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REPORT FROM THE COMMISSION

**State Aid Scoreboard
- Autumn 2008 Update -**

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EXECUTIVE SUMMARY

The autumn 2008 update of the State aid Scoreboard focuses on the State aid situation in the twenty-seven Member States for the year 2007 and the underlying trends. The main aim is to assess Member States progress towards meeting the Lisbon objectives and response to successive European Councils call for “less and better targeted aid”. It includes an overview of the recent State aid cases in the banking sector that have resulted from the sub-prime crisis. This update of the Scoreboard also reports on progress towards delivering a comprehensive and coherent reform package for State aid that began with the State Aid Action Plan (SAAP) in 2005.

Less and better targeted aid

Response to Council calls for less State aid: underlying trend in the volume of aid continues to be downward or stable in the vast majority of Member States ...

The Lisbon European Council of March 2000 called on the Commission, the Council and Member States to *"further their efforts to ... reduce the general level of State aid, shifting the emphasis from supporting individual companies or sectors towards tackling horizontal objectives of Community interest, such as employment, regional development, environment and training or research"*. Successive European Councils have since repeated the call for “less and better targeted aid”. These goals were underlined by the Commission Recommendation on the Broad Economic Policy Guidelines for 2005-2008. Furthermore, less and better-targeted aid was identified as one of the four guiding principles underpinning the Commission's State aid reform programme launched in 2005.

Looking at the trend from a long-term perspective, the overall level of State aid in the 1980s was in the region of 2% of GDP, fell to just below 1% in the 1990s and now stands at around 0.5%-0.6%. This decline in State aid expenditure can be explained in part by the work that began in the mid 1980s to make effective State aid control a key component of the Single Market Programme. It is also the result of a general recognition that a high volume of State aid not only hindered an efficient allocation of resources but also rendered the economy as a whole less competitive. State aid discipline was then widened and strengthened in the 1990s in the context of EMU and then given new impetus by the Lisbon Council in 2000 and the SAAP in 2005. The resulting reform package for State aid focuses largely on a better targeting of aid while ensuring that distortions are kept to a minimum in order to maintain the functioning of the single market.

Total State aid less railways granted by the Member States in 2007 stood at €65 billion or 0.53% of EU Gross Domestic Product (GDP). Aid for industry and services amounted to €49 billion or 0.40% of GDP.

From a short-term perspective, the underlying trend in total aid for industry and services continues to be downward or stable in the vast majority of Member States. In relation to GDP, and during a period of steady economic growth, State aid for EU-27 decreased by 15% from 0.50% of GDP in the period 2002-2004 to 0.42% of GDP in the period 2005-2007. This positive development can be attributed to mainly three factors:

- First, and in line with expectations during a period of economic growth, Member States granted considerably less rescue and restructuring aid. In absolute terms, rescue and restructuring aid decreased from an average of €6.8 billion per year in 2002-2004 to €1.8 billion per year in 2005-2007. In this context, it is worth noting that while several Member States have awarded significant amounts of aid to rescue ailing firms in the past six years, most countries awarded relatively small amounts and indeed eight countries did not award any such aid.
- Second, state aid to the coal sector shows a continued downward trend, decreasing from an average of just under €8 billion per year to less than €4 billion per year over the two reporting periods 2002-2004 and 2005-2007. The decrease can be observed primarily in Poland, France, Germany, and, to a lesser extent, Spain.
- Third, the downward trend is even more accentuated in the EU-12. Here, pre-accession commitments and continued efforts after accession contributed likewise as these Member States continue to adjust their State aid policies and practices to the requirements under EU State aid law and policies.

The overall EU-27 level of State aid does not only reflect the broader strategic choices or changes in national policies but is likewise influenced by a relatively small number of large cases (for example, restructuring aid in Germany to [Bankgesellschaft Berlin \(BGB\)](#), amounting to some €8 billion in the years 2001 and 2002, €4 billion for Polish coal in 2003, €1.4 billion to [Alstom](#) in France 2004, €750 million restructuring aid to [BAWAG](#) in Austria 2006, €1.6 billion of rescue aid to Northern Rock in the United Kingdom and a €630 million restructuring aid package for Sachsen LB in Germany in 2007).

It should be noted that State aid expenditure figures refer only to cases decided by the Commission by 30 June 2008 (and for which aid was awarded up to the end of 2007) and not to ongoing State aid cases.

... though the level of aid is expected to rise in some Member States in 2008 due primarily to the banking crisis as well as a general downturn in the economy

Following the recent downturn in the economy, in particular the banking crisis, the share of rescue and restructuring aid is likely to increase significantly for the year 2008.

The Commission has been able to deal quickly and effectively with the rescue and restructuring of troubled banks within its current rules

Since the beginning of the current financial crisis, Member States have announced unprecedented support measures for the financial sector, ranging from increased (or even unlimited) deposit guarantees, interbank credit guarantees, direct capital injections and partial nationalization to individual rescue packages. To a considerable extent, these support measures are subject to European State aid control, and the Commission has thus been playing a key role in this situation. Coordinated action by Member States and the Commission has ensured that large support schemes for the financial sector could be implemented in compliance with EU State aid rules. The current situation and the large number of notifications provide a significant challenge for the Commission to deal with these cases quickly, but at the same time to continue to ensure that measures are proportionate and do not create undue distortions of competition. In fact, the Commission has managed to respond to

notifications submitted by Member States and to approve schemes in record time - even within 24 hours.

While a crisis at an individual bank may have the potential to trigger a general banking crisis and *vice versa*, in terms of compatibility with EU State aid rules individual rescue cases differ considerably from schemes aimed at the entire financial sector. The Commission has been tackling the individual rescue cases during the financial crisis based on the guidelines on rescue and restructuring aid. The Commission has made an important effort to deal in a rapid, efficient and flexible way with the cases submitted: Northern Rock (notification on 26 November 2007, approved on 5 December 2007), West LB (notification on 27 March 2008, approved on 30 April 2008), Roskilde Bank (notification on 22 July 2008, approved on 31 July 2008), and Hypo Real Estate (notification on 30 September 2008, approved on 2 October 2008). Also in more complex cases, where a formal investigation procedure was inevitable, such as Sachsen LB, the Commission was able to take a final decision in the case within three months after the initiation of a formal investigation procedure.

Responding to exceptional circumstances and systemic risk

As the financial crisis deepened in October 2008, the Commission published a Communication¹ on how Member States can best support financial institutions in the current financial crisis whilst respecting EU State aid rules. The Commission acknowledges the exceptional circumstances and the systemic risks inherent to a financial crisis and takes them into account when dealing with support schemes.

The current financial crisis has, however, led to a need for State interventions that differ from the traditional rescue or restructuring of a financial institution in difficulties. To a large extent the measures currently taken by Member States do not concern specific banks in difficulties, but are aimed at the entire banking sector. These measures have been announced in order to respond to the systemic risk that is seen in the banking sector. In its Communication the Commission acknowledges the exceptional circumstances and the systemic risk in the current situation. The Commission can therefore apply Article 87(3)(b) of the EC Treaty. This exception to the general prohibition of State aid can be invoked in order to 'remedy a serious disturbance of the economy'. In October 2008 the Commission approved far-reaching support measures notified by Ireland, the United Kingdom and Denmark. These schemes involve a combination of increasing guarantees for bank deposits, guarantees for interbank loans and capital injections. Several other countries have notified or are expected to notify similar schemes. However, even under exceptional circumstances it is the Commission's responsibility to ensure compliance with European State rules while at the same time respond flexibly and swiftly to the systemic risk posed by the financial crisis.

State aid in the current economic downturn

The current financial crisis and downturn in the economy is already beginning to have a negative impact on jobs and on the order books of businesses. There is consensus that Member States have to coordinate their response to this crisis. Member States' economies are too intertwined and a short-term fix involving a subsidy race between Member States should be avoided. On the contrary, State support for European business will only show results if it is

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:270:0008:0014:EN:PDF>

sustainable. While boosting sustainable investment benefits European industry in general, particular emphasis should be placed on SMEs which may face greater difficulties of access to finance than other companies.

The recent Small Business Act adopted by the Commission identifies a large number of actions to support SMEs. Furthermore, the recent modernisation of EU State aid rules encourages Member States to support sustainable investment, thus contributing to the Lisbon strategy for growth, jobs and competitiveness. For SMEs, the recently adopted GBER now offers Member States a wide range of aid measures with a much reduced administrative burden. This also enables Member States to facilitate access to finance particularly for SMEs, and so tackle the current financial and economic crisis effectively.

The majority of Member States have contributed positively to the Council's call for better targeted aid

In line with the commitments undertaken at the various European Councils, most Member States have continued to shift the emphasis from supporting individual companies or sectors towards horizontal objectives of common interest. For the EU-27, the average share of horizontal objectives in total aid increased from 67% over the period 2002-2004 to 81% over the period 2005-2007. This compares with around 50% in the mid-Nineties. In welcoming this trend, one should be aware that much of the increase in horizontal aid can be attributed to an increase in environmental tax exemptions, in particular for energy intensive industries. Aid for environmental protection increased by €3 billion over the two reporting periods (the share in total aid rose by + 8 percentage points to 27%) with Sweden (+€1.4 billion) and Germany (+ €1.0 billion) the main contributors to this rise. The share of R&D&I aid (+ 2.5 points to 13% of total aid) also rose significantly.

The clear positive shift towards horizontal objectives is even more significant in the EU-12 Member States as they continue to adjust their State aid policies and practices.

Simplification of State aid rules

State aid reform package: a new set of rules and a new architecture for State aid

The State Aid Action Plan (SAAP), adopted in June 2005, announced that the Commission would set out to tackle a series of acknowledged deficiencies in State aid policy, and thereby transform State aid into an effective policy tool for growth and jobs. The plan launched a review of almost all the State aid rules and procedures.

There are 4 guiding principles underpinning the reform programme:

- less and better targeted State aid;
- a refined economic approach;
- more effective procedures, better enforcement, higher predictability and enhanced transparency;
- a shared responsibility between the Commission and Member States.

Since 2005, the Commission has worked in close cooperation with the Member States to deliver these reforms. As outlined in the SAAP roadmap, the Commission has revised a large number of its guidelines, frameworks and communications. This includes the Decision and

guidelines on Services of General Economic Interest, a revised set of Regional Aid Guidelines, a new framework on Research, Development and Innovation, revised Community guidelines on state aid for environmental protection and a new General Block Exemption Regulation.

In order to make procedures and decision-making faster and more efficient, the Commission has made substantial changes to the architecture of its State aid control. The new architecture is based on a "3-stream system": block exemption, standard assessment and detailed assessment. This is a crucial feature that allows the Commission to focus on the most distortive cases as well as reducing the administrative burden for companies and Member States for cases which are less important.

Indeed an increasing number of aid measures are exempted from ex ante Commission scrutiny, either by the *de minimis* Regulation or by the new General Block Exemption Regulation. The rationale behind this change is that such measures are unlikely to have a significant impact on competition at the Community level and may thus be granted without prior notification to the Commission provided they fulfil the criteria of the respective legal instruments. In this context, changes to the state aid architecture have already begun to have an impact with a sharp increase observed in 2007 in the share of block exempted aid measures (65% of all measures in 2007 compared with 40% in 2002). Although this is not yet reflected to the same extent in terms of expenditure, 2007 saw a significant rise in the share of expenditure awarded under the block exemption regulations (BER): from 6% of total aid in 2006 to 13% in 2007.

By applying a level of assessment proportionate to the impact of the aid measure, the new State aid architecture assures a strict but practical form of State aid control in an EU of 27, where it is impossible to assess every notification of national aid measures. Furthermore, the new architecture facilitates and accelerates the implementation of compatible aid considerably and, thus, provides an incentive for Member States to introduce better targeted aid measures that contribute to growth and employment, notably R&D&I and risk capital. Last but not least, the new architecture frees Commission resources to examine the most distortive cases more thoroughly. Such cases are subject to a detailed and rigorous assessment of their effects on competition in the internal market.

Member States have been able to introduce more than 1700 block exempted aid measures in the past 18 months

Member States continue to use block exempted measures in increasing numbers: the number rose sharply in 2007 with over 1100 measures introduced, more than double the figure for 2006. The trend has continued with a further 600 measures block exempted in the first six months of 2008. In all, some 3400 measures have been introduced since the first BER was introduced in 2001. Expenditure under the BER has risen accordingly – Member States awarded an estimated €6.2 billion in 2007 under the four block exemption regulations for the industry and services sectors. This compares with only €3.2 billion in 2006.

Although virtually all Member States have increased the number of block exempted measures, the extent to which each country makes use of the possibilities offered by the BER varies considerably. A new General Block Exemption Regulation (GBER), which came into force in August 2008, should lead to a further rise in the number of block exempted measures. The new GBER consolidates into one text and harmonises the rules previously existing in five

separate Regulations and enlarges the categories of state aid covered by the exemption. The new regulation authorises aid in favour of SMEs, research, innovation, regional development, training, employment, risk capital, environmental protection aid, aid measures promoting entrepreneurship, such as aid for young innovative businesses, aid for newly created small businesses in assisted regions, as well as measures tackling problems, like difficulties in access to finance, faced by female entrepreneurs.

The increase in block exempted measures has been accompanied by a significant reduction in the number of notified measures for these types of aid, thus reducing the administrative burden on Member States and companies. This should be seen against the backdrop of a continuing trend towards horizontal aid measures allowing Member States to grant individual awards of aid under approved schemes without the need for notification.

Enforcing the State aid rules

More effective recovery of aid: €7 billion or 92% of total illegal and incompatible aid had effectively been recovered by June 2008

The effectiveness and credibility of state aid control presupposes a proper enforcement of the Commission's decisions. The Commission therefore announced in the SAAP that it will seek to achieve a more effective and immediate execution of the recovery decisions, which will ensure equality of treatment of all beneficiaries. The latest figures indicate that significant progress has been made since 2005. By the end of June 2008, there were 47 pending recovery decisions compared with 93 at the end of 2004. The total amount of aid to be recovered on the basis of the 126 recovery decisions adopted between 2000 and 2007 is (at least) €9 billion. Of this figure, some €7.1 billion of illegal and incompatible aid had been effectively recovered by the end of June 2008 as well as €2.4 billion of interest. In addition to the amounts effectively recovered, a further €1.26 billion was "lost" in bankruptcy proceedings. This means that 92% of the total amount of illegal and incompatible aid has effectively been recovered compared with only 25% at the end of 2004.

New Notice on the Enforcement of State aid Law by National Courts

The Commission considers that State aid enforcement by national courts can play an important role in the overall system of State aid control. National courts are often well placed to protect individual rights affected by violations of the State aid rules and can offer quick and effective remedies to third parties. The Commission therefore sees a need to give clear guidance to the courts and potential claimants on the different issues that can arise in the context of State aid litigation at national level. This guidance will be based on the jurisprudence of the Community courts and will cover issues such as the remedies available to third parties, procedural matters (such as legal standing), the circumstances in which a national court should issue interim measures and the conditions for claiming damages in the event of a breach of the State aid rules. In addition, the Commission wishes to intensify its co-operation with national courts in individual cases. It hopes to achieve this aim by providing practical and straight forward co-operation mechanisms to national judges along the lines of those already existing in the antitrust area. To reach the above aims, the Commission is currently in the process of preparing a new notice on State aid enforcement by national courts. The Commission has recently published a first draft for consultation and expects to issue the final notice in early 2009.

Ex-post monitoring

In order to ensure the continued proper enforcement of the State aid architecture, in which an increasing number of aid measures are no longer subject to the notification obligation, the Commission has been stepping up its ex post monitoring of such measures. DG Competition started, in 2006, a sample-based monitoring exercise covering both approved aid schemes and measures adopted under the BERs. On the basis of the experience gathered in this first pilot project, similar exercises have been launched in 2007 and, most recently in 2008. The analysis of the results of the first two exercises shows that, overall, the part of the existing state aid architecture allowing for the approval of aid schemes and allowing Member States to implement aid measures under BERs, functions in a satisfactory manner. In a minority of cases substantive problems or procedural issues (such as transparency, reporting, speed and quality of answers) were identified.

INTRODUCTION

The autumn 2008 update of the State aid Scoreboard focuses on the State aid situation in the twenty-seven EU Member States for the year 2007 and the underlying trends. The main aim is to assess Member States progress towards meeting the Lisbon objectives and their response to successive European Councils call for “less and better targeted aid”. It includes an overview of the recent State aid cases in the banking sector that have resulted from the sub-prime crisis. This update of the Scoreboard also reports on progress towards delivering a comprehensive and coherent reform package for State aid that began with the State Aid Action Plan in 2005.

The Scoreboard is divided into six parts. Part One looks at the extent to which Member States have contributed over the last five years to the Lisbon strategy. Part Two provides an overview of the new state aid rules and revised state aid architecture that have been put into place since the State Aid Action Plan in 2005. Part Three focuses on ongoing efforts to enforce our state aid rules and recover unlawful aid. More in-depth statistical information and analysis regarding the amounts and types of State aid awarded by each Member State in 2007 are included in Part Four. Part Five provides an overview of the recent State aid cases in the banking sector while Part Six includes a summary of recent legislative and policy developments.

This Scoreboard and previous editions can be consulted on the [Competition Directorate General's website](#). Also available are a series of key indicators and a range of statistical information for all EU Member States.

The EFTA Surveillance Authority (ESA) publishes an [annual scoreboard](#) on the volume of state aid granted in Iceland, Liechtenstein and Norway. Data for these countries have also been included for the first time in Table 1 (Annex).

STATE AID AS DEFINED UNDER ARTICLE 87 OF THE EC TREATY

The Scoreboard covers State aid as defined under [Article 87\(1\)](#) of the EC Treaty² that has been granted by the Member States and has been the subject of a final Commission decision or has been granted on the basis of a block exemption regulation. Accordingly, general measures and public subsidies that have no effect on trade and do not distort or threaten to distort competition are not dealt with in the Scoreboard as they are not subject to the Commission's investigative powers. For example, a general tax break for expenditure on research and development is not considered as State aid although it may well appear in Member States national budgets as public support for research and development. All aid compensating for services of general economic interest (SGEI) is also excluded from the Scoreboard (see below). Aid measures covered by the *de minimis* Regulation³ are also excluded as by their nature they do not qualify as State aid.

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, a measure that is open to all sectors may be selective if there is an element of discretion by the awarding authorities. On the other hand, the fact that certain companies might benefit more than others from a measure does not necessarily mean that the measure is selective. The interpretation of the concept of selectivity has been fine-tuned over the years following various Commission decisions and Court rulings. Details of the most important cases can be found on the Commission website at http://ec.europa.eu/comm/competition/state_aid/register/ or in recent Annual Competition Reports at http://ec.europa.eu/comm/competition/annual_reports/.

The distinction between State aid measures and general economic support measures should be borne in mind when interpreting the Scoreboard data. Some of the detailed statistical tables on the website show that in some Member States the amount of State aid for some horizontal objectives such as employment has risen or fallen. This does not however necessarily mean that public expenditures on these activities have risen or fallen. Instead, Member States may have increased spending on general economic support measures.

Another important area concerns aid which compensates for the provision of SGEI. In its judgment in the Altmark case⁴, the Court of Justice ruled that compensation to undertakings that perform a SGEI is not State aid, provided certain conditions are fulfilled. As a result, similar measures are now classed as aid, or non-aid depending, for example, on whether a certain kind of tender was used. All measures compensating for SGEI are therefore excluded from the Scoreboard. In contrast, in cases where part of the aid is found to overcompensate for the SGEI the appropriate amount is included as aid, e.g., in the Deutsche Post case⁵.

The above text is without prejudice to the interpretation of the definition of State aid as provided by the Court of First Instance and Court of Justice.

² The measure constitutes state aid if it is granted by a Member State or through State resources, it distorts or threatens to distort competition, it favours certain undertakings or the production of certain goods, and it affects trade between Member States.

³ Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid, [OJ L 379, 28.12.2006, p. 5](#).

⁴ [C-280/00 of 24 July 2003](#) concerning the grant of licences for scheduled bus transport services in the Landkreis of Stendal (Germany) and public subsidies for operating those services.

⁵ Case [C61/1999](#) in which the Commission reached a negative decision on 19.6.2002.

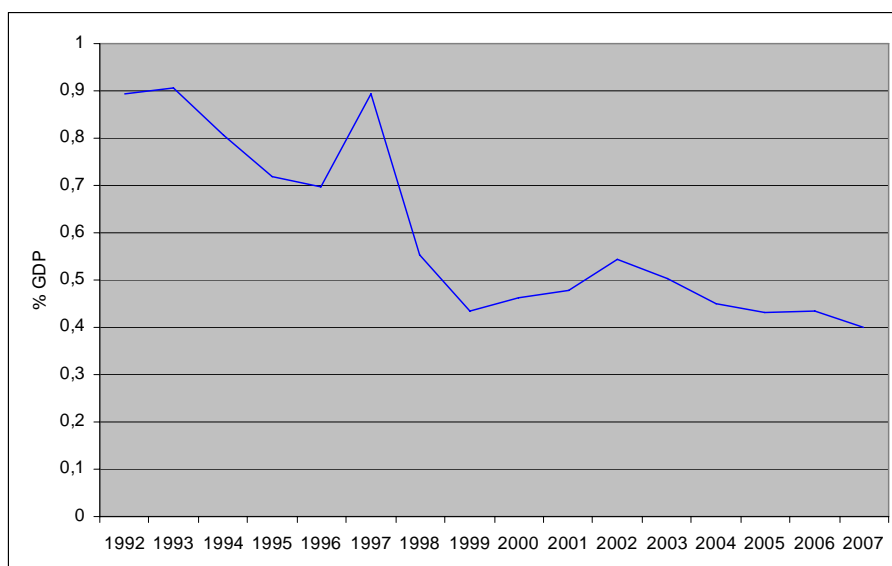
1. PART ONE: PROGRESS TOWARDS THE EUROPEAN STRATEGY FOR GROWTH AND JOBS (LISBON AGENDA)

Member States progress towards less and better-targeted aid

The Lisbon European Council of March 2000 called on the Commission, the Council and Member States to *"further their efforts to ... reduce the general level of State aid, shifting the emphasis from supporting individual companies or sectors towards tackling horizontal objectives of Community interest, such as employment, regional development, environment and training or research"*. Successive European Councils have since repeated the call for "less and better targeted aid". These goals were underlined by the Commission Recommendation on the Broad Economic Policy Guidelines for 2005-2008.⁶ Furthermore, less and better-targeted aid was identified as one of the four guiding principles underpinning the reform programme that began with the State Aid Action Plan (SAAP) in 2005.

Looking at the trend from a long-term perspective, the overall level of State aid in the 1980s was in the region of 2% of GDP, fell to just below 1% in the 1990s and now stands at around 0.5%-0.6% (Figure 1). This decline in State aid expenditure can be explained in part by the work that began in the mid 1980s to make effective State aid control a key component of the Single Market Programme. It is also the result of a general recognition that a high volume of State aid not only hindered an efficient allocation of resources but also rendered the economy as a whole less competitive. State aid discipline was then widened and strengthened in the 1990s in the context of EMU and then given new impetus by the Lisbon Council in 2000 and the SAAP in 2005. The resulting reform package for State aid focuses largely on a better targeting of aid while ensuring that distortions are kept to a minimum in order to maintain the functioning of the single market.

Figure 1: Trend in the overall level of aid as a percentage of GDP, EU, 1992-2007



Note: Data refer to industry and services only. Source: DG Competition.

⁶ [COM\(2005\) 141 final, 12.4.2005.](#)

Methodological notes

At the Stockholm European Council in 2001, Member States pledged to demonstrate a downward trend in State aid in relation to GDP. The 'State aid as percentage of GDP' indicator takes into account the general economic situation in the particular Member State. The degree to which Member States have reduced (or not) the level of State aid can be measured by looking at total State aid relative to GDP over a period of one year, i.e. the trend from 2006 to 2007 or by observing the underlying trend over the periods 2002-2004 and 2005-2007. In order to eliminate as far as possible annual fluctuations and the effects of delayed reporting,⁷ the latter option is preferred.

As comparable data on transport and agriculture are not available for EU-12 Member States prior to their accession, it is not possible to draw conclusions on a long-term trend for total State aid. Therefore, observations on the underlying trend are based on data for total aid for industry and services (i.e. total aid less agriculture, fisheries and transport).

It is important to bear in mind that some aid measures can not be quantified and are therefore not included in the scoreboard figures.⁸ Although the number of measures is limited, the distortion of competition is often very significant and has an impact on the overall level of State aid, e.g., the unlimited State guarantees previously available to Electricité de France (EDF) or the German Landesbanken. Another example is the aid to France Telecom, part of which cannot be quantified⁹ while the other part may be underestimated.¹⁰

The underlying trend in total aid for industry and services continues to be downward or stable in the vast majority of Member States (Figure 2). In relation to GDP, and during a period of steady economic growth, State aid for EU-27 decreased by 15% from 0.50% of GDP in the period 2002-2004 to 0.42% of GDP in the period 2005-2007. Total State aid¹¹ granted by the Member States in 2007 stood at €65 billion or 0.53% of EU Gross Domestic Product (GDP). Aid for industry and services amounted to €49 billion or 0.40% of GDP. Table 1 in Annex provides an overview of the key figures for each Member State.

⁷ In spite of the Member States' obligation (in the [Commission Regulation No 794/2004 of 21 April 2004](#)) to report State aid expenditure figures for the year t-1, some Member States are able to report figures for some measures only for year t-2. In addition, unlawfully granted State aid is included in the Scoreboard data only after Commission's decision on particular unlawful aid case and retroactively added to the year in which the aid was granted. Therefore, overall aid levels tend to be underestimated for the most recent years.

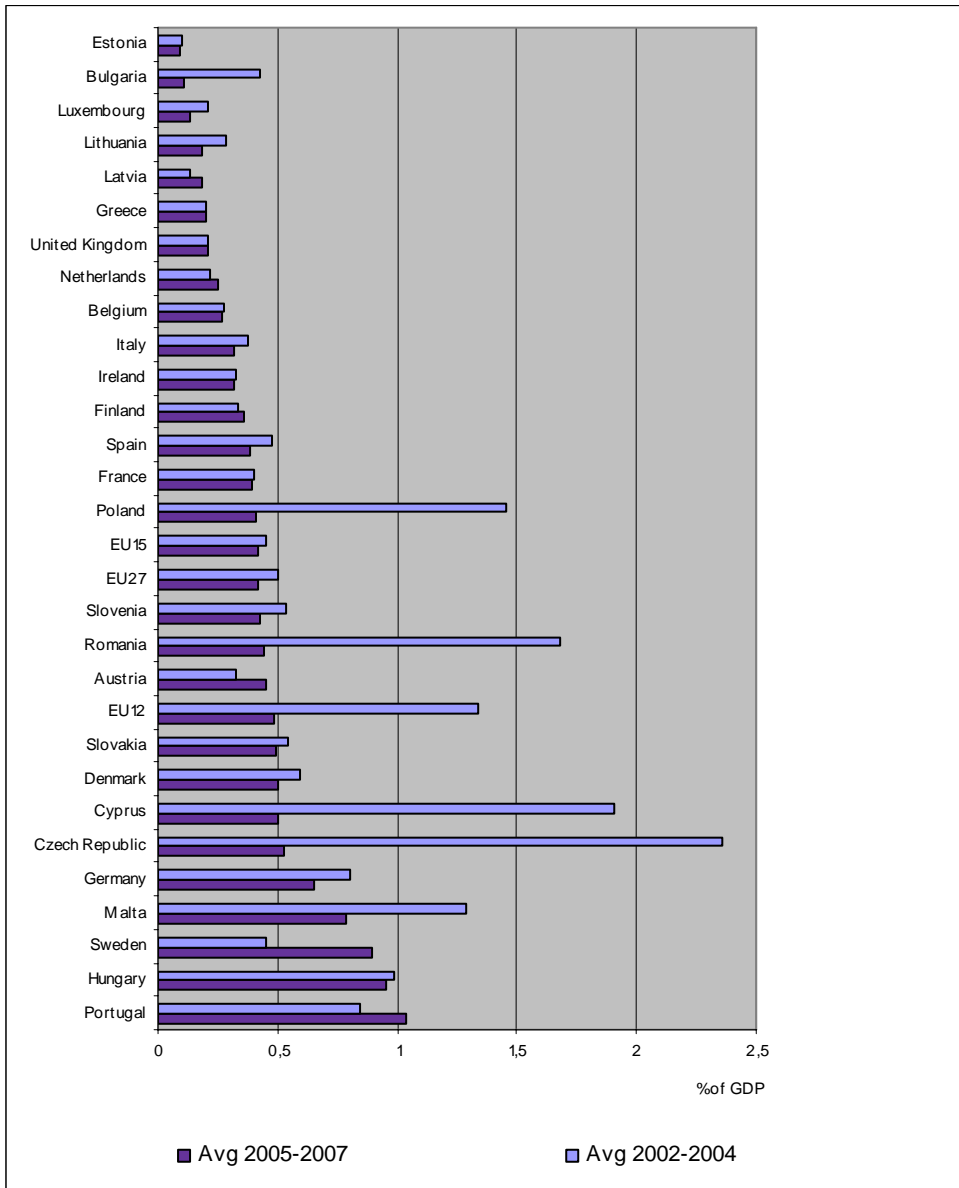
⁸ For more details on not quantifiable or underestimated measures, especially in rescue and restructuring cases, see the feature chapter of the [Autumn 2006 scoreboard](#), pp 32-33.

⁹ [C 13a/2003](#) Mesures Financières-France Telecom.

¹⁰ [C 13b/2003](#) Taxe professionnelle-France Telecom has been estimated between €798mn and €1.14bn but only the minimum of €798mn is included in the scoreboard totals.

¹¹ The total covers aid to manufacturing, services, coal, agriculture, fisheries and part of the transport sector but excludes aid to the railway sector, aid for compensation for services of general economic interest due to the lack of comparable data.

Figure 2: Trend in State aid in industry and services as a percentage of GDP, 2002-04 and 2005-07



Note: Member States are ranked in ascending order according to the total amount of State aid expressed as a percentage of GDP for the period 2005-2007. Data cover all State aid measures as defined under Article 87(1) of the EC Treaty that have been awarded by Member States and examined by the Commission. Source: DG Competition.

This positive development can be attributed to mainly three factors:

- First, and in line with expectations in a period of economic growth, Member States granted considerably less rescue and restructuring aid. While such aid to ailing firms accounted for 12% of total aid in the period 2002 – 2004, it amounted to only 4% in the years 2005 – 2007. In absolute terms, rescue and restructuring aid decreased from an average of €6.8 billion per year to €1.8 billion per year (Figure 8). Following the recent downturn in the economy, affecting the banking sector in particular, the share of rescue and restructuring

aid is likely to increase significantly for the year 2008. Already in 2007, both Northern Rock¹² in the United Kingdom and Sachsen LB¹³ in Germany received large amounts of rescue and restructuring aid respectively. In this context, it is worth noting that while several Member States have awarded significant amounts of aid to rescue ailing firms in the past six years, most countries have awarded relatively small amounts and indeed eight have not awarded any such aid (see section 4.5.1).

- Second, state aid to the coal sector shows a continued downward trend, decreasing from an average of just under €8 billion per year to less than €4 billion per year over the two reporting periods. The decrease can be observed primarily in Poland, France, Germany, and, to a lesser extent, Spain.
- Third, the downward trend is even more accentuated in the EU-12. Here, pre-accession commitments and continued efforts after accession contributed likewise as these Member States continue to adjust their State aid policies and practices to the requirements under EU State aid law and policies.

The overall EU-27 level of State aid does not only reflect the broader strategic choices or changes in national policies but is likewise influenced by a relatively small number of large cases (for example, restructuring aid in Germany to [Bankgesellschaft Berlin \(BGB\)](#), amounting to some €8 billion in the years 2001 and 2002, €4 billion for Polish coal in 2003, €1.4 billion to [Alstom](#) in France 2004, €750 million restructuring aid to [BAWAG](#) in Austria 2006, €1.6 billion¹⁴ of rescue aid to Northern Rock in the United Kingdom and a €630 million restructuring aid package for Sachsen LB in Germany).

The EU average of State aid for industry and services expressed as percentage of GDP hides differences between Member States. The sharpest falls can be observed in five EU-12 countries (Czech Republic, Cyprus, Romania, Poland and Malta), due largely to the phasing out of pre-accession measures, and in Poland due mainly to the declining aid to the coal industry. Of the EU-15 countries, Germany, Denmark and Spain also experienced a significant decrease. In Germany the decrease can also be explained by the diminishing aid to the coal industry in addition to the above mentioned [BGB](#) case and a sharp decline in environmental aid in 2007. The decline in Denmark was mainly due to reduced expenditure in several environmental aid measures. In Spain, the decrease can mainly be explained by declining expenditure for the coal industry. France also saw a sharp drop in aid for the coal sector but the decrease was offset by an increase in horizontal aid, particularly for employment, regional development and R&D&I.

In contrast, State aid in relation to GDP increased significantly during the two periods under review in two Member States: in Sweden the increase can be attributed to the aid for environmental protection while the restructuring aid to [BAWAG](#) in 2006 accounts for the rise in total aid for Austria.

At the same time, and in line with the commitments undertaken at the various European Councils, most Member States have continued to redirect aid towards such horizontal

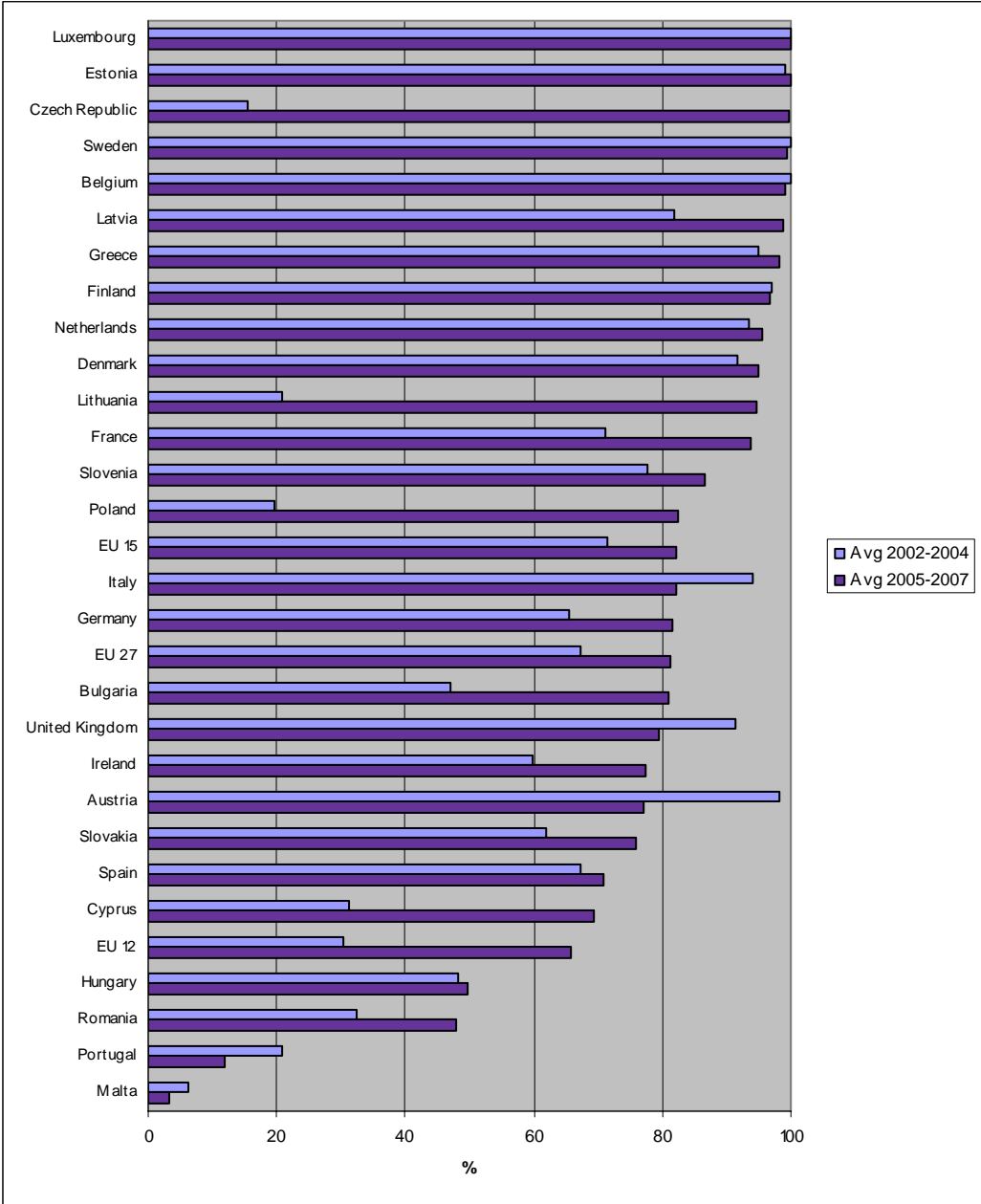
¹² [Case NN70/2007](#). The amount of aid is based on the rescue aid awarded to Northern Rock and has been estimated for Scoreboard purposes only.

¹³ [Case C9/2008](#).

¹⁴ See footnote 12

objectives of common interest. For the EU-27, the average share of horizontal objectives in total aid increased from 67% in 2002-2004 to 81% over the period 2005-2007. The corresponding figure in the mid-1990s was around 50%. The upward trend was largely the result of a significant increase in aid for environmental protection (+ 8 percentage points, €3 billion in absolute terms), particularly in Sweden (+€1.4 billion) and Germany (+ €1.0 billion). The increase would have been considerably higher had it not been for a sharp decrease (- €2.5 billion from 2006 to 2007) in German environmental aid expenditure (see section 4.2.4). The share of aid for R&D&I (+ 2.4 points) in total aid also rose significantly. See Figure 3 together with section 4.2 which also includes a detailed look at the various objectives, sectors and instruments favoured by Member States.

Figure 3: Share of horizontal aid in total aid, trend 2002-2007



Note: Member States are ranked in descending order according to the percentage share of horizontal aid in total aid. Data refer to industry and services only. Source: DG Competition.

2. PART TWO: SIMPLIFICATION OF THE STATE AID RULES

2.1. The Commission's state aid control policy

The Commission has the exclusive competence to evaluate the compatibility of state aid measures with the EC Treaty. Accordingly, Member States are obliged to notify all measures prior to their implementation¹⁵ to the Commission, unless they are covered by a block exemption Regulation or the "de minimis" Regulation¹⁶. In 2007, 778 cases were notified by Member States: 53 % concerned the industry and services sectors, 33 % agriculture, 8 % transport and 6 % fisheries. Italy submitted the largest number (117) of notifications accounting for 15 % of the total, followed by Germany 13 %, Spain 12 %, France 9 % and the United Kingdom for 6 %. See tables on website for number of notifications by sector, year and Member State.

Due to the recent enlargements in 2004 and 2007 and the introduction of a new programming period for EU structural funds in 2007, the number of annual notifications over the past few years does not provide a clear picture of the underlying trend. An expected drop in the future level of notifications is however in line with the Commission's commitment to facilitate the granting of aid through block exemptions and focus policy on the most distortive types of aid. In this respect, there was a remarkable rise in the number of block exempted measures in 2007 (see sections 2.2 and 4.2.6) In addition to dealing with notified aid measures, the Commission also takes up state aid cases in reaction to a complaint¹⁷ or *ex officio* (case started at the Commission's own initiative). In 2007, 78 such "non-notified" cases were initiated by the Commission.

The vast majority (92%) of all state aid cases are approved at the end of the preliminary investigation procedure, which should be taken within two to four months after notification. Of the 629 final State aid decisions¹⁸ taken in 2007, the Commission concluded in the preliminary phase that 87 % of all measures examined were compatible with the State aid rules and that 5 % did not constitute State aid. Where the Commission has doubts whether certain aid measures comply with the rules, it carries out a formal investigation during which third parties and all Member States are invited to provide observations. At the end of this investigation procedure, the Commission either takes a positive, conditional or no aid decision (an additional 3 % of all decisions) or finds that the measure does not comply with State aid rules and hence is not compatible with the common market and thus takes a negative decision (5 % of all decisions made up of 3 % with recovery and 2 % without recovery).¹⁹

¹⁵ Article 88 EC Treaty; detailed provisions in Council Regulation No 659/1999 of 22 March 1999, [OJ L 83/1, 27.03.1999, p. 1-9](#).

¹⁶ Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid, [OJ L 379, 28.12.2006, p. 5](#).

¹⁷ In 2007 there were just under 250 registered complaints, some of which led (or may lead) to new registered state aid cases.

¹⁸ Of this figure, 347 concerned industry and services, 202 agriculture, 61 transport and 19 fisheries. Included are the following types of decision: decisions do not constitute aid, decisions not to raise objections, positive decisions, conditional decisions and negative decisions. Other types of decision such as corrigenda as well as measures withdrawn by Member States after a formal investigation are excluded.

¹⁹ Negative decisions without recovery are almost exclusively decisions based on notified aid. Negative decisions to recover aid are the result of unlawful aid (i.e. non-notified) being awarded.

It is worth noting that for a significant number of state aid cases, competition concerns are resolved by mutual agreement during the preliminary investigation procedure so that the Commission can approve the project without an in-depth investigation. This is an important but often underestimated aspect of the Commission's state aid control.

There are a number of other important Commission decisions regarding existing aids, such as those leading to a Member State withdrawing an unlimited guarantee, for which the state aid element cannot easily be quantified. Although the number of such measures is limited, the distortion of competition is often very significant, e.g., the unlimited State guarantees previously available to Electricité de France (EDF) and to the German Landesbanken. The Commission thus requested the Member States to withdraw or phase out such distortive support.

In the same line, the Commission requested Hungary and Poland, in the first semester of 2008, to refrain from granting state aids under long term power purchase agreements (PPAs) for electricity because, in the specific circumstances of the cases, they constituted unlawful and incompatible state aid to the power generators. This is a crucial step in the liberalisation of the electricity market in these countries.

2.2. A new architecture for State aid control

The State Aid Action Plan (SAAP)²⁰, adopted in June 2005, announced that the Commission would set out to tackle a series of acknowledged deficiencies in State aid policy, and thereby transform State aid into an effective policy tool for growth and jobs. The plan launched a review of almost all the State aid rules and procedures.

There are 4 guiding principles underpinning the reform programme:

- less and better targeted State aid;
- a refined economic approach;
- more effective procedures, better enforcement, higher predictability and enhanced transparency;
- a shared responsibility between the Commission and Member States.

In order to make procedures and decision-making faster and more efficient, the Commission has made substantial changes to the architecture of its State aid control. This is achieved by subjecting the various aid measures to a level of control which reflects their respective potential effect on competition and trade. The new architecture is based on a "3-stream system": block exemption, standard assessment and detailed assessment.

An increasing number of aid measures are exempted from ex ante Commission scrutiny, either by the *de minimis* regulation²¹ or by the new General Block Exemption Regulation (GBER)²² (see new legislation in Part Six). The rationale behind this change is that such

²⁰ [COM\(2005\) 107 final, 7.6.2005.](#)

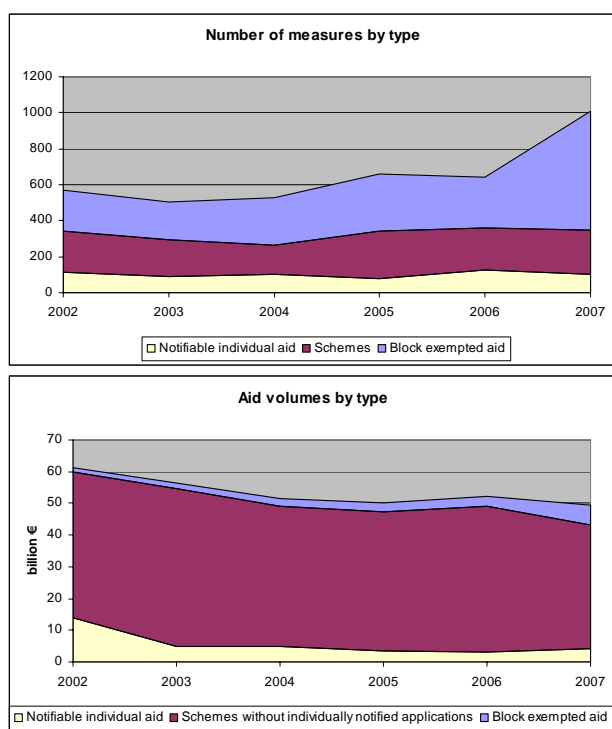
²¹ Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid, [OJ L 379, 28.12.2006, p. 5.](#)

²² Commission Regulation (EC) No 800/2008 of 6 August 2008 on the application of Articles 87 and 88 of the Treaty declaring certain categories of aid compatible with the common market, [OJ L 214, 9.8.2008, p. 3.](#)

measures are unlikely to have a significant impact on competition at the Community level and may thus be granted without prior notification to the Commission provided they fulfil the criteria of the respective legal instruments. For State aid measures that remain subject to Commission scrutiny prior to their implementation, Member States can notify aid schemes. After a scheme has been approved, a Member State may generally grant individual awards of aid without further notice to the Commission. Only large individual applications of aid schemes exceeding certain thresholds and individual aid (also known as 'ad hoc' aid) awarded outside a scheme need to be notified individually. The majority of these cases are subject to a standard assessment rather than a detailed economic assessment.

The new architecture can be illustrated by the example of aid for environmental protection. The new GBER exempts environmental aids in several ways from the notification requirement and, thus, from approval procedure.²³ Those environmental aids that are notified are governed by the environmental aid guidelines adopted in January 2008²⁴ which foresee a standard assessment (paragraph 38 and Chapter 3) and a detailed assessment (paragraph 39 and Chapter 5). Section 4.2.2 of this Scoreboard also provides further information of detailed assessments carried out in the area of R&D&I aid.

Figures 4a and 4b: Trend in the type of aid measure used (numbers and expenditure)



Source: DG Competition. Data refer to industry and services only. Note: The "number of measures" is based on the number of decisions taken by the Commission in a given year except for the case of block exempted aid for which the number corresponds to the measures reported by Member State. Due to differences in the nomenclature of aid measures, data for EU-12 are not included prior to accession. This does not have a significant impact on the graph.

²³ cf. Section 4, Articles 17-25.

²⁴ Community Guidelines for State aid for environmental protection, [OJ C 82, 1.4.2008, p. 1](#); cf. paragraph 14.

Figure 4a shows the trend in the number of aid measures by type (individual aid, aid schemes or block exempted aid) while Figure 4b provides the same overview in terms of aid expenditure. A comparison of the two graphs shows, for example, that while the number of notified aid schemes accounted for just under 25% of all aid measures in 2007, aid awarded under such schemes accounted for almost 80% of total aid expenditure.

The data also show that the number of aid measures that are subject to an individual assessment procedure is relatively small, accounting for 10% of all State aid measures in 2007. This share is rather stable over time with a peak, in terms of aid volume, in 2002, due largely to the rescue aid in favour of the Berliner Bankgesellschaft in Germany. The current banking crisis is likely to lead to an increase in the share of individual aid in 2008.

Changes to the state aid architecture have already begun to have an impact with a sharp increase observed in 2007 in the share of block exempted aid measures (65% of all measures in 2007 compared with 40% in 2002). Although this is not yet reflected to the same extent in terms of expenditure, 2007 saw a significant rise in the share of BER expenditure in total aid (from 6% in 2006 to 13% in 2007).

As already pointed out in previous issues of the Scoreboard, the reasons for this increase of block exempted measures in 2007 are threefold.²⁵ First, a new EU structural funds programming period began in 2007 (valid until 2013) and triggered a significant number of new state aid block exemption measures, as many state aid measures are co-financed by structural funds. Second, there is a sharp increase in the number of measures exempted in the agricultural sector. Third, the Commission observed a high take-up rate for the new possibility to block exempt regional investment aid. While the first explanation is of only temporary nature, the remaining two indicate a permanent shift in the direction of block exempted aids.

By applying a level of assessment proportionate to the potential impact of the aid measure, the new State aid architecture assures a strict but practical form of State aid control in an EU of 27, where it is impossible to assess every notification of national aid measures. Furthermore, the new architecture facilitates and accelerates the implementation of compatible aid considerably and, thus, provides an incentive for Member States to introduce better targeted aid measures that contribute to growth and employment, notably R&D&I and risk capital. Last but not least, the new architecture frees Commission resources to examine the most potentially distortive cases more thoroughly.

2.3. Revised set of State aid rules

Since 2005, the Commission has worked in close cooperation with the Member States to deliver these reforms. As outlined in the SAAP roadmap²⁶, the Commission has revised a large number of its guidelines, frameworks and communications. This includes the Decision and guidelines on Services of General Economic Interest, a revised set of Regional Aid Guidelines, a new framework on Research, Development and Innovation, revised Community

²⁵ See point 3.1 of the State aid Scoreboard Autumn 2007 Update, COM(2007) 791 final, available online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0791:EN:NOT>.

²⁶ State Aid Action Plan, COM(2005) 107 final, available online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005DC0107:EN:NOT>, Figure 1: Roadmap 2005-2009 (indicative).

guidelines on state aid for environmental protection and a new General Block Exemption Regulation. See Table 2 in Annex.

3. PART THREE: ENFORCEMENT OF STATE AID RULES

3.1. Unlawful aid

Article 88(3) of the EC Treaty obliges Member States to not only notify state aid measures to the Commission before their implementation but also to await the outcome of the Commission's investigation before implementing notified measures. When either of these obligations is not respected, the state aid measure is considered to be unlawful.

In the 7-year period 2000-2006, the Commission took 608 decisions on unlawful aid. In addition, there are around 200 pending unlawful aid cases which are still under Commission scrutiny. These cases are taken up by the Commission in reaction to a complaint or *ex officio* (case started at the Commission's own initiative). The figures also include cases notified by a Member State, but for which the measure was fully or partially implemented by the Member State before the Commission's final decision (i.e., cases where the standstill clause was not respected).

In the period under review, the Commission 'intervened' in 25.6% of unlawful aid cases by taking a negative decision on an incompatible aid measure (24.0%) or taking a conditional decision (1.6%). The need for the Commission to intervene in the granting of aid with a negative or conditional decision for at least a part of the aid unlawfully implemented by the Member State concerned is around ten times higher than that for notified aid decisions (2.7%). The share of unlawful cases (25.6%) in which the Commission needs to intervene varies considerably according to sector: 37% of all unlawful aid cases in the industry and services sectors, followed by transport and coal (17% of all unlawful aid cases in this sector), agriculture (9%) and fisheries (5%).

See special focus on this topic in the spring 2007 Scoreboard.²⁷

3.2. Enforcement of State aid Law: Cooperation with national courts

The Commission considers that State aid enforcement by national courts can play an important role in the overall system of State aid control. National courts are often well placed to protect individual rights affected by violations of the State aid rules and can offer quick and effective remedies to third parties.

The 2006 study on State aid enforcement by national courts²⁸ found that, whilst there had been a significant increase in the involvement of national courts in State aid law generally, only a limited number of legal actions were specifically aimed at enforcing compliance with the State aid rules.

The Commission therefore sees a need to give clear guidance to national courts and potential claimants on the different issues that can arise in the context of State aid litigation at national level. This guidance will be based on the jurisprudence of the Community courts and will cover issues such as the remedies available to third parties, procedural matters (such as legal

²⁷ [COM\(2007\) 347 final, 28.6.2007.](#)

²⁸ Study on the enforcement of State aid law at national level, available at http://ec.europa.eu/comm/competition/state_aid/studies_reports/studies_reports.cfm.

standing), the circumstances in which a national court should issue interim measures and the conditions for claiming damages in the event of a breach of the State aid rules.

In addition, the Commission wishes to intensify its co-operation with national courts in individual cases. It hopes to achieve this aim by providing practical and straight forward co-operation mechanisms to national judges along the lines of those already existing in the antitrust area.²⁹

To reach the above aims, the Commission is currently in the process of preparing a new notice on State aid enforcement by national courts. This new notice will replace the existing 1995 cooperation notice³⁰, while aligning its scope as far as possible with the applicable rules in antitrust. The Commission has recently published a first draft for consultation and expects to issue the final notice in early 2009.

3.3. Recovery of unlawful aid

The Commission, in its State Aid Action Plan (SAAP), underlined that the effectiveness and credibility of state aid control presupposes a proper enforcement of the Commission's decisions. The Commission therefore announced in the SAAP that it will seek to achieve a more effective and immediate execution of the recovery decisions, which will ensure equality of treatment of all beneficiaries.

The latest figures indicate that significant progress has been made in the execution of recovery decisions since the SAAP in 2005. By the end of June 2008, there were only 47 pending recovery decisions compared with 93 at the end of 2004. This improvement in the Commission's enforcement record of its decisions should contribute to a higher state aid discipline by Member States.

In the first half of 2008, ten pending recovery cases were closed, whilst seven recovery decisions were taken and three cases were re-opened. As of 30 June 2008, Spain had the highest number of pending cases (14 which represents 30 % of the EU total) although nine cases refer to Basque fiscal schemes for which the Commission has initiated infringement proceedings against Spain for failure to implement the Decisions and the ECJ judgment. Italy had 12 pending cases followed by Germany (7) and France (4). During the first half of 2008, the Commission adopted for the first time recovery decisions against Austria, Hungary and Romania. It is also worth noting that there were no pending cases in 14 of the 27 Member States.

Table 3 in Annex provides data on the amounts of aid to be recovered under the 126 recovery decisions adopted since 2000. For 118 of these decisions, relatively accurate information exists on the amount of aid involved. This information shows that the total amount of aid to be recovered on the basis of decisions adopted between 1 January 2000 and 30 June 2008 is at least €9 billion.

²⁹ Commission Notice on the cooperation between the Commission and the courts of the EU Member States in the application of Articles 81 and 82 EC ([OJ C 101, 27.4.2004, p. 54](#)).

³⁰ Commission Notice on cooperation between national courts and the Commission in the State aid field ([OJ C 312, 23.11.1995, p. 8](#)).

The recovery process

Article 14(1) of the Procedural Regulation³¹ states that "where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary".³² This article establishes an obligation on the Commission to order recovery of unlawful and incompatible aid unless this would be contrary to a general principle of law. The purpose of recovery, as held by the ECJ on several occasions, is to re-establish the situation that existed on the market prior to the granting of the aid. This is necessary to ensure that the level-playing field in the internal market is maintained, in accordance with Article 3 g) of the EC Treaty. According to the ECJ, the "re-establishment of the previously existing situation is obtained once the unlawful and incompatible aid is repaid by the recipient who thereby forfeits the advantage which they enjoyed over their competitors in the market, and the situation as it existed prior to the granting of the aid is restored".³³ In order to eliminate any financial advantages incidental to unlawful aid, interest is to be recovered on the sums unlawfully granted. Such interest must be equivalent to the financial advantage arising from the availability of the funds in question, free of charge, over a given period.³⁴

According to Article 14(3) of the Procedural Regulation, the recovery of unlawful and incompatible aid "shall be effected without delay and in accordance with the national procedures under the national law of the Member State concerned, provided that they allow for the immediate and effective execution of the Commission decision". Community law does not prescribe which body in each Member State should be in charge of the practical implementation of a recovery decision. It is for the legal system of each Member State to designate the bodies that will be responsible for the implementation of the recovery decision. Recovery is in principle effected by the authority that granted the aid. This might lead to the involvement of a variety of central, regional and local bodies, as well as public entities, in the recovery process. The state resources are, therefore, returned to the authority granting the aid.

Of the €9 billion aid to be recovered under decisions adopted since 2000, some €7.1 billion of illegal and incompatible aid had been effectively recovered by the end of June 2008 as well as €2.4 billion of interest. In addition to the amounts effectively recovered, a further €1.26 billion of unlawful and incompatible aid was "lost" in bankruptcy proceedings.³⁵ This means that 92% of the total amount of illegal and incompatible aid has effectively been recovered (Figure 5). The percentage of illegal and incompatible aid still to be recovered has fallen accordingly from 75% at the end of 2004 to 8% at the end of first half of 2008.

In addition, the Commission has taken 12 recovery decisions in the area of agriculture since 1999, of which 9 are pending. Around €1 billion of aid is yet to be recovered. In the area of fisheries, there were 2 recovery decisions involving France in 2004 (amounts unknown) and 3 recovery decisions involving the United Kingdom in 2007. The total amount was less than €1 million of which a significant part qualified as *de minimis* aid and thus did not need to be recovered.

³¹ Council Regulation No 659/1999 of 22 March 1999, [OJ L 83/1, 27.3.1999, p. 1-9](#).

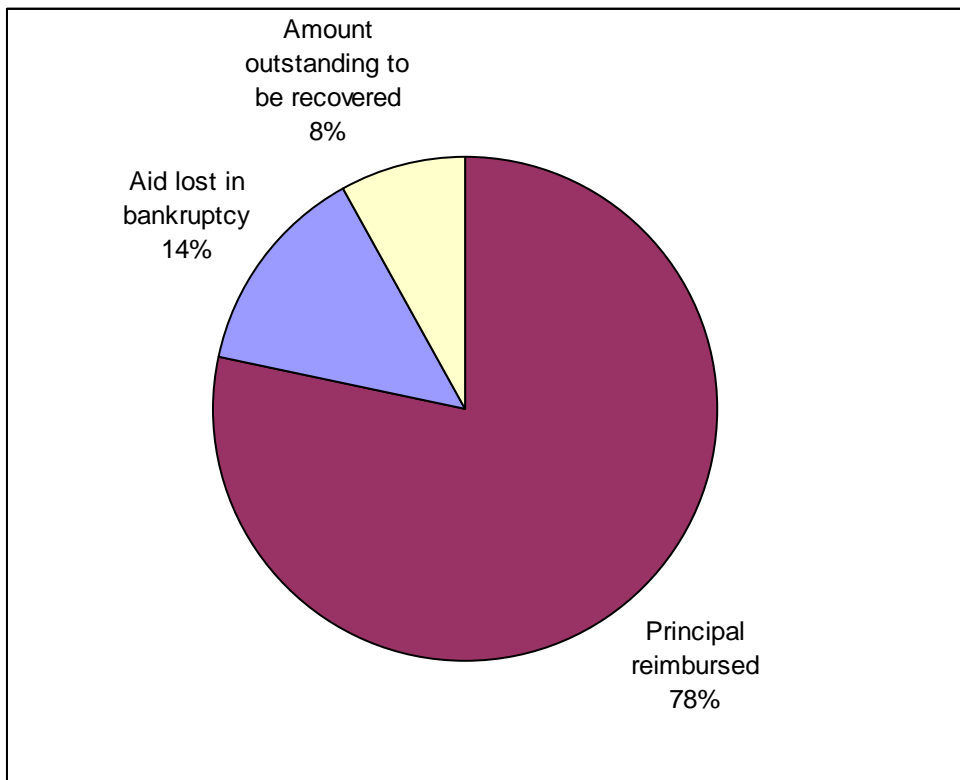
³² When state aid is granted without respecting Article 88(3), the state aid becomes unlawful. The Commission must assess the compatibility of the state aid granted with the EC Treaty and other applicable legislation.

³³ [Case C-348/93](#), *Commission v Italy* [1995] ECR I-673, paragraph 27.

³⁴ [Case T-459/93](#), *Siemens v Commission* [1995] ECR II-1675, paragraph 97 to 101.

³⁵ In insolvency cases, the recovery claim is normally only partially satisfied. The remainder is "lost". From a competition perspective, however, it is considered that the distortion of competition is removed with the liquidation of the beneficiary (provided that its assets are transferred on market terms).

Figure 5: Recovery of illegal and incompatible aid – state of play 30 June 2008



Notes: This covers all recovery decisions taken between 1 January 2000 and 30 June 2008 for which the aid amount is known. The amount recovered excludes interest. The data cover industry and services only. Source: DG Competition.

Recovery of illegal incompatible State aid is still a lengthy process: Of the 47 pending recovery cases, 24 were adopted more than four years ago, and six more than eight years ago. Significant efforts have and are being made to implement the oldest recovery decisions.

Another important step towards better execution of recovery decisions in the future has been the adoption in October 2007 of the Notice on the Implementation of recovery decisions. The Notice emphasises that improving the enforcement of State aid decisions is a shared responsibility between the Commission and the Member States. It recalls the principles applying to the recovery of State aid as confirmed by the Community Courts and defines the respective role of the Commission and the Member States in the recovery procedures.

The Commission is monitoring more closely the execution of recovery decisions by Member States. Where Member States do not take all measures available to implement such decisions, the Commission has taken a strict line and systematically initiated infringement proceedings against the Member State concerned in accordance with Articles [88\(2\)](#), [226](#) and [228\(2\)](#) of the EC Treaty. A complete list of these cases is available on the DG Competition website.

3.4. Ex-post monitoring

In order to ensure the continued proper enforcement of the State aid architecture, in which an increasing number of aid measures are no longer subject to the notification obligation, the

Commission has been stepping up, as announced in the SAAP³⁶, its ex post monitoring of such measures.

This development should be seen, more generally, in the light of the fact that Member States are increasingly implementing horizontal policy goals by means of – previously approved - aid schemes and by means of measures implemented under the block exemption regulations (BER - see sections 2.2 and 4.2.6). This trend is expected to continue after the recent entry into force of the general block exemption regulation (see part 6).

In the light of the above, DG Competition has started, in 2006, a sample-based monitoring exercise covering both approved aid schemes and measures adopted under BERs. On the basis of the experience gathered in this first pilot project, similar exercises have been launched in 2007 and, most recently in 2008.

With these three combined exercises, DG Competition has covered an important part of the different main substantive types of aid: specific aid measures implemented most notably on the basis of the SME BER, training BER, employment BER, regional BER, the R&D&I Framework, the environmental guidelines and the rescue and restructuring guidelines have been monitored in this manner. This monitoring took place both at the level of the scheme and at the level of important individual decisions implementing such schemes. DG Competition has now also addressed aid measures adopted by all of the 27 Member States of the Community, thereby ensuring a balanced geographical coverage.

The analysis of the results of the first two exercises shows that, overall, the part of the existing state aid architecture allowing for the approval of aid schemes and allowing Member States to implement aid measures under BERs functions in a satisfactory manner. In a minority of cases substantive problems or procedural issues (such as transparency, reporting, speed and quality of answers) were identified. The cases in which no appropriate solution was yet identified are currently still being investigated. Finally, it has to be noted all Member States are cooperating with the Commission, albeit many submitted the information which had been requested from them with considerable delay.

³⁶ See in particular points 52 to 54 of the [SAAP](#).

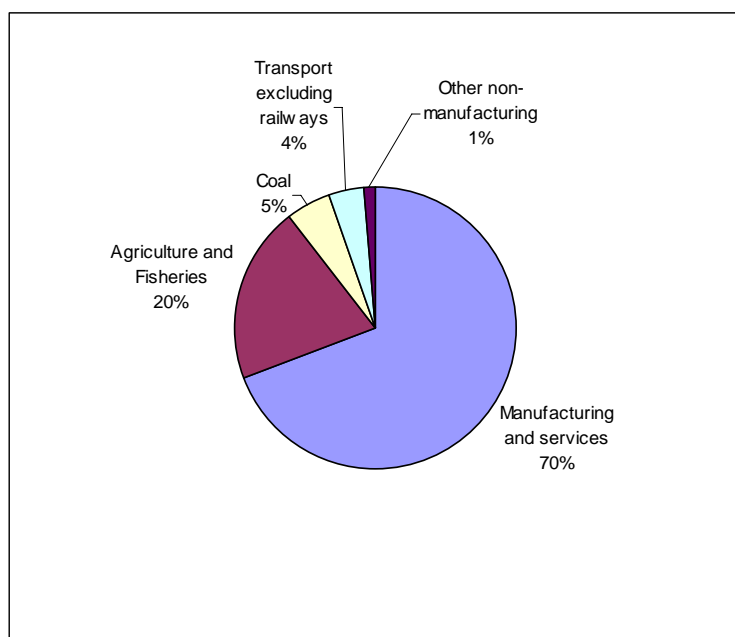
4. PART FOUR: TRENDS AND PATTERNS OF STATE AID EXPENDITURE IN THE MEMBER STATES

4.1. State aid in absolute and relative terms

Total State aid³⁷ granted by the Member States stood at €65 billion in 2007. In absolute terms, Germany granted the most aid (€16.2 billion) followed by France (€9.8 billion), the United Kingdom (€6.2 billion), Spain (€5.4 billion), and Italy (€5.1 billion).

In sectoral terms, around €45 billion of aid was earmarked for the manufacturing and services sectors, €13.2 billion for agriculture and fisheries, €3.4 billion for coal, €2.4 billion for the transport (excluding railways) sector and €1.0 billion for the other non manufacturing sectors³⁸ (Figure 6). There are significant differences between Member States in the sectors to which they direct aid. In 2007, aid directed at the manufacturing and service sectors represented 80% or more of total aid in Belgium, Czech Republic, Denmark, Portugal, Slovakia and Sweden. Aid to the agricultural and fisheries sectors accounted for, on average, 40% of total aid in the EU-12³⁹ Member States, more than twice the share of the EU-15 average. The share of aid to the coal industry was relatively high in Spain (15%) and Germany (14%).

Figure 6: Total State aid by sector, EU-27, 2007



³⁷ The total covers aid to manufacturing, services, coal, agriculture, fisheries and part of the transport sector but excludes aid to the railway sector, aid for compensation for services of general economic interest due to the lack of comparable data.

³⁸ Other non manufacturing sectors includes aid for mining and quarrying, oil and gas extraction, aid for electricity, gas and water supply and aid for construction.

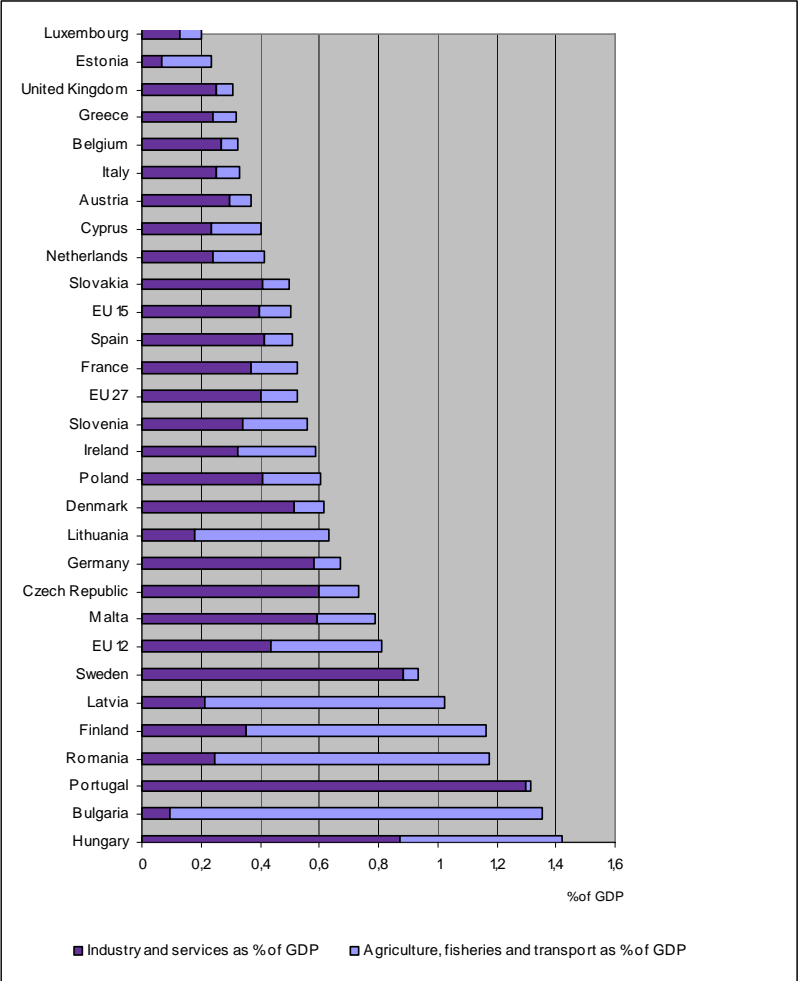
³⁹ The ten Member States that joined the EU in 2004 plus Bulgaria and Romania.

Note: Data cover all State aid measures as defined under Article 87(1) of the EC Treaty that have been awarded by Member States and examined by the Commission. Included are all sectors except railways. Source: DG Competition, DG Energy and Transport, DG Agriculture and DG Maritime Affairs and Fisheries.

State aid measured as a percentage of GDP

In relative terms, State aid amounted to below 0.53% of EU GDP in 2007. This average hides significant disparities between Member States: the share of total aid to GDP ranges from around 0.4% or less in nine countries including Italy and the United Kingdom to 1% or more in five EU-12 countries together with Finland. For Bulgaria, Latvia, Romania and Finland, the high proportion can be explained by the relatively large amounts of agricultural aid which represent between 70% and 90% of aid in these countries. In Hungary and Malta, it is due largely to pre-accession measures which are being phased out under transitional arrangements or limited in time. Sweden (0.9% of GDP) also lies well above the EU average but this can be attributed to the large proportion of aid for environmental protection which represents around 80% of total Swedish aid (Figure 7).

Figure 7: Total State aid as a percentage of GDP, 2007



Note: Member States are ranked in ascending order according to the total amount of aid expressed as a percentage of GDP. Data cover all State aid measures as defined under Article 87(1) of the EC Treaty that have been awarded by Member States and examined by the Commission. Included are all sectors except railways. Source: DG Competition, DG Energy and Transport, DG Agriculture and DG Maritime Affairs and Fisheries.

Indeed, due to the particularities associated with aid to agriculture and fisheries, it is worth looking at total aid less these sectors (i.e. total aid to industry and services). This second indicator produces a rather different ranking of Member States. For example, Bulgaria (0.09%), Romania (0.24%) and Finland (0.35%) lie below the EU average (0.40%) of aid for industry and services as a percentage of GDP.

The underlying trend in the volume of State aid for industry and services continues to be downward or stable in the majority of Member States. See Part One.

4.2. State aid for horizontal objectives of common interest

State aid for horizontal objectives, i.e. aid that is not granted to specific sectors, is usually considered as being better suited to address market failures and thus less distortive than sectoral and ad hoc aid. R&D&I, safeguarding the environment, energy saving, support to SMEs, employment creation, the promotion of training and aid for regional economic development are the most prominent horizontal objectives pursued with State aid. Due to data constraints,⁴⁰ this section looks at horizontal objectives in the context of total aid for industry and services.

In 22 Member States, at least three-quarters of all the aid awarded in 2007 was for horizontal objectives of common interest

On average, aid earmarked for horizontal objectives, accounted for 80% of total aid for industry and services in 2007. This compares with 74% in 2004 and around 50% in the mid Nineties. In welcoming this trend, one should be aware that much of the increase in horizontal aid can be attributed to an increase in tax exemptions for the environment and energy saving, in particular for energy intensive industries.

The remaining 20% was aid directed at specific sectors⁴¹: financial services (9%), coal (7%), manufacturing and other services (3%), and other non-manufacturing sectors (1%). In interpreting these figures, however, it is important to bear in mind that some aid measures can not be quantified (see section 2.1). Another factor that keeps the volume of sectoral and individual aid artificially low is that Commission decisions which follow an unlawful aid procedure⁴² tend to refer to aid that was granted up to several years previously and involve ad hoc awards of aid to individual companies. Although the data for all years are adjusted retrospectively when the Commission takes its decision, the overall level is underestimated.

In 17 Member States, around 90% or more of all the aid awarded in 2007 was earmarked for horizontal objectives (Figure 3). In another group of five Member States (Germany, Spain, Ireland, Slovakia, Slovenia), the share of horizontal aid was between 70% and 85% while in the remaining five others the share was significantly lower: the United Kingdom (62%), Hungary (53%), Romania (36%), Portugal (10%), Malta (4%). The low share of horizontal aid (and thus relatively high share of sectoral aid) in Malta can be explained by a tax relief

⁴⁰ Transport and Fisheries aggregated data cannot be broken down by objective. Agriculture data have been collected by objective since 2004. This information cannot yet be used. In addition, primary objectives for agriculture are specific to this sector and could not be integrated into this general overview.

⁴¹ These percentages exclude those measures with a horizontal objective that are nevertheless earmarked for the manufacturing and services sectors.

⁴² Such cases are denoted by a 'NN' case number.

measure under the Business Promotion Act,⁴³ while in Portugal it is due to a large regional aid tax scheme (being phased out) in Madeira which in practice benefits a limited number of sectors. In Romania, a significant proportion of aid continues to be awarded to the manufacturing sector as well as to the mining industry while Hungary continues to grant a large proportion of aid through an Investment tax benefit scheme. The United Kingdom has consistently had a share of horizontal aid around 90% but this fell in 2007 due to the rescue aid package for Northern Rock.

Large disparities between Member States in the share of aid awarded to various horizontal objectives

When making comparisons between Member States, it is important to bear in mind that aid measures are classified according to their primary objective at the time the aid was approved and not according to the final recipients of the aid. Notwithstanding the measurement difficulties, the data do give an indication as to which horizontal objectives are favoured by Member States. The largest proportion of aid was directed exclusively to the environment and energy saving objectives (25% of the total State aid for industry and services), which were extensively supported by the Nordic countries (85% of total aid in Sweden, 41% in Finland, 32% in Denmark), the Netherlands (58%), Austria (49%), Germany (41%) and the United Kingdom (26%) . In contrast, the average for the EU-12 countries was 2%.

The second most favoured horizontal objective was regional development (20% of total aid), which was mainly supported by EU-12 and southern Member States (86% of total aid in Greece, 60% in Bulgaria, 58% in Latvia, 52% in Slovakia, 41% in Spain, 39% in the Czech Republic and 36% in France). An additional 15% of aid went to R&D&I activities, which was favoured most by Luxembourg (38%), Bulgaria (30%), Belgium (29%), France (29%), Finland (26%), Estonia (25%), Austria (25%) and the Czech Republic 24%).

Other objectives were supported to a lesser extent: SMEs (9% of total aid),⁴⁴ employment (5%), culture and heritage conservation (3%), risk capital (1%), training (1%) and other horizontal objectives (1%) which include objectives such as commerce and internationalisation and natural disasters.

The relative share of objectives is considerably different in the EU-12 countries where aid to the environment and energy saving represents a mere 2% of total aid. The most favoured objective is aid for regional development (28% of total aid for industry and services), followed by employment aid (18%), SMEs (11%) and R&D&I (8%). The relatively high share of employment aid in EU-12 is due mainly to a Polish block exempted scheme for disabled people.⁴⁵

⁴³ [Case MT/6/2002](#). Accession Treaty 2003, OJ L 236 of 23.9.2003, p. 797, OJ C 227 E, 23.9.2003, p. 2.

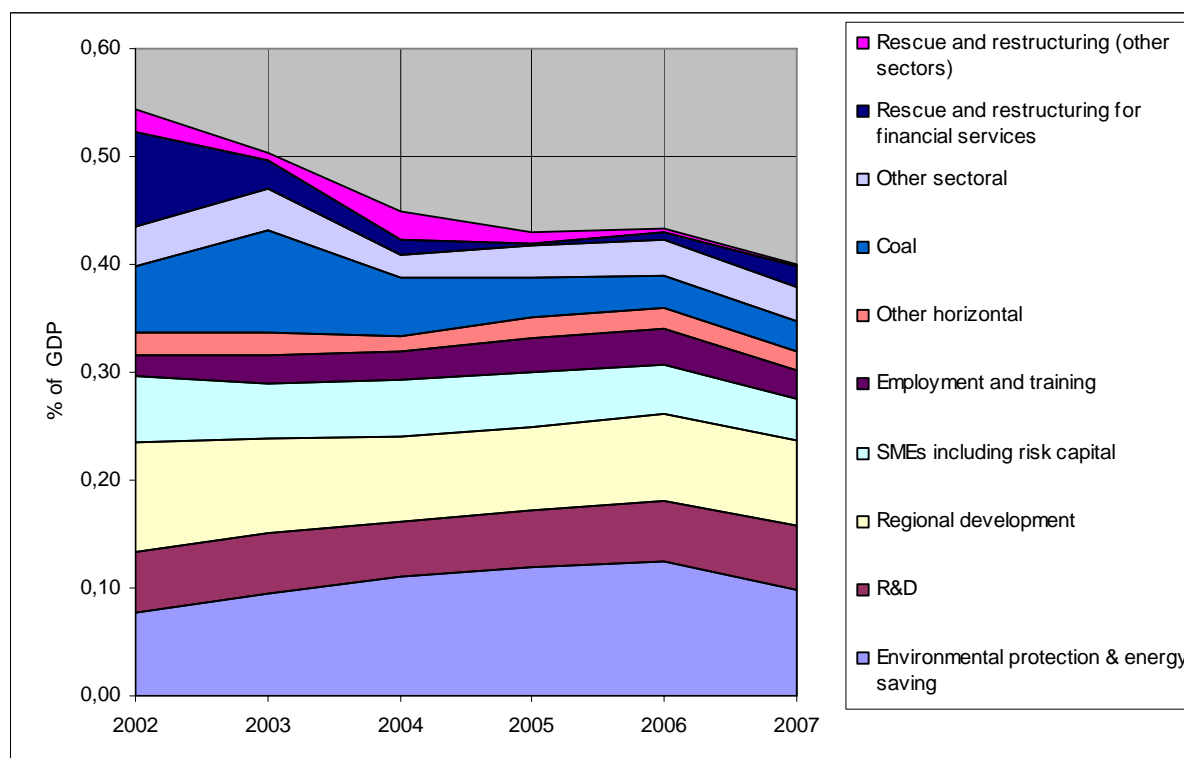
⁴⁴ This figure only captures aid exclusively earmarked for SMEs for which there was no other primary objective. For example, risk capital aid which accounts for 1.0 % of total aid (included in "other horizontal objectives") is also exclusively directed to SMEs. Indeed total aid granted to SMEs is much higher since most schemes for other horizontal objectives such as environment and energy saving, regional development, research and development are open to companies regardless of their size.

⁴⁵ [XE 11/2004](#).

4.2.1. Trend in State aid for horizontal objectives and sectoral objectives

As outlined in Part One, Member States have continued to redirect aid towards such horizontal objectives. The upward trend was almost exclusively the result of a significant increase in aid for environmental and energy saving objectives coupled with a decrease in sectoral aid (Figures 8 and 9). This decrease was particularly significant in the Czech Republic, where €2 billion restructuring aid was awarded to the banking sector in 2003 and in Germany (*BGB* in 2001 and 2002).

Figure 8: Trend in level of aid by primary objective, EU-27, 2002-2007



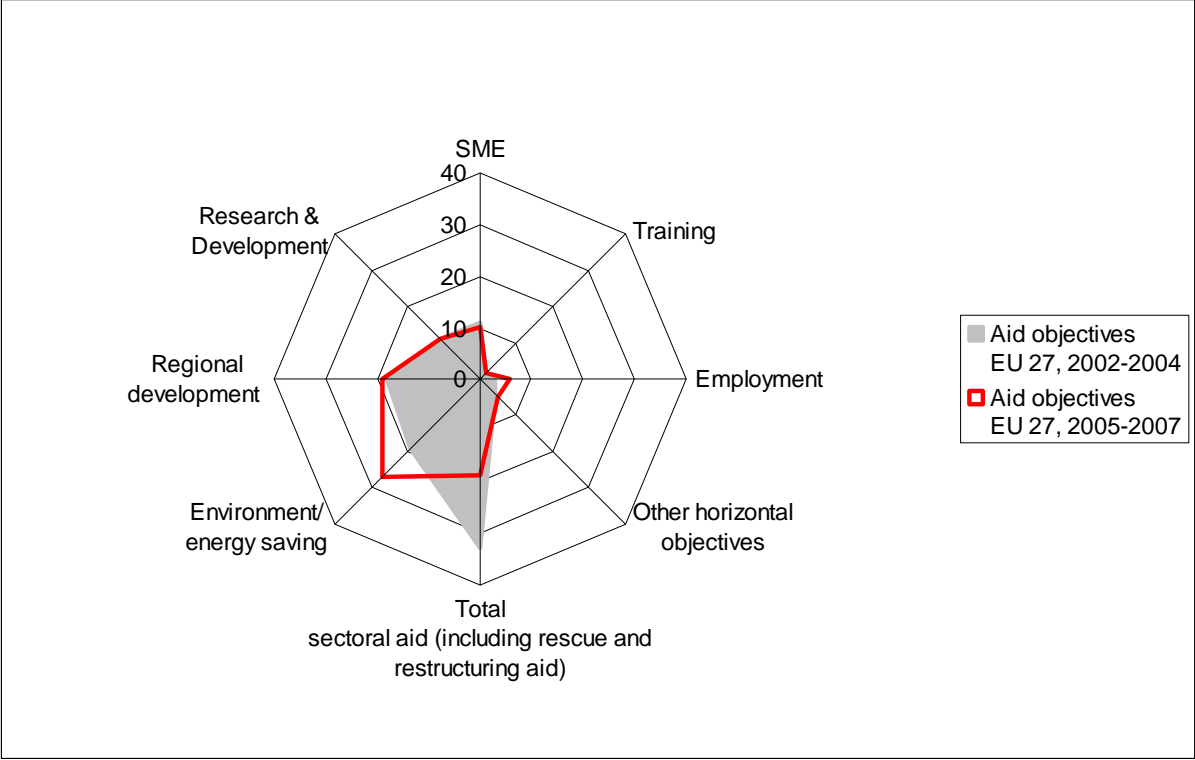
Note: Data cover industry and services only. Source: DG Competition.

The clear positive trend was observed, to varying degrees, in the majority of Member States. All EU-12 Member States are progressively redirecting aid towards horizontal objectives: the average share of horizontal objectives in total aid increased from 30% to 67% between the two periods 2002-2004 and 2005-2007. The share of horizontal aid increased in particular in the Czech Republic (+84 points), Lithuania (+ 74 points), Poland (+63 points) and Cyprus (+38 points). The remarkable increase in these countries can mainly be explained by an increase in regional aid (Czech Republic, Lithuania, Poland), employment aid (Poland), aid to SMEs (Lithuania) and aid for R&D&I (Czech Republic). In Cyprus the explanation lies in the expiry of an important tax exemption scheme for sectoral development,⁴⁶ accounting for half of total aid in Cyprus, coupled with a significant increase in cultural aid (+24 points). The two EU-15 Member States with significant increases in the share of horizontal aid were Ireland (+18 points) and Germany (+16 points). Ireland spent more on aid to SMEs (+12 points) and on aid for culture (+ 6 points), while the increase in Germany can be largely explained by a

⁴⁶ Special tax regime under the International Business Enterprises Act.

shift towards aid for environmental protection (+13 points). Lithuania (+22 points), Belgium (+17 points) and the Netherlands (+12 points) also increased their share of environmental aid.

Figure 9: Trend in share of primary objectives as % of total aid (2005-2007 compared with 2002-2004)



Source: Data cover industry and services only. DG Competition.

In contrast, the share of horizontal aid in total aid decreased in Austria (-21 points) because of the large amount of restructuring aid awarded to *BAWAG*⁴⁷ in 2006. In Italy the share fell by 12 points due to a large case involving aid to cover stranded costs in the energy sector.⁴⁸ The United Kingdom also experienced a 12 point decrease, due to the rescue aid for Northern Rock.⁴⁹

⁴⁷ Case [C 50/2006](#) (NN 68/2006) Restructuring aid to *BAWAG* (decision 27.6.2007).
⁴⁸ Case [N 490/2000](#).
⁴⁹ See footnote 12

4.2.2. *State aid for research and development and innovation (R&D&I)*

Overall R&D spending

Investment in research and development (R&D) is a crucial factor to strengthen the competitiveness of the EU economy and to ensure sustainable growth. The Barcelona European Council in 2002 recognised this by setting the objective for expenditure on R&D to 3% of GDP by 2010. Two thirds of this expenditure should be funded by the private sector and the other third by public funding. Figures for 2007 show that investment in R&D is not sufficient to meet the Barcelona objectives: for the EU as a whole, overall R&D investment stood at 1.84% of GDP, with public R&D funding amounting to 0.63 % of GDP. Sweden and Finland are the only Member States to reach the 3% level with 3.73% and 3.37% respectively. Public R&D funding is highest in Denmark, Germany, France, Austria, Finland and Sweden, with all six Member States above the EU average. Drawing conclusions from the so far sluggish development of R&D investment, it is clear that with growth remaining at the current level, the European economy will not achieve the Barcelona targets by 2010. Rather, growth needs to be accelerated and new impetus given to investment in R&D.

State aid for research, development and innovation (R&D&I)

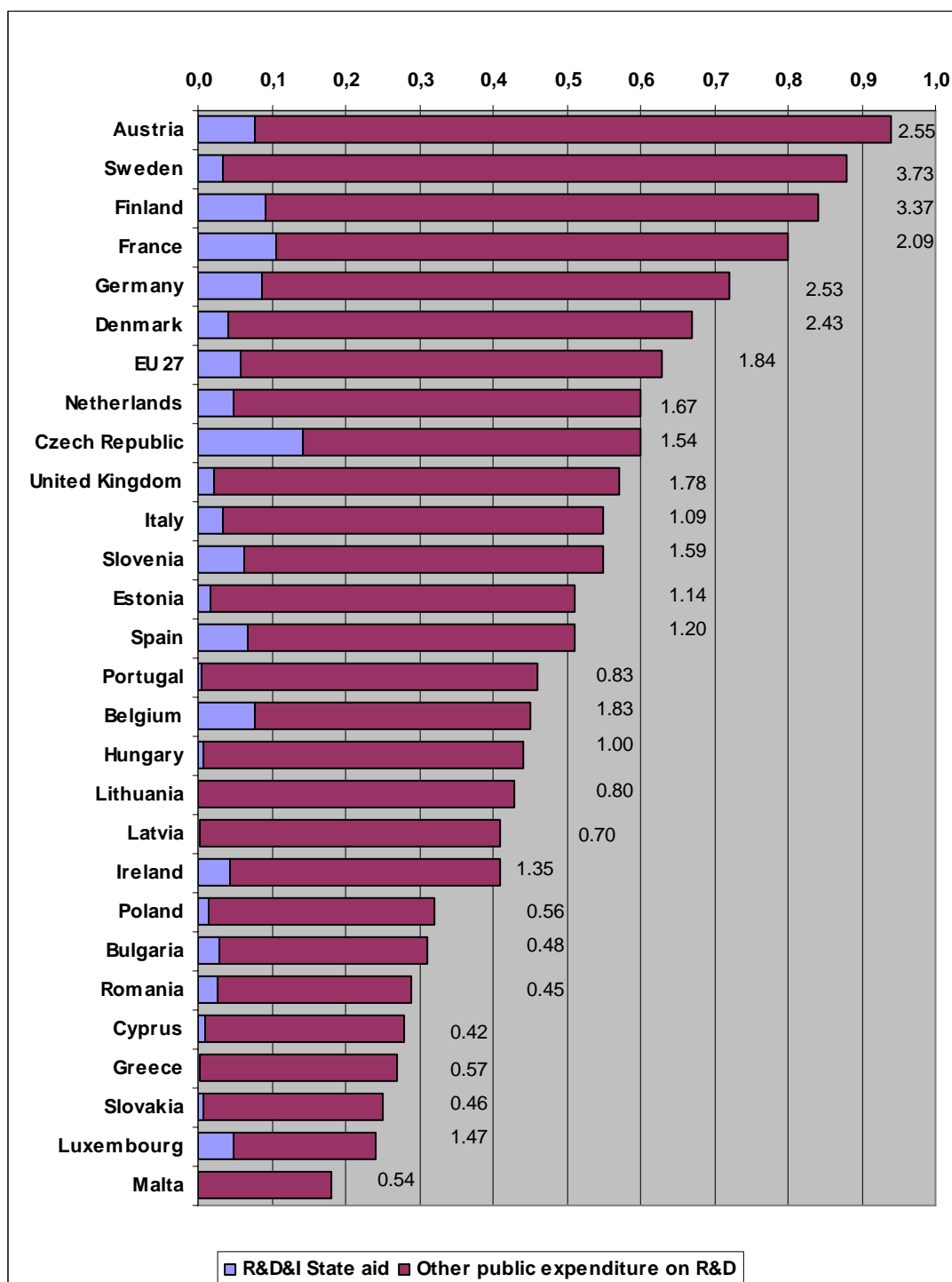
National governments have a range of measures to choose from to fund and consequently trigger R&D&I, the exact range and balance of which depend on the national context and form the policy mix. These public measures might contain State aid that could distort competition by favouring some enterprises over others. On the other hand, State aid may in certain circumstances be the best available option to provide incentives for additional private R&D&I investment. The Commission thus tries to strike a balance through the application of the framework on R&D&I aid thereby ensuring that R&D&I is furthered to the largest extent while minimising distortions of competition.

EU-wide, state aid expenditure on R&D&I amounted to €7.2 billion in 2007. This represents a relatively small share in public R&D funding although there are significant differences between Member States (Figure 10): while State aid to R&D&I represented 0.06% of GDP in 2007, overall public funding for R&D in 2006 was 0.63% of GDP. In 2007, five Member States awarded above average levels of R&D&I aid: Czech Republic (0.14% of GDP), France (0.11%), Germany (0.09%), Finland (0.09%) and Austria (0.08%). For the Union as a whole, the level of R&D&I aid remained rather stable between 2001 and 2005 but rose slightly in 2006 and 2007.

The new Community Framework for State aid for R&D&I⁵⁰, which entered into force on 1 January 2007, follows the logic of the SAAP by, on the one hand, allowing for new types of aid for innovation purposes whilst, on the other hand, introducing a more refined economic approach for large sums of aid. Member States had to adapt their existing aid schemes by the end of 2007 in order to make them compatible with the new framework. The framework pays great attention to the needs of SMEs, which are most affected by market failures. But it also offers many possibilities for large enterprises to receive support, when duly needed and justified.

⁵⁰ Community Framework for State aid for Research and Development and Innovation, [OJ C 323 of 30.12.2006, p. 1.](#)

Figure 10: Public expenditure on R&D as % of GDP, 2007



Note: Figures on R&D public expenditure are not directly comparable with state aid expenditure data as i) the source is different and ii) for many countries, data are not available for 2007. Nevertheless, the above graph provides an indication as to the approximate share of state aid in total R&D public expenditure. Reading note: While the graph itself shows public expenditure on R&D, the figure presented next to each horizontal bar indicates total R&D expenditure (public and private) as a percentage of GDP. This shows progress towards the Barcelona target of 3% of GDP. Source: DG Competition and Eurostat.

All notifications pending on 1 January 2007 and all subsequent notifications have been assessed under the new framework. By 30 June 2008, the Commission had approved 110 schemes and ad hoc cases in favour of R&D&I on the basis of the new Framework. Around 20 of the schemes involved innovation aid, making use of the fresh possibilities provided by the new Framework.

In addition, by 30 June 2008 the Commission had completed a more detailed assessment of 13 large⁵¹ applications of approved R&D&I aid schemes and adopted final decisions on each case; formal investigations on two other large individual aid cases are ongoing. This detailed assessment examines whether a market failure exists and whether the aid can be considered as an appropriate instrument to remedy the market failure; it looks at whether the aid has an incentive effect, is necessary to realise the aided project and is proportionate; the distortive effects of the aid and its expected effects on trade are also scrutinized and the positive and negative effects are then balanced against the Community interest. Such an assessment is clearly more demanding, both for the Member State in question and for the Commission, than the more summary tests carried out under the previous framework.⁵² The experience so far has shown that the Commission can reach a decision on a notified aid measure within a similar timeframe to the previous framework. Almost half the notified aid measures were approved within 6 months. About 30% of the cases needed longer, largely due to the need for the Commission to request additional information that had not been provided in the original notification. In this context, the Commission continues to work closely with the Member States to streamline and shorten the length of procedures.

4.2.3. *State aid for SMEs including risk capital*

The new GBER Regulation constitutes an important and effective complement to the Small Business Act⁵³ adopted by the Commission in June 2008. It allows Member States to support SMEs at different stages of their development. All 26 categories of aid covered in the Regulation can be provided to SMEs. To the extent such aid is also available to large companies, SMEs benefit from higher aid intensities. By way of example, the GBER includes a series of innovation measures such as aid for young innovative enterprises, aid for innovation advisory services as well as aid for hiring highly qualified personnel. Such aid should allow SMEs to become more competitive in the context of heightened international competition and to grow by means of increased emphasis on innovative products and processes.

From the entry into force of the Community Guidelines on State aid to promote Risk Capital investments in SMEs⁵⁴ and up to 30 June 2008, the Commission approved 30 measures in favour of risk capital. The measures consisted of funds, schemes or tax measures to bring equity to SMEs. Two thirds of the measures had a budget of less than €50 million to be spent over their duration, on average 5-7 years. Two measures had a budget over €100 million.

⁵¹ For predominantly fundamental research projects: aid to an undertaking above € 20 million, for predominantly industrial research projects: aid to an undertaking above €10 million, for predominantly experimental development projects: aid to an undertaking above €7.5 million.

⁵² Aid amounts over €5 million for projects exceeding €25 million.

⁵³ [IP/08/1003](#).

⁵⁴ Community guidelines on state aid to promote risk capital investments in small and medium-sized enterprises, [OJ C 194 of 18.8.2006, pages 2-22](#).

Among the Member States, Germany notified 10 measures, followed by Italy (4 measures) and the United Kingdom (3 measures).

4.2.4. State aid for environmental protection

The Commission's Climate Change/Energy Package of January 2008 implemented a series of targets for the year 2020⁵⁵: 20% CO₂ emissions reduction, 20% share for renewable energy in EU energy consumption and 20% increase in energy efficiency. The package included a policy mix of regulatory measures, including new *Community Guidelines on State aid for Environmental Protection*.⁵⁶ These have since been complemented by the new GBER adopted in July 2008 which included specific provisions for environmental protection.

During the seven years (2001-2007) that the previous environmental aid guidelines were in force, the Commission took around 350 decisions. In the vast majority of cases (98%), the Commission approved the measures without a formal investigation, concluding that the examined aid was compatible with the State aid rules. Although the number of new environmental aid measures remained relatively stable for the majority of Member States during this period, total expenditure for environmental purposes increased from €7 billion in 2001 to €12 billion in 2007. In relative terms, environmental aid amounted to 0.11 % of EU-27 GDP in the period 2005 - 2007 compared with 0.09 % in the period 2002 - 2004. This average hides significant disparities between Member States. The largest aid grantors in 2005 - 2007 were Sweden (0.77 % of GDP) and Germany (0.30 %) followed by Denmark, Austria, the Netherlands and Finland each of which granted aid above the EU average. Environmental aid expenditure in the United Kingdom was just over half the EU average, while Belgium, Slovenia and Lithuania were slightly less than half. All other Member States, including Spain, France and Italy, granted aid amounting to less than one quarter of the EU-27 average in terms of GDP. The overall level of expenditure in environmental aid measures in the EU is strongly influenced by the largest aid grantors, Germany and Sweden, in which tax exemptions account for a large share of total environmental aid in each country. A CO₂ tax reduction for industry and a tax exemption from the energy tax on electricity led to a remarkable rise in aid expenditure for Sweden from 2003 onwards. In Germany, expenditure rose steadily up to 2006 following the approval in 2002 of measures that prolonged several tax exemptions from the German energy taxation on electricity and mineral oils. Following modifications to these tax exemptions, environmental aid expenditure fell by €2.5 billion in 2007 to stand at €5.8 billion.

Any analysis of State aid expenditure for environmental purposes must take account of the fact that a large proportion of aid has, to date, comprised tax exemptions from environmental taxes⁵⁷, usually benefiting energy intensive industries including sometimes big polluters, that had to be accepted in order to allow for certain types of environmental taxes to be introduced. See special focus on aid for environmental protection in the spring 2008 Scoreboard.⁵⁸

⁵⁵ Targets set by the March 2007 Council.

⁵⁶ [OJ C 82 of 01.04.2008, p. 1.](#)

⁵⁷ Expenditure data currently available for this category of aid measures indicate the amount of tax revenue foregone and can therefore not serve as a proxy measure for the environmental benefit the taxes themselves have brought. In 2006, some 53 % of total expenditure (around €7.5 billion) fell under this category.

⁵⁸ [COM\(2008\) 304 final, 21.05.2008.](#)

4.2.5. *State aid supporting regional development and cohesion*

The Commission Guidelines on national regional aid for 2007-2013 (RAG 2007)⁵⁹ which codify and clarify the general approach regarding the compatibility of granting regional aid in the EU apply to all regional aid after 31 December 2006. The Commission encourages Member States to grant regional aid on the basis of pluri-sectoral aid schemes, which form part of a national regional policy. These schemes provide the general conditions under which a Member State can grant regional aid, normally without the need to notify their individual cases of application to the Commission. A number of schemes have been notified and approved by the Commission under the RAG 2007. The Commission also adopted a BER RAG which has been superseded by the GBER⁶⁰ to exempt certain regional aid measures from the notification requirement. Its success is clear with around 300 measures block exempted by mid-2008. Accordingly, most of the remaining notifications refer to schemes or cases that can not be block exempted such as operating aid schemes, schemes concerning the new category in the RAG 2007 of newly created small enterprises, ad hoc aid above certain thresholds and aid to large investment projects.

The RAG 2007 now also include special rules for regional aid to large investment projects (LIP) which, before 31 December 2006, were set out in the 2002 Multisectoral framework (MSF).⁶¹ After a wave of notifications on large investment projects under the old 2002 MSF at the end of 2006 (17 in the last six months of 2006), notifications under the new RAG 2007 came in more slowly in 2007. By mid 2008, 15 new LIP cases were notified (or pre-notified). Germany accounted for nine of those new LIP cases and Poland for three. Sectors concerned paper, LCDs, cars, glass and most importantly photovoltaics. The Commission has already taken a decision in seven of the nine notified cases (of which one to open proceedings) while six cases remain in the pre-notification stage. No case has yet been subject to an in-depth assessment according to the newly introduced balancing test.

The rules on large investment projects also continue to include the obligation to inform the Commission about regional aid measures for projects with eligible costs above EUR 50 million but below the notification threshold (transparency mechanism). About 120 such transparency cases have been registered by Member States since the start of 2007.

4.2.6. *State aid awarded under the block exemption regulations*⁶²

Experience has shown that the objectives of the Enabling Regulation have been largely met⁶³ with Member States able to introduce more than 3400 block exempted measures since 2001 under a series of block exemption regulations (BER) for SMEs, employment, training, regional investment, agriculture and fisheries. This has been accompanied by a significant reduction in the number of notified aid measures for these types of aid since 2001. The recent trend is in line with one of the key objectives in the SAAP, i.e. to facilitate the granting of aid

⁵⁹ [OJ C 54/13 of 4.3.2006.](#)

⁶⁰ As planned, the provisions of the BER RAG were included in the recently approved General Block Exemption Regulation (Commission Regulation (EC) No 800/2008 of 6 August 2008 describing certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty).

⁶¹ Multisectoral Framework on regional aid for large investment projects

⁶² For full set of legislation, see http://ec.europa.eu/comm/competition/state_aid/legislation/block.cfm.

⁶³ See page 11 of the Evaluation report on the application of Council Regulation (EC) No 994/98 of 7 May 1998, [COM\(2006\)831 final of 21.12.2006.](#)

through block exemptions, thereby reducing the administrative burden on Member States, and focus more on the most distortive types of aid.

In 2007 alone, Member States introduced over 1100 block exempted measures, more than double the figure for 2006. The reasons for this significant increase are threefold: First, many State aid measures are co-financed by EU structural funds. Member States therefore tend to introduce a significant number of new state aid block exemption measures at the beginning of a structural funds programming period (now 2007 – 2013). Moreover there has been a high take-up rate as regards the new possibility to block exempt regional investment aid as well as a sharp increase (four-fold compared with 2006) in the number of measures exempted in the agricultural sector, following new recent legislation.⁶⁴ The trend has continued with Member States informing the Commission of a further 600 measures in the first six months of 2008.

As regards expenditure under the BER, Member States awarded an estimated €6.2 billion in 2007 under the four block exemption regulations for SMEs in the industry and services sectors, for regional investment aid, and for aid to training and employment (Figure 11). This compares with only €3.2 billion in 2006. The sharp increase can be explained in part by the €2.3 billion awarded in 2007 under the new BER for regional investment aid which was introduced in time for the beginning of the EU 2007-2013 Structural Funds programming period. This included €1 billion awarded under a large German regional investment scheme.⁶⁵

The new programming period also accounts for a rise in expenditure under the BER for SMEs: €2.5 billion in 2007, a rise of €0.6 billion on the previous year. A further €0.6 billion was awarded for training aid and €0.8 billion for aid to employment.

In 2007, five Member States accounted for more than 75% of the total expenditure (€6.2 billion): Germany (29%) followed by Italy (15%), Poland (13%), Spain (10%) and United Kingdom (9%).

The extent to which block exempted aid has, over time, replaced notified aid can be measured by comparing total expenditure granted under a given horizontal objective with the expenditure under the block exemption for the same objective. Results show that while a number of Member States have made increasing use of the block exemption possibilities there are considerable variations between objectives and countries.

In 2007, more than 80% of all training aid was reported by Member States under the training BER. Bulgaria, Estonia, Greece, Lithuania, Hungary, Malta, Austria, Poland and Slovenia awarded training aid exclusively through the BER while Portugal, Germany, Italy, Finland and the United Kingdom used the BER for the vast majority of their training aid.

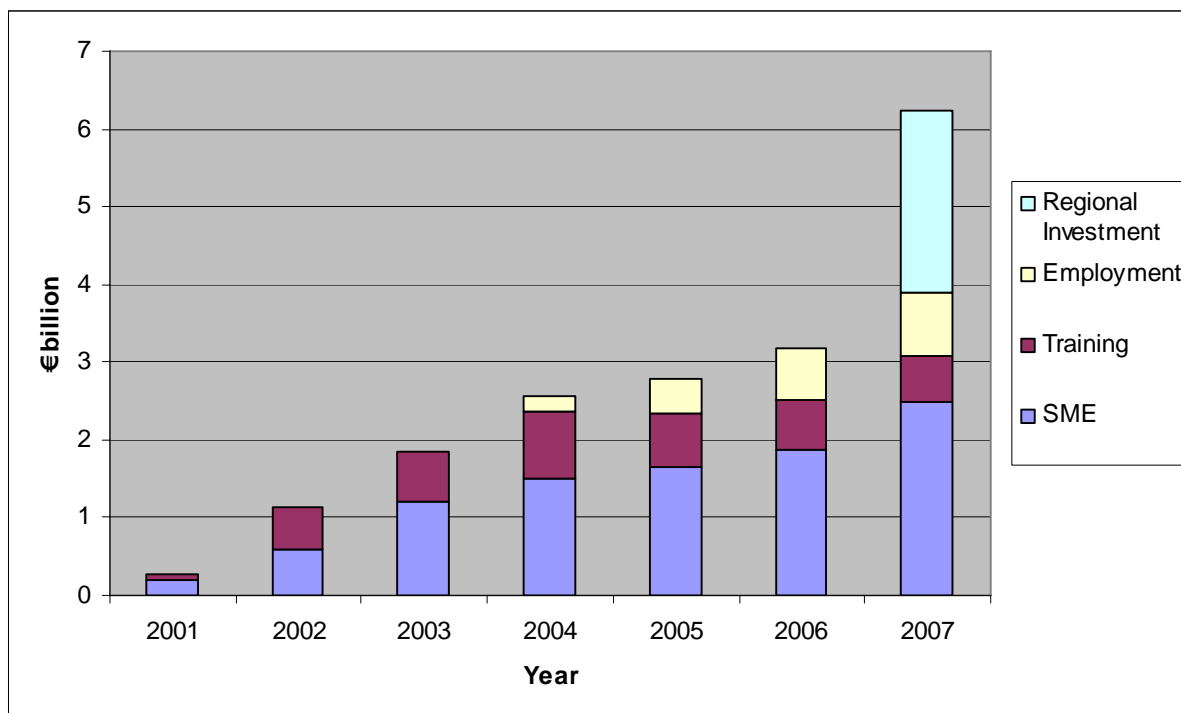
Around 55% of aid to SMEs active in the industry and services sectors was granted under the SME BER. Estonia, Greece, Lithuania, Hungary and Poland awarded SME aid exclusively

⁶⁴ Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to State aid to SMEs active in the production of agriculture products and amending Regulation (EC) No 70/2001 (for SMEs active in processing and marketing of agricultural products), [OJ L 358, 16.12.2006, p. 3](#).

⁶⁵ [XR 31/2007](#).

through the BER while in the Czech Republic, Denmark, Germany, Ireland, Latvia, Slovenia, and the United Kingdom used the BER for around 80% or more of their aid to SMEs.

Figure 11: Trend in block exempted state aid expenditure for industry and services, 2001-2007, EU-27



Source: DG Competition

Around one third of all aid to employment was granted in 2007 under the employment BER. Bulgaria, Estonia, Greece, Cyprus, Lithuania, Hungary, Malta, Poland, Slovakia, Sweden and the United Kingdom used exclusively block exempted measures.

The new BER for regional investment aid, in its first year of operation, accounted for around 24% of total regional aid expenditure.

Expenditure under the BER for SMEs active in the agriculture sector has also risen with more than €596 million granted in 2007 compared with around €231 million in 2006. More than 75% of the exempted expenditure in 2007 was awarded by five Member States: Germany (24%), Spain (19%), France (14%), Ireland (12%) and Italy (10%).

The share of exempted aid in total agriculture aid rose from 2.1% in 2006 to 4.7% in 2007. While some Member States awarded a relatively high share of BER aid, Latvia (19% of total agriculture aid), Spain (16%), Ireland (15%), Cyprus (14%), Slovenia (11%) and Hungary (9%), others have not used the block exemption possibility.

No new block exempted fisheries aid was awarded in 2007 since the BER for fisheries was not applicable in that year. However, an estimated €28 million was spent under BER measures already introduced in previous years.

4.3. State aid compensating for Services of General Economic Interest (SGEI)

General overview

Services of general economic interest (SGEI) are of great importance for the daily life of citizens and are part of Europe's model of society. Article 16 of the Treaty requires the Community and the Member States to take care that such services operate in such a way as to make sure that they fulfil their missions. Within the boundary of the Treaty, public authorities and governments at various levels in the Member States, be they local, regional or national define which public services should be delivered and by which means. For certain services, in order to deliver the appropriated results, financial public support may prove necessary.

The task of the Commission is to ensure that there is no abuse as regards the definition of SGEI and that the provision and organisation of these services comply with internal market and competition rules, since these activities are economic in nature. However, Article 86(2) of the Treaty allows an exception from the rules contained in the Treaty, provided that a number of criteria are met. The Commission is entrusted in Art 86(3) to specify the meaning and extent of that exception by addressing appropriate decisions or directives to Member States.

In the Altmark⁶⁶ decision of 2003, the Court of Justice defined the following four conditions under which financing of SGEI does not constitute State aid: act of entrustment with a clearly defined public service mission, the parameters for calculating the compensation payments must be established in advance in an objective and transparent manner, no overcompensation of costs and selection of beneficiary in a public tender or compensation does not exceed the costs of a well-run undertaking that is adequately equipped with the means to provide the public service. If all four conditions are fulfilled the compensation does not constitute any State aid. In the case that one of the conditions is not fulfilled the Court has ruled that the compensation constitutes State aid.⁶⁷

In 2005, the Commission adopted a package of measures to clarify, in the light of the first three Altmark principles, how the Commission intends to apply the state aid rules to public service compensation.

The Decision⁶⁸ adopted in November 2005 specifies the conditions under which compensation to companies for the provision of public services is compatible with state aid rules and does not have to be notified to the Commission in advance. In practice, it has the effect of a block exemption regulation. In that respect one should recall that most small-scale public services, plus compensation for hospitals, social housing, air and sea transport to islands and smaller airports and ports are exempted from the notification requirement, provided that the compensation for the public service only covers the real cost of providing the service. Furthermore, compensation of up to €30 million per year can be given without any obligation to notify to the Commission provided its beneficiaries have an annual turnover of less than €100 million.

⁶⁶ Case [C-280/00](#), ECR I-7747.

⁶⁷ This implies of course that all other conditions of Article 87.1 are fulfilled (State resources, economic advantage, selectivity and affectation of trade and competition).

⁶⁸ Commission Decision on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, [OJ L 312, of 29.11.2005 p. 67-73](#).

The Commission Framework⁶⁹ establishes the conditions under which compensation not covered by the Decision is compatible with state aid rules. Such compensation has to be notified to the Commission due to the higher risk of distortion of competition. The compatibility criteria remain however essentially those under the Decision.

Finally, the modified Transparency Directive⁷⁰ ensures that companies receiving compensation and operating on both public service and other markets must have separate accounts for their different activities, so that the absence of over-compensation can be checked.

More recently the Commission also issued a Communication⁷¹, which further reflects the important role that public services play, and is accompanied by two documents containing 'frequently asked questions' including a useful synthesis of the Court of Justice's case law and the Commission's practice with regard to SGEIs⁷². An interactive information service also provides more practical information and guidance on the Community rules for SGEI.

No data on aid compensating for SGEI are currently available but the Commission will undertake an impact assessment by the end of 2009, based on factual information submitted by Member States (due by the end of 2008) as well as the results of wider consultations of the 2005 Decision and Framework.

The Commission has applied the rules on SGEI to certain sectors of particular social, economic and political relevance including broadcasting, postal services and social housing. Further information on these sectors is available in a [forthcoming] special edition of the autumn Competition policy Newsletter.⁷³

Broadcasting sector

Public service broadcasting plays a particular role in the promotion of democratic, social and cultural needs of each society. Increased competition in the sector in recent years, together with the presence of state-funded operators, has led to growing concerns about a level playing field, which has been brought to the Commission's attention by private operators.

State financing of public service broadcasters is normally regarded as state aid. However, the existence of state aid has to be assessed on a case-by-case basis and depends also on the specific nature of the funding.

⁶⁹ Community framework for State aid in the form of public service compensation, [OJ C 297, of 29.11.2005 p. 4-7](#).

⁷⁰ Commission Directive on transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (Codified version), [OJ L 318, of 17.11.2006, p 17 - 25](#).

⁷¹ [COM\(2007\) 725 final](#), Communication on Services of general interest, including social services of general interest: a new European commitment.

⁷² [SEC\(2007\) 1516 final](#). Commission staff working document : "Frequently asked questions in relation with Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, and of the Community Framework for State aid in the form of public service compensation".

⁷³ <http://ec.europa.eu/comm/competition/publications/cpn/>

The 2001 Communication on the application of State aid rules to public service broadcasting⁷⁴ aimed at making the Commission's policy as transparent as possible. These rules are currently under revision.⁷⁵

Since 1999, the Commission has taken 24 state aid decisions related to the broadcasting sector. The majority of decisions are based on complaints rather than on notifications. There are mainly two types of cases: existing aid cases for the regular financing systems of public service broadcasters and new aid cases for specific one-off measures such as restructuring programs, re-capitalisation or financing of new TV channels.

The Commission has already examined existing financing schemes in various Member States and proposed measures to ensure full compliance with the state aid rules. In all cases handled by the Commission so far, agreement was reached with the Member States who accepted the recommendations made by the Commission in order to align their systems to the competition rules.

In most cases, there were no objective pre-defined parameters for determining the compensation. Furthermore, public service broadcasters have not been selected by way of a tender procedure, and the compensation was not determined on the basis of an analysis of the costs of a typical well-run undertaking. Information on the most relevant cases in this sector can be found on the website.

Postal services sector

The postal services sector is of vital importance for commercial users and consumers alike and is considered as a SGEI. In recent years, there has been a progressive opening of national postal markets to competition. Following the adoption of the new postal directive⁷⁶ in February 2008, remaining exclusive rights must be abolished, with certain exceptions, by 2011. The new directive continues to guarantee citizens a universal service, and foresees the possibility of financing this, if there are any net costs, also through state aid. It provides a specific methodology to calculate the net cost of the universal postal service.

Regarding the application of State aid rules to the postal sector, the Chronopost case law⁷⁷ covers the issue of aid in the relation between a postal operator and its subsidiary operating in commercial markets. The Altmark case law and, pending the implementation period of the 3rd Postal Directive into national legislation, the Community Framework are applicable to this sector where Member States compensate financially the costs of universal service provision. Information on recent such cases can be found in a table on the website. In analysing these cases, as well as others where the issue of the existence of aid has been raised, the Commission has analysed the accounts of universal service providers so as to ensure the absence of overcompensation and of unlawful cross subsidies. In particular, the Commission

⁷⁴ Communication from the Commission on the application of State aid rules to public service broadcasting. [OJ C 320, of 15.11.2001, p 5-11.](#)

⁷⁵ Results of the public consultation that end in March 2008 are available on http://ec.europa.eu/comm/competition/state_aid/reform/reform.cfm.

⁷⁶ Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, OJ L 52, p 3.

⁷⁷ Cases [T-613/97](#), [C-341/06](#) and [C-342/06](#). Judgement of the Court (Grand Chamber) of 1 July 2008.

has examined the methods applied by the postal operators to allocate costs between universal services and other services and to calculate the financial burden of the public service tasks.

4.4. State aid earmarked for specific sectors

4.4.1. State aid for rescue and restructuring firms in difficulty

As outlined in Part One, Member States have granted considerably less rescue and restructuring aid during the recent period of economic growth. However, over the period 2002 – 2007, the extent to which Member States used (or not) State aid to rescue and restructure their ailing firms varied considerably. Seven Member States accounted for 95% of the rescue and restructuring aid. Germany made up 28% of the total followed by the Czech Republic (20%), the United Kingdom (13%), Romania (12%), France (11%), Poland (7%) and Austria (3%). This does not necessarily reflect a regular recourse to State aid for rescue and restructuring in each of these countries as one large rescue case may be sufficient to place them in this group. At the other end of the scale are nine Member States (Denmark, Estonia, Ireland, Greece, Cyprus, Latvia, Luxembourg, Hungary and Sweden) who did not award any ad hoc rescue and restructuring aid to ailing firms (in the industry and services sectors) between 2002 and 2007.

Over this six-year period, the banking sector accounted for, on average, 68% of all rescue and restructuring aid. In 2007, however, around 87% of the €2.7 billion of rescue and restructuring aid awarded by Member States went to the banking sector.

Part Five includes an overview of the recent rescue and restructuring aid cases in the banking sector.

4.4.2. State aid to the shipbuilding sector

The amount of State aid to the shipbuilding sector fell from an annual average of €1.0 billion for the period 2002-2004 to €313 million for the period 2005-2007. In 2007, an estimated €354 million was granted to the shipbuilding sector mainly by Spain, Germany and Denmark. See also new legislation in Part Six.

4.4.3. State aid to the steel sector

Since the European Coal and Steel Community Treaty expired on 23 July 2002, the general State aid rules have been applied for the steel sector, with the exception that no investment or restructuring aid may be granted to steel production unless it is closure aid.⁷⁸ In 2007, no new aid was authorised by the Commission for the steel sector, however, ongoing expenditure amounted to €203 million, which was granted principally by the United Kingdom (€132 million - climate change levy) as environmental aid, Slovakia as employment aid (€50 million) and the Czech Republic (€16 million) for different objectives (R&D, environment, regional development). There is a clear decreasing trend in the aid to the steel sector from an annual average of €727 million in the period 2002-2004 to €210 million in the period 2005-

⁷⁸ Aid under the Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty ([OJ L 214, 9.8.2008, p. 3-47](#)) remains possible with the exception of regional aid favouring activities in the steel sector (Article 1(3)(e)).

2007. The downward trend can be largely explained by the fact that some Member States such as Sweden stopped or reduced considerably (the Czech Republic) granting State aid after the year 2003 to companies in the steel sector.

4.4.4. *State aid to the coal sector*

The European Coal and Steel Community Treaty expired on 23 July 2002. Thereafter, a Council Regulation established a new legal framework for state aid to the Community coal industry.

The overall amount of State aid to the coal sector in the Union (EU-27) stood at €3.4 billion in 2007, around the same level as in 2006, while both the absolute amount and the share of aid related to current production continued to decline. More generally, as from 2001, aid to current production has decreased significantly and steadily in line with the agreement on the reduction of volumes of aid to the coal industry. As stipulated by Regulation 1407/2002, the total amount of aid to current production to be granted annually shall in any event not exceed the amount of aid authorized by the Commission for the reference year 2001 (for new Member States – the year of accession to the EU).

Reduction of the aid to current production was mainly achieved through gradual closure of the least competitive mines accompanied by considerable reductions in the number of persons employed in the EU's coal sector. Nearly all the aid not related to current production was directed at covering the costs incurred in the process of (partial) mine closures and at financing the so-called inherited liabilities.

Seven Member States granted aid to the coal sector in 2007. Germany and Spain continue to account for the bulk of it (more than 90%). Broadly-speaking, coal mining in the EU-12 Member States is more competitive than in the EU-15 Member States. For more information on the EU's coal sector and coal subsidies, please refer to the Report on State aid to the coal industry published in May 2007⁷⁹ as well as to the Commission's web-page devoted to coal issues⁸⁰. Commission decisions on coal-related state aids can also be found on the web.⁸¹

4.4.5. *State aid to the transport sector*

State aid to the transport sector is governed by special rules in the Treaty, as well as secondary legislation and rules of soft law (see box below). Member States spend considerable resources for the provision of services of general economic interest (SGEI) in the transport sector and for the construction, management and maintenance of infrastructure. The amount of State aid granted for environmental measures, such as aid for the acquisition of new transport vehicles which go beyond Community standards or which increase the level of the environmental protection in absence of Community standards, has increased in recent years.

With regard to public resources for the provision of SGEI, Community law foresees a number of mechanisms allowing for and encouraging the provision of such services. Member States

⁷⁹ http://ec.europa.eu/dgs/energy_transport/state_aid/energy_en.htm.

⁸⁰ http://ec.europa.eu/energy/coal/index_en.htm.

⁸¹ http://ec.europa.eu/dgs/energy_transport/state_aid/doc/decisions/decisions_list.xls (English or French versions) and http://ec.europa.eu/comm/competition/state_aid/register/ii/by_sector_b.html (authentic language versions).

must, however, ensure that the public financing granted complies with the rules laid down and in particular avoids overcompensation in order not to distort competition. Furthermore, the public financing of transport infrastructure raises more and more questions about the application of the State aid rules, as many infrastructures are operated on a commercial basis and either by private undertakings or under public-private-partnerships.⁸²

Summary of rules for the transport sector

- **Land transport (road, rail, inland waterways):** Article 73 of the EC Treaty contains rules for the compatibility of State aid in the area of coordination of transport and public service obligation in transport. The Commission considers in its constant practice that Article 73 constitutes *lex specialis* with respect to Article 87(2) and Article 87(3), as it contains special rules for the compatibility of State aid. In addition, Article 73 of the EC Treaty constitutes a *lex specialis* also with respect to Article 86(2) of the EC Treaty, and therefore, Article 86(2) of the EC Treaty cannot be applied in the area of coordination of transport and public service obligation in the inland transport sector.⁸³ Until 2 December 2009, Article 73 cannot be applied directly (Altmark), but only through the three Council Regulations which have been adopted under it, these are Council Regulations 1191/69⁸⁴, 1107/70⁸⁵ and 1192/69⁸⁶. Regulation 1370/07⁸⁷ will replace Regulations 1191/69 and 1107/70 as from 3 December 2009. In addition the Commission adopted on 30 April 2008 the Community guidelines on State aid for railway undertakings.⁸⁸
- **Aviation:** Communication on the Application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA agreement to State aids in the aviation sector⁸⁹ and Community guidelines on financing of airports and start-up aid to airlines departing from regional airports.⁹⁰
- **Maritime transport:** Community guidelines on State aid to maritime transport.⁹¹

EU-wide, for the transport sector as a whole (excluding railways - see below), around €2.5 billion of aid was awarded per year over the period 2005-2007, a 13% increase compared with the annual average over the period 2002-2004 (€2.2 billion). With respect to the different transport sectors, the following developments can be observed:

⁸² See for example decisions in case N713/1997, point 39; Case [N60/2006](#), point 39; [Case N134/2007](#); [Case N478/2004](#), point 26 with further references.

⁸³ See recital 17 of the Commission decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest ([OJ L 312, 29.11.2005, page 67 - 73](#)).

⁸⁴ Regulation (EEC) No. 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway, as amended.

⁸⁵ Regulation (EEC) No. 1107/70 of the Council of 4 June 1970 on the granting of aid for transport by rail, road and inland waterway, as amended.

⁸⁶ Regulation (EEC) No. 1192/69 on common rules for the normalisation of accounts of railway undertakings is particularly important from a State aid monitoring perspective as it exempts from the notification procedure a number of different compensations from public authorities to railway undertakings, as amended.

⁸⁷ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 ([OJ L 315, 3.12.2007, p. 1-13](#)).

⁸⁸ [OJ C 184, 22.7.2008, page 13](#).

⁸⁹ OJ C 350/1994 of 10.12.1994, p 5-20.

⁹⁰ [OJ C 312/2005 of 9.12.2005, p.1-14](#).

⁹¹ [OJ C 13/2004 of 17.1.2004, p. 3-12](#).

Maritime transport

Almost two-thirds of total transport aid (around €1.6 billion per year) was awarded to the maritime sector during the period 2005-2007. The largest amounts were given by Italy, France, the United Kingdom, the Netherlands, Spain and Sweden.

Land transport

Railways

A large amount of public financing for railways is not notified to the Commission, either because the financing, due to the lack of liberalisation of the sector, is not deemed by Member States to constitute State aid within the meaning of Article 87(1) of the EC Treaty,⁹² or because it is exempted from notification in accordance with Regulations 1191/69 and 1192/69. Member States are however required to report to the Commission overall public expenditure to this sector. Over €46 billion was reported by Member States for 2007. Disparities between Member States may reflect different interpretations of the scope of this annual reporting exercise (see table on website).

Public transport by bus

The Commission is faced with similar problems in the bus transport sector as in the railway sector. Most public financing of the bus transport services operated under a public service obligation is not notified to the Commission. As a result, the aid amounts reported for road and combined transport sector are underestimated. Following complaints from competitors in this sector, the Commission initiated in 2006 – 2008 formal investigation procedures in Austria, Germany, Ireland and the Czech Republic; further investigations in these and other Member State are ongoing. Within the context of the public service obligation and/or public service contracts late 2007 the Commission also noticed that many Member States intend to grant subsidies for the purchase of new vehicles used for public transport services.

Road haulage

State aid in the area of road haulage is given either in the form of restructuring aid, or in the form of State aid for environmental protection.

Aviation

The 2005 *Community guidelines on financing of airports and start-up aid to airlines departing from regional airport*⁹³ add to the Commission's 1994 guidelines⁹⁴ on the application of Articles 87 and 88 of the EC Treaty. They are designed to cover all aspects relating to the financing of airports and start-up aid for new routes. Since the entry into force of the 2005 guidelines, the Commission has adopted a number of positive decisions (including Germany, Poland, Ireland, Malta, Cyprus and the United Kingdom), relating to the two main types of State aid defined by the guidelines – State aid to airports and start-up aid to airlines.

⁹² This should now change since State aid guidelines for railway undertakings were adopted in 2008.

⁹³ [OJ C 312/2005 of 9.12.2005, p.1-14.](#)

⁹⁴ Community guidelines on the application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector, OJ C350 of 10 December 1994.

The public financing of airport infrastructure aimed mainly at financing the construction of new airports, the extension of existing ones in order to accommodate in particular bigger aircrafts and related increase of passengers and the purchase of equipment with the aim to comply with safety and security standards may constitute State aid. Indeed, as the operation of airports constitutes an economic activity, the Commission assessed these measures in view of the State aid rules and in particular, it assessed its impact on competing airports. In most cases the Commission considered that the planned investments had a positive impact on the accessibility of the region, which outweighed the potentially negative impact on competition.

The Commission is also examining a large number of complaints concerning investment aid and start-up aid. In some of these cases, the Commission has opened the formal investigation procedure. In dealing with complaints, the Commission can conclude that the public financing of airport infrastructure and start-up aid has not been notified to the Commission because it was not deemed by Member States to constitute State aid within the meaning of Article 87 (1) of the EC Treaty. With respect to investment aid for airport infrastructure, the difficulty encountered relates in particular to the question of the midterm viability of the investment and the impact on competing airports. In order to assess these points, the Commission needs in particular a business plan. In relation to the start up aid, most of the identified difficulties relate to the contracts with low cost companies, the non-discriminatory nature of the aid and the appropriate assessment of marketing aid and in particular the calculation of "additional costs".

Over the period 2005-2007, an annual average of €121 million of aid was reported by Member States for the air transport sector.

4.4.6. *State aid to the agricultural sector*

The total amount of State aid awarded to the agricultural sector (including block exemptions and top-ups) was estimated at €12.8 billion in 2007 compared with €11.4 billion⁹⁵ in 2006. Expenditure increased especially in the Netherlands, Italy and Ireland. In contrast, thirteen countries spent less in 2007 than in 2006, in particular Poland, Spain and the United Kingdom.⁹⁶

In 2007, France (€2.4 billion), Germany (€1.95 billion), Finland (€1.4 billion) and Romania (€1.1 billion) reported the highest figures. The data are based on an annual reporting exercise introduced for the first time in 2004. In almost all Member States, the vast majority of aid was granted through budget aid measures (such as grants, interest subsidies, guarantee fee subsidies) or through the tax or social security system (such as bio-fuel tax exemptions, tax credits).

In total, 186 measures were notified to and decided by the Commission in 2007, compared with 317 measures in 2006. The number of non-notified aid measures also decreased from 27 to 18. In contrast, Member States submitted 496 block exemption measures in 2007 compared

⁹⁵ The discrepancy between this figure and the total for 2006 (almost €16 billion) published in the autumn 2007 Scoreboard is due to corrections made by Member States in their annual reports submitted in June 2008 for the entire period 2002-2007. Furthermore, expenditure under the Rural Development programme has been excluded.

⁹⁶ See tables on the website http://ec.europa.eu/comm/competition/state_aid/studies_reports/stat_tables.html for more details.

with 119 in 2006. The 186 new aid measures involve aid schemes and (rather rare) individual application of a scheme or ad hoc aid, i.e. individual aid awarded outside of a scheme. These new notifications frequently cover more than one type of aid. For example, investment aid may be combined with aid for consultancy costs or technical support with aid for encouraging quality products. The most notified objectives (for cases on which a decision was taken in 2007) are to compensate farmers for losses caused by adverse weather conditions followed by aid for combating animal diseases, and provision of technical support. Of the new aid measures, 33% were notified by Italy, followed by Spain (16%), France (9%) and the United Kingdom (6%). The breakdown by country is rather different when looking at block exempted measures: 32% of the 496 measures were communicated by Slovenia, followed by Italy (13%), Spain (11%), the United Kingdom (7%), the Netherlands and France each with more than 5%.

4.4.7. State aid to the fisheries sector

The total amount of State aid awarded to the fisheries sector was estimated at around €418 million in 2007. The data are based on the figures received from Member States' annual reports on existing aid schemes. Spain (€184 million) reported the highest figures, followed by Italy (€82 million), Ireland (€37 million), Denmark (€33 million) and Greece (€31 million). Further breakdown of expenditure figures are not available for the fisheries sector. (See also legislative in Part Six.)

4.5. State aid instruments

In 20 Member States, the most favoured aid instrument is the direct grant

All State aid represents a cost or a loss of revenue to the public authorities and a benefit to recipients. However, in some cases the actual aid element may differ from the nominal amount as in the case of a subsidised loan or guarantee.

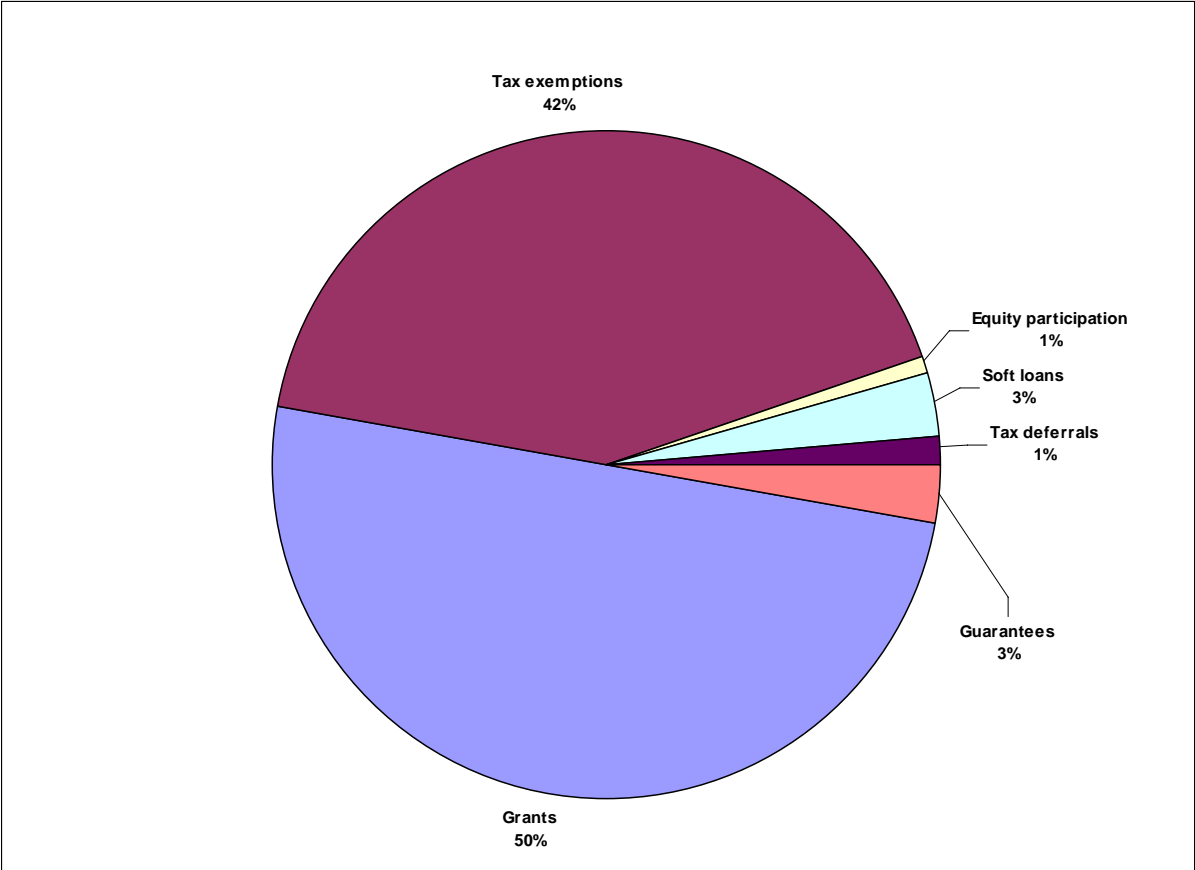
During the period 2005-2007, grants accounted for just over half (50%) of total aid in the manufacturing and service sectors. In addition to aid awarded through the budget, other aid is paid through alleviation from the tax or social security system. Tax exemptions made up for almost 42% of the total (Figure 12). Luxembourg, Belgium, Denmark, Slovenia and Estonia provided 90% or more of their aid in the form of grants. In contrast, some other Member States tended to make greater use of tax exemptions: accounting for around 80% or more of total aid in Portugal, Sweden and Bulgaria. A similar instrument is a tax deferral which was used by ten Member States during the period under review. Tax deferrals accounted for 19% in Romania, 13% in Malta and 9% of all aid in Italy compared with an EU average of 1%.

There are other forms of aid instrument which vary from one Member State to another. One such category covers transfers in which the aid element is the interest saved by the recipient during the period for which the capital transferred is at his disposal. The financial transfer takes the form of a soft loan or tax deferral (mentioned already above). The aid elements in this category are much lower than the capital values of the transfers. EU-wide, soft loans represented around 3% of all aid to manufacturing and services. In Spain, France, Austria and Finland, the proportion was at least twice the EU average.

Aid may also be in the form of state equity participation which represented around 1% of all aid to the manufacturing and service sectors. Finally, aid may be provided in the form of guarantees. The aid elements are generally much lower than the nominal amounts guaranteed,

since they correspond to the benefit which the recipient receives free of charge or at lower than market rate if a premium is paid to cover the risk. EU-wide, guarantees made up for 3% of total aid. During the period under review, guarantees were used by Austria (22% of total aid) and the United Kingdom (13%), mainly due to aid for the banking sectors.

Figure 12: Share of each aid instrument in total aid for industry and services, EU-27, 2005-2007



Source: DG Competition.

5. PART FIVE: STATE AID RELATED TO THE FINANCIAL CRISIS

Since the beginning of the current financial crisis, Member States have announced unprecedented support measures for the financial sector, ranging from increased (or even unlimited) deposit guarantees, interbank credit guarantees, direct capital injections and partial nationalization to individual rescue packages. To a considerable extent, these support measures are subject to European State aid control, and the Commission has been playing a key role in this situation. Coordinated action by Member States and the Commission has ensured that large support schemes for the financial sector could be implemented in compliance with EC Treaty state aid rules. The current situation and the large number of notifications provide a significant challenge for the Commission to deal with these cases quickly, but at the same time to continue to ensure that measures are proportionate and do not create undue distortions of competition. In fact, the Commission has managed to respond to notifications submitted by Member States and to approve schemes in record time - even within 24 hours.

As the financial crisis deepened in October 2008, the Commission published a Communication⁹⁷ on how Member States can best support financial institutions in the current financial crisis whilst respecting EU State aid rules. The Commission acknowledges the exceptional circumstances and the systemic risks inherent to a financial crisis and takes them into account when dealing with support schemes.⁹⁸ The specific conditions for aid to be in compliance with the EU State aid rules as set out in the Communication are:

- Non-discriminatory access in order to protect the functioning of the Single Market by making sure that eligibility for a support scheme is not based on nationality
- State commitments to be limited in time in such a way that it is ensured that support can be provided as long as it is necessary to cope with the current turmoil in financial markets but will be reviewed and adjusted or terminated as soon as improved market conditions so permit
- State support to be clearly defined and limited in scope to what is necessary to address the acute crisis in financial markets while excluding unjustified benefits for shareholders of financial institutions at the taxpayer's expense
- An appropriate contribution of the private sector by way of an adequate remuneration for the introduction of general support schemes (such as a guarantee scheme) and the coverage by the private sector of at least a significant part of the cost of assistance granted
- Sufficient behavioural rules for beneficiaries that prevent an abuse of state support, like for example expansion and aggressive market strategies on the back of a state guarantee

⁹⁷

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:270:0008:0014:EN:PDF>

⁹⁸

In its Presidency conclusions of 16 October 2008, the Council stated that 'in the current exceptional circumstances, European rules must continue to be implemented in a way that meets the need for speedy and flexible action. The European Council supports the Commission's implementation, in this spirit, of the rules on competition policy, particularly State aids, while continuing to apply the principles of the single market and the system of State aids.'

- An appropriate follow-up by structural adjustment measures for the financial sector as a whole and/or by restructuring individual financial institutions that had to rely on state intervention.

The financial crisis and the State aid context

The crisis was initially triggered by problems with sub-prime mortgage lending in the US that impacted heavily on other financial markets, leading to a loss of confidence between financial institutions and in particular to a freeze in interbank lending. Investor confidence in Europe was further undermined by revelations of losses linked to collateralised debt obligations (CDOs), leading *inter alia* to rescue operations by Germany for IKB and Sachsen LB in August 2007. Depending heavily on short-term funding and raising funds on the financial markets more generally, UK mortgage lender Northern Rock became a victim of the crisis in September 2007.

In 2008 the situation deteriorated further when interest spreads reached record levels and credit squeezed further. European central banks addressed the liquidity crisis by injecting high amounts of liquidity into the financial markets. However, more banks had to be rescued by the state, among others Bradford and Bingley in the United Kingdom, Hypo Real Estate in Germany, and Fortis and Dexia in Belgium.

The US and European governments responded to the crises by a number of different support schemes, ranging from increased (or even unlimited) deposit guarantees, interbank credit guarantees, direct capital injections and partial nationalization to individual rescue packages. Not least, the world's most important central banks cut interest rates in a coordinated action.

Some of the measures taken by Member States are not State aid within the meaning of Article 87(1) EC and are therefore outside the State aid rules. A Member State/central bank may react to a banking crisis not with selective State aid to individual banks, but with general measures open to all actors in the market. Such general measures normally fall outside the scope of the State aid rules and do not need to be notified to the Commission.

However, most schemes currently implemented by Member States are subject to European State aid rules, and the Commission has therefore seen the number of notifications in this area multiply.

State aid control in the financial sector⁹⁹

While a crisis at an individual bank may have the potential to trigger a general banking crisis and *vice versa*, in terms of compatibility with European State aid rules individual rescue cases differ considerably from schemes aimed at the entire financial sector.

Generally and as in any other sector, companies in the financial sector can find themselves in difficulties following excessive risk, bad management, defective supervision and/or fraud. In such situations unchecked subsidies can significantly distort competition between banks and between Member States' economies. It is detrimental to the functioning of competitive markets and creates moral hazard problems if every undertaking that gets into difficulties

⁹⁹ For a regular update on most recent developments see also http://ec.europa.eu/comm/competition/sectors/financial_services/overview_en.html

were to be rescued by the State with the burden ultimately shifted on the tax payer. Moreover, the amounts of public support to the financial sector are often very large. State aid can undermine the incentives for banks to have a balanced and prudent investment strategy, thus further endangering financial stability. Competitors inevitably suffer from this type of State aid as they can not benefit from their comparatively better performance.

The Commission has been tackling the individual rescue cases during the financial crisis along the Commission's guidelines on rescue and restructuring aid. The Commission has made an important effort to deal in a rapid, efficient and flexible way with the cases submitted: Northern Rock¹⁰⁰ (notification on 26 November 2007, approved on 5 December 2007), West LB¹⁰¹ (notification on 27 March 2008, approved on 30 April 2008, Roskilde Bank¹⁰² (notification on 22 July 2008, approved on 31 July 2008), and Hypo Real Estate¹⁰³ (notification on 30 September 2008, approved on 2 October 2008). Also in more complex cases, where a formal investigation procedure was inevitable, such as Sachsen LB¹⁰⁴, the Commission was able to take a final decision in the case within three months after the initiation of a formal investigation procedure.

Exceptional circumstances and systemic risk

The current financial crisis has, however, led to a need for State interventions that differ from the traditional rescue or restructuring of a financial institution in difficulties. To a large extent the measures currently taken by Member States do not concern specific banks in difficulties, but are aimed at the entire banking sector. These measures have been announced in order to respond to the systemic risk that is seen in the banking sector. In its Communication the Commission acknowledges the exceptional circumstances and the systemic risk in the current situation. The Commission can therefore apply Article 87(3)(b) of the EC Treaty. This exception to the general prohibition of State aid can be invoked in order to 'remedy a serious disturbance of the economy'. In October 2008 the Commission approved far-reaching support measures notified by Ireland¹⁰⁵, the UK¹⁰⁶ and Denmark¹⁰⁷. These schemes involve a combination of increasing guarantees for bank deposits, guarantees for interbank loans and capital injections. Several other countries have notified or are expected to notify similar schemes. However, even under exceptional circumstances it is the Commission's responsibility to ensure compliance with European State aid rules while at the same time respond flexibly and swiftly to the systemic risk posed by the financial crisis.

State aid in the current economic downturn

The current financial crisis and downturn in the economy is already beginning to have a negative impact on jobs and on the order books of businesses. There is consensus that Member States have to coordinate their response to this crisis. Member States' economies are too intertwined and a short-term fix involving a subsidy race between Member States should

¹⁰⁰ [Case NN70/2007](#)

¹⁰¹ [Case NN25/2008](#)

¹⁰² [Case NN36/2008](#)

¹⁰³ [Case NN44/2008](#)

¹⁰⁴ [Case C9/2008](#)

¹⁰⁵ [Case NN48/2008](#)

¹⁰⁶ [Case N507/2008](#)

¹⁰⁷ [Case NN51/2008](#)

be avoided. On the contrary, State support for European business will only show results if it is sustainable: leading to more innovation, more research, better training and higher quality jobs. While boosting sustainable investment benefits European industry in general, particular emphasis should be placed on SMEs – the backbone of Europe's economy. In this context, the recent Small Business Act adopted by the Commission identified a large number of actions to support SMEs.

In the current financial crisis, SMEs may face greater difficulties of access to finance than other companies. To alleviate such problems in the short to medium term, Member States could adopt a series of general policy measures, applicable to all companies on their respective territories and consequently falling outside the State aid rules. For example, payment deadlines for social security contributions or taxes could be extended.

Moreover, general EU programmes, like the competitiveness and innovation programme and the research framework programme, should be used to support SMEs as well as large undertakings. This is fully in line with other European initiatives, such as the European Investment Bank's decision to mobilise €30 billion to support European SMEs.

Finally, a key objective of the Commission's recent modernisation of EU State aid rules has been to encourage Member States to support sustainable investment, thus contributing to the Lisbon strategy for growth, jobs and competitiveness. In this context, particular emphasis has been put on support for SMEs. In addition, State aid rules have been significantly simplified in the recently adopted General Block Exemption Regulation (GBER) and now offer Member States a wide range of aid measures with a much reduced administrative burden.

In conclusion, the wide range of available support measures enables Member States to facilitate access to finance particularly for SMEs, and so tackle the current financial and economic crisis effectively. State aid should be used where necessary and should be sustainable, in line with the Commission's guidelines directing State aids towards common horizontal objectives such as research, development, innovation, training and a low-carbon economy.

6. PART SIX: LEGISLATIVE AND POLICY DEVELOPMENTS

Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis

In October 2008, the Commission published a Communication¹⁰⁸ providing guidance on how Member States can best support financial institutions in the current financial crisis whilst respecting EU state aid rules and so avoiding excessive distortions of competition. See Part Five.

Prolongation of the Framework on State aid Rules for Shipbuilding

In July 2008, the European Commission decided to prolong the Framework on State aid rules for shipbuilding for three more years, until 31 December 2011.¹⁰⁹ The Commission concluded that the Framework, which came into effect on 1 January 2004¹¹⁰ and had already been prolonged in 2006¹¹¹, had been applied without any problems and did not need to be revised at present. A public consultation conducted by the Commission confirmed general support for the prolongation.

General Block Exemption Regulation (GBER)

On 7 July 2008, the Commission adopted a new General Block Exemption Regulation (GBER), which became effective on 29 August 2008 and since then gives automatic approval for a range of aid measures and so allows Member States to grant such aid without first notifying the Commission.¹¹² As well as encouraging Member States to focus their state resources on aid that will be of real benefit to job creation and Europe's competitiveness, the regulation reduces the administrative burden for public authorities, the beneficiaries and the Commission who will be able to focus its attention on other, more distortive types of aid.

The GBER consolidates into one text the rules previously existing in several separate block exemption regulations: aid to SMEs, R&D aid in favour of SMEs, aid for employment, training aid and regional aid.¹¹³ In addition, the GBER enlarges the categories of State aid covered by the exemption and now authorises 26 different aid measures, among them environmental aid, innovation aid, research and development aid for large companies, aid in the form of risk capital and aid for enterprises newly created by female entrepreneurs.

In line with the Commission's "Better Regulation" agenda, the GBER also harmonises, as far as possible, all horizontal aspects applying to the different aid areas concerned. Moreover, for a series of aid measures covered by existing instruments, the new regulation substantially

¹⁰⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:270:0008:0014:EN:PDF>

¹⁰⁹ [OJ C 173, 8.7.2008, p. 3](#); see also press release [IP/08/1097](#).

¹¹⁰ [OJ C 317, 30.12.2003, p. 11](#).

¹¹¹ [OJ C 260, 28.10.2006, p. 7](#).

¹¹² Commission Regulation (EC) No 800/2008 of 6 August 2008 on the application of Articles 87 and 88 of the Treaty declaring certain categories of aid compatible with the common market, [OJ L 214, 9.8.2008, p. 3](#).

¹¹³ http://ec.europa.eu/comm/competition/state_aid/legislation/block.cfm.

increases the permitted aid intensities and the notification ceilings. This means that higher amounts of SME investment aid, training aid, and employment aid, amongst others, can be granted as compared to the past.

Community Guidelines on State aid to railway undertakings

The Commission adopted on 30 April 2008 the Community guidelines on State aid to railway undertakings.¹¹⁴ With this document, which pays due account to the specific features of rail while ensuring convergence of the sector-based rules with the general rules on State aid, the Commission wants to help promote the liberalisation of the sector, improving its competitiveness and capitalising on its strengths, especially from the environmental angle. The guidelines complement the PSO Regulation which deals in particular with aid in the form of compensation for discharging public service obligations.

The guidelines makes henceforward possible, under certain conditions, to grant regional aid for the purchase and renewal of passenger rolling stock, lifting thereby a prohibition contained in the regional aid guidelines. The guidelines also specify the conditions for applying Article 73 of the EC Treaty, which provides that aid which meets the needs of coordination of transport is compatible with the common market. These guidelines at the same time indicate to Member States how to reconcile with the Treaty's State aid rules the requirement imposed on them by Community legislation to assume the debts of railway undertakings in order to allow them to rectify their financial situation. Finally, the Commission is in addition adapting the rules on restructuring firms in difficulty to be able to respond to situations where the freight division of a railway undertaking has serious economic problems but cannot be restructured by the railway undertaking as a whole.

Block Exemption Regulation for Fisheries

In July 2008, the Commission adopted a new Block Exemption Regulation for the fisheries sector, which is not covered by the GBER.¹¹⁵ The Regulation declares certain types of aid compatible with the common market without prior notification, on condition that they comply with the relevant conditions established under the European Fisheries Fund (EFF) and provided that they do not exceed the threshold of a total amount of aid of €1 million or a total amount of eligible costs per project of €2 million. The Regulation includes all categories of aid covered by the EFF, with the exception of aid for investments in the fleet and aid for sustainable development of fisheries areas. As a result, Member States that wish to grant State aid in the eligible areas may do so by submitting the relevant summary information to the Commission for publication.

¹¹⁴ [OJ C 184 of 22.07.2008, p. 13.](#)

¹¹⁵ Commission Regulation (EC) No 736/2008 of 22 July 2008 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products, [OJ L 201, 30.7.2008, p. 16](#); see also press release [IP/08/1088](#).

Council Regulation (EC) No 744/2008 of 24 July 2008 instituting a temporary specific action aiming to promote the restructuring of the European Community fishing fleets affected by the economic crisis

Also in July, the Council adopted a regulation instituting a temporary specific action aiming to promote the restructuring of the European Community fishing fleets affected by the economic crisis.¹¹⁶ This specific action provides for additional measures within the framework of the EFF until the end of 2010.

Council Regulation (EC) No 1198/2006 on the EFF specifies that, as a general rule, competition rules on State aid set out in Articles 87-89 of the EC Treaty apply to enterprises in the fisheries sector.¹¹⁷ However, these rules shall not apply to financial contributions from Member States to operations provided that they are co-financed by the EFF and implemented as part of an operational programme.¹¹⁸ In view of the urgency and the temporary nature of the measures included in this specific action, the scope of the exemption from State aid rules has been widened to certain aids that, while not being co-financed from Community financial instruments, are granted pursuant to and in conformity with the new regulation. In order to limit possible distortions of competition and adverse effects on the internal market, the exemption is subject to enhanced reporting obligations and applies only to projects with eligible expenses of up to €2 million or a total amount of aid of up to €1 million. State aid granted by Member States with no financing from Community financial instruments and exceeding these limits shall be fully subject to the State aid rules.

¹¹⁶ [OJ L 202, 31.7.2008, p. 1](#); see also press release [IP/08/1120](#) and [MEMO/08/493](#).

¹¹⁷ Article 7(1) of the Council Regulation (EC) No 1198/2006, [OJ L 223, 15.8.2006, p. 1](#).

¹¹⁸ Article 7(2) of the Council Regulation (EC) No 1198/2006, [OJ L 223, 15.8.2006, p. 1](#).

ADDITIONAL INFORMATION ON STATE AID AVAILABLE ON THE WEBSITE

Previous State aid Scoreboards, statistics and indicators available online

This Scoreboard and previous editions can be consulted on the Competition Directorate General's website. Also available are a series of key indicators and a range of statistical information for all EU Member States:

http://ec.europa.eu/comm/competition/state_aid/studies_reports/studies_reports.cfm

Any queries or requests for data should be sent to the scoreboard mailbox at Stateaid-Scoreboard@ec.europa.eu

State aid Register – a second transparency tool

The Commission's State aid Register provides detailed information on all State aid cases which have been the object of a final Commission decision since 1st January 2000 as well as block exemption measures submitted by Member States. It is updated daily and thus ensures that the public has timely access to the most recent State aid decisions.

http://ec.europa.eu/comm/competition/state_aid/register/

Annual Report on Competition Policy

The Commission publishes an Annual Report on Competition Policy which summarises the most important policy and legal developments as well as the latest case-law.

http://ec.europa.eu/comm/competition/annual_reports/

Competition Policy Newsletter

The Competition Policy Newsletter, which is published three times a year by DG Competition, includes a series of articles on specific legislative developments as well as interesting case-law. <http://ec.europa.eu/comm/competition/publications/cpn/>

State aid Weekly e-News

The State aid Weekly e-News, launched in 2006, is distributed free of charge to more than 3500 subscribers. It sets out the activities of the Commission in the area of State aid, including the latest legislative developments, Commission decisions, news, upcoming events, reports and studies. http://ec.europa.eu/competition/state_aid/newsletter/index.html

EFTA State aid Scoreboard

The EFTA Surveillance Authority (ESA) publishes an annual scoreboard on the volume of state aid granted in Iceland, Liechtenstein and Norway.

<http://www.eftasurv.int/information/pressreleases/2008pr/dbaFile14074.html>

METHODOLOGICAL NOTES

The Scoreboard covers State aid as defined under [Article 87\(1\)](#) of the EC Treaty that was granted by the Member States up to the end of 2007. All State aid data refer to the implementation of Commission decisions and not cases that are still under examination. There may be discrepancies with figures published in previous Scoreboards for a number of reasons: first, provisional or estimated figures may now be replaced by final data; second, when the Commission takes a decision on a non-notified aid measure, the aid in question is attributed to the year(s) in which it was awarded. In cases that result in expenditure over a number of years, the total amount is generally attributed to each of the years in which expenditure took place. All data are provided in million (or billion where appropriate) Euro at constant 1995 prices but have been re-referenced on the year 2007. Community funds and instruments are excluded.

See also box on “State aid as defined under Article 87 of the EC Treaty” on page 12.

The following symbols have been used in the Scoreboard:

- n.a. not available
- real zero
- 0 less than half the unit used

Further information on methodological issues may be found on the online Scoreboard: http://ec.europa.eu/competition/state_aid/studies_reports/conceptual_remarks.html

ANNEX: STATISTICAL TABLES

Table 1: Less and better targeted aid: key figures

	State aid in million EUR, 2007		State aid as % of GDP, 2007		Trend in the share of aid to GDP, 2002 - 2007 in % points (1)		Share of aid to horizontal objectives as % of total aid for industry and services, 2007	Trend in the share of aid to horizontal objectives as a % of total aid, 2002 - 2007 in % points (1)
	Total State Aid less railways	Total State Aid for industry and services (i.e. less agriculture, fisheries and transport)	Total State Aid less railways	Total State Aid for industry and services (i.e. less agriculture, fisheries and transport)	Total aid less railways	Total state aid for industry and services		
EU 27	64816	49214	0,53	0,40	-0,07	-0,08	80	14,0
EU 15	57694	45406	0,51	0,40	-0,04	-0,03	80	7,4
EU 12	7123	3808	0,81	0,43	-0,65	-0,85	77	44,5
Belgium	1077	883	0,33	0,27	0,00	-0,01	100	-0,7
Bulgaria	391	27	1,35	0,09	0,07	-0,32	92	33,7
Czech Republic	938	767	0,73	0,60	-1,76	-1,83	100	84,2
Denmark	1405	1166	0,62	0,51	-0,10	-0,09	92	3,4
Germany	16229	14148	0,67	0,58	-0,13	-0,15	79	15,9
Estonia	37	10	0,24	0,07	0,08	-0,01	100	0,8
Ireland	1093	603	0,59	0,32	0,01	-0,01	77	17,8
Greece	729	551	0,32	0,24	-0,03	0,01	98	3,4
Spain	5371	4336	0,51	0,41	-0,05	-0,09	74	3,6
France	9798	6889	0,52	0,37	-0,01	0,00	95	22,4
Italy	5096	3860	0,33	0,25	-0,08	-0,06	89	-11,9
Cyprus	107	63	0,40	0,24	-1,68	-1,41	95	38,2
Latvia	204	42	1,02	0,21	0,66	0,06	100	17,1
Lithuania	177	50	0,63	0,18	0,13	-0,10	96	73,7
Luxembourg	72	46	0,20	0,13	-0,14	-0,07	100	0,0
Hungary	1434	879	1,42	0,87	0,34	-0,03	53	1,7
Malta	99	74	0,79	0,59	-0,35	-0,50	4	-2,9
Netherlands	2316	1355	0,41	0,24	-0,08	0,03	96	2,3
Austria	1006	815	0,37	0,30	0,10	0,12	98	-21,0
Poland	1849	1261	0,60	0,41	-0,85	-1,04	89	62,8
Portugal	2138	2119	1,31	1,30	0,17	0,19	10	-9,0
Romania	1426	296	1,17	0,24	-0,95	-1,24	36	15,5
Slovenia	188	115	0,56	0,34	-0,01	-0,11	84	8,9
Slovakia	273	223	0,50	0,41	0,02	-0,05	76	13,9
Finland	2079	629	1,16	0,35	0,00	0,02	96	-0,4
Sweden	3100	2932	0,93	0,88	0,44	0,44	99	-0,6
United Kingdom	6185	5075	0,31	0,25	-0,03	0,00	62	-12,0
Norway	1819	1368	0,64	0,48	n.a.	n.a.	100	n.a.
Iceland	17	17	0,12	0,12	n.a.	n.a.	87	n.a.
Liechtenstein	1	1	0,03	0,03	n.a.	n.a.	65	n.a.

Note: Data cover all State aid measures as defined under Article 87(1) of the EC Treaty that have been awarded by Member States and examined by the Commission. The Community rules on agricultural and fisheries policies are not covered by the EEA Agreement. Therefore, aid to these sectors is not included for the 3 above-mentioned EFTA countries. (1) Change in percentage points between the annual average for 2002-2004 and that for 2005-2007. Source: DG Competition, DG Energy and Transport, DG Agriculture, DG Maritime Affairs and Fisheries and EFTA Surveillance Authority.

Table 2: Main set of rules adopted since the launch of the State Aid Action Plan in 2005

As outlined in the SAAP roadmap in 2005, the Commission has revised a large number of its guidelines, frameworks and communications. The following table shows the main legislative acts adopted to date.

2005	
SGEI Package	Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest. OJ L 312, 29.11.2005, p. 67 ; press release IP/05/937 Community framework for State aid in the form of public service compensation OJ C 297, 29.11.2005, p. 4 ; press release IP/05/937 Commission Directive No 2005/81 of 28 November 2005 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings. OJ L 312, 29.11.2005, p. 47 ; press release IP/05/937 ; cf. codified version of 16 November 2006, OJ L 318, 17.11.2006, p. 17
Short-term export-credit insurance	Communication of the Commission to Member States amending the communication pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance. OJ C 325, 22.12.2005, p. 22
Regional aid guidelines	Guidelines on national regional aid for 2007-2013. OJ C 54, 4.03.2006, p. 13 ; press release IP/05/1653
2006	
Risk capital guidelines	Community guidelines on state aid to promote risk capital investments in small and medium-sized enterprises. OJ C 194, 18.08.2006, p. 2 ; press release IP/06/1015
Block exemption regulation for regional aid	Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid. OJ L 302, 01.11.2006, p. 29 ; press release IP/06/1453
RDI Framework	Community Framework for State aid for Research and Development and Innovation. OJ C 323, 30.12.2006, p. 1 ; press release IP/06/1600
De minimis regulation	Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to <i>de minimis</i> aid. OJ L 379, 28.12.2006, p. 5 , press release IP/06/1765
2007	
Recovery Notice	Notice from the Commission – Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid. OJ C 272, 15.11.2007, p. 4 ; press release IP/07/1609
Communication on interest rates	Communication from the Commission on the revision of the method for setting the reference and discount rates. OJ C 14, 19.01.2008, p. 6 ; press release IP/07/1912
2008	
Amendment of procedural	Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed

regulation	rules for the application of Article 93 of the EC Treaty. OJ L 82, 25.03.2008, p.1
Environmental guidelines	Community guidelines on state aid for environmental protection. OJ C 82, 01.04.2008, p. 1 ; press release IP/08/80
Guarantee notice	Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees. OJ C 155, 20.06.2008, p. 10 ; press release IP/08/764
General block exemption regulation	Commission Regulation (EC) No 800/2008 of 6 August 2008 on the application of Articles 87 and 88 of the Treaty declaring certain categories of aid compatible with the common market. OJ L 214, 09.08.2008, p. 3 ; press release IP/08/1110

**Table 3: Trend in the number of recovery decisions and amounts to be recovered (1) 2000- 2008
(state of play – 30.06.2008)**

	Date of Decision									Total
	2000	2001	2002	2003	2004	2005	2006	2007	2008 (as of 30 June)	
Number of decisions adopted	16	20	23	10	23	12	6	9	7	126
Total aid known to be recovered (in mio €)	239.0	1146.8	1272.8	1015.0	4862.3	29.2	270.3	270.6	27.7	9133.7
amounts recovered:(In mio €)	217.7	1125.4	1576.0	1230.3	6372.4	21.2	151.8	90.7	28.1	10813.5
Of which:										
(a) Principal reimbursed/or in blocked account	16.7	962.1	1093.3	894.6	3963.4	14.2	94.5	78.5	27.4	7144.7
(b) Aid lost in bankruptcy	201.0	76.3	63.3	0.7	870.9	0.0	45.0	2.0	0.0	1259.2
(c) Interest		87.0	419.4	335.0	1538.1	7.0	12.3	10.2	0.7	2409.6
Aid registered in bankruptcy	15.6	16.9	0.0	133.8	0.0	7.5	0.0	0.0	0.0	173.8
Amount outstanding (2)	21.3	108.4	116.2	119.7	28.0	15.0	130.8	190.1	0.3	729.8
% still pending to be recovered (2)	8.9%	9.5%	9.1%	11.8%	0.6%	51.4%	48%	70%	1%	8.0%

Notes: (1) Only for decisions for which the aid amount is known. (2) Total aid known to be recovered less principal reimbursed and aid lost in bankruptcy, amount excluding interest. Source: DG Competition.