence over incentive policies. The authorisation of a regional aid scheme by the Commission leaves the national authorities free to administer the scheme as they wish (but on condition that awards fall within the parameters approved and that proposed awards to so-called sensitive sectors[49] are dealt with under their own Codes). For the Commission and the Member States alike this has the advantage of obviating the need for case-by-case scrutiny of aid proposals, as would otherwise be required by the Treaty.

Within the context of its control over regional incentive schemes, it could be argued that the Commission has come to see spatial coverage, expressed as a percentage of the population contained in the assisted areas, as a proxy for the extent to which regional aids distort competition; in consequence, the Commission has been influential in determining the shape and scope of the assisted areas maps of the Member States. Its influence over the type of assistance offered has also been decisive in a number of cases and has contributed to the growing homogeneity in regional aid design in the Community countries. In contrast, its impact on award rates, and, associated, total volumes of regional aid has been limited[50].

By the early 1990s, concerns at this lacuna in regional aid control were mounting within the Commission, and were shared by some Member States. These concerns were fuelled by the outcomes of the Commission's biennial surveys on State aid spending, which were interpreted as revealing inordinately high levels of spend among the richer and larger Member States. In addition, the increasingly high profile given to economic and social cohesion meant that there was a growing preoccupation about the extent to which the poorer Member States could compete with the richer ones; the issue was given further impetus by the impact of the Single Market programme on competition for mobile investment.

For the Commission, the absence of any further scrutiny within the context of approved schemes was a matter of concern because of the potential scale and volume of assistance in individual cases, even within the ceilings approved by the Commission. This is particularly so for capital-intensive sectors which have the added perceived drawback of creating few jobs in relation to investment and aid. Related to this, although higher percentage ceilings are authorised in Article 92(3)(a) areas, these are typically located in, or cover the entire territory of, countries that are least able to afford to pay the available maximum. In consequence, there tends to be a convergence

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[49] Eg. shipbuilding, synthetic fibres, motor vehicles.

[50] See Wishlade F. (1998) 'EC Competition Policy: the Poor Relation of EC Regional Policy?' *European Planning Studies,* Carfax and Yuill, D. *et al* (1997) *European Regional Incentives 1997-8,* 17th edition, Bowker-Saur, London for fuller discussion of the history and impact of the competition rules in relation to regional aids.

in the *actual* rates of award offered in richer and poorer regions, in spite of wide differences in the authorised ceilings. Moreover, the Commission was also concerned that the less prosperous countries would expend considerable sums in competing against the wealthier Member States to attract mobile investment.

A second set of issues relates to sectoral concerns. As noted above, the approval of regional investment aids is subject to the proviso that special rules apply to awards to firms in specific sectors. The common themes of these frameworks are that the sectors concerned are considered to be in "overcapacity" and that all or specified awards must be notified individually for consideration by the European Commission. Beyond this, however, the frameworks diverge considerably. The Motor Vehicle Framework[51], for example, requires only aid to investments exceeding ECU 50 million or aid exceeding ECU 5 million to be notified. In contrast, the Synthetic Fibres Code[52] makes no reference to size of project or level of award.

The sectoral rules also diverge considerably in substance and in the discretion afforded to the Commission. The Motor Vehicle Framework provides the basis for the Commission to evaluate the regional development benefits of aid against its possible adverse effects on the sector as a whole. The approach taken by the Commission involves undertaking a cost-benefit analysis with a view to identifying, and compensating for, the cost disadvantages of a problem region location[53]. In contrast, the Synthetic Fibres Code states that the "fundamental consideration is the effect of that aid on the markets for the relevant products"; in short, there is no explicit provision for balancing potential regional benefits against possible sectoral consequences.

In addition to the widely divergent nature of the frameworks themselves, there is also the issue of the sectors covered by the frameworks. There are two aspects to this question: on the one hand, is a sectoral approach appropriate at all? If so, are the sectors affected by frameworks appropriate? In other words, should more or fewer sectors be covered by specific guidelines? These issues have become of increasing importance as various sectors lobby for codes to be introduced to discipline subsidies for particular industries. They are also of significance in the context of assessments where there is no relevant sectoral framework but where an individual case needs to be appraised because it involves *ad hoc* or unnotified aid. As well as a desire to avoid a proliferation of sectoral codes, such issues have tended to reinforce moves towards a sectorally-neutral approach covering all large investment projects.

A further question is the extent to which notified cases should be assessed on an individual basis, as opposed to some "formula-based" method. The case-by-case approach presents two main problems for the Commission. First, it is extremely resource intensive and time-consuming in terms of DGIV staff and costly in the use of external consultants with sectoral expertise; and second, because of the discretionary nature of the decision, the case-by-case approach is more easily open to challenge by

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[51] *Community Framework on State Aid to the Motor Vehicle Industry,* OJEC No. C 279; 15 September 1997.

[52] *Code on Aid to the Synthetic Fibres Industry,* OJEC No. C 94, 30 March 1996.

[53] Of course, problem region locations are not necessarily more costly.

the potential beneficiary or by competitor firms, involving yet more Commission resources and reducing the legal certainty and transparency of outcomes. These drawbacks have made the development of an "objectively justifiable" approach an attractive option, if indeed such a solution can be found. It is against this background that the Commission developed proposals to limit aid to large investment projects.

Initial proposals on the part of the Commission focused on the issue of aid to capital intensive projects. Following the acceptance of a Commission Communication[54] on industrial policy, work began on devising rules to regulate incentives to projects involving high levels of investment in relation to job creation. Commission concern centred on two factors. First, it considered that the higher the capital investment in relation to job creation, to increased production capacity, or to value-added, then the greater the distortion of competition. Second, it took the view that incentives to highly capital-intensive projects did not contribute significantly to the objectives of the policies under which they were offered. Associated with this, it argued that assistance to capital-intensive projects resulted in a lower level of job creation overall than could be obtained with a more balanced distribution of government incentives.

According to the Communication "it is not so much the *quantity* of aid granted as the importance of the *differential* between existing aid schemes which acts as the spur for footloose industrial location" [emphases added]. It further argued that the poorer countries could make substantial budgetary savings if the appropriate differentials were maintained at a lower level.

Reflecting these issues, consideration was given to finding a method which would reduce the *value* of incentives without affecting maximum *rates* of award. The proposals made (details of which were not made public) involved setting cost-per-job limits to investment eligible for incentives. This proved highly controversial and left Member States and different Directorates of the Commission deeply divided. At the national level, for example, Spain and Germany were opposed to such regulation. In contrast, the United Kingdom government regarded "effective constraints on 'subsidy auctions' for internationally mobile investment projects" as a priority and claimed to be "pressing the Commission to adopt its proposal to limit aid for capital intensive projects"[55]. It is perhaps not surprising that the UK government should have taken this view, and this for several reasons. First, Regional Selective Assistance the main British incentive offered to mobile projects is operated with internal cost-per-job limits; second, over the past decade, UK regional aid budgets have come under intense pressure; and third, the UK government of the day had a more free-market oriented stance than any other EC government, with the result that, unusually for the UK, it was frequently allied with the Commission on competition policy issues.

Having met with significant objections, these initial proposals to restrict support for capital-intensive projects were partially superseded by a series of drafts culminating in the publication of the Multisectoral Framework on Regional Aids for Large

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[54] CEC (1990) *Industrial Policy in an Open and Competitive Environment: Guidelines for a Community Approach*, COM(90)556, 16 November 1990, Brussels.

[55] HMSO (1994) *Competitiveness: Helping Business to Win*, Cm 2563, London.

Investment Projects. This title is indicative of the Commission's original intention that a new "horizontal" approach should eventually supersede some or all of the existing codes[56].

3.2 The Substance of the Framework

The essence of the LIPS Framework is that projects/awards which meet specified size and sectoral criteria must be notified to the Commission and evaluated on a case-by-case basis in order for the Commission to approve a maximum rate of award. In addition, the Framework provides for detailed project monitoring to ensure that the terms of the Commission authorisation are complied with. Notification, evaluation and administrative arrangements are now reviewed in turn.

3.2.1 Notification Requirements

As noted earlier, there is some precedent for the Commission seeking to influence certain individual awards, most notably in the motor vehicle sector. In addition, separate rules apply in a number of other sectors[57]; during the trial period, projects in these sectors will continue to be evaluated according to the existing codes. Thereafter, the situation is to be reviewed to assess the scope for some of the sectoral frameworks to be superseded. Other than in these specified sectors, the LIPS Framework provides that any proposal to offer aid under an approved regional aid scheme (or in the form of an *ad hoc* award) must be notified to the Commission if it meets one of the following criteria:

- either: total project costs exceed ECU 50 million *and* the aid level[58] proposed is more than 50 percent of the authorised ceiling for large firms in the region or more than ECU 40,000 per job[59];

- or: total aid is more than ECU 50 million.

3.2.2 Evaluation Criteria

The assessment undertaken by the Commission of those cases notified as above takes account of three factors:

(i) competition (T)

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[56] The current Synthetic Fibres Code states that: "In principle, they [the aid rules for the synthetic fibres industry] will be abolished no later than six months after the date on which the planned horizontal framework on State aid in support of major investments comes into force." However, the Commission subsequently backtracked on this principle, following pressure from industry associations. Instead, the sectoral rules will remain in place until the horizontal rules prove workable – see Schaub, A. (1997) European Competition Policy - In Particular Developments in Policy on State Aid Control, paper to CIRFS General Assembly, 14 May 1997, Brussels.

[57] For example, agriculture, fisheries, steel, synthetic fibres, shipbuilding.

[58] Including any Structural Funds contribution.

[59] In the case of the textiles and clothing industries, the investment and cost-per-job limits are ECU 15 million and ECU 30,000, respectively.

(ii) capital-labour (I)

(iii) regional impact (M)

The *competition* factor is concerned with so-called “structural overcapacity” in the sector or subsector concerned, whether the project takes place in a declining market and whether it will result in an increase in capacity. In addition, where a company has a high market share for the products concerned (set at 40 percent for the purposes of the framework), there is presumed to be a high risk that aid at the maximum rate will unduly distort competition. The competition factor is calculated as follows:

IMPACT ON COMPETITION	**FACTOR**
Project which results in capacity expansion in a sector facing serious structural overcapacity and/or an absolute decline in demand	0.25
Project which results in a capacity expansion in a sector facing structural overcapacity and/or a declining market and which is likely to reinforce high market share	0.50
Project which results in a capacity expansion in a sector facing structural overcapacity and/or a declining market	0.75
No likely negative effects in relation to the above	1.00

The *capital-labour* factor seeks to limit the value of assistance to highly capital intensive projects. It is predicated on the assumption that there is “a natural tendency for capital-intensive projects to locate in assisted areas”, but that they do not necessarily create many jobs or reduce unemployment. This criterion also claims to take account of the possible distorting effects of the aid on the final price of the product. Jobs safeguarded are only taken into account when it can be shown that “they are directly linked to the investment project in question”. The capital-labour factor is calculated as follows:

INVESTMENT PER JOB CREATED[60.]	**FACTOR**
< ECU 200,000	1.0
ECU 200,000 to ECU 400,000	0.9
ECU 401,000 to ECU 700,000	0.8
ECU 701,000 to ECU 1,000,000	0.7
> ECU 1,000,000	0.6

The *regional impact* factor is intended to take account of the benefits of the project for the assisted area. In this context, the “Commission considers that job creation can be used as an indicator of a project’s contribution to the development of a region”. In part this criterion appears to try to counter the impact of the capital-labour factor, which makes no allowance for indirect jobs. Within the context of this factor, the regional impact is defined as “jobs created directly by the project together with jobs created by

[60.] This table reproduces the figures found in the framework; however, what is intended is presumably ECU 400,001 and ECU 700,001 rather than the figures cited above.

first-tier suppliers and customers in response to the aided investment". In applying this factor, the Commission distinguishes between areas approved under Article 92(3)(a) and 3(c). The regional impact factor is calculated as follows:

INDIRECT JOB CREATION	**FACTOR**	
	Article 92(3)(a)	**Article 92(3)(c)**
High (>100% of direct jobs)	1.5	1.2
Medium (>50%, <100% of direct jobs)	1.25	1.1
Low (< 50% of direct jobs)	1.0	1.0

The maximum rate of award which the Commission will authorise is calculated as:

R x T x M x I,

where **R** is the maximum rate applicable in the region concerned.

Although the application of the above formula could result in a higher award rate than that prevailing in the region (eg. if the competition and capital intensity factors are 1.0 and there is a "medium" or "high" level of indirect job creation), this is expressly ruled out by the framework.

3.2.3 Administrative Arrangements

Under the terms of the Framework, the Commission will either authorise the aid or else will open the procedure provided for in Article 93(2) (to undertake a fuller investigation) within two months of the receipt of a completed notification; in the event of the full investigation being required, the Commission expects that a decision would normally be reached within six months.

The Framework carries with it rather detailed monitoring requirements designed to ensure that the conditions for the award which the Commission has authorised are respected. Moreover, not only must the Commission receive a copy of the award contract, but this contract must contain a reimbursement clause in the event of non-compliance with the contract and provide for a portion of the aid to be payable only when the Commission has indicated its approval or raised no objections.

3.3 Policy Implications

The Commission has estimated that the LIPS Framework will capture around 20 projects a year, presumably based on the information in the annual reports currently submitted by the Member States. This is significantly fewer than was anticipated under earlier drafts of the Framework, reflecting the extent to which its terms have been diluted to counter the objections of the Member States and the relatively recent decision not to apply the code to "special sectors" during the trial period. Notwithstanding the relatively small number of potential cases, the Framework raises some important issues for the operation of regional incentive policy in relation to large projects. This is particularly so given the incrementalism that characterises much of

EC policymaking; this could readily culminate in an expansion of the sectoral coverage of the Framework and a lowering of the size threshold above which it applies, increasing significantly the number of cases where the Framework would come into play. More generally, the Framework has the indirect effect of transferring decision-making on major investment projects away from the national authorities and into the hands of the Commission.

Perhaps the key policy issue is that the LIPS Framework, coupled with the lower award maxima set out in the Guidelines on National Regional Aid, could substantially reduce the value of regional incentives - in some cases and areas this could fall low enough to erode policy effectiveness. The table below sets out the upper award limits in those cases where the LIPS Framework has maximum impact.

Assisted area type	**Maximum rate under Guidelines**	**Impact of LIPS Framework[a]**
Article 92(3)(a) (outermost)	65	9.75
Article 92(3)(a) (standard)	50	7.5
Article 92(3)(a) (outermost with GDP > 60% EC av.)	50	7.5
Article 92(3)(a) (GDP > 60% EC av.)	40	6.0
Article 92(3)(c) (Northern Ireland)	40	6.0
Article 92(3)(c) (low population density	30	4.5
Article 92(3)(c) (standard)	20	3.0
Article 92(3)(c) (GDP > EC av. & unemp. < EC av.)	10	1.5

Note: (a) This assumes the maximum possible reduction under the LIPS framework.

In considering this table it should be noted that the Commission made clear in the Guidelines on National Regional Aid that the ceilings given were upper limits and that it reserved the right to modulate maximum rates of award within these limits; in consequence, the maximum impact of the LIPS Framework could be more dramatic still. Moreover, the administrative arrangements for notifying proposed award offers and the timing of Commission authorisation, coupled with the prospect of lower rates of award than those envisaged by the awarding body, could further undermine the attractiveness of a regional aid offer, perhaps leading firms to dismiss assisted areas from their location options. In parallel, the application of such a system may actually increase the likelihood of “windfall gains”. The delays inherent in the authorisation process may encourage firms to make location decisions having discounted the prospect of a regional aid offer (because they cannot predict the level of award which the Commission will authorise, nor how long the decision will take), with firms regarding any subsequent award as a bonus.

In addition to these issues, there are some concerns about the arbitrariness or appropriateness of some of the factors and their quantification.

First, the emphasis on capacity and overcapacity as a reflection of competition distortion is not wholly convincing. In particular, it can be argued that regional aid does not create additional capacity unless the project would not have gone ahead at all in the Community in the absence of aid. The decision to expand is a commercial one on the part of the firm, made in the light of the conditions of the market and is unlikely to be induced entirely by the prospect of regional aid. It is true that if the aided capacity displaces existing capacity *and* is less efficient than that displaced, then there is a negative impact on competition and a distortion in resource allocation. Could it not be argued that if the aided capacity is as efficient (or more so) than the capacity it displaces, then the aid influences the spatial distribution of production (in line with the objectives of regional policy) without damaging overall efficiency (in line with the objectives of competition policy)? At the very least, a clearer understanding of the relationship between regional aid, increases in capacity and competition distortion is required.

Second, the quantification of the various criteria for the LIPS Framework appears quite arbitrary. For example, the competition factor is set at 0.5 for projects resulting in capacity expansion in a sector facing overcapacity, but lowered to 0.25 where the overcapacity is “serious”. In short, the rate of award applicable could be halved on the basis of the interpretation of “serious”. According to the Framework, “serious overcapacity” is deemed to exist where the capacity utilisation rate is more than 5 percentage points below the average for the sector over a five-year period; for overcapacity, the threshold is 2 percentage points.

Significantly, the competition factor carries more weight than the capital-intensity and the regional impact factors. Assuming that a project scores the minimum in respect of the competition impact (ie. 0.25), then even if the regional impact is at the highest level, the maximum rate which the Commission can authorise under the Framework is 37.5 percent of the relevant regional aid ceiling in Article 92(3)(a) areas, and 30 percent of the ceiling in the Article 92(3)(c) areas (even this assumes that the project falls into the lowest band in relation to capital intensity). In short, the negative impact of the competition factor on award values is considerably greater than the positive impact of the regional factor, but no explanation of the various weightings is provided.

Third, the capital-labour factor itself introduces a distortion in the allocation of resources by discriminating against capital intensive projects. These are sought after precisely because capital-intensity is often associated with high-value new technologies that can bring benefits to the problem regions. There is no scope for the assessment criteria to take account of such benefits.

Fourth, the regional impact factor is limited to a consideration of indirect job creation; in part, this counters the criticism that the capital-labour factor takes account only of direct job creation. However, there are some serious flaws in the design of this criterion. The notification form requires the Member State / aid recipient to indicate whether indirect job creation is low, medium or high, to justify this assertion and supply lists of prospective first-tier suppliers and prospective customers within assisted regions. There is clearly an in-built incentive here to claim high indirect job creation and to submit exaggerated lists, effectively undermining the relevance of the criterion. On the other hand, if the Commission’s intention is to encourage the use of local suppliers by authorising high regional aid in such cases, this in itself would distort the allocation of resources. Notwithstanding the above, it is anyway difficult to imagine how this factor could be subjected to equitable *ex post* monitoring, which is surely necessary if regional impact as defined is to be a meaningful evaluation criterion.

4. CONCLUSIONS

This paper has reviewed the provisions of two major instruments of regional aid control adopted by the Commission. The adoption of the RAGS and LIPS Framework last year signals a renewed determination on the part of DGIV to maintain discipline over the regional aid policies of the Member States and will involve the Commission ever more closely in the minutiae of national policies. This final section highlights some issues for debate or discussion that arise from the new rules.

(i) The lack of transparency in the Commission approach to introducing new rules is a major cause for concern in the context of codes that are apparently intended to be enforceable and impact on parties other than the Member States.

This paper has made much of the lack of transparency involved in the publication of the Guidelines on National Regional Aid. In particular, the impact of the Guidelines cannot be fully understood without the accompanying letter. Moreover, it is only the accompanying letter which makes explicit the legal basis (ie. Article 93(1)) for the Guidelines; third parties have, therefore, no means of knowing the legal status of the Guidelines. This is important because it is not only national level policymakers who are affected by its provisions; regional development agencies and other subnational authorities operating aid schemes are also impacted.

The fact that part of the information is contained in unpublished letters also creates uncertainties - not only for third parties, but also for the Member States; in particular, the letter appears directly to contradict the terms of the Guidelines with respect to the obligation to update the population ceilings on the basis of new data. In addition, the letter involves conditions other than those contained in the Guidelines, for example, the overall population ceiling across the Community and the obligation to use the current NUTS breakdown in any updating of the data analysis.

Similar concerns apply in the context of the LIPS Framework, the first indication that there *was* an accompanying letter to the Framework was in the Commission notice pursuant to Article 93(2) regarding Germany's refusal to accept the Framework[61]; moreover, the LIPS Framework itself does not quote a legal base - it transpires from the Commission notice cited above that the letter gives the legal base of the Framework as being Article 93(1). The legal status of the Commission letters is rather unclear; however, it may be that the LIPS Framework is not actually enforceable but that its application relies on the acquiescence of the Member States; on the other hand, the negative Article 93(2) decision against Germany in respect of the LIPS Framework *is* binding, leading to the anomalous position that the Framework may only be enforceable in one Member State. If this were so, then, it has been argued, the

[61] OJEC No. C 171; 5 June 1998.

application of the LIPS Framework only to Germany could be challenged on grounds of proportionality[62].

In short, the lack of transparency, and the consequent legal uncertainty, suggest scant regard for the rule of law, which is regrettable in an area of regulation which has wide-ranging implications for policymakers and firms.

(ii) Both the RAGS and the LIPS Framework are characterised by an arbitrariness which suggests that the *existence* of rules is more important than their content.

In addition to essentially procedural concerns, there are well-founded *substantive* reasons for unease with Commission rule-making. Not the least of these is the apparent absence of a real theoretical foundation to much of its approach to controlling State aids. In a recent article, one commentator called for "a rigorous and transparent assessment of the competitive impact of state aid and a clear specification of the 'market failure' reasons which would exempt a state aid from the operation of the competition rules."[63] Both the RAGS and the LIPS lack such underpinning.

Instead, in the field of regional aids, the emphasis has been on regulating an aspect of policy which is measurable and where the impact of Commission intervention is visible, namely spatial coverage. The link between assisted area coverage and the distortion of competition is, at best, not proven, and perhaps DGIV is not entirely convinced of its relevance - DGIV has produced at least three different versions of its proposed ceilings on the assisted areas of the Member States[64]; for some countries, these involved very considerable differences, for example: under the published version of the Guidelines, the whole of the population of Ireland qualifies as Article 92(3)(c), but under an earlier version, only 50 percent of the population was included - presumably because higher coverage would have been "contrary to the common interest". This change doubtless came about as a consequence of political pressure in bilateral negotiations with the Commission, or indeed in the multilateral meetings, but a change of this order (ie. doubling the coverage of assisted areas between one draft of the Guidelines and another) undermines any plausible notion of there being an objective rationale for the rules.

While the foundations of policy are shaky, the Commission appears to compensate for this by bolting on seemingly robust and objective systems and structures for determining eligibility, spatial coverage, area designation, award maxima, and so on. In all of these areas, however, there is intensive reliance on data that is inadequate or inappropriate to the task or an attempt to quantify essentially subjective perceptions.

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[62] Bevis, W. (1998) *Omission and Commission in State Aid Control*, paper to the UACES Research Conference Panel "EC State Aid Control: A Quiet Revolution?", Lincoln, 9-11 September.

[63] Bishop, S. (1997) 'The European Commission's Policy Towards State Aid: A Role for Rigorous Competitive Analysis' *European Competition Law Review, Vol 18, No.2.*

[64] In addition to the figures given in this paper see Wishlade, F. (1997) 'EC Competition Policy and Regional Aid: an Agenda for the Year 2000?' *Regional and Industrial Research Paper Series,* 25, European Policies Research Centre, University of Strathclyde, Glasgow, which details the earlier versions.

For example, with respect to *eligibility*, in the context of Article 92(3)(a), the criteria used are of doubtful relevance, especially for the purposes of applying a strict cut-off. The Treaty refers to “areas where the standard of living is abnormally low or where there is serious underemployment”, it is highly questionable whether GDP in PPS reflects this - EUROSTAT itself stresses that:

> “GDP is not synonymous with the income ultimately available to private households….GDP or per capita GDP cannot therefore be used to make statements such as ‘Region A is more prosperous than Region B’”[65]

The validity of assessing GDP at anything but the national level is also disputable: the conventions associated with the spatial disaggregation of GDP undermine the validity of the concept and regions vary so widely in size and composition that outcomes are not really comparable. Moreover, the lack of data for some countries calls for what EUROSTAT describes as a “harmonised estimation procedure”[66]. In short, GDP in PPS is used for its availability; the plethora of problems associated with Community-wide comparisons of GDP in PPS make it unsuitable for use as “hard criterion”.

Similarly, regarding *spatial coverage*, the population quota for Article 92(3)(c) is the result of subtracting one arbitrary figure (the population eligible for Article 92(3)(a) - determined by the criteria described in the paragraph above) from another (42.7 percent). More than this, the quota is divided among countries according to internal disparities in unemployment and GDP per head at NUTS III. Both of these indicators are problematic[67] and produce some surprising outcomes in terms of “eligible” regions - these include, London, Copenhagen and Brussels (see Annex III). However, and perhaps fortunately, this process does not determine assisted area status: the “eligible” regions merely generate initial quotas which are adjusted through a mechanism in which the dominant factor is precedent; within this quota, it is the Member States which select the actual areas, albeit within strict parameters.

Last, with respect to *award values* the quantification of the various criteria for the LIPS Framework appears quite arbitrary. For example, the competition factor is set at 0.5 for projects resulting in capacity expansion in a sector facing overcapacity, but lowered to 0.25 where the overcapacity is “serious”. In short, the rate of award applicable could be halved on the basis of the interpretation of “serious”. According to the Framework, “serious overcapacity” is deemed to exist where the capacity utilisation rate is more than 5 percentage points below the average for the sector over a five-year period; for overcapacity, the threshold is 2 percentage points. It may be that considerable research underpins the evaluation of the criteria and their quantification, but this is not in evidence in the Framework.

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[65] EUROSTAT (1998) *Statistics in Focus: Regions, 1.*

[66] EUROSTAT (1998) *op cit.*

[67] GDP at NUTS III is even less meaningful than at NUTS II and the figures are explicitly described as estimates by EUROSTAT; unemployment is best measured in relation to labour market areas, but the unemployment rate alone is not a good guide to employment-related problems.

(iii) Aside from the appropriateness and/or arbitrariness of the assessment criteria, there are concerns about the impact of the LIPS Framework on the effectiveness of regional incentive policy.

The Commission has estimated that the LIPS Framework will capture around 20 projects a year, presumably based on the information in the annual reports currently submitted by the Member States. Notwithstanding the relatively small number of potential cases, the Framework raises some important issues for the operation of regional incentive policy in relation to large projects. This is particularly so given the incrementalism that characterises much of EC policymaking; this could readily culminate in an expansion of the sectoral coverage of the Framework and a lowering of the size threshold above which it applies, increasing significantly the number of cases where the Framework would come into play. More generally, the Framework has the indirect effect of transferring decision-making on major investment projects away from the national authorities and into the hands of the Commission.

Perhaps the key policy issue is that the LIPS Framework, coupled with the lower award maxima set out in the Guidelines on National Regional Aid, could substantially reduce the value of regional incentives - in some cases and areas this could fall low enough to erode the attraction of policy to potential investors. Moreover, the administrative arrangements for notifying proposed award offers and the timing of Commission authorisation, coupled with the prospect of lower rates of award than those envisaged by the awarding body, could further undermine the attractiveness of a regional aid offer, perhaps leading firms to dismiss assisted areas from their location options. In parallel, the application of such a system may actually increase the likelihood of “windfall gains”. The delays inherent in the authorisation process may encourage firms to make location decisions having discounted the prospect of a regional aid offer (because they cannot predict the level of award which the Commission will authorise, nor how long the decision will take), with firms regarding any subsequent award as a bonus.

Last, and taking a wider view, especially if there is the prospect of the scope of the Framework being expanded in the future, there is the issue of whether such limits would make a European location less attractive in a global context. North Americans habitually regard Europeans as being profligate in the use of public funds to compete for mobile investment, pointing to the low or non-existent levels of spend at the *Federal* levels in the US and Canada; however, by the end of the 1980s, annual spending on targeted assistance at the *subnational* level in the US was estimated at \$20 billion, with a further \$200 billion in expenditures and revenue foregone[68]. Importantly in the present context, such spending is, to all intents and purposes, not regulated; against this background, projects which have choice of location outside the Community may well find the absence of such discipline attractive alongside the arcane and lengthy procedures implied by the LIPS Framework.

(iv) Is the competition policy control of regional aids really an aspect of cohesion policy?

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[68] According to Earl Fry, quoted in Trebilcock, M J and Howse, R (1995) *The Regulation of International Trade,* Routledge, London.

From the discussion above, it is perhaps easy to lose sight of the fact that the new Guidelines on National Regional Aid are concerned with preventing distortions of competition and trade. Over the past decade the Community has been increasingly preoccupied with the notion of economic and social cohesion and the evolution of EC competition policy in relation to State aids has reflected this trend. It has become a standard part of Commission rhetoric to promote the control of State aids as a strand of cohesion policy. In its Second Survey on State aids, the Commission stated that:

> "In addition to the need to ensure that any aids that are granted by the Member States in the Community do not frustrate the move towards the internal market, the Commission must verify that the remaining aids promote recognised Community objectives. In particular the Commission has in mind the goal of cohesion, which permits aid for the promotion of peripheral and poorer regions of the Community. The Community will continue to ensure coherence between its own Structural Funds and state aids such that the two are complementary and not contradictory".

With the adoption of the RAGS and LIPS, the focus of the rules has involved a further shift towards concerns with competition between *regions* and *countries*, most notably with the respect to the attraction of mobile investment, rather than the relative competitive positions of *firms*, who are, after all, the ultimate beneficiaries of subsidies.

In practice, this results in attempts to shape regional policy at the Community, national and subnational levels in ways that are not justified competition concerns. The straight-jacketing of cohesion policies which is implied by the new rules arguably runs counter to the principle of subsidiarity because of the extent to which it impedes the scope for national and subnational authorities to design and implement spatial development policies. Furthermore, it is questionable whether the particular view of cohesion implied by the rules actually enables legitimate regional development objectives to be furthered; as worrying, it is far from clear that fair competition is safeguarded by this style and level of intervention.

ANNEX: REGIONAL TABLES

Regio Code	NUTS II	1993-5 Average	Total Pop 95	Art 92(3)(a) as % of EC Pop	Art 92(3)(a) as % of Nat Pop
eur_ec	EUR 15	100	373.13	0	
at11	BURGENLAND	72.89	0.27	0.07	3.41
	AUSTRIA			**0.07**	**3.41**
de4	BRANDENBURG	63.30	2.54	0.68	3.11
de8	MECKLENBURG-VORPOMMERN	57.92	1.83	0.49	2.24
ded	SACHSEN	59.61	4.58	1.23	5.60
dee1	DESSAU	53.46	0.58	0.15	0.70
dee2	HALLE	66.34	0.91	0.24	1.12
dee3	MAGDEBURG	56.09	1.26	0.34	1.54
deg	THUERINGEN	57.49	2.51	0.67	3.07
	GERMANY			**3.81**	**17.39**
es11	GALICIA	60.41	2.73	0.73	6.95
es12	ASTURIAS	72.56	1.08	0.29	2.75
es41	CASTILLA-LEON	71.39	2.52	0.67	6.42
es42	CASTILLA-LA MANCHA	64.89	1.69	0.45	4.30
es43	EXTREMADURA	54.96	1.07	0.29	2.73
es61	ANDALUCIA	57.32	7.10	1.90	18.10
es62	MURCIA	68.61	1.08	0.29	2.75
es63	CEUTA Y MELILLA	66.59	0.13	0.04	0.34
	SPAIN			**4.66**	**44.34**
fi13	ITAE-SUOMI	72.82	0.71	0.19	13.83
	FINLAND			**0.19**	**13.83**
fr91	GUADELOUPE	40.25	0.41	0.11	0.71
fr92	MARTINIQUE	53.87	0.38	0.10	0.66
fr93	GUYANE	50.88	0.14	0.04	0.25
fr94	REUNION	47.18	0.65	0.17	1.11
	FRANCE			**0.43**	**2.73**
gr11	ANATOLIKI MAKEDONIA, THRAKI	58.38	0.56	0.15	5.37
gr12	KENTRIKI MAKEDONIA	65.19	1.77	0.47	16.91
gr13	DYTIKI MAKEDONIA	59.74	0.30	0.08	2.89
gr14	THESSALIA	59.84	0.74	0.20	7.10
gr21	IPEIROS	43.05	0.36	0.10	3.49
gr22	IONIA NISIA	60.00	0.20	0.05	1.89
gr23	DYTIKI ELLADA	55.61	0.73	0.20	6.98
gr24	STEREA ELLADA	65.21	0.65	0.18	6.25
gr25	PELOPONNISOS	57.45	0.66	0.18	6.35
gr3	ATTIKI	73.09	3.46	0.93	33.14
gr41	VOREIO AIGAIO	48.79	0.19	0.05	1.78
gr42	NOTIO AIGAIO	73.51	0.27	0.07	2.54
gr43	KRITI	69.93	0.56	0.15	5.31
	GREECE			**2.80**	**100.00**
it8	CAMPANIA	67.19	5.86	1.57	10.04
it91	PUGLIA	71.35	4.15	1.11	7.12
it92	BASILICATA	67.26	0.62	0.17	1.06
it93	CALABRIA	59.75	2.11	0.57	3.62
ita	SICILIA	67.88	5.18	1.39	8.88
	ITALY			**4.81**	**30.73**
pt11	NORTE	60.99	3.52	0.94	35.55
pt12	CENTRO (P)	57.73	1.71	0.46	17.27
pt14	ALENTEJO	55.80	0.53	0.14	5.31
pt15	ALGARVE	70.11	0.35	0.09	3.48
pt2	ACORES	49.60	0.24	0.06	2.43
pt3	MADEIRA	51.56	0.26	0.07	2.59
	PORTUGAL			**1.77**	**66.62**
uk23	SOUTH YORKSHIRE	73.28	1.30	0.35	2.22
uk84	MERSEYSIDE	73.67	1.43	0.38	2.44
	UK			**0.73**	**4.66**
	EC Total Population in 92(3)(a)			**19.26**	

Regio Code	NUTS II Region	GDP(PPS) per Head 1993-5 Average	Total Population	Article 92(3)(a) as % of EC Population
eur_ec	EUR 15	100.00	373.13	0.00
fr91	GUADELOUPE	40.25	0.41	0.11
gr21	IPEIROS	43.05	0.36	0.21
fr94	REUNION	47.18	0.65	0.38
gr41	VOREIO AIGAIO	48.79	0.19	0.43
pt2	ACORES	49.60	0.24	0.50
fr93	GUYANE	50.88	0.14	0.54
pt3	MADEIRA	51.56	0.26	0.60
dee1	DESSAU	53.46	0.58	0.76
fr92	MARTINIQUE	53.87	0.38	0.86
es43	EXTREMADURA	54.96	1.07	1.15
gr23	DYTIKI ELLADA	55.61	0.73	1.34
pt14	ALENTEJO	55.80	0.53	1.48
dee3	MAGDEBURG	56.09	1.26	1.82
es61	ANDALUCIA	57.32	7.10	3.72
gr25	PELOPONNISOS	57.45	0.66	3.90
deg	THUERINGEN	57.49	2.51	4.58
pt12	CENTRO (P)	57.73	1.71	5.03
de8	MECKLENBURG-VORPOMMERN	57.92	1.83	5.52
gr11	ANATOLIKI MAKEDONIA, THRAKI	58.38	0.56	5.67
ded	SACHSEN	59.61	4.58	6.90
gr13	DYTIKI MAKEDONIA	59.74	0.30	6.98
it93	CALABRIA	59.75	2.11	7.55
gr14	THESSALIA	59.84	0.74	7.75
gr22	IONIA NISIA	60.00	0.20	7.80
es11	GALICIA	60.41	2.73	8.53
pt11	NORTE	60.99	3.52	9.48
de4	BRANDENBURG	63.30	2.54	10.16
es42	CASTILLA-LA MANCHA	64.89	1.69	10.61
gr12	KENTRIKI MAKEDONIA	65.19	1.77	11.08
gr24	STEREA ELLADA	65.21	0.65	11.26
dee2	HALLE	66.34	0.91	11.50
es63	CEUTA Y MELILLA	66.59	0.13	11.54
it8	CAMPANIA	67.19	5.86	13.11
it92	BASILICATA	67.26	0.62	13.27
ita	SICILIA	67.88	5.18	14.66
es62	MURCIA	68.61	1.08	14.95
gr43	KRITI	69.93	0.56	15.10
pt15	ALGARVE	70.11	0.35	15.19
it91	PUGLIA	71.35	4.15	16.31
es41	CASTILLA-LEON	71.39	2.52	16.98
es12	ASTURIAS	72.56	1.08	17.27
fi13	ITAE-SUOMI	72.82	0.71	17.46
at11	BURGENLAND	72.89	0.27	17.53
gr3	ATTIKI	73.09	3.46	18.46
uk23	SOUTH YORKSHIRE	73.28	1.30	18.81
gr42	NOTIO AIGAIO	73.51	0.27	18.88
uk84	MERSEYSIDE	73.67	1.43	19.26

es52	COMUNIDAD VALENCIANA	75.45	3.90	20.31
es7	CANARIAS	75.55	1.55	20.72
es13	CANTABRIA	75.58	0.53	20.87
itb	SARDEGNA	76.35	1.69	21.32
it72	MOLISE	76.72	0.34	21.41
nl23	FLEVOLAND	77.01	0.27	21.48
uk91	CLW, DYF, GWYN, POW	77.16	1.13	21.78
uka3	HIGHLANDS, ISLANDS	78.76	0.28	21.86
ukb	NORTHERN IRELAND	78.79	1.65	22.30
uk11	CLEVELAND, DURHAM	79.44	1.17	22.61
uk62	CORNWALL, DEVON	79.58	1.54	23.03
uk72	SHROPSHIRE, STAFFORDSHIRE	80.96	1.48	23.42
fi14	VAELI-SUOMI	81.02	0.71	23.61
fr81	LANGUEDOC-ROUSSILLON	81.81	2.22	24.21
uk92	GWENT, MID-S-W GLAMORGAN	82.11	1.78	24.68
fr83	CORSE	82.30	0.26	24.75
fi15	POHJOIS-SUOMI	83.07	0.56	24.90
uk54	ESSEX	83.41	1.58	25.33
be32	HAINAUT	83.59	1.29	25.67
uk13	NORTHUMBERLAND,T & W	83.65	1.44	26.06
be35	NAMUR	84.58	0.43	26.17
fr63	LIMOUSIN	84.66	0.71	26.36
uk83	LANCASHIRE	85.61	1.43	26.75
fr53	POITOU-CHARENTES	85.70	1.61	27.18
de93	LUENEBURG	85.80	1.59	27.61
fr72	AUVERGNE	85.83	1.33	27.96
be31	BRABANT WALLON	86.59	0.34	28.05
fr22	PICARDIE	86.71	1.87	28.55
uk31	DERBYSHIRE, NOTTS	86.98	1.99	29.09
fr52	BRETAGNE	87.33	2.88	29.86
es24	ARAGON	87.72	1.18	30.18
uk33	LINCOLNSHIRE	87.83	0.61	30.34
ie	IRELAND	87.90	3.58	31.30
uka2	DUMF-GALLOWAY, STRATH	88.16	2.43	31.95
uk57	KENT	88.17	1.55	32.37
at22	STEIERMARK	88.32	1.21	32.69
uk63	DORSET, SOMERSET	88.33	1.16	33.00
pt13	LISBOA E VALE DO TEJO	88.39	3.31	33.89
fi12	ETELAE-SUOMI	88.44	1.79	34.37
fr3	NORD-PAS-DE-CALAIS	88.62	4.00	35.44
uk21	HUMBERSIDE	88.74	0.89	35.68
deb2	TRIER	88.84	0.50	35.81
es23	RIOJA	88.95	0.26	35.88
uk82	GREATER MANCHESTER	89.31	2.58	36.58
se02	OESTRA MELLANSVERIGE	89.63	1.50	36.98
nl12	FRIESLAND	89.67	0.61	37.14
nl13	DRENTHE	89.67	0.46	37.26
it71	ABRUZZO	89.82	1.29	37.61
fr62	MIDI-PYRENEES	90.15	2.50	38.28
at21	KAERNTEN	90.15	0.56	38.43
fr41	LORRAINE	90.89	2.31	39.05
uk71	HEREFORD-WORCS, WARCS	91.57	1.19	39.37
es21	PAIS VASCO	92.01	2.08	39.93
se04	SYDSVERIGE	92.14	1.26	40.26
at12	NIEDEROESTERREICH	92.62	1.52	40.67

fr26	BOURGOGNE	92.90	1.62	41.11
uk24	WEST YORKSHIRE	92.96	2.11	41.67
deb1	KOBLENZ	93.04	1.48	42.07
fr61	AQUITAINE	93.37	2.88	42.84
fr25	BASSE-NORMANDIE	93.44	1.42	43.22
fr43	FRANCHE-COMTE	93.49	1.12	43.52
es22	NAVARRA	93.66	0.53	43.66
fr51	PAYS DE LA LOIRE	93.89	3.15	44.50
nl21	OVERIJSSEL	93.99	1.05	44.79
nl42	LIMBURG (NL)	94.21	1.13	45.09
se06	NORRA MELLANSVERIGE	94.48	0.86	45.32
nl22	GELDERLAND	94.72	1.87	45.82
uk73	WEST MIDLANDS (COUNTY)	94.87	2.64	46.53
es51	CATALUNA	94.96	6.07	48.16
fr82	PROV-ALPES-COTE D'AZUR	95.14	4.43	49.34
fr24	CENTRE	95.22	2.42	49.99
se05	VAESTSVERIGE	95.77	1.77	50.46
be24	VLAAMS BRABANT	95.86	1.00	50.73
es3	MADRID	96.15	5.01	52.07
se03	SMAALAND MED OEARNA	96.19	0.80	52.29
uk51	BEDFORDSHIRE, HERTS	96.34	1.56	52.70
fr21	CHAMPAGNE-ARDENNE	96.42	1.35	53.07
se08	OEVRE NORRLAND	96.44	0.53	53.21
uk53	SURREY, EAST-WEST SUSSEX	96.52	2.51	53.88
dea3	MUENSTER	97.04	2.56	54.57
uk22	NORTH YORKSHIRE	97.54	0.73	54.76
se07	MELLERSTA NORRLAND	97.81	0.40	54.87
uk4	EAST ANGLIA	98.13	2.12	55.44
de22	NIEDERBAYERN	98.59	1.14	55.74
it52	UMBRIA	98.60	0.84	55.97
nl34	ZEELAND	99.07	0.37	56.07
es53	BALEARES	99.27	0.73	56.26
uk56	HAMPSHIRE, ISLE OF WIGHT	99.46	1.74	56.73
uk12	CUMBRIA	99.62	0.49	56.86
be34	LUXEMBOURG (B)	100.39	0.24	56.92
de23	OBERPFALZ	101.02	1.05	57.20
uka1	BORD.-CENTR.-FIFE-LOTH.-TAY.	101.22	1.89	57.71
de94	WESER-EMS	101.52	2.34	58.34
uk32	LEICS., NORTHAMPTONSHIRE	101.77	1.52	58.75
at31	OBEROESTERREICH	102.36	1.39	59.12
nl41	NOORD-BRABANT	103.87	2.28	59.73
it53	MARCHE	104.26	1.47	60.12
be33	LIEGE	104.54	1.02	60.40
fr71	RHONE-ALPES	104.78	5.57	61.89
de3	BERLIN	105.06	3.47	62.82
def	SCHLESWIG-HOLSTEIN	105.09	2.72	63.55
deb3	RHEINHESSEN-PFALZ	105.15	1.98	64.08
de26	UNTERFRANKEN	105.70	1.31	64.43
uk61	AVON, GLOUCS., WILTSHIRE	106.31	2.13	65.00
dec	SAARLAND	106.69	1.08	65.29
dea5	ARNSBERG	106.71	3.82	66.31
de72	GIESSEN	106.75	1.05	66.59
be22	LIMBURG (B)	106.87	0.77	66.80
uk81	CHESHIRE	107.34	0.98	67.06

de24	OBERFRANKEN	108.40	1.11	67.36
dea4	DETMOLD	108.41	2.00	67.90
at33	TIROL	108.58	0.66	68.07
de91	BRAUNSCHWEIG	108.64	1.68	68.52
be23	OOST-VLAANDEREN	108.66	1.35	68.88
fr23	HAUTE-NORMANDIE	108.89	1.77	69.36
it51	TOSCANA	109.75	3.59	70.32
nl33	ZUID-HOLLAND	109.76	3.33	71.21
fr42	ALSACE	110.73	1.70	71.67
de13	FREIBURG	110.83	2.08	72.23
dk	DANMARK	111.29	5.23	73.63
de27	SCHWABEN	111.91	1.72	74.09
at34	VORARLBERG	113.14	0.34	74.18
it6	LAZIO	114.52	5.29	75.60
it11	PIEMONTE	115.01	4.37	76.77
dea2	KOELN	116.10	4.17	77.89
de14	TUEBINGEN	116.19	1.72	78.35
nl31	UTRECHT	117.23	1.07	78.63
de73	KASSEL	117.42	1.27	78.97
nl32	NOORD-HOLLAND	118.34	2.47	79.63
uk52	BERKS.,BUCKS., OXFORDSHIRE	118.52	2.05	80.18
de92	HANNOVER	118.72	2.13	80.75
it13	LIGURIA	118.91	1.69	81.21
fi11	UUSIMAA	119.71	1.32	81.56
be25	WEST-VLAANDEREN	119.71	1.12	81.86
at32	SALZBURG	120.89	0.51	82.00
it32	VENETO	120.97	4.51	83.21
dea1	DUESSELDORF	121.52	5.29	84.62
it33	FRIULI-VENEZIA GIULIA	122.51	1.21	84.95
se01	STOCKHOLM	122.64	1.72	85.41
fi2	AHVENANMAA/AALAND	122.97	0.03	85.42
de25	MITTELFRANKEN	125.02	1.66	85.86
it31	TRENTINO-ALTO ADIGE	125.61	0.93	86.11
de12	KARLSRUHE	126.62	2.65	86.82
uka4	GRAMPIAN	129.37	0.53	86.96
nl11	GRONINGEN	129.74	0.56	87.11
it4	EMILIA-ROMAGNA	129.82	4.00	88.18
it12	VALLE D'AOSTA	130.56	0.12	88.21
it2	LOMBARDIA	130.95	9.08	90.65
de11	STUTTGART	137.44	3.85	91.68
be21	ANTWERPEN	140.01	1.63	92.12
uk55	GREATER LONDON	143.81	7.01	93.99
de5	BREMEN	152.50	0.68	94.18
de21	OBERBAYERN	158.25	3.97	95.24
fr1	ILE DE FRANCE	165.46	11.01	98.19
at13	WIEN	166.33	1.59	98.62
lu	LUXEMBOURG (GRAND-DUCHE)	166.66	0.41	98.73
de71	DARMSTADT	172.38	3.68	99.71
be1	BRUSSELS	175.67	0.95	99.97
de6	HAMBURG	192.66	1.71	100.43

Note: Population figures are for 1995, except for the French DOMS; these are not included in the total, hence the cumulative population exceeds 100%.

Eurostat Code	NUTS III Regions	Qualifying Pop (% of EC15)	Qualifying pop (% of nat)	Qual on GDP?	Qual on Unemp?
eur_ec	EUR 15	28.453			
	BELGIUM		**49.05**		
be1	BRUSSELS	0.255	9.39		YES
be223	TONGEREN	0.050	1.84	YES	
be231	AALST	0.070	2.57	YES	
be232	DENDERMONDE	0.050	1.82	YES	
be233	EEKLO	0.021	0.78	YES	
be242	LEUVEN	0.120	4.40	YES	
be31	BRABANT WALLON	0.090	3.32	YES	
be321	ATH	0.021	0.77	YES	YES
be322	CHARLEROI	0.115	4.22		YES
be323	MONS	0.068	2.50	YES	YES
be324	MOUSCRON	0.019	0.70		YES
be325	SOIGNIES	0.046	1.69	YES	YES
be326	THUIN	0.039	1.44	YES	YES
be327	TOURNAI	0.038	1.39	YES	YES
be331	HUY	0.026	0.96		YES
be332	LIEGE (ARRONDISSEMENT)	0.159	5.85		YES
be334	WAREMME	0.017	0.64	YES	
be345	VIRTON	0.013	0.47	YES	
be351	DINANT	0.026	0.96	YES	
be352	NAMUR (ARRONDISSEMENT)	0.074	2.74	YES	YES
be353	PHILIPPEVILLE	0.016	0.60	YES	YES
	DENMARK		**26.68**		
dk001	KOEBENHAVN OG FREDERIKS.KOM	0.150	10.73		YES
dk003	FREDERIKSBORG AMT	0.094	6.73	YES	
dk004	ROSKILDE AMT	0.060	4.30	YES	
dk006	STORSTROEMS AMT	0.069	4.91	YES	
	GERMANY		**23.44**		
de12a	CALW	0.042	0.19	YES	
de12b	ENZKREIS	0.050	0.23	YES	
de132	BREISGAU-HOCHSCHWARZWALD	0.061	0.28	YES	
de133	EMMENDINGEN	0.039	0.18	YES	
de145	ALB-DONAU-KREIS	0.048	0.22	YES	
de216	BAD TOELZ-WOLFRATSHAUSEN	0.030	0.14	YES	
de217	DACHAU	0.032	0.15	YES	
de219	EICHSTAETT	0.030	0.14	YES	
de21a	ERDING	0.028	0.13	YES	
de21j	PFAFFENHOFEN AN DER ILM	0.028	0.13	YES	
de21k	ROSENHEIM, LANDKR.	0.060	0.27	YES	
de225	FREYUNG-GRAFENAU	0.022	0.10	YES	
de227	LANDSHUT, LANDKR.	0.035	0.16	YES	
de228	PASSAU, LANDKR.	0.049	0.22	YES	
de229	REGEN	0.022	0.10	YES	
de22a	ROTTAL-INN	0.031	0.14	YES	
de22b	STRAUBING-BOGEN	0.024	0.11	YES	
de234	AMBERG-SULZBACH	0.028	0.13	YES	
de235	CHAM	0.035	0.16	YES	
de237	NEUSTADT A. D. WALDNAAB	0.027	0.12	YES	
de238	REGENSBURG, LANDKR.	0.044	0.20	YES	

de239	SCHWANDORF	0.037	0.17	YES	
de23a	TIRSCHENREUTH	0.022	0.10	YES	
de245	BAMBERG, LANDKR.	0.036	0.17	YES	
de246	BAYREUTH, LANDKR.	0.029	0.13	YES	
de248	FORCHHEIM	0.029	0.13	YES	
de256	ANSBACH, LANDKR.	0.047	0.22	YES	
de257	ERLANGEN-HOECHSTADT	0.033	0.15	YES	
de258	FUERTH, LANDKREIS	0.029	0.13	YES	
de25a	NEUSTADT/AISCHBAD WINDSHEIM	0.025	0.12	YES	
de25b	ROTH	0.032	0.15	YES	
de265	BAD KISSINGEN	0.029	0.13	YES	
de267	HASSBERGE	0.023	0.11	YES	
de26b	SCHWEINFURT, LANDKR.	0.030	0.14	YES	
de26c	WUERZBURG, LANDKR.	0.041	0.19	YES	
de275	AICHACH-FRIEDBERG	0.031	0.14	YES	
de276	AUGSBURG, LANDKR.	0.060	0.27	YES	
de27e	OBERALLGAEU	0.039	0.18	YES	
de302	BERLIN-OST, STADT	0.349	1.59	YES	YES
de502	BREMERHAVEN, KRFR.ST.	0.035	0.16		YES
de71d	RHEINGAU-TAUNUS-KREIS	0.049	0.22	YES	
de912	SALZGITTER, KRFR.ST.	0.032	0.14		YES
de913	WOLFSBURG, KRFR.ST.	0.034	0.16		YES
de914	GIFHORN	0.043	0.20	YES	
de916	GOSLAR	0.043	0.20	YES	
de917	HELMSTEDT	0.027	0.12	YES	
de918	NORTHEIM	0.041	0.19	YES	
de91a	PEINE	0.034	0.15	YES	
de91b	WOLFENBUETTEL	0.033	0.15	YES	
de922	DIEPHOLZ	0.054	0.25	YES	
de924	HANNOVER, LANDKR.	0.156	0.71	YES	
de928	SCHAUMBURG	0.043	0.20	YES	
de932	CUXHAVEN	0.053	0.24	YES	
de933	HARBURG	0.057	0.26	YES	
de934	LUECHOW-DANNENBERG	0.014	0.06	YES	
de936	OSTERHOLZ	0.028	0.13	YES	
de939	STADE	0.049	0.22	YES	
de941	DELMENHORST, KRFR.ST.	0.021	0.10	YES	
de945	WILHELMSHAVEN, KRFR.ST.	0.024	0.11		YES
de947	AURICH	0.048	0.22	YES	
de948	CLOPPENBURG	0.037	0.17	YES	
de94a	FRIESLAND	0.026	0.12	YES	
de94b	GRAFSCHAFT BENTHEIM	0.033	0.15	YES	
de94c	LEER	0.041	0.19	YES	
de94d	OLDENBURG (OLD.), LANDKR.	0.030	0.14	YES	
de94e	OSNABRUECK, LANDKR.	0.091	0.41	YES	
de94h	WITTMUND	0.015	0.07	YES	
dea12	DUISBURG, KRFR.ST.	0.144	0.66		YES
dea1b	KLEVE	0.077	0.35	YES	
dea1e	VIERSEN	0.077	0.35	YES	
dea1f	WESEL	0.124	0.57	YES	
dea25	AACHEN, LANDKR.	0.081	0.37	YES	
dea28	EUSKIRCHEN	0.049	0.22	YES	
dea29	HEINSBERG	0.063	0.29	YES	
dea2b	RHEINISCH-BERGISCHER-KREIS	0.072	0.33	YES	
dea2c	RHEIN-SIEG-KREIS	0.145	0.66	YES	
dea31	BOTTROP, KRFR.ST.	0.032	0.15	YES	
dea35	COESFELD	0.054	0.25	YES	
dea36	RECKLINGHAUSEN	0.177	0.81	YES	
dea44	HOEXTER	0.041	0.19	YES	
dea52	DORTMUND, KRFR.ST.	0.161	0.73		YES

dea55	HERNE, KRFR.ST.	0.048	0.22		YES
deb12	AHRWEILER	0.033	0.15	YES	
deb13	ALTENKIRCHEN (WESTERWALD)	0.036	0.16	YES	
deb15	BIRKENFELD	0.024	0.11	YES	
deb16	COCHEM-ZELL	0.017	0.08	YES	
deb17	MAYEN-KOBLENZ	0.055	0.25	YES	
deb19	RHEIN-HUNSRUECK-KREIS	0.028	0.13	YES	
deb1a	RHEIN-LAHN-KREIS	0.034	0.16	YES	
deb1b	WESTERWALDKREIS	0.052	0.24	YES	
deb22	BERNKASTEL-WITTLICH	0.030	0.14	YES	
deb23	BITBURG-PRUEM	0.026	0.12	YES	
deb24	DAUN	0.017	0.08	YES	
deb25	TRIER-SAARBURG	0.036	0.16	YES	
deb37	PIRMASENS, KRFR.ST.	0.013	0.06		YES
deb3b	ALZEY-WORMS	0.031	0.14	YES	
deb3c	BAD DUERKHEIM	0.035	0.16	YES	
deb3d	DONNERSBERGKREIS	0.020	0.09	YES	
deb3f	KAISERSLAUTERN, LANDKR.	0.029	0.13	YES	
deb3g	KUSEL	0.021	0.10	YES	
deb3h	SUEDLICHE WEINSTRASSE	0.029	0.13	YES	
deb3i	LUDWIGSHAFEN, LANDKR.	0.038	0.17	YES	
deb3j	MAINZ-BINGEN	0.050	0.23	YES	
deb3k	PIRMASENS	0.028	0.13	YES	
Dec-02	MERZIG-WADERN	0.028	0.13	YES	
Dec-03	NEUNKIRCHEN	0.040	0.18	YES	
Dec-06	SANKT WENDEL	0.026	0.12	YES	
def06	HERZOGTUM LAUENBURG	0.045	0.21	YES	
def0a	PLOEN	0.034	0.15	YES	
def0c	SCHLESWIG-FLENSBURG	0.050	0.23	YES	
	SPAIN		**43.27**		
es13	CANTABRIA	0.141	1.34	YES	YES
es212	GUIPUZCOA	0.179	1.70		YES
es213	VIZCAYA	0.304	2.89		YES
es3	MADRID	1.342	12.77		YES
es511	BARCELONA	1.241	11.81		YES
es521	ALICANTE	0.353	3.36	YES	YES
es523	VALENCIA	0.572	5.44		YES
es701	LAS PALMAS	0.214	2.04	YES	YES
es702	SANTA CRUZ DE TENERIFE	0.201	1.91		YES

	FRANCE		**52.87**		
fr106	SEINE-SAINT-DENIS	0.377	2.42		YES
fr211	ARDENNES	0.079	0.51	YES	YES
fr212	AUBE	0.078	0.50		YES
fr214	HAUTE-MARNE	0.053	0.34	YES	
fr221	AISNE	0.147	0.94		YES
fr222	OISE	0.205	1.32	YES	
fr223	SOMME	0.148	0.95	YES	YES
fr232	SEINE-MARITIME	0.332	2.13		YES
fr243	INDRE	0.063	0.41	YES	
fr251	CALVADOS	0.170	1.09		YES
fr262	NIEVRE	0.062	0.40	YES	
fr264	YONNE	0.089	0.57	YES	
fr301	NORD	0.686	4.40		YES
fr302	PAS-DE-CALAIS	0.386	2.47	YES	YES
fr412	MEUSE	0.052	0.33	YES	
fr433	HAUTE-SAONE	0.062	0.40	YES	
fr434	TERRITOIRE DE BELFORT	0.037	0.24	YES	
fr511	LOIRE-ATLANTIQUE	0.293	1.88		YES
fr512	MAINE-ET-LOIRE	0.194	1.24	YES	
fr515	VENDEE	0.141	0.91	YES	
fr521	COTES-D'ARMOR	0.145	0.93	YES	
fr522	FINISTERE	0.232	1.49	YES	
fr524	MORBIHAN	0.170	1.09	YES	
fr532	CHARENTE-MARITIME	0.144	0.92	YES	YES
fr533	DEUX-SEVRES	0.093	0.60	YES	
fr534	VIENNE	0.104	0.67	YES	
fr611	DORDOGNE	0.105	0.67	YES	
fr612	GIRONDE	0.340	2.18		YES
fr614	LOT-ET-GARONNE	0.082	0.53	YES	YES
fr621	ARIEGE	0.037	0.24	YES	
fr622	AVEYRON	0.071	0.46	YES	
fr623	HAUTE-GARONNE	0.267	1.72		YES
fr624	GERS	0.046	0.30	YES	
fr625	LOT	0.041	0.27	YES	
fr626	HAUTES-PYRENEES	0.060	0.38	YES	
fr627	TARN	0.091	0.59	YES	
fr628	TARN-ET-GARONNE	0.055	0.35	YES	
fr631	CORREZE	0.063	0.40	YES	
fr632	CREUSE	0.034	0.22	YES	
fr712	ARDECHE	0.076	0.49	YES	
fr713	DROME	0.115	0.74		YES
fr715	LOIRE	0.201	1.29	YES	
fr721	ALLIER	0.095	0.61	YES	
fr722	CANTAL	0.042	0.27	YES	
fr723	HAUTE-LOIRE	0.055	0.36	YES	
fr811	AUDE	0.081	0.52	YES	YES
fr812	GARD	0.167	1.07	YES	YES
fr813	HERAULT	0.226	1.45	YES	YES
fr814	LOZERE	0.020	0.13	YES	
fr815	PYRENEES-ORIENTALES	0.101	0.65	YES	YES
fr821	ALPES-DE-HAUTE-PROVENCE	0.037	0.23	YES	
fr823	ALPES-MARITIMES	0.272	1.74		YES
fr824	BOUCHES-DU-RHONE	0.483	3.10		YES

fr825	VAR	0.234	1.50	YES	YES
fr826	VAUCLUSE	0.130	0.83		YES
fr83	CORSE	0.070	0.45		YES
	IRELAND		**47.07**		
ie001	BORDER	0.109	11.32	YES	
ie003	MID-EAST	0.092	9.55	YES	
ie004	MIDLAND	0.054	5.67	YES	
ie006	SOUTH-EAST (IRL)	0.104	10.85		YES
ie008	WEST	0.093	9.67	YES	
	ITALY		**5.78**		
it511	MASSA-CARRARA	0.055	0.35		YES
it516	LIVORNO	0.092	0.59		YES
it601	VITERBO	0.078	0.50		YES
it604	LATINA	0.134	0.86		YES
it721	ISERNIA	0.025	0.16		YES
it722	CAMPOBASSO	0.066	0.42		YES
itb01	SASSARI	0.125	0.80		YES
itb02	NUORO	0.075	0.48		YES
itb03	ORISTANO	0.043	0.28		YES
itb04	CAGLIARI	0.210	1.34		YES
	NETHERLANDS		**12.28**		
nl111	OOST-GRONINGEN	0.041	0.98	YES	
nl122	ZUIDWEST-FRIESLAND	0.026	0.63	YES	
nl123	ZUIDOOST-FRIESLAND	0.052	1.25	YES	
nl131	NOORD-DRENTHE	0.044	1.05	YES	
nl133	ZUIDWEST-DRENTHE	0.038	0.91	YES	
nl23	FLEVOLAND	0.072	1.73	YES	
nl321	KOP VAN NOORD-HOLLAND	0.092	2.22	YES	
nl322	ALKMAAR E.O.	0.060	1.45	YES	
nl334	OOST ZUID-HOLLAND	0.085	2.05	YES	
	AUSTRIA		**37.80**		
at121	MOSTVIERTEL-EISENWURZEN	0.063	2.93	YES	
at122	NIEDEROESTERREICH-SUED	0.065	3.03	YES	
at124	WALDVIERTEL	0.060	2.78	YES	
at125	WEINVIERTEL	0.033	1.52	YES	
at126	WIENER UMLAND/NORDTEIL	0.071	3.30	YES	
at212	OBERKAERNTEN	0.036	1.65	YES	YES
at213	UNTERKAERNTEN	0.043	1.99	YES	
at222	LIEZEN	0.022	1.04	YES	YES
at223	OESTLICHE OBERSTEIERMARK	0.049	2.29	YES	YES
at224	OSTSTEIERMARK	0.072	3.35	YES	
at225	WEST-UND SUEDSTEIERMARK	0.051	2.36	YES	
at226	WESTLICHE OBERSTEIERMARK	0.030	1.40	YES	
at311	INNVIERTEL	0.073	3.39	YES	
at313	MUEHLVIERTEL	0.053	2.46	YES	
at321	LUNGAU	0.006	0.26	YES	
at322	PINZGAU-PONGAU	0.042	1.93		YES
at331	AUSSERFERN	0.008	0.38		YES
at333	OSTTIROL	0.013	0.61	YES	YES
at334	TIROLER OBERLAND	0.024	1.13		YES

	PORTUGAL		**14.87**		
pt131	OESTE	0.097	3.65	YES	
pt133	PENINSULA DE SETUBAL	0.176	6.62	YES	
pt134	MEDIO TEJO	0.060	2.27	YES	
pt135	LEZIRIA DO TEJO	0.062	2.33	YES	
	FINLAND		**47.97**		
fi122	SATAKUNTA	0.065	4.77		YES
fi123	HAEME	0.044	3.23	YES	YES
fi124	PIRKANMAA	0.117	8.56		YES
fi125	PAEIJAET-HAEME	0.049	3.57		YES
fi126	KYMENLAAKSO	0.052	3.77		YES
fi127	ETELAE-KARJALA	0.038	2.74		YES
fi141	KESKI-SUOMI	0.069	5.05		YES
fi142	ETELAE-POHJANMAA	0.054	3.95	YES	YES
fi144	KESKI-POHJANMAA	0.020	1.43	YES	YES
fi151	POHJOIS-POHJANMAA	0.095	6.96	YES	YES
fi152	LAPPI	0.054	3.95		YES
	SWEDEN		**11.05**		
se022	SOEDERMANLANDS LAEN	0.069	2.94	YES	
se053	AELVSBORGS LAEN	0.121	5.09	YES	
se082	NORRBOTTENS LAEN	0.072	3.02		YES
	UNITED KINGDOM		**30.80**		
uk111	CLEVELAND	0.150	0.95		YES
uk112	DURHAM	0.163	1.04	YES	
uk131	NORTHUMBERLAND	0.082	0.52	YES	
uk132	TYNE AND WEAR	0.303	1.93		YES
uk531	EAST SUSSEX	0.196	1.25	YES	
uk54	ESSEX	0.423	2.69	YES	
uk55	GREATER LONDON	1.878	11.96		YES
uk562	ISLE OF WIGHT	0.034	0.21	YES	
uk621	CORNWALL	0.129	0.82	YES	
uk722	STAFFORDSHIRE	0.283	1.80	YES	
uk912	DYFED	0.095	0.60	YES	
uk913	GWYNEDD	0.064	0.41	YES	
uk914	POWYS	0.032	0.21	YES	
uk921	GWENT	0.121	0.77	YES	
uk922	MID GLAMORGAN	0.146	0.93	YES	
uk924	WEST GLAMORGAN	0.099	0.63	YES	
uka11	BORDERS	0.028	0.18	YES	
uka13	FIFE	0.094	0.60	YES	
uka31	HIGHLANDS	0.056	0.36	YES	
uka32	ISLANDS	0.019	0.12		YES
ukb	NORTHERN IRELAND	0.442	2.81	YES	YES