

Commission Decision (EU) 2019/1352 of 2 April 2019 on the State aid SA.44896 implemented by the United Kingdom concerning CFC Group Financing Exemption (notified under document C(2019) 2526)  
(Only the English version is authentic) (Text with EEA relevance)

- Article 1 The group financing exemption scheme, included in the Taxes Acts...
- Article 2 (1) The United Kingdom shall recover all incompatible aid granted...
- Article 3 (1) Recovery of the aid in accordance with Article 2...
- Article 4 (1) Within two months following notification of this Decision, the...
- Article 5 This Decision is addressed to the United Kingdom of Great...  
Signature

- (1) OJ C 400, 24.11.2017, p. 10.
- (2) Additional requests for information were sent by letter of 11 March 2014, 4 June 2015 and 19 December 2016.
- (3) Distribution exemption rules were introduced in the Finance Act 2009 and the foreign branch profits exemption was introduced in the Finance Act 2011.
- (4) See <https://www.gov.uk/government/publications/the-corporation-tax-road-map>
- (5) Under the UK CFC regime, any company resident in a country other than the UK and controlled by one or more UK persons is a CFC. Control by UK residents is generally exercised by companies, but also interests of individuals or trustees may be taken into account to establish if a foreign subsidiary is a CFC. Control can be legal, economic or accounting control. It can be direct or indirect; if a UK resident company controls non-UK resident company A, which in turn controls non-UK resident company B, then both A and B are CFCs. Section 371RG of TIOPA broadened the definition of control so that the interests of non-resident associates are taken into account when considering whether a foreign company is a CFC.
- (6) HM Treasury, *Consultation on Controlled Foreign Companies (CFC) reform*, June 2011, recital 1.12.
- (7) *Ibidem*, recital 2.4.
- (8) Discussions for the current CFC rules arose in the context of many multinational enterprises moving their headquarters away from the UK: the 2010 Corporate Tax Roadmap stated that 'It is time to reverse this trend' by re-establishing the UK tax system as an asset. The UK Government identified the CFC reform in particular as a 'priority of our multinational business and a key step in the Government's plans to rebuild competitiveness'.
- (9) The UK already had CFC rules before 2013 which were based on an entirely different concept. The old CFC provisions did not contain an exemption for international group financing.
- (10) HMRC Internal Manual, International Manual, INTM190000, <https://www.gov.uk/hmrc-internal-manuals/international-manual/intm190000>
- (11) The term 'assumed taxable total profits' is a defined term essentially referring to what the total taxable UK profits had been under the UK corporate tax rules, if the CFC had been a resident of the UK.
- (12) In the case of businesses in the financial sector the identification of key entrepreneurial risk-taking ('KERT') functions is central to this analysis.
- (13) Section 371DA(3)(f) of TIOPA.
- (14) See HM Treasury, *Consultation on Controlled Foreign Companies (CFC) reform*, June 2011.
- (15) House of Commons, Public Bill Committee, Finance Bill debate, 19 June 2012, PBC (Bill 001) 2012-2013, p. 466 (statement of the Exchequer Secretary to the Treasury).
- (16) Chapter 9 of TIOPA provides an optional alternative rule for certain profits normally covered under the CFC charge gateway rules of Chapter 5, but is not formally part of the CFC charge gateway.
- (17) Its purpose is to exclude CFCs that despite not meeting any of the entity level exemptions are unlikely to earn (significant) artificially diverted profits in a relatively simple way in order to keep the cost of administration of the CFC regime as low as possible. The conditions are relatively straightforward following a risk-based approach to facilitate self-assessment without any special requirements for documentation. The underlying principle of artificial diversion arising when there has been a separation of assets and risks from the underlying activity that supports the group's holding of those assets is evident here. For example, as regards trading profits, the CFC does not need to identify the presence of chargeable profits if it does not have assets and bears no risks that are managed or controlled from UK activities. Similarly, as regards non-trading finance profits, for example, if 5 % or less of a CFC's profits belong to that category (5 % safe harbour), they are considered incidental to business profits and are excluded from Chapter 5 under Chapter 3 of Part 9A of TIOPA.
- (18) Section 371CA (1) to (11) of TIOPA. Property business profits are completely excluded from the scope of the CFC charge gateway and from the definition of accounting profits for the purposes of the entity level exemptions in Chapters 10 to 14, see HMRC Internal Manual, International Manual, INTM248550.

- (19) Chapter 7 of Part 9A of TIOPA deals with CFCs earning profits carrying on captive insurance business. Chapter 8 of Part 9A of TIOPA, finally, deals with CFCs earning profits accrued by certain subsidiaries of regulated financial companies. Chapters 15 to 22 of Part 9A of TIOPA contain various operating and administrative rules, such as rules to prevent double taxation, rules about control, definitions and various other rules relevant to the proper application of the CFC rules by the UK tax authorities.
- (20) HMRC, *CFC reform: response to consultation*, December 2011, Executive Summary, key points.
- (21) Section 371DA of TIOPA, see also the HMRC Internal Manual, International Manual, INTM200100 ‘Chapter 4 provides a mechanism for determining the extent to which any of a CFC’s assumed total profits [...] pass through the CFC charge gateway (“Chapter 4 profits”) and are thus potentially subject to the CFC charge because of specific UK activities that have allowed the CFC to make those profits’.
- (22) HMRC Internal Manual, International Manual, INTM200100 as well INTM197200: ‘Chapter 4 will apply to and bring overseas trading profits within the scope of the CFC charge [...] where the CFC is diverting profits from the UK by means of a separation of assets and risks from the underlying activity that supports the group’s holding of those assets, or that necessarily goes with its bearing of that risk’.
- (23) Section 371DA (3)(f) of TIOPA. See also HMRC Internal Manual, International Manual, INTM200300.
- (24) HMRC Internal Manual, International Manual, INTM203310, states that ‘Like Chapter 4, Chapter 5 identifies NTFP from assets that are owned by the CFC and profits from risks allocated to the CFC in situations where relevant significant people functions (SPF) are carried out in the UK’ and on this basis chapter 5 imports many of the step tests from Chapter 4.
- (25) For example, application of the Chapter 4 test to certain trading finance profits of a CFC may lead to the conclusion that no profits pass through the CFC charge gateway on the basis of Chapter 4. But that conclusion does not exclude the possibility that some or all of those trading finance profits may pass through the CFC charge gateway — and thus become chargeable profits — on the basis of Chapter 6.
- (26) A foreign subsidiary involved in one or more incidental intercompany finance transactions will need to apply the Chapter 5 tests to assess whether a CFC charge applies whereas a subsidiary engaged in active group treasury activities will need to apply either the general Chapter 4 or Chapter 6 specifically dealing with trading finance profits.
- (27) A CFC that earns both NTFP and other types of profit may also need to apply other charging chapters, but a CFC earning solely NTFP is exclusively dealt with under Chapters 5 and 9.
- (28) This test is indeed very similar to the test applied under Chapter 4 to assess artificial diversion of ‘other profits’ of a CFC, essentially normal business profits. In particular, the test whether NTFP from assets owned by the CFC and from risks allocated to the CFC are related to relevant SPF which are carried out in the UK, refers to the principles from the authorised OECD approach, as set out in the 2010 Report on the Attribution of Profits to Permanent Establishments. It therefore also comprises the term KERT functions, which is used for businesses in the financial enterprise sector.
- (29) Consequently, if a CFC earns interest income from loans, whereby the relevant decision making and supervisory functions related to granting and managing the loan and interest payments are carried out from the UK, the interest income will be captured by the CFC rules and taxed in the UK.
- (30) UK connected capital is defined as any direct or indirect, formal or informal contribution of capital by a UK connected company into the CFC as well as any amount of CFC profits that were identified as ‘artificially diverted profits’ for any earlier accounting period and are now used to fund subsequent loans of the CFC.
- (31) These two additional specific tests look at whether the NTFP arises from arrangements in lieu of dividends to UK resident companies or an arrangement regarding UK finance leases.
- (32) According to the specific Chapter 6 test, trading finance profits of a CFC pass through the CFC charge gateway to the extent they are funded with excess equity from UK connected capital contributions. While the Chapter 5 gateway for NTFP uses the broader criterion of any UK connected capital funding for its alternative test, the specific test in Chapter 6 for trading finance profits is based on ‘excess free capital’ of the CFC, i.e. capital over that which it would be reasonably expected to have if it was not a 51 % subsidiary of another company (Section 371FA of

- TIOPA). Only in circumstance of excess equity funding from UK connected capital will assumed profits pass through this gateway and become subject to a CFC charge.
- (33) Such a company will effectively be operating in a manner similar to a retail bank: a high volume of transactions, a large number of incomings and outgoings, hedging activity. Structural lending activity will largely be funded from group deposits and, overall, it will realise a profit based on margins between lending activities and deposit taking.
  - (34) To determine whether a CFC is a 'group treasury company', Section 316(5) to (11) of TIOPA applies.
  - (35) Section 371CE(2) of TIOPA.
  - (36) See recital 36.
  - (37) Qualifying resources are those loans of the CFC that are not directly or indirectly linked to wider group funds and include profits of the CFC deriving from the making of loans to relevant members of the CFC group which are used solely for the purposes of the business of the CFC group in the relevant territory, or funds or other assets received by the CFC in relation to shares held by the CFC in, or issued by the CFC to, members of the CFC group (see Section 371IB of TIOPA).
  - (38) Section 371IE of TIOPA. Under the matched interest rule, any CFC charge remaining after the application of the partial or full exemption, is capped at the level of net UK interest expense within the UK group. The cap prevents a CFC charge when the UK members of the group, in aggregate, have net financing income which is equal to or greater than their net financing deductions (HMRC Internal Manual, International Manual, INTM216100).
  - (39) The department of the UK Government responsible for the collection of taxes is known as *Her Majesty's Revenue and Customs* ('HMRC').
  - (40) HMRC Internal Manual, International Manual, INTM216100.
  - (41) UK letter dated 15 January 2018, paragraph 58.
  - (42) Point 6 of the Minutes of the CFC Monetary Assets working group meeting of 4 February 2011.
  - (43) Section 371IG of TIOPA outlines tracing rules to identify when a loan provided by a CFC is a qualifying loan relationship, addressing situations where the party initially receiving the loan uses the funds to provide a loan itself (the 'ultimate debtor' rule). See also HMRC Internal Manual, International Manual, INTM217100.
  - (44) See HMRC Internal Manual, International Manual, INTM216100. In addition, it was also stated that the inclusion of this exemption aims to have a fixed low tax-rate applicable on intra-group financing which would in most situations 'give rise to an effective UK corporation tax rate on profits overseas intra-group financing of 5,75 % by the year 2014'. HMRC Consultation on CFC reform, June 2011 at 1.10.
  - (45) Section 371DG of TIOPA. HMRC have published additional guidance on the operation of the test in the specific context of Chapter 9 and NTFP (HMRC Internal Manual, International Manual, INTM216650).
  - (46) Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, [OJ L 193, 19.7.2016, p. 1](#)).
  - (47) [http://www.legislation.gov.uk/ukpga/2019/1/pdfs/ukpga\\_20190001\\_en.pdf](http://www.legislation.gov.uk/ukpga/2019/1/pdfs/ukpga_20190001_en.pdf)
  - (48) This concerns for example the definition of control, low tax and shifted profits but also administrative provisions on the computation of the CFC profits and the prevention of double taxation.
  - (49) OECD (2013), *Action Plan on Base Erosion and Profit Shifting*, OECD Publishing. <http://dx.doi.org/10.1787/9789264202719-en>
  - (50) OECD (2015), *Designing Effective Controlled Foreign Company Rules, Action 3 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264241152-en>
  - (51) OECD (2015), *Designing Effective Controlled Foreign Company Rules, Action 3 - 2015 Final Report*, paragraph 85, footnote 12. The report does not make any reference to special exemptions in CFC rules for group financing income.

- (52) Directive (EU) 2016/1164. According to Article 11 of the Directive, Member States shall have implemented and apply the provisions of the Directive from 1 January 2019.
- (53) Article 8 of the Anti Tax Avoidance Directive further illustrates the way to compute CFC profits.
- (54) With effect from 14 October 2015, Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9), repealed and replaced Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1). Any reference to Regulation (EC) No 659/1999 may be construed as a reference to Regulation (EU) 2015/1589 and should be read in accordance with the correlation table in Annex II to the latter regulation.
- (55) The UK authorities nevertheless note that also in case of a narrower reference system, i.e. the UK CFC regime, the outcome of the State aid assessment will be the same if the objectives are correctly defined.
- (56) Case T-287/11, *Heitkamp BauHolding GmbH v European Commission*, ECLI:EU:T:2016:60 and Case T-620/11, *GFKL Financial Services AG v European Commission*, ECLI:EU:T:2016:59.
- (57) The UK authorities outline the alternative approaches that were considered at the time of implementing reform of the CFC rules, to the current CFC rules enacted in 2013. The UK authorities further explain why none of these alternative options were chosen (UK letter dated 22 March 2018, Section 4).
- (58) UK letter dated 15 January 2018 in response to the European Commission Opening Decision at recital 106.
- (59) In the case of upstream lending, the UK resident group company can deduct the interest expense on this loan from its profits while the interest income on the investment is not taxed (or subject to low tax) at the level of the CFC. In this situation, the UK considers that the combination of the non-taxation of the NTFP at the level of the CFC, and the interest deduction in the UK poses a threat to the UK treasury. The UK considers that there is no valid commercial reason for structuring finance from a UK resident company through a CFC instead of lending the money directly to the other UK company. Therefore, both the purpose and the effect of the finance arrangement would be to artificially divert interest income from the UK and thereby obtain a UK tax advantage. Similarly, in the case of money boxes the likelihood of profits actually being artificially diverted and the impact on the UK's tax base is substantial, according to the UK authorities.
- (60) UK letter dated 3 July 2018, Annex point 3.
- (61) Commission Decision 2009/809/EC of 8 July 2009 on the groepsrentebox scheme which the Netherlands is planning to implement (C 4/07 (ex N 465/06)) (OJ L 288, 4.11.2009, p. 26).
- (62) Commission Decision 2010/95/EC of 28 October 2009 on State aid C 10/07 (ex NN 13/07) implemented by Hungary for tax deductions for intra-group interest decisions (OJ L 42, 17.2.2010, p. 3).
- (63) UK letter dated 15 January 2018, recital 119.
- (64) Case C-196/04, *Cadbury Schweppes plc and Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue*, ECLI:EU:C:2006:544.
- (65) Joined Cases C-106/09 P and C-107/09 P, *Commission v Government of Gibraltar and United Kingdom*, ECLI:EU:C:2011:732.
- (66) See Case C-399/08 P, *Commission v Deutsche Post*, ECLI:EU:C:2010:481, paragraph 38 and the case-law cited therein.
- (67) See Case C-399/08 P, *Commission v Deutsche Post*, ECLI:EU:C:2010:481, paragraph 39 and the case-law cited therein.
- (68) See Joined Cases C-106/09 P and C-107/09 P, *Commission v. Government of Gibraltar and United Kingdom*, ECLI:EU:C:2011:732, paragraph 72 and the case-law cited therein.
- (69) See Case 730/79, *Phillip Morris*, ECLI:EU:C:1980:209, paragraph 11 and Joined Cases T-298/97, T-312/97 etc., *Alzetta* ECLI:EU:T:2000:151, paragraph 80.
- (70) Clearances can be obtained under a non-statutory clearance procedure whereby the HMRC may provide certainty to a UK resident company as to the application of the CFC rules to their particular set of facts, resolving areas of doubt prior to the completion of the self-assessment tax return by

the UK resident company (see also recital 46). Requesting such clearance is voluntary. It is not a condition for the application of the measure and does not constitute an implementing measure within the meaning of Article 1(d) of Regulation (EU) 2015/1589.

- (71) See Joined Cases C-182/03 and C-217/03, *Belgium and Forum 187 ASBL v Commission*, ECLI:EU:C:2006:416, paragraph 82; Case 248/84, *Germany v Commission*, ECLI:EU:C:1987:437, paragraph 18; and Case C-75/97, *Belgium v Commission*, ECLI:EU:C:1999:311, paragraph 48.
- (72) Case C-143/99, *Adria-Wien Pipeline and Wietersdorfer & Peggauer Zementwerke*, ECLI:EU:C:2001:598, paragraph 41.
- (73) Case 173/73, *Italy v Commission*, ECLI:EU:C:1974:71, paragraph 13.
- (74) See Case C-66/02, *Italy v Commission*, ECLI:EU:C:2005:768, paragraph 78; Case C-222/04, *Cassa di Risparmio di Firenze and Others*, ECLI:EU:C:2006:8, paragraph 132; Case C-522/13, *Ministerio de Defensa and Navantia*, ECLI:EU:C:2014:2262, paragraphs 21 to 31.
- (75) HMRC Internal Manual, International Manual, INTM203410. Section 371EB of TIOPA, to which the Guidance refers, is the provision within Chapter 5 that contains the SPF test, prescribing a CFC charge to the extent the CFC's NTFP are derived from relevant SPF located in the UK.
- (76) Case C-374/17, *Finanzamt B v A-Brauerei*, ECLI:EU:C:2018:1024, paragraphs 35 and 36.
- (77) See Opening Decision, recital 61. The Commission put forward an alternative narrower reference system made up of Chapters 3, 5 and 9 of TIOPA in footnote 52 of the Opening Decision. The Commission is not pursuing this narrower reference system.
- (78) UK letter dated 22 March 2018.
- (79) Case C-374/17, *Finanzamt B v A-Brauerei*, ECLI:EU:C:2018:1024, paragraph 37.
- (80) The UK does, however, need to respect the limits set by the CJEU where an anti-abuse rule may pose a limitation to the EU freedom of establishment.
- (81) The comparability test is not a test of its own. It must always be made in light of the objective of the reference system, which is actually the benchmark, and thus of primary importance, see case C-203/16 P, *Dirk Andres v European Commission*, ECLI:EU:C:2018:505, in particular paragraphs 86 and 89.
- (82) Case C-374/17, *Finanzamt B v A-Brauerei*, ECLI:EU:C:2018:1024, Paragraph 33.
- (83) See Opening Decision, recital 61.
- (84) See Section 371CC of TIOPA.
- (85) If a CFC exclusively earns NTFP, it is exclusively covered by Chapters 5 and 9 which also contains a SPF test, which is however slightly different. If a CFC exclusively earns property business profits, it is not covered by the CFC rules because such profits by their nature cannot be diverted from the UK.
- (86) See Section 371DB of TIOPA. CFC rules based on profit attribution to special people functions is well recognised both in International and in EU regulations concerning CFC provisions. The final OECD BEPS report OECD (2015) Final Report on Action 3 on the effective design of CFC rules for example highlights that many European jurisdictions rely, or partially rely, on a substance based test analysing if the CFC is engaged in substantial activities by using a variety of proxies, most notably whether the CFC's income was separated from the underlying substance, including the people premises assets and risks. The Report stresses that regardless of the tests used the fundamental question pertaining to substance is 'whether the CFC had the ability to earn the income itself' — in line with the objective of the SPF test. In discussing the best practice for the design of a substance analysis the Report advocates for a test that would examine all the 'significant functions performed by entities within the group' to determine whether the CFC is the entity most likely to own particular assets, or undertake particular risks if the entities were unrelated. The Report identifies the UK CFC rules as an exemplification of this SPF test stating that the UK CFC rules have 'used the concepts and guidance developed by the OECD for Article 7 to identify the group's significant people functions associated with each asset, so that it can be determined whether the CFC undertakes those functions'. At a European level, the preamble to Directive (EU) 2016/1164 recalls that it is a 'proportionate response to BEPS concern' to 'limit their CFC rules to income which has been artificially diverted to the subsidiary precisely target situations where most of the decision-making functions which generated diverted income at the level of the controlled subsidiary are carried out in the Member State of the taxpayer'.

- (87) HMRC Internal Manual, International Manual, INTM200200.
- (88) See for example HMRC Internal Manual, International Manual, INTM210200.
- (89) While it is true that Chapter 4 does not apply to a CFC that *exclusively* earns NTFP, in which case only Chapter 5 applies, this does not affect this conclusion, since Chapter 5 to a large extent replicates the SPF test of Chapter 4 as explained in recitals 121 and 122.
- (90) The application of the SPF test under Chapter 4 is done through an 8-step method (Section 371DB(1) of TIOPA). Chapter 5 refers back to Chapter 4 and requires some of the steps in Chapter 4 to be taken; specifically steps 1 to 5 and 7 to determine the extent to which NTFP fall within Chapter 5. Steps 6 and 8 are not taken because the UK legislator considered that those steps were not relevant for NTFP.
- (91) Judgment of the Court of Justice of 15 November 2011, *Commission and Spain v Government of Gibraltar and United Kingdom*, C-106/09 P and C-107/09 P, ECLI:EU:2011:732, paragraph 75. See also Judgment of the Court (Grand Chamber) of 21 December 2016, *European Commission v World Duty Free Group SA and other*, C-20/15 P and C-21/15 P, ECLI:EU:C:2016:981, paragraph 54.
- (92) NTFP means interest income that has not been earned from a finance trade or business; it includes interest income from passive portfolio investments, interest earned on a bank deposit or interest earned on incidental loans to related or unrelated parties.
- (93) Section 371IG(1) of TIOPA.
- (94) Other NTFP in this regard can be either derived from loans to UK Group companies, or from loans to third parties.
- (95) See recital 66.
- (96) See recital 71.
- (97) UK letter dated 15 January 2018 in response to the Opening Decision at recital 116.
- (98) UK letter dated 15 January 2018 in response to the Opening Decision at recital 117.
- (99) In this respect, see HMRC, International Manual, INTM217190: ‘If a CFC makes a long-term loan to the UK resident treasury company, which in turn uses the funds to make a series of short term loans to other group members, then the NTFPs of the CFC will most likely fall within Chapter 5 and, if a claim under Chapter 9 is made, the ultimate debtor rules will need to be considered.’
- (100) Base erosion can be distinguished from artificial diversion of profits (or profit shifting) in that the former deals with erosion of the *payer’s* tax base by excessive deductions, whereas the latter deals with the *recipient* of income who reduces his tax base by artificially diverting that income abroad. The former is generally dealt with by interest limitation rules (see for example Article 4 of the Anti Tax Avoidance Directive), whereas CFC rules address the latter.
- (101) The provisions defining the ‘ultimate debtor’ (see footnote 43) do not affect that conclusion, since they do not contain any conditions for the (commercial) use of the funds by the debtor under the loan arrangement, apart from provisions concerning on-lending.
- (102) The G20/OECD BEPS Report on Action 3 states in paragraph 78: ‘The general concern underlying the treatment of interest and financing income is that this income is easy to shift and therefore could have been shifted by the parent into the CFC, possibly leading to overleveraging of the parent and overcapitalisation of the CFC. Interest and financing income is more likely to raise this concern *when it has been earned from related parties, when the CFC is overcapitalised*, when the activities contributing to the interest were located outside the CFC jurisdiction, or *when the income was not earned from an active financing business.*’ These situations objectively causing most concern for income shifting according to the OECD are precisely the circumstances to which the UK applies the contested measure.
- (103) UK letter in response to the Opening Decision dated 15 January 2018, point 155.
- (104) *Ibidem*, point 26.
- (105) Judgment of the Court of Justice of 12 September 2006, *Cadbury Schweppes plc and Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue*, C-196/04, ECLI:EU:C:2006:544.
- (106) *Ibidem*, paragraph 65.
- (107) *Ibidem*, paragraph 66.

- (108) Joined Cases C-78/08 to C-80/08 of the Court of Justice of 8 September 2011, *Paint Graphos and others*, ECLI:EU:C:2011:550, paragraph 69.
- (109) HMRC Internal Manual, International Manual, INTM216100.
- (110) See, for example, Joined Cases C-78/08 to C-80/08, *Paint Graphos*, ECLI:EU:C:2011:550, paragraph 69 and 73 to 75 and Case T-287/11, *Heitkamp BauHolding GmbH v European Commission*, ECLI:EU:T:2016:60, paragraph 160.
- (111) HMRC Internal Manual, International Manual, INTM203380.
- (112) HMRC Internal Manual, International Manual, INTM203410.
- (113) Directive (EU) 2016/1164.
- (114) Case C-278/92, *Spain v. Commission*, ECLI:EU:C:1994:325, paragraph 75.
- (115) Case C-275/10, *Residex Capital IV CV*, ECLI:EU:C:2011:814, paragraphs 45-47.
- (116) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).
- (117) *Letter of formal notice* of 22 March 2010, C(2010) 1521; *Reasoned Opinion* of 20 May 2011, C(2011) 3275 final.
- (118) Judgment of the Court of Justice of 24 March 2011, *ISD Polska and Others v Commission*, C-369/09 P, ECLI:EU:C:2011:175, paragraph 123; Judgment of the Court of Justice of 16 December 2010, *Kahla Thüringen Porzellan v Commission*, C-537/08 P, ECLI:EU:C:2010:769, paragraph 63; Judgment of the Court of Justice of 16 December 2008, *Masdar (UK) v Commission*, C-47/07 P, ECLI:EU:C:2008:726, paragraphs 34 and 81.
- (119) Case 73/79 of 21 May 1980, *Commission v Italy*, ECR, ECLI:EU:C:1980:129, paragraph 11; Case C-156/98 of 19 September 2000, *Germany v Commission*, ECR, ECLI:EU:C:2000:467, paragraph 78; and Cases T-197/97 and T-198/9731 of 31 January 2001, *Weyl Beef Products and Others v Commission*, ECR, ECLI:EU:T:2001:28, paragraph 75.
- (120) Case T-511/09 of 13 May 2015, *Niki Luftfahrt v Commission*, ECLI:EU:T:2015:284, paragraph 215.
- (121) Case T-308/00 *renv*, *Salzgitter v Commission*, ECLI:EU:T:2013:30.
- (122) See Judgment of the Court of Justice of 11 December 2012, *Commission v Spain ('Magefesa II')*, C-610/10, ECLI:EU:C:2012:530, paragraph 105.
- (123) Judgment of the Court of Justice of 4 April 1995, *Commission v Italy ('ALFA Romeo')*, C-348/93, ECLI:EU:C:1995:95, paragraph 27.
- (124) Case C-441/06, *Commission v France*, ECLI:EU:C:2007:616, paragraph 29 and the case-law cited.
- (125) Case C-148/04 of 15 December 2005, *Unicredito Italiano*, ECLI:EU:C:2005:774.