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State Aid Scoreboard

autumn 2003 update

(presented by the Commission)

Contents

INTRODUCTION

As part of the drive to make the EU the most competitive and dynamic knowledge-based economy in the world, the Lisbon Council in March 2000 requested the Council, Commission and Member States to "further their efforts to … reduce the general level of State aids". One year later at the Stockholm Council, a specific indicator and target date concerning the reduction of aid were introduced. Member States were requested to "demonstrate a downward trend in State aid in relation to GDP by 2003, taking into account the need to redirect aid toward horizontal objectives of common interest, including cohesion objectives."

Although figures for 2003 are not yet available, indications are that the majority of Member States have taken steps to ensure that these commitments to reduce and redirect aid are being met. The overall volume of State aid in the fifteen Member States, as a percentage of GDP continues to decline: in 2001, the total amount of aid granted was €86 billion, or just slightly below 1% of GDP, compared with €102 billion in 1997. Outside of the specific areas of agriculture, fisheries and transport, the decline in aid levels has been even more notable: the overall level of aid declined from 0.66% of GDP in 1997 to 0.38% of GDP in 2001. Moreover there has been a significant increase in the proportion of aid devoted to horizontal objectives, such as research and development aid, aid for small and medium-sized enterprises, the environment, employment and training, and a corresponding reduction in the amount of more distortive individual aid. Aid to assisted regions however fell dramatically over the period 1993–2001 largely due to the phasing out of aid to the new German Bundesländer.

Since the commitments undertaken at Stockholm, the Council has adopted further sets of conclusions on State aid, all built around the principles of reducing and redirecting aid. In particular, Member States have been invited to "consider before granting State aid whether it is targeted on clearly identified market failures or directed at horizontal objectives of common interest, including economic and social cohesion objectives, and whether an intervention in the form of State aid is the most appropriate and effective way to address these issues;" and to continue to "develop the use of "*ex-ante*" and "*ex-post*" evaluations of individual State aid and State aid schemes in order to monitor impact on competition and effectiveness of the aid".

This update of the Scoreboard is divided into three parts. The first part focuses on the actions undertaken by both the Commission and the Member States to follow up the above-mentioned Council conclusions on State aid. The second part looks at one of the most distortive types of State aid, that is rescuing and restructuring firms in difficulty. Finally, part three looks at recent developments in the Commission's State aid reform programme.

The spring 2003 update of the Scoreboard provides an overview of the State aid situation in the Union and examines the underlying trends based on the latest available data (2001). In addition to this paper edition, a permanent online Scoreboard (http://europa.eu.int/comm/competition/state_aid/scoreboard/) consisting of a series of key indicators, statistical information and a Member State Forum was launched in 2002.

PART ONE: FOLLOW-UP TO THE COUNCIL CONCLUSIONS ON STATE AID

The following is a brief description of the key points emerging from the various Council conclusions on State aid since the Lisbon agenda was launched in March 2000. A full set of the conclusions can be found in Annex I.

The Lisbon European Council set out to make the EU the most competitive and dynamic knowledge-based economy in the world. The Council, Commission and Member States were requested "to further their efforts to promote competition and reduce the general level of State aids". One year later at the Stockholm European Council, Member States pledged to "demonstrate a downward trend in State aid in relation to GDP by 2003, taking into account the need to redirect aid toward horizontal objectives of common interest, including cohesion objectives." Further impetus was provided at the Barcelona European Council in March 2002 when Member States agreed to step up their efforts to reduce aid levels. In March 2003, the Brussels European Council called for "a further reduction in state aids and the redirection of aid to horizontal objectives and welcomes the Commission's intention to continue working to simplify and modernise state aid arrangements, focusing attention on the most distorting aid".

In addition to the references to State aid at the European Council summits, more specific conclusions on State aid have also been adopted. In December 2001, under the Belgian Presidency, the Industry Council adopted a set of conclusions in which it invited Member States to continue their efforts to reduce aid levels, reorient aid towards horizontal objectives, further develop the use of "ex ante" and "ex post" evaluations of aid schemes, and improve the transparency and the quality of reporting to the Commission. The Council also asked the Commission to take an active role in following-up the implementation of these conclusions and to present an initial assessment of progress in 2002[1].

In November 2002, under the Danish Presidency, the Competitiveness Council adopted a further set of conclusions on "an economic approach towards less and better State aid"[2] The main aim of the conclusions is to develop a broader economic analysis of the effects of State aid by encouraging greater dialogue and exchange of information between the Member States. It reaffirms the need to "closely evaluate State aid in order to identify and reduce the most distortive types of State aid, underlining that monitoring and follow-up of State aid expenditures are essential components of State aid policies in Member States and Community State aid policy;" In this context, it invites Member States to "consider before granting State aid whether it is targeted on clearly identified market failures or directed at horizontal objectives of common interest, including economic and social cohesion objectives, and whether an intervention in the form of State aid is the most appropriate and effective way to address these issues;" and to continue to "develop the use of "*ex-ante*" and "*ex-post*" evaluations of individual State aid and State aid schemes in order to monitor impact on competition and effectiveness of the aid". The Council also invited Member States and the Commission to exchange information and experience, notably through meetings and seminars and the development of a web-based network, on their efforts to reduce and redirect State aid.

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1 The Commission's progress report to the Council (COM(2002) 555 final) concerning the reduction and reorientation of State aid was adopted on 16th October 2002: http://europa.eu.int/comm/competition/state_aid/others/

2 Council document number 13799/02: http://register.consilium.eu.int/pdf/en/02/st13/13799en2.pdf

In addition, the Council invited the Commission, among other things, to continue to modernise, simplify, and clarify the scope and content of EU rules on State aid (see Part Three).

Member States and Commission's response to the Council conclusions

In its progress report to the Council mentioned above, the Commission invited Member States in October 2002 to send a contribution indicating the actions they have undertaken to follow up the various conclusions on State aid. The contributions received from thirteen Member States were the subject of a meeting in July 2003 between the Commission services and State aid experts from the Member States. The following is a summary of Member States contributions together with details of some of the Commission's work in response to the conclusions.

Reduction and reorientation of aid

In view of the current political and economic situation, there is a general consensus among Member States on the need to balance the grant of State aid against constraints on national public finances. Some Member States contend that their national economic policies are very much in line with the goals to reduce and reorient aid and cite specific efforts that have or will further reduce State aid levels. For example, the present Danish Government cut total aid to companies by over 10% in the Financial Law for 2003. In the Irish Budget for 2003 the termination dates for a number of tax incentive schemes were set at 31 December 2004, which the Irish expect "will further contribute to the downward trend in State aid."

A number of Member States cite recent efforts to streamline and rationalise their business support schemes with a view to both reducing aid levels and increasing the effectiveness of the aid schemes. For example:

- The United Kingdom began work in November 2002 to restructure the manner in which its Department of Trade and Industry (DTI) business support services were organised. The intention is "to rationalise the current business support schemes, and close those which were unnecessary or not achieving their desired results." It is envisaged that "the new business support structure will focus more strongly on horizontally based business support schemes which are more closely aimed at addressing demonstrable market failures."

- A review of innovation policy in the Netherlands concluded that "streamlining the instruments is vital for improving transparency for users and for reducing the amount of (inefficient) overlap and conflicting goals. This requires a restriction in the number of instruments and a reduction in departmental compartmentalisation, as well as a shift towards a more generic structure for the instruments."

- Denmark has carried out a series of economic analyses of both existing and potential new state aid schemes. By drawing attention to both the positive and negative sides of state aid it hopes that this "will lead to better state aid schemes" and that "state aid should in the future secure the largest possible effect for taxpayers' money and with the smallest possible distortionary effects on competition." As well as distortion of competition, other negative effects identified by Denmark include excessive profits, excessive wages, low productivity, outdated industrial structure, direct costs, administrative costs and distortionary taxes.

- In Finland, with a view to improving the quality of aid programmes, "opportunities have also been identified to move, by degrees, from grants towards funding instruments that 'come back', such as loans, guarantees and conditional own capital funding."

- Belgium too is also looking at the possible development of more innovative instruments having concluded that direct grants are often less effective.

Furthermore, there appears to be a trend in several Member States towards making greater use of general measures rather than aid schemes or at least towards greater synergy and interaction with other non-aid instruments. For example:

- The United Kingdom states that government policy is “to move whatever support it is necessary to provide to industry away from routes which constitute State aid.”

- In Ireland, “while payment of State aid under the Regional, Training, R&D and SME headings is continuing …,the State’s focus on also using non-State aid measures to achieve development objectives in these areas has been stepped up. For example, the establishment of research capacity and other measures in relation to education significantly reduces the proportion of State funding to R&D which will be delivered in the form of State aid.”

- In Belgium, policy in recent years has focused on measures to improve the business environment (e.g., reducing the administrative burden, access to finance, etc) and strengthening the synergy of the various policies.

It is important to stress that a reduction in the level of State aid does not necessarily imply a reduction in the level of State funding. For example, a Member State may decide, instead of granting State aid, to allow all enterprises to deduct for tax purposes certain expenditure such as the expenses incurred for the training of workers. This would be a measure of general economic policy, not caught by the State aid rules. See box on ‘State aid versus general measures’.

All Member States refer to the main indicators in the spring 2003 update of the State aid Scoreboard which allow progress towards the commitments undertaken at Stockholm to be monitored. Due to a time-lag in the data[3], it is not yet possible to see whether Member States are able to demonstrate a downward trend in total aid as a percentage of GDP by 2003, as agreed at Stockholm. Nevertheless, the spring 2003 Scoreboard shows that up to 2001 the vast majority of Member States have reduced aid levels as a percentage of Gross Domestic Product (GDP). EU-wide, total aid amounted to 0.99% of GDP in 2001, a decrease of -0.31 percentage points compared with 1997. Excluding the agriculture, fisheries and transport sectors, aid fell from 0.66% of GDP in 1997 to 0.38% in 2001.

The other main goal concerns a reorientation of aid from ad hoc and sectoral aid towards horizontal objectives of common interest. Looking at recent trends, the share of EU aid granted for horizontal objectives increased by 10 percentage points from the period 1997-1999 to 1999-2001. This was largely the result of a sharp increase (+8 points over this period) in aid for environmental objectives. All Member States have, to differing degrees, redirected aid to such objectives although the level of sectoral aid, mainly for the coal sector, remains relatively high in certain Member States. Aid to the assisted regions[4] however fell dramatically over the period 1993 – 2001, largely due to the phasing out of aid to the new German Bundesländer. In most

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3 As part of the ongoing procedural reform, the Commission is exploring the possibility to reduce this time-lag from two years to one.

4 Aid awarded under Article 87(3)(a) of the Treaty. See also Section 2.3 of State aid Scoreboard spring 2003 update.

cases, the increase in horizontal aid is clearly the result of explicit national policies favouring aid for horizontal objectives.

The Commission has also played a role in this process. First, it adopted guidelines on State aid on environmental protection in 2001[5], which provide a favourable framework for aid for the development of renewable energy supplies. Second, in order to eliminate unnecessary procedural formalities whenever possible, the old frameworks for small and medium-sized enterprises, training and employment have been replaced by block exemption regulations[6], which eliminate the need for notification by Member States of individual aid or aid schemes. A proposal to block exempt research and development aid for small and medium-sized enterprises should be adopted by the end of 2003. Third, in cases where it can be shown that the State aid rules are too strict and may actually constitute a hindrance to the achievement of the broader economic policy objectives of the Union, the Commission has shown that it is prepared to take remedial action. A good example is the Commission Communication on State aid and risk capital[7]. In that case, working closely with the European Venture Capital Association, the Commission established that there was a gap in the market provision of capital for high risk company start-ups and that a solution was not available within the existing frameworks. The resulting Communication provides a very flexible instrument to give public support through venture capital, especially to start-ups involved in innovative projects, to SMEs, and to companies located in assisted areas.

State aid versus general measures

State aid is a form of state intervention used to promote a certain economic activity. It implies that certain economic sectors or activities are treated more favourably than others and thus distorts competition because it discriminates between companies that receive assistance and others that do not. In order to determine whether a measure constitutes State aid, a distinction has thus to be drawn between the situation where the support is directed at certain undertakings or the production of certain goods, as specified in Article 87(1) of the Treaty, and the situation where the measures in question are equally applicable throughout the Member State and are intended to favour the whole of the economy. In the latter case, there is no State aid within the meaning of Article 87(1).

This selective character thus distinguishes State aid measures from general economic support measures. Most nation-wide fiscal measures would be regarded as general measures as they apply across the board to all firms in all sectors of activity in a Member State. The distinction is however not always clear-cut. For example, the fact that certain companies might benefit more than others from a measure does not necessarily mean that the measure is selective. Accordingly, the Commission decided that a Dutch tax measure involving partially accelerated depreciation for R&D laboratories did not constitute State aid[8]. On the other hand, a measure is considered to be “selective” if it applies to only one or some sectors of activity regardless of the fact that the measure covers a large number of companies or that the sectors concerned are particularly diverse.[9] Similarly, a measure reserved for certain companies is deemed to be selective even if a limitation on the number of companies to benefit from the aid is based on objective criteria.[10] A scheme may also be selective if the authorities administering the scheme enjoy a degree of discretionary power.

5 Official Journal C 37, 3.2.2001, pages 3-15
6 Regulations (EC) N°68/2001, N° 70/2001 and N°2204/2002
7 OJ C 235, 21.8.2001, p. 3-11
8 Decision of 11.5.1999. Case N 18/97. OJ C 225 of 7.8.1999
9 See in particular judgment of the Court of 17.6.1999. Belgium v Commission. AFF C-75/97
10 See in particular judgment of the Court of 1.12.1998. Ecotrade v AFS. AFF C-200/97 Item 38

The interpretation of the concept of selectivity has evolved over the years following various Commission decisions and court rulings. Details of the most important cases are provided in recent Annual Competition Reports (http://europa.eu.int/comm/competition/annual_reports/).

The distinction between State aid measures and general economic support measures should be borne in mind when interpreting some of the data included in the Scoreboard. Some of the detailed statistical tables on the online Scoreboard show that some Member States have reduced the amount of State aid for some horizontal objectives such as training, employment or R&D. This does not however mean that public expenditures on these activities have fallen. Instead, a number of Member States have increased spending on general economic support measures.

Ex ante and ex post evaluation exercises

All Member States carry out some form of monitoring and evaluation of their aid schemes though, for some, such exercises have begun only within the last few years. Member States such as Belgium and Portugal point to the considerable amount of experience acquired over the years in evaluating the Structural Funds. Other Member States have set up special evaluation units. For example:

- The Ministry of Finance in the Netherlands set up a special monitoring and evaluation unit in 2002 to evaluate both policy aims and instruments.

- In Ireland, an Industry Evaluation Unit was established in 1993 to "undertake analysis of particular measures or sub-programmes co-financed under the Operational Programme for Industry, assess the impact, effectiveness and efficiency of those interventions and recommend, as appropriate, changes in approach."

- In Finland, evaluating aid programmes is a statutory duty[11]. The authorities "have an obligation to monitor the progress of aid programmes and to have evaluations carried out to establish the objectives of aid and how successful it is." General business aid policy, including initiatives to develop evaluation practices, is co-ordinated by an advisory committee. Furthermore, the Finns also set up a working party in 2000 to examine the effectiveness of business aid.

- In France, in addition to other bodies which carry out evaluation exercises, le Conseil National de l'Evaluation was created in 1998 to develop an evaluation programme for a variety of topics such as the Structural Funds and regional policy.

- In Greece, the Ministry of Economy and Finance is currently trying to develop a methodology for the appraisal of aid granted. A State aid unit was set up within the Centre for European and International Economic Law in October 2001.

A number of Member States have developed criteria, either for the ex ante stage, i.e. to develop new schemes, or for the ex post stage, to evaluate the effectiveness of the aid:

- Denmark points out, "experience from ex post analyses leads to some general conclusions as well as a general methodology that will be useful in future ex ante analyses." Furthermore the Danish government has introduced an approach aimed at ensuring State aid is treated in the same way for comparable activities in all sectors. It is based on two general welfare economic

[11] State aid Act of 2001 and Act on the General Terms and Conditions of Business Subsidy which came into force in 1999

principles which state that, first, no aid should be given unless there are externalities, the gains of which should outweigh the costs, including the marginal cost of public funds and second, there are barriers for the commercial sector to undertake profitable activities.

- As part of the preparation of the German Federal Budget for 2004 and the Finance Plan to the year 2007 all financial assistance listed in the Federal Government's subsidy report is audited. The Federal Ministry of Finance has drawn up an audit plan including an ex-ante and ex-post questionnaire to be completed by specialist departments.

- In Finland, the Ministry of Trade and Industry has developed an aid monitoring system and series of project-related indicators. Collecting monitoring information at project level takes place at various stages beginning with the application stage, when key figures such as expected growth of the company (turnover, employees, exports) are entered into the monitoring system. The process ends with an *ex-post* questionnaire on the impact of the aid which is sent to all recipients of aid within two years of the end of the project. This allows actual and expected results to be compared and tests for deadweight effects.

- Ireland has also developed a list of criteria for the various stages: ex-ante stage (e.g., identify any possible displacement/deadweight issues; build in evaluation criteria in scheme description); implementation stage (e.g., use cost benefit economic model where appropriate); ex-post stage (e.g., review impact, use of independent consultants such as universities /academics).

- In France, a new Financial Law adopted in August 2001 has placed much greater emphasis on the results and effectiveness of public management. Budgeting decisions are now based on the achievement of results from pre-defined objectives.

- In the United Kingdom, all policies, projects or programmes undertaken by the government are subject to ex-ante appraisal and ex-post evaluation. This is facilitated by the use of an assessment cycle known as ROAMEF, standing for Rationale, Objective, Appraisal, Monitoring, Evaluation and Feedback. The United Kingdom cites a number of reasons why appraisal is a key element of the current design of policies, projects and programmes: “prudence in spending public funds, promoting efficient policy development, informing decision making, examining the wider social costs and benefits of proposals, promoting economic efficiency and value for money.”

Several Member States provide detailed information on specific evaluation exercises that have been undertaken. For example:

- Italy produces every year a series of reports detailing the impact of various aid schemes on economic activity. One such report from 2002 looks at the impact of aid programmes on the industrialisation process in the southern regions of Italy. It includes a comprehensive evaluation exercise drawing largely on information provided in a questionnaire completed by all businesses benefiting from State aid. This provides a range of information such as the incentive effect of the aid vis-à-vis the decision to invest in the region. Furthermore, Italy is also in the process of developing a database detailing all beneficiaries of State aid.

- In Ireland, the Industry Evaluation Unit has undertaken a large number of evaluations ranging from a review of training grants to a review of effectiveness indicators in the operational programme for industrial development.

- In the Netherlands, an Interministerial policy review has recently looked at the legitimacy and efficiency of the Netherlands' innovation policy in the light of future developments and the opportunities for improving this policy.

- In 2001, the Danish Ministry of Economic and Business Affairs carried out ex-post analyses of three state aid schemes (shipbuilding subsidies, transport aid to firms producing on the island Samsoe and subsidies to firms' investment in energy saving technology).

- In Finland, a working party to examine the effectiveness of business aid included among its recommendations: the reliability of information produced by monitoring systems must be improved and the information produced by different systems harmonised; develop a common indicator system to support monitoring and evaluation; set up an evaluation unit independent of the Ministry's departments; create a manual for evaluating effectiveness, etc. The Finnish report also contains valuable descriptions of several aid evaluation studies.

- The Belgian report cites several examples of evaluation exercises. For example, in 1998 and 2000 Belgium carried out in-depth ex-post evaluations of the impact of investment aid on the Wallonian economy. Some econometric tests were used to assess the effectiveness of the aid schemes.

- Portugal has carried out a number of ex ante and ex post assessments of aid schemes. For example, a report in 2002 on the selection criteria adopted for the SIME – Sistema de Incentivos à Modernização Empresarial (Incentives for Business Modernisation) and SIPIE – Sistema de Incentivos às Pequenas Iniciativas Empresariais (Incentives for Small Business Initiatives) schemes made proposals for the modification and redesign of these incentive schemes.

Member States also point to the need to raise awareness about State aid through advice, training, drafting manuals and guides, etc. For example:

- In the United Kingdom, the State Aid Branch in the Department of Trade and Industry runs a range of training and awareness raising programmes aimed at "assisting administrators to understand the need for State aid control …, to provide them with basic advice on how to approach projects which may constitute State aid. It is hoped that such exercises will assist in the reorientation and reduction of State aid, e.g., a greater awareness of the need to comply with the State aid rules should assist in reducing the number of cases where aid is granted without notification. It should also result in more schemes being designed so that aid is avoided or, where it is necessary to include aid, targeted towards horizontal measures."

- In Finland, among the recommendations of the working party to examine the effectiveness of business aid were "drawing up a manual for evaluating effectiveness and increasing the evaluation know-how of ministry staff".

- Belgium has placed on the internet a considerable amount of information ranging from detailed descriptions of all aid schemes in Wallonia to an online service for aid applications in the Flemish region.

In the context of devising indicators of effectiveness, the Commission decided in 2001 to procure a study from outside consultants. The purpose of this study was two-fold. First, to devise a methodology for assessing the contribution of different forms of State aid towards the achievement of various clearly defined policy objectives. Second, to develop general criteria that can be used to explain the efficient use of state aid. In assessing the effectiveness of State aid, the study does not attempt to identify and measure market failures directly nor to compare the level of aid intensity with regional gaps, but rather to define policy objectives of State aid and to investigate the effectiveness of State aid as a policy instrument for achieving these objectives. The study proposes a econometric model to investigate the determinants of effectiveness, and uncovers a number of conditions that explain variations in effectiveness across Member States and state aid objectives. The effectiveness of state aid is measured in four policy fields: R&D, SME, Regional aid and Railways. Some robust but rather general conclusions can be drawn from the study. The econometric approach is clearly superior to the use of simple ratios and correlations; there are diminishing returns, i.e. as expenditure increases, marginal effectiveness falls; there are wide variations between Member States in the effectiveness of aid; complementarities can often be observed between aid for different primary objectives; the financial instrument used (grant, tax relief, etc) has a strong influence on effectiveness.

Conclusions and next steps

Member States contributions point to a range of actions that have been undertaken to follow up the various conclusions on State aid. Throughout the Union, there has been a concerted effort to reduce the overall level of aid while redirecting aid to horizontal objectives. The most notable policy innovation has been in Denmark where the total amount of aid to companies was cut by 10% in 2003. Several Member States also report that they are making greater use of general measures rather than aid schemes as well as developing greater synergy with other non-aid instruments. The Commission welcomes such an approach. Some Member States are however continuing to award aid that is particularly distortive of competition, such as ad hoc and sectoral aid and aid for rescue and restructuring.

All Member States have recognised the need, particularly in the context of tightening budgetary constraints, to evaluate the effectiveness of their aid measures. A variety of ex-ante and ex-post evaluation exercises have been developed, particularly within the last few years, although some Member States are clearly further advanced than others in the degree to which such exercises are being carried out systematically.

The actions undertaken by Member States to follow up these conclusions were the subject of a meeting in July 2003 between the Commission services and national State aid experts. It was agreed that such a meeting should be held, in general, on an annual basis, to discuss developments in this area.

In response to the Council's request to the Commission to provide a web-based network for the exchange of information and best practices, the Commission established in 2003 a CIRCA interest group[12] on State aid. It was agreed that all Member States should make full use of this facility to exchange information on their efforts to reduce and redirect State aid and evaluate the effectiveness of aid.

The Commission has made available to Member States, for internal use, the results of the study on effectiveness of aid referred to above. The Commission services are currently reflecting on a possible follow-up study in this area.

[12] The State aid interest group on CIRCA (Communication & Information Resource Centre Administrator) allows for the exchange of confidential and non-confidential information between the Commission and the Member States.

PART TWO: STATE AID FOR RESCUING AND RESTRUCTURING FIRMS IN DIFFICULTY

Introduction

In its conclusions on State aid, adopted in November 2002, the Council invited the Member States to "commit themselves to continue their efforts to reduce the overall level of State aid, in particular those aids which imply the greatest risk of competition distortions."

Aid for rescue and restructuring firms in difficulty is undoubtedly one of the most potentially distortive types of State aid. It cannot be the norm that a company which runs into difficulties is kept artificially in the market by the State. The exit of unprofitable firms is a normal part of the functioning of a market economy. Rescue aid is a one-off operation designed to keep a company in business for a limited period, during which its future can be assessed. On the other hand, repeated rescues that would merely maintain the status quo, postpone the inevitable and in the meantime shift the attendant economic and social problems on to other, more efficient producers or other Member States cannot be allowed. Aid for restructuring raises particular competition concerns as it can shift an unfair share of the burden of structural adjustment and the attendant social and economic problems onto other producers who are managing without aid and to other Member States. As well as the competition concerns, the ineffectiveness of a lot of rescue and restructuring aid is clearly a concern for Member States in their pursuit of an efficient allocation of state resources.

Hence, the current Community guidelines on rescuing and restructuring (see box below) confirm that state aid for rescuing firms in difficulty from bankruptcy and helping them to restructure may only be regarded as compatible under certain strict conditions imposed on the recipient and the Member State. It may be justified, for instance, by social or regional policy considerations: for example, if it can be shown that any distortions of competition will be offset by the benefit flowing from the firm's survival (in particular, where it is clear that the net effect of redundancies resulting from the firm going out of business, combined with the effects on its suppliers, would exacerbate local, regional or national employment problems) or, exceptionally, where the firm's disappearance would result in a monopoly or tight oligopolistic situation and, where appropriate, there are adequate compensatory measures in favour of competitors. The grant of rescuing and restructuring may also be approved by the need to take into account the beneficial role played by small and medium-sized enterprises (SMEs) in the economy.

A forthcoming review of the current guidelines, which expire in October 2004, will focus on whether stricter conditions to aid given to undertakings in financial difficulty are required, while at the same time ensuring that the necessary means are available for the training and reemployment of the workers concerned. See box on 'Revision of the Restructuring Guidelines' for further information.

Brief summary of the current guidelines on rescue and restructuring[13]

The compatibility of State aid for rescue and restructuring is governed by the Community guidelines on State aid for rescuing and restructuring firms in difficulty, first adopted in 1994 and then revised in 1999.

Rescue aid and restructuring aid are covered by the same set of guidelines, because in both cases the public authorities are faced with a firm in difficulties and the rescue and the restructuring are often two parts of a single operation, even if they involve different processes. A company in difficulty is a company that is unable to stem losses which without outside intervention by public authorities will almost certainly condemn it to go out of business in the short or medium term. Rescue aid is by nature temporary assistance. It should make it possible to keep an ailing firm afloat for the time needed to work out a restructuring or liquidation plan and/or for the length of time the Commission needs to be able to reach a decision on that plan. Restructuring, on the other hand, will be based on feasible, coherent and far-reaching plan to restore firm's long-term viability. Restructuring usually involves one or more of the following elements: the reorganisation and rationalisation of the firm's activities on to a more efficient basis, typically involving the withdrawal from loss-making activities, the restructuring of those existing activities that can be made competitive again and, possibly, diversification in the direction of new and viable activities. Financial restructuring (capital injections, debt reduction) usually has to accompany the physical restructuring. Restructuring operations within the scope of the Guidelines cannot, however, be limited to financial aid designed to make good past losses without tackling the reasons for those losses.

In order to be approved by the Commission, rescue aid has to meet the following conditions:

- consist of liquidity support in the form of loan guarantees or loans bearing normal commercial interest rates;

- be restricted to the amount needed to keep the firm in business;

- should be temporary, i.e. only for the time needed (max. 6 months) to devise the recovery plan;

- be warranted on the grounds of serious social difficulties and have no unduly adverse spillover effects on other Member States;

- should be a one-off operation.

Similarly, restructuring aid can be granted only if certain criteria are met:

- a viable restructuring/recovery programme is submitted to the Commission;

- measures are taken to avoid undue distortions of competition (e.g. appropriate reduction of capacity);

- aid is limited to the minimum needed for the implementation of the restructuring measures. Beneficiaries have to make a significant contribution;

- the company has to implement the restructuring plan in full;

- restructuring aid can be granted once only (‘one time, last time principle’);

- strict monitoring and annual reporting is required.

The vast majority of aid for rescue and restructuring is awarded on an individual (ad hoc) basis. Member States may notify rescue and restructuring schemes for small and medium-sized enterprises but for large companies such aid is always assessed on an individual basis.

[13] http://europa.eu.int/eur-lex/pri/en/oj/dat/1999/c_288/c_28819991009en00020018.pdf

The current set of guidelines, adopted in 1999, strengthened the rules in several areas, notably:

- on repeated restructuring aid. The "one time last time" principle ruled out a second restructuring aid for a company for ten years after the end of its first restructuring. An exception may be made where there are exceptional circumstances that are not attributable to the company;

- on which firms can be considered as firms in difficulty and can therefore benefit from rescue and restructuring aid. Although there is no precise Community definition of what constitutes ‘a firm in difficulty’, for the purposes of the current Guidelines, the Commission regards a firm as being in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to go out of business in the short or medium term. New firms and firms formed out of the assets of previous ones are excluded;

- on the ability of Member States to give aid approved for other reasons (such as regional aid) to companies undergoing an aided restructuring.

Trends and patterns of rescue and restructuring aid per sector

A comparison of the overall amounts of aid awarded for rescue and restructuring in each Member State over time is not particularly meaningful. First, the very nature of the aid means that each individual case is examined on its own merits. As a result, one large award of State aid, as in the Crédit Lyonnais case in France, may outweigh all other cases. Second, recourse to rescue and restructuring aid has been influenced by the level of financial support afforded to the various economic sectors by each Member State (e.g., the long-standing State guarantees for public banks in Germany undoubtedly helped them to better stand competitive pressure) and, in particular, to the timing of and degree to which each sector has been liberalised. Third, the overall economic climate also has an impact on the extent of aid for rescue and restructuring. As a result of the recent economic downturn, the number of firms in difficulty has risen and hence there has been a greater tendency for Member States to resort to State aid for rescue and restructuring. This is reflected in the number of important cases involving ailing firms that the Commission has been dealing with in the last couple of years. The overall number of cases however remains relatively small: 14 new registered cases in 2002 involving the rescue and restructuring of firms in the manufacturing and service sectors. The overall picture of aid for rescue and restructuring is thus rather complex and varies considerably from one Member State to another and from one sector to another. It is however worth noting that while some Member States regularly award aid to rescue and restructure ailing firms, others clearly do not have such a policy.

The vast majority of aid for rescue and restructuring is awarded on an individual (ad hoc) basis to ailing firms and it is this aid that is most prone to distort competition. During the period 1990-2002, the Commission approved rescue and restructuring aid in this way to around 120 firms in difficulty in the manufacturing and service sectors[14]. Several Member States, in particular Germany, Spain and Austria, have also introduced aid schemes for rescuing and/or restructuring small and medium-sized enterprises in difficulty in these sectors over this period. The overall amounts of aid awarded through such schemes are, in general, relatively small.

[14] This figure also includes a small number of firms operating in the construction, engineering and mining sectors

In looking at the number of individual awards of rescue and restructuring aid per Member State, it is important to bear in mind that aid amounts have varied from less than €1 million up to more than €20 billion. Furthermore, the figures do not include the large number of companies that received aid under the enormous restructuring programme[15] carried out in the new German Bundesländer during the 1990s. Nevertheless, the figures are quite revealing: of the 120 firms in the manufacturing and service sectors, around 35 were in Germany, 20 in France, 15 in Spain and Italy and 5-10 in Austria, Belgium and Portugal. In contrast, in Denmark, Greece, Ireland, Luxembourg, Netherlands, Finland, Sweden and the United Kingdom, there were at most 2 cases of rescue and restructuring aid being awarded and in some cases none whatsoever.

Of the 120 individual awards of rescue and restructuring aid, around 90 were for manufacturing firms in difficulty. Indeed, during the 1990s, the bulk of aid granted ad hoc in the Union was awarded for the purpose of the vast restructuring programme in the new German Bundesländer and for the rescuing or restructuring of companies and large industrial conglomerates in other Member States. Ad hoc aid to the new German Bundesländer peaked in 1994 when just over €10 billion was awarded and then dropped considerably until the Treuhand programme expired at the end of the decade. In total, an estimated €45 billion of State aid was awarded under this programme. A similar trend is found in ad-hoc aid that was granted in other Member States to certain sections of their respective manufacturing industries.

As regards shipbuilding, a sub-sector of the manufacturing sector, the Commission approved a number of major restructuring programs during the second half of the 1990s, in particular in shipyards in the former East Germany and Spain. Over the last few years, however, no major restructuring aid has been applied for by the Member States.

As a general rule, rescue and restructuring aid for the steel industry, another sub-sector of the manufacturing sector, has been prohibited. However, major restructuring and concomitant capacity reductions were undertaken exceptionally in the early to mid-nineties in several Member States. In its 2002 Communication[16] on Rescue and restructuring aid and closure aid for the steel sector, the Commission noted that, in the last decisions adopted in 1993 on the basis of Article 95 of the ECSC Treaty, the Commission and the Council agreed that no further decisions of this nature would be taken to rescue Community steel firms. Following this, steel companies had been acting on the market on the assumption that no further restructuring aid was available to them. If this state of affairs were to change in future, there would be no guarantee that steel firms would not relax their efforts towards costs reduction and increased competitiveness, thereby endangering the enormous efforts already made. In these circumstances, the Commission considered that rescue aid and restructuring aid for firms in difficulty in the steel sector as defined in Annex B of the Multisectoral framework, were not compatible with the common market.

During the 1990's, a considerable amount of rescue and restructuring aid, in the region of €31 billion, was granted to the banking sector involving a number of high-profile cases in Germany, France and Italy. This was due largely to the profound modification in the European banking sector that characterised the last decade. Following the adoption of European banking directives, the legislative and regulatory framework of national banking systems underwent important changes. The institutional separation between the establishments and the operational

[15] Aid given via the Treuhandanstalt or the Bundesanstalt für vereinigungsbedingte Sonderaufgaben

[16] 2002/C 70/05

constraints progressively fell away, the markets opened up, technological advances offered new commercial opportunities and competitive pressures increased throughout Europe. The necessity for many banks and the banking sector to restructure became more urgent because of the economic crisis in the early 1990's. The delay in adapting to the new banking environment, notably by public banks, led to dramatic consequences. Some banks in certain Member States, as in France and Italy, went through deep crises and received large amounts of restructuring aid. Since 1998, the Commission has dealt with no new cases for this sector in France and Italy, appearing to confirm that the major restructuring operations undertaken had reached completion. Some banks in Germany however, which first came under scrutiny in 1994, are still currently being investigated.

Other service sectors where rescue and restructuring aid has been awarded over the last ten years or so include media, culture and tourism. Overall amounts of aid are relatively small.

There have also been several restructuring cases in the postal sector but in the vast majority of cases the Commission concluded that the financial support granted by Member States constituted compensation to the undertaking concerned for the operation of services of general economic interest. However, in the Deutsche Post case the Commission found that part of the aid was also being used to subsidise activities in the competitive business parcels sector as well as for public postal services and it therefore ordered the recovery of the corresponding part of the aid.

As regards the railway sector, there have been important efforts in recent years to revitalise the Community's railways. While several Member States have provided financial support to railway companies as compensation for the operation of services of general economic interest, no restructuring aid has been notified nor authorised by the Commission.

With the liberalisation of the air transport sector, many airline companies introduced major restructuring programmes during the early to mid-nineties. Aid, mostly ad-hoc, that was granted to this sector peaked in 1994 with around €2.5 billion awarded in the Union but since 1998 the level of aid has fallen significantly. This is largely due to the fact that the Commission adopted strict guidelines in 1994 that reinforced, in particular, the one-time-last-time principle for restructuring aid to companies in financial difficulty. Although the airline industry was hit badly following the terrorist attacks of 11 September 2001, this did not lead to specific rescue and restructuring aid in this sector. In 2001 and 2002, however, aid schemes were approved by the Commission for most Member States to, among other things, provide for the insurance cover that, due to an increased terrorist threat, the insurance market failed to provide. It is not possible to quantify such aid.

The rescue and restructuring guidelines do not apply to the coal sector. Aid to the coal industry, insofar as ECSC coal products were concerned, was regulated by a Commission Decision[17] which expired in July 2002. In its place, the Commission adopted a Regulation which lays down rules for the granting of State aid to the coal industry with the aim of contributing to the restructuring of this sector[18]. The rules take account of the social and regional aspects of the sector's restructuring, as well as the need for maintaining, as a precautionary measure, a minimum quantity of indigenous coal production to guarantee access to reserves.

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17 Commission Decision 3632/93/ECSC adopted under Article 95 ECSC Treaty

18 Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry

Conclusions

It is widely recognised that aid for rescue and restructuring firms in difficulty is one of the most potentially distortive types of State aid. Hence, the Commission has attempted to ensure a rigorous application of the Community guidelines on rescuing and restructuring where aid is compatible only under certain strict conditions - justified for example by social or regional policy concerns - imposed on the recipient and the Member State. A forthcoming review of the current guidelines, which expire in October 2004, will examine whether stricter conditions are required in order to reduce such potentially distortive aid to a minimum.

Revision of the Rescue and Restructuring Guidelines

The Commission has begun work on a comprehensive review of the guidelines in view of the preparation of new guidelines to replace the existing ones which expire in October 2004. A first internal review of the guidelines has identified a series of problems, a selection of which are presented below:

- When is a company in financial difficulties? There is no Community definition of a "firm in difficulty" and it seems very difficult to derive any definition from the practice of Member States because of differences in national insolvency laws and procedures.

- Groups of companies. The guidelines state that a company belonging to a group is not normally eligible, except where the difficulties are the company's own and are not the result of an arbitrary allocation of costs within the group, while the difficulties are too serious to be dealt with by the group itself. These criteria are not easily applicable and raise a number of questions. For example, where a subsidiary in one Member State is in financial difficulties but whose parent company appears unwilling to support it.

- Urgency. Whereas the current Guidelines are based on the premise that aid is notified in advance, rescue aid often has to be granted prior to Commission approval in order to avoid the collapse of the company. However, any possible solution to this situation should comply with the notification obligation under Art. 88 (3) EC Treaty.

- One-time last time principle. The guidelines provide that rescue aid is a one-off operation and that repeated rescue aids should be avoided. However, there have been cases of companies which were not eligible for restructuring aid because of the "one time, last time" principle, obtaining new rescue aid.

- Various time limits. The different time limits in the current framework are unclear and thus need to be clarified.

- Compensatory measures: when are the compensatory measures proposed sufficient in scope "to mitigate the potentially distortive effects of the aid on competition"?

PART THREE: MODERNISING STATE AID CONTROL

The Council conclusions adopted in November 2002 on "an economic approach towards less and better State aid"[19] called on the Commission, in close co-operation with the Member States, to "continue to modernise, simplify, and clarify the scope and content of EU rules on State aid, including making them more effective in terms of the length of process and the administrative resources involved." Unlike the reform of anti-trust or merger control, State aid reform is not being undertaken in a specific single initiative, but by a series of changes at different levels.

The first initiative concerns procedural change which has become increasingly important in view of enlargement. The objective is to accelerate, simplify and modernise procedures, in particular with a view to reducing the resources expended on routine cases and to enable the Commission to concentrate resources on more important cases which present real competition concerns at the Community level and hamper the growth and competitiveness of European business. In this regard, the Commission recently undertook a detailed internal review to identify the possibilities for simplifying procedures and reducing their duration. As a result of this review, the Commission services identified a number of possible changes which are currently the subject of detailed consultation with experts from Member States. This work includes the preparation of draft implementing provisions under Article 27 of Regulation (EC) n° 659/1999 concerning the form, content and other details of notifications, the form, content and other details of annual reports, details of time-limits and the calculation of time-limits, and the interest rate for the recovery of unlawful aid, as well as other suggestions to improve current procedures and working methods.

The Commission will also continue to review its State aid instruments to simplify and clarify them, and remove possible conflicts between the different texts. At present, priority is being given to reviewing the rules on rescue and restructuring aid for companies in difficulty (see Part Two), to look at the reform of the Community's regional aid rules after enlargement, to prepare new rules for shipbuilding, to simplify the rules on research and development aid for small and medium-sized enterprises, to clarify the area of services of general economic interest, and to review the State aid guidelines for the maritime and aviation sectors.

As regards the <u>regional aid</u> guidelines, it is clear that the situation will change significantly after enlargement. The greater part of the territory of the Acceding States will receive "assisted region" status. There will thus be a clear need to review the approach to regional aid for the period after 2006, while at the same time taking full account of the parallel review of the structural fund regulations. For the period up to 2006, the current regional aid maps for the fifteen Member States will remain in place while regional aid maps for the Acceding States have been elaborated.

The Commission is preparing a framework on State aid to <u>shipbuilding</u> to replace the 1998 Shipbuilding Regulation which expires on 31 December 2003. The guiding principle of this exercise is to simplify and normalise the treatment of shipbuilding, both as to the form and the substance of State aid rules. It is nevertheless proposed to maintain certain sector-specific provisions on the basis of certain particularities that distinguish shipbuilding from other industries.

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[19] Council document number 13799/02: http://register.consilium.eu.int/pdf/en/02/st13/13799en2.pdf

As regards research and development aid for small and medium-sized enterprises, the Commission launched in July 2003 a formal consultation of Member States and interested parties on a draft regulation to amend the rules on aid for SMEs in order to incorporate the new Community definition of an SME and to exempt aid for R&D from notification.

Services of General Economic Interest (SGEI)

The Commission has repeatedly stressed the importance that it attaches to the proper operation of Services of General Economic Interest (SGEI). Clearly, undertakings responsible for a service of general economic interest must have the necessary resources to ensure that it operates properly, and in some cases public financial support may prove necessary. The Commission's task is however to ensure that the amount of such financial support does not exceed what is necessary for the performance of the public service obligation and that the resources made available are not in practice improperly used to finance activities on other markets open to competition.

In this context, the judgment delivered by the Court of Justice on 24 July 2003 in the Altmark case[20] provides useful clarification on how Articles 87 and 88 of the EC treaty apply to the public financing of undertakings responsible for services of general economic interest.

In its judgment, the Court stated that "where a State measure must be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations, so that those undertakings do not enjoy a real financial advantage and the measure thus does not have the effect of putting them in a more favourable competitive position than the undertakings competing with them, such a measure is not caught by Article 87(1) of the Treaty."

However, for such compensation to escape classification as State aid in a particular case, four conditions must be satisfied:

- "The recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined."
- "The parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner, to avoid it conferring an economic advantage which may favour the recipient undertaking over competing undertakings." The Court states that "payment by a Member State of compensation for the loss incurred by an undertaking without the parameters of such compensation having been established beforehand, where it turns out after the event that the operation of certain services in connection with the discharge of public service obligations was not economically viable, therefore constitutes a financial measure which falls within the concept of State aid."
- "The compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations."
- "Where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs

[20] C-280/00 concerning the grant of licences for scheduled bus transport services in the Landkreis of Stendal (Germany) and public subsidies for operating those services.

which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations."

When these conditions are met, any subsidies paid as compensation do not constitute state aid and the prior notification requirement is not therefore applicable. The Court broadly upholds the traditional approach of the Commission, balancing the need to ensure the financing of SGEI against the need to prevent unwarranted distortions of competition. In the light of this Court ruling, the Commission must now draw up a document laying down the conditions governing their actual application by the Member States.

State aid to the fisheries sector

With regard to State aid procedures in the fisheries sector, the Commission has adopted a draft regulation proposing to exempt most categories of state aid in the fisheries sector from prior notification to the Commission. The aim is to make the existing rules simpler and to adapt them to the new legal framework under the reformed Common Fisheries Policy adopted in December 2002. Once adopted, this block exemption will further reduce administrative procedures necessary before granting aid to the sector, and will thus be in line with the facilitation already approved in December 2002 for the Financial Instrument for Fisheries Guidance (FIFG), according to which Member States no longer have to notify the Commission of national aid which co-finances measures benefiting from FIFG support. The categories proposed for exemption include aid for promotion and/or advertising of fisheries products, producers' groups, protection and development of aquatic resources, innovative measures and technical assistance, fishing port facilities, scrapping of fishing vessels, socio-economic measures, investment in processing and/or marketing of fisheries products, and aquaculture and inland fishing. Once adopted, the block exemption will apply to aid granted to small and medium-sized enterprises for amounts below €1 million or to aid designed to finance measures with a maximum eligible amount of €2 million. To ensure the proper allocation of such aid, monitoring will take place through ex post reporting obligations.

New draft guidelines on the examination of State aid to the fisheries sector, in the form of appropriate measures under Article 88(1) of the Treaty will be submitted to the Commission at a later stage, following a consultation with the Member States in October 2003.

State aid to the agricultural sector

Within the framework of the Commission Communication to the European Parliament and the Council on the Mid Term Review of the Common Agricultural Policy, the Commission recently adopted a draft block exemption regulation for certain types of State aid up to certain ceilings, granted to small and medium-sized enterprises (SMEs) in the agricultural sector. Due to the SME definition - up to 250 employees, €40 million turnover or a €27 million balance sheet – this would cover almost all farms and companies active in the agriculture sector.

This draft regulation shows that the Commission is willing to take bold steps to simplify the regulatory framework for agriculture and to modernise and simplify the state aid rules in the sector.

Accordingly, provided that all conditions mentioned in the draft regulation are fulfilled, it is now proposed that Member States would no longer need to notify to the Commission in advance certain types of State aid for clearance. Such types of aid include, among others, *Investment aid* of up to 40% for farmers /50% in less-favoured areas**;** Aid of up to 100% for the costs of *conservation of traditional landscapes and buildings*; *Investment aid* of up to 40% or 50% in Objective 1 regions, to enterprises active in the *processing and marketing* of agricultural products or aid of up to €100 000 per beneficiary over a three year period to encourage the production and marketing of *quality agricultural products*[21].

The draft regulation was discussed with Member States in June 2003 and was published in the Official Journal C 194 of 15.8.2003 to invite comments from third parties. It will be submitted to a second consultation of Member States on 6 November after which the Commission intends to adopt the final text by the end of 2003 and to make it applicable by January 2004.

Recovery of aid

The Commission has the power to require that aid granted by Member States which is incompatible with the common market be repaid by recipients to the public authorities which granted it. The Member State must recover the aid immediately in accordance with national procedures.

The fact that Commission decisions are enforced through the Member States under their national procedures constitutes a weak spot in the enforcement system. Due to the inherent conflict of interest (the State being the donor of aid as well as the recovering institution) recovery orders often do not enjoy a high priority. This is particularly true when the aid beneficiary has declared bankruptcy. About a third of all recovery cases concern bankrupt companies. In such cases, recovery takes place under national insolvency procedures since there is no harmonised European insolvency law. Moreover, a number of Member States, including the Acceding States, have recently adopted insolvency laws, modelled to a greater or lesser extent on the U.S. Chapter 11 insolvency statute. In line with the US model, these new laws shield the economic activities of the insolvent company against its creditors, including the State aid recovery claims.

In reaction to this and as part of the recent reorganisation of DG Competition, a new unit was set up, specifically charged with ensuring the enforcement of recovery decisions. Besides the treatment of individual cases, it analyses the barriers to recovery and identifies possible solutions. A dialogue with practitioners and academics of insolvency law was started in order to avoid a one-sided approach but to pursue the goal of effective recovery within the overall internal market objectives.

Preparing for Enlargement

As of 1 May 2004, competition rules will apply directly on the new Member States with, as regards State aid, only some very limited transitional arrangements. The Commission will need to ensure the application of the State aid rules in economies which are in some respects still different from those of the current Member States, and which have not always yet fully completed the process of transition from centrally planned to market-based economies. The experience of German reunification illustrates some of the difficulties which may arise.

In order to prepare for a gradual introduction of State aid control in line with the EU acquis, the Commission has over many years been working closely with the authorities in the Acceding

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[21] Details on the different types of aid are provided on: http://europa.eu.int/comm/agriculture/stateaid/leg/sum_en.pdf

States. Since the late 1990s, the Commission has actively encouraged the introduction of State aid legislation and the establishment of State aid monitoring authorities in the Candidate Countries, in line with the provisions of the Europe Agreements. The Commission has consistently taken the view that Candidate Countries had to demonstrate a credible State aid enforcement record in line with the acquis well before the date of accession. This has ensured that the Acceding States have phased out or aligned their most distortive forms of aid, i.e. aid for the bail-out of ailing businesses as well as incompatible fiscal aid measures, largely designed to attract internationally mobile investments. Furthermore, the Accession Treaty, signed in Athens in April 2003, provides for a mechanism that enables the Commission to screen State aid measures that entered into effect before the date of accession and that the authorities of the Acceding States intend to continue to operate after that date. The Treaty provisions enable the Commission to object to any such measure, if it considers that it is incompatible with the common market. The mechanism enables the Acceding States to ensure continuity without any interruption in the their state aid systems immediately after accession. At the same time, it allows the Commission to ensure an effective control of any State aid that is granted in these countries after accession.

An overview of the State aid situation in the new Member States is foreseen for the autumn 2004 update of the State aid Scoreboard.

ONLINE SCOREBOARD

Further information on methodological issues, a set of key indicators and a wide array of statistical tables may be found on the online Scoreboard. A selection of the key indicators is presented in the table below.

The website also contains internet-links to information on State aid policy issues of the Member States and the European Parliament.

http://europa.eu.int/comm/competition/state_aid/scoreboard/

Key indicators on State aid

	State aid as a % of GDP		Trend in the share of aid to GDP, 1997- 2001 in % points (1)		Share of aid to horizontal objectives as a % of total* aid, 2001	Trend in the share of aid to horizontal objectives as a % of total* aid, 1997- 2001 in % points (1)
	Total aid	Total* aid	Total aid	Total* aid		
EU	0,99	0,38	-0,16	-0,14	71	+9,8
B	1,34	0,31	-0,05	-0,03	99	+0,6
DK	1,36	0,68	+0,20	+0,09	97	-2,1
D	1,14	0,58	-0,20	-0,15	63	+11,2
EL	1,02	0,36	-0,28	-0,11	99	+2,0
E	0,74	0,42	-0,19	-0,15	55	+10,7
F	1,10	0,42	-0,23	-0,22	53	+11,9
IRL	1,20	0,65	-0,05	-0,20	78	+0,1
I	1,01	0,35	-0,30	-0,24	96	+6,9
L	1,30	0,16	+0,19	-0,09	87	-5,7
NL	0,98	0,15	+0,13	0,00	90	-1,6
A	0,99	0,26	-0,15	-0,04	94	+2,9
P	1,04	0,77	-0,46	-0,35	41	+12,3
FIN	1,58	0,29	-0,34	-0,08	97	+3,3
S	0,71	0,19	-0,08	-0,02	78	-1,9
UK	0,66	0,17	-0,07	-0,08	91	+15,6

total* : total state aid less agriculture, fisheries and transport

(1) Change in percentage points between the annual average for 1997-1999** and that of 1999-2001

** Data for Ireland cover the period 1998-1999 instead of 1997-1999.

ANNEX I: COUNCIL CONCLUSIONS ON STATE AID

In March 2000, the Lisbon European Council set out to make the EU the most competitive and dynamic knowledge-based economy in the world. The Council, Commission and Member States were requested "to further their efforts to promote competition and reduce the general level of State aids".

In its conclusions of 24 March 2001, the Stockholm European Council indicated that "the level of state aids in the European Union must be reduced and the system made more transparent"…. "To that effect, Member States should demonstrate a downward trend in State aid in relation to GDP by 2003, taking into account the need to redirect aid toward horizontal objectives of common interest, including cohesion objectives."

At Barcelona, on 16 March 2002, the European Council renewed "its call to Member States to reduce the overall level of State aid as a percentage of GDP by 2003, and onwards, and to redirect such aid towards horizontal objectives of common interest, including economic and social cohesion, and target it to identified market failures. Less and better-targeted State aid is a key part of effective competition."

On 5 December 2001, the Council adopted Conclusions concerning State aid. In those conclusions, the Council invited the Member States to:

- continue their efforts to reduce aid levels, in terms of percentage of GDP;
- reduce, by way of priority, with a view to eliminating, aid which has the greatest distortive effects;
- reorient aid towards horizontal objectives, including cohesion and, where appropriate, small and medium-sized enterprises (SMEs);
- further develop the use of "ex ante" and "ex post" evaluations of aid schemes, so as to rebalance them in a more effective way; such evaluations should focus on the quality of aid packages, their effects on competition and their impact;
- improve the transparency and the quality of reporting to the Commission, particularly by national control and follow-up procedures as well as, where possible, by the provision of relevant statistics;

In addition, the Council invited the Commission to:

- develop, together with the Member States, statistical tools enabling these Conclusions to be followed up and devise indicators of effectiveness and efficiency; those indicators should thereafter, where appropriate, supplement the Scoreboard;
- intensify the assessment of the impact of aid on competition, on the basis of economic criteria;
- encourage exchanges of experience and concerted evaluation exercises, in order to benchmark the effectiveness of instruments on a European scale;
- continue its efforts to simplify European rules on State aid, to modernise them and clarify them in order to make them more effective, particularly in terms of the length of processes;
- submit an initial assessment of progress in 2002;

On 26 November 2002, the Council adopted Conclusions concerning State aid. In those conclusions, the Council invited the Member States to:

- commit themselves to continue their efforts to reduce the overall level of State aid, in particular those aids which imply the greatest risk of competition distortions;
- consider before granting State aid whether it is targeted on a clearly identified market failures or directed at horizontal objectives of common interest, including economic and social cohesion objectives, and whether an intervention in the form of State aid is the most appropriate and effective way to address these issues;
- continue to develop the use of *.ex-ante.* and *.ex-post.* evaluations of individual State aid and State aid schemes in order to monitor impact on competition and effectiveness of the aid;
- contribute to the report of the Commission to the European Council in spring 2003 on the steps taken concerning the reduction and reorientation of State aid with a view to developing in the long term perspective an analytical framework for the evaluation of State aid impact on markets and economic development.

In addition, the Council invited the Commission to:

- in close co-operation with the Member States and without delay, continue to modernise, simplify, and clarify the scope and content of EU rules on State aid, including making them more effective in terms of the length of process and the administrative resources involved and include in the autumn edition of the State aid scoreboard each year a section on the results of these considerations;
- clarify the economic criteria used to assess the effects of aid whether in established or in new areas of activity;

In addition, the Council invited Member States and the Commission, in their respective areas of competence, to:

- to exchange experiences, starting in 2003, notably through meetings and seminars, on their efforts to reduce State aid; the results of this work will be reported in the framework of the scoreboard and could ideally include an evaluation of the State aid trend based on the following indicative list of themes and issues:

• development of statistical measures and indicators;

• methodologies and tools used to evaluate impact and effectiveness of State aid;

• national targets and results of efforts to reduce State aid;

• experience in using *.ex ante.* and *.ex post.* evaluations of aid;

• other concrete measures in order to fulfil the targets set in the conclusions of the Stockholm and Barcelona European Council concerning a reduction and reorientation of aid, including suggestions for further work and initiatives;

- to develop within the State aid scoreboard a web-based network for the exchange of information and experience between Member States and the Commission, and continue to increase transparency."