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REPORT

State Aid Scoreboard

- spring 2005 update -

(presented by the Commission)

EXECUTIVE SUMMARY

Starting with the Lisbon agenda in 2000 which launched the process of reducing the general level of State aids and shifting the emphasis from supporting individual companies or sectors towards tackling horizontal objectives of Community interest, the Council has adopted a series of conclusions on State aid. In 2001, at the Stockholm European Council, Member States committed themselves "to demonstrate a downward trend in State aid in relation to GDP by 2003, taking into account the need to redirect aid toward horizontal objectives of common interest, including cohesion objectives." The latest European Council held on 22-23 March 2005 reiterated its call to Member States "to continue working towards a reduction in the general level of State aid, while making allowance for any market failures." Similarly a recent Commission Communication[1] on the mid-term review of the Lisbon Strategy stated that Member States "should reduce and redirect State Aids to address market failures in sectors with a high growth potential as well as to stimulate innovation."

While a slight decline in the level of aid in relation to GDP can be observed in the majority of Member States, the underlying trend since the launch of the Lisbon agenda is more stable than downward. In contrast, Member States appear to have responded more positively to the call for the second part of the equation, i.e. "better targeted State aid". As well as measuring Member States' progress towards these goals, this update of the Scoreboard includes a special focus on aid to the broadcasting sector and a summary of ongoing efforts to recover unlawful aid.

This Scoreboard includes a concise update of the state aid situation in the new Member States over the four-year period prior to accession. The data are not directly comparable with those of the EU-15 Member States for various methodological reasons and therefore EU-25 figures will be produced only from the reference year 2004. See autumn 2004 Scoreboard for details.

Main findings

Slight decline in level of State aid in relation to GDP but the underlying trend is more stable than downward

The overall level of State aid[2] granted by the fifteen Member States was estimated at € 53 billion in 2003. From the relatively high levels of State aid in the early and mid-nineties, the overall volume of aid[3] fell dramatically from € 74 billion in 1996 to € 55 billion in 1999. Between 1999 and 2001, total aid hovered around the € 55 billion mark, rising to € 57 billion in 2002 but then falling in 2003 by some € 4 billion to € 53 billion.

Total State aid amounted to 0.57% of EU-15 GDP in 2003 (or 0.40% excluding the agriculture, fisheries and transport sectors). The underlying trend is stable rather than downward: for the Union as a whole, total aid amounted to 0.59% (or 0.43% excluding the agriculture, fisheries and transport sectors) of GDP on average for the period 2001-2003 compared with 0.61% (or 0.44% excluding the agriculture, fisheries and transport sectors) during 1999-2001. A slight decrease can be observed in ten Member States.

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1 (« Working together for growth and jobs » - COM(2005) 24, 2.2.2005, Section 3.2.2.

2 Total State aid in the sense of Article (87)1 of the Treaty, covering manufacturing, services, coal, agriculture, fisheries and transport with the exception of the railway sector.

3 Total excludes aid to the railway sector.

In sectoral terms, around € 32 billion of aid was earmarked for the manufacturing and service sectors, € 14 billion for agriculture and fisheries, just over € 5 billion for coal and a little over € 1 billion for the transport (excluding railways) sector. Finally, in terms of comparing the Member States, the EU-15 average of 0.40% (total aid excluding the agriculture, fisheries and transport sectors) masks significant disparities: the share of aid to GDP ranged from less than 0.20% in the Netherlands and the United Kingdom to 0.68% in Germany and 0.96% in Portugal. In absolute terms, Germany granted the most aid (€ 16 billion) in 2003 followed by France (€ 9 billion) and Italy (€ 7 billion).

Clear shift in emphasis from supporting individual companies or sectors towards tackling horizontal objectives

In the mid-1990s when State aid levels were much higher, the share of total aid earmarked for horizontal objectives such as R&D, small and medium-sized enterprises, environment, employment and training and regional economic development was around 50%. In line with the commitments undertaken at various European Councils, Member States have continued to redirect aid towards such horizontal objectives. Over the period 1999-2001 to 2001-2003, the share of total aid for horizontal objectives increased by 5 percentage points, largely as the result of significant increases in aid for the environment and energy saving (+6 points) and R&D (+2 points) as well as a reduction in sectoral aid for some Member States.

By 2003, the share of horizontal aid had risen to 79% of total aid (excluding agriculture, fisheries and transport). The four main horizontal objectives were environment and energy saving (23% of total aid), regional economic development (21%), R&D (14%) and SMEs (13%) – see Table 7. The remaining 21% was aid directed at specific sectors (mainly coal) including aid to rescue and restructure ailing firms. Any interpretation of the relatively low share of sectoral and ad hoc aid in the Union should take into account that some aid measures cannot 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. Another factor that keeps the volume of sectoral and ad hoc aid artificially low is that Commission decisions which follow a formal investigation procedure 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 clearly underestimated.

Notwithstanding these measurement difficulties, in ten of the fifteen Member States, more than 90% of all the aid awarded in 2003 was earmarked for horizontal objectives. However, in Germany (73%), Spain (63%), France (76%), Ireland (64%) and Portugal (19%), the share was significantly lower. The high share of sectoral aid in Portugal was due largely to an increase in expenditure on a tax scheme in Madeira that supports financial services. In Ireland, although aid awarded through the Irish Corporation Tax has decreased significantly, it still accounts for a relatively high share of total aid. Germany, France and Spain have relatively high shares of aid to the coal sector.

In the new Member States, the share of pre-accession aid to horizontal objectives was low but a large proportion of existing aid measures were earmarked for horizontal objectives

In the context of redirecting aid, prior to accession, aid granted for horizontal objectives accounted for around 24% of total aid in the new Member States. This share is rather low in comparison to 79% in the EU-15 Member States in 2003. The disparity can be explained in part by the relatively strong support of several industries (e.g., financial sector, coal and steel) before accession in the context of privatisation or to ensure viability. There were large disparities between countries in the share of sectoral objectives ranging from 28% of total aid in Slovenia to 90% or more in Lithuania, the Czech Republic and Malta. In Estonia, no aid was earmarked for sectoral objectives. It is encouraging to note that a large proportion of the aid measures qualifying as existing aid upon accession were earmarked for horizontal objectives.

Overall level of aid earmarked for the least developed regions remains around the € 8 billion mark, around one fifth of total aid

In the EU-15 an estimated € 7.6 billion of aid was earmarked exclusively for the least developed regions, the so-called assisted ‘a’ regions in 2003. This represented around one fifth of total aid (less agriculture, fisheries and transport). Aid to the assisted ‘a’ regions, which are almost identical to the Objective 1 regions under the EU Structural Funds, fell dramatically from a peak of € 28 billion in 1993 to € 9 billion in 2000, due largely to a reduction in aid in Germany and Italy. While aid to the least developed regions continues to decrease in Germany (only € 1 billion was exclusively earmarked in 2003) there has been an upturn in Italy.

Majority of Member States tend to provide aid to the manufacturing and service sectors in the form of grants

As to the instruments used when aid is awarded to the manufacturing and service sectors, grants were by far the most frequently used form making up around two-thirds (67%) of total State aid in EU-15 during the period 2001-2003. In addition to aid awarded through the budget, other aid is paid through the tax or social security system. Tax exemptions made up 23% of the total. While Belgium, Denmark, Spain, Luxembourg, Austria and Sweden provided at least 85% of their aid in the form of grants, other Member States tended to make greater use of tax exemptions, particularly Germany (29%), Ireland (62%) and Portugal (82%).

Following the adoption of the Broadcasting Communication in 2001, the Commission has analysed the financing of broadcasting systems in several Member States.

Starting in the seventies, broadcasting has gradually been opened up to competition. Nevertheless, as has been recognised in Community Primary law, namely the Amsterdam Protocol concerning public service broadcasting, the importance of broadcasting for social, democratic and cultural life continues to explain Member State’s willingness to compensate for well-defined public service obligations complying with the principles of entrustment, transparency[4] and proportionality. This update of the Scoreboard includes an in-depth look at the State financing of public service broadcasting by describing the State aid rules applicable in this area.

The Commission continues to investigate the financing of broadcasting systems in several Member States to check whether or not a particular case involves State aid and if so whether

[4] It should however be noted that Directive 2004/18/EC on public procurements does not apply to broadcasting activities.

there has been any overcompensation. In this context, new challenges are expected to emerge as technological developments further change the broadcasting landscape.

Around 12% of all State aid cases registered in 2004 were non notified measures

In 2004, there were just under 700 cases registered by the Commission of which 570 were notified by Member States and 87 (around 12%) non-notified cases initiated by the Commission. Of the 87 non-notified cases, 20 concerned Italy, 19 Germany, 11 the United Kingdom and 7 France. Around 47% of the cases concerned the agricultural sector, 43% the manufacturing and service sectors, 7% transport and energy and 4% the fisheries sector.

With a view to reducing the administrative burden for specific types of aid, State aid block exemption regulations have been introduced over the last four years. To date, more than 900 information sheets have now been submitted covering aid to SMEs, training, employment and, more recently, certain types of aid in the fisheries sector and aid to SMEs in the agricultural sector. Five Member States, Italy (26% of the total), the United Kingdom (22%), Germany (11%), Spain (8%) and Belgium (7%) accounted for 75% of all the information forms submitted in 2004. Compared with 2003, virtually all other Member States increased their use of the possibilities offered to exempt aid. Six of the ten new Member States also submitted information forms on exempted aid by the end of 2004.

In 2004, the Commission approved the award of State aid in 93% of its decisions

In 2004, the Commission took 566 final decisions. In around 87% of cases, the Commission approved the aid without carrying out a formal investigation procedure. A further 6% were approved at the end of a formal investigation procedure while in the remaining 7% of cases the Commission took a negative decision after concluding that the aid did not comply with State aid rules and hence was not compatible with the Common Market.

Of the 118 negative decisions over the period 2001-2003, more than half concerned Germany (35) and Italy (25). Only two other Member States, Spain (13) and France (12) reached double-figures with as many as nine of the EU-15 Member States having less than five negative decisions in the last three years.

Around € 4.6 billion of unlawful aid remains to be recovered

Recovery of incompatible state aid is a lengthy process: 21 of the recovery decisions still pending at the end of 2004 were adopted before the year 2000. Of the 91 decisions adopted between 2000 and 2004, only 21 were closed by the end of 2004.

Of the € 9.7 billion of aid (for which the aid amount is known) to be recovered under decisions adopted since 2000, some € 6.7 billion (including interest) had been effectively recovered by the end of 2004. Four Member States (Germany, Spain, Italy and France) account for more than 90% of the pending recovery cases.

INTRODUCTION

The main aim of this update of the Scoreboard is to assess Member States progress towards meeting the Lisbon objectives and more specifically the specific commitments agreed at Stockholm in 2001 to show a downward trend in the level of State aid relative to GDP by 2003 while redirecting aid from specific sectors to horizontal objectives. The recent European Council held on 22-23 March 2005 reiterated its call to Member States "to continue working towards a reduction in the general level of State aid, while making allowance for any market failures."

As underlined by the European Council of November 2004 and the Commission Communication[1] on the mid-term review of the Lisbon Strategy in February 2005, there is a need for renewed impetus to the so-called Lisbon Strategy. As described in the Commission Communication on "A pro-active Competition Policy for a Competitive Europe"[5], State aid policy does contribute to the Lisbon objectives by avoiding distortions of competition while allowing aid to horizontal measures which address market failures.

While state aid levels fell dramatically in the 1990s, since the year 2000 the trend has been more stable than downward. In contrast, throughout the Union Member States have shifted or are shifting the emphasis from supporting individual companies or sectors towards tackling horizontal objectives of Community interest.

Clearly there are areas in which more progress can be achieved. Under the Danish Presidency in 2002, Council conclusions on State aid were adopted in which Member States were invited not only to "consider before granting State aid whether it is targeted on clearly identified market failures…" but to also consider "whether an intervention in the form of State aid is the most appropriate and effective way to address these issues". Furthermore, Member States pledged to continue to "develop the use of "*ex-ante*" and "*ex-post*" evaluations of individual State aid and State aid schemes in order to monitor impact on competition and effectiveness of the aid". While significant progress has been made in several Member States (see autumn 2003 and 2004 updates of the Scoreboard), a more concerted effort is required to ensure that distortions of competition are reduced to a minimum and that, also in the face of constraints on national public finances, the granting of aid is targeted as far as possible at meeting the Lisbon objectives.

The Scoreboard is divided into three main parts. Part one looks at the extent to which Member States have responded to the Lisbon Strategy by first providing an overview of the amount and type of (potentially) distortive State aid awarded by the Member States in 2003 and then examining the underlying trends. This part also includes a focus on how the Commission has dealt with a series of cases on State aid awarded to public service broadcasters, an area which has aroused much interest in recent years.

Part Two looks in some detail at State aid control procedures and includes an extensive section on the recovery of unlawful State aid. Finally, part three summarises ongoing work to modernise State aid control through legislative and policy means.

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[5] COM(2004) 293, 20.4.2004.

Improvements have been made to the quality and timeliness of the State aid data published in this Scoreboard. A revised Standardised Reporting Format[6] means that Member States submit information on all existing State aid measures in a harmonised way. The revision also aims to improve the timeliness of the data so that expenditure figures for 2004 should be published already in the autumn 2005 Scoreboard.

In addition to this paper edition, a permanent online Scoreboard consisting of a series of key indicators and a range of statistical information for the EU Member States is available on the on the homepage of the Competition Directorate General's Internet site (http://europa.eu.int/comm/competition/state_aid/scoreboard/).

6 The new provisions can be found in Commission Regulation (EC) No 794/2004 of 21 April 2004. Annex IIIA covers all sectors except agriculture (Annex IIIB) and fisheries (Annex IIIC) : http://europa.eu.int/eur-lex/en/archive/2004/l_14020040430en.html

What is a State Aid ?

This Scoreboard covers State aid as defined under Article 87(1) EC Treaty[7] that has been granted by the EU Member States up to the end of 2003 and has been the subject of a final Commission decision[8]. General measures and public subsidies that have no affect 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. All aid compensating for services of general economic interest (SGEI) is also excluded from the Scoreboard (see below).

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 evolved 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://europa.eu.int/comm/competition/state_aid/register/ or in recent Annual Competition Reports at http://europa.eu.int/comm/competition/annual_reports/.

The distinction between State aid measures and general economic support measures should be borne in mind when interpreting some of the data included in the Scoreboard. Some of the detailed statistical tables in the online Scoreboard show that in some Member States the amount of State aid for some horizontal objectives such as employment or training has fallen or remained stable. This does not however mean that public expenditures on these activities have 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 case[9], 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 aid compensating for SGEI is 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, e.g., in the Deutsche Post case[10].

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

[7] 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.

[8] Expenditure under the block exemption regulations is also included.

[9] Case 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.

[10] C 61/1999 in which the Commission reached a negative decision on 19.6.2002.

1. PART ONE: PROGRESS TOWARDS THE LISBON AGENDA

This chapter provides an overview of (potentially) distortive State aid granted in the EU Member States up to 2003 in order to measure Member States response to the Lisbon agenda and more specifically the commitments agreed at Stockholm in 2001 to show a downward trend in the level of State aid relative to GDP by 2003 while redirecting aid from specific sectors to horizontal objectives.

1.1. State aid in absolute and relative terms

Total State aid[11] granted by the fifteen Member States was estimated at € 53 billion in 2003. In absolute terms, Germany granted the most aid (€ 16 billion) in 2003 followed by France (€ 9 billion) and Italy (€ 7 billion).

Table 1: State aid awarded in the EU-15 Member States, 2003

	EU-15	BE	DK	DE	EL	ES	FR	IE	IT	LU	NL	AT	PT	FI	SE	UK
Total state aid less railways in billion €	52.8	1.1	1.3	16.4	0.6	4.0	8.8	0.9	7.1	0.1	1.5	1.5	1.6	2.0	1.6	4.2
Total state aid less agriculture, fisheries and transport in billion €	37.3	0.7	0.9	14.4	0.3	3.2	4.8	0.4	5.7	0.0	0.5	0.6	1.3	0.5	1.0	3.0
Total aid less railways as % of GDP	0.57	0.40	0.67	0.77	0.40	0.54	0.57	0.69	0.54	0.30	0.33	0.66	1.24	1.41	0.60	0.26
Total aid less agriculture, fisheries and transport as % of GDP	0.40	0.24	0.49	0.68	0.22	0.43	0.31	0.31	0.44	0.15	0.11	0.26	0.96	0.36	0.39	0.19

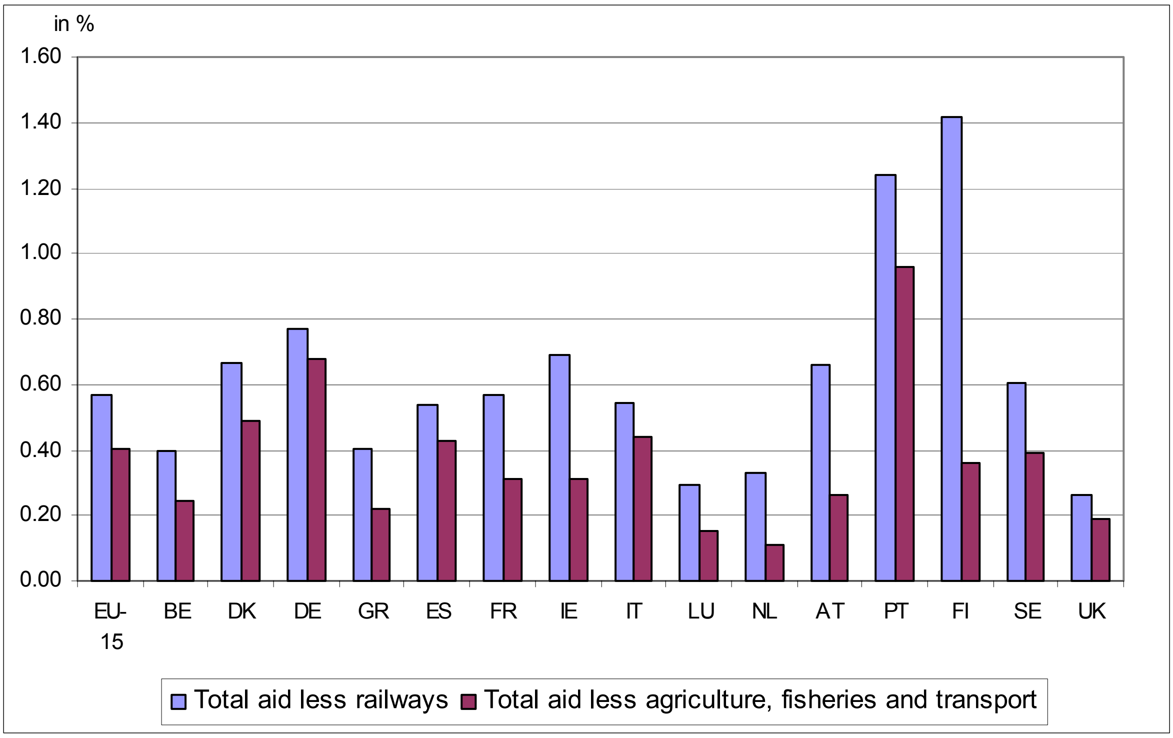
(Potentially) distortive State aid as defined under Article 87(1) EC Treaty that has been granted by the fifteen Member States for all sectors except railways and has been examined by the Commission. All data are quoted at constant prices. Source: DG Competition

Disparities between Member States in the share of State aid as a percentage of GDP

In relative terms, State aid amounted to 0.57% of EU Gross Domestic Product (GDP) in 2003. This average masks significant disparities between Member States: the share of total aid to GDP ranges from 0.26% in the United Kingdom to 1.41% in Finland (Table 1). The high proportion in Finland can be explained by the relatively large amount of aid to agriculture which represents more than 70% of total aid in this country. Indeed, due to the particularities associated with aid to agriculture and fisheries, it is worth looking at total aid less these sectors. This second indicator produces a rather different ranking of Member States (Graph 1). For example, such aid in Finland represents 0.36% of GDP, just below the EU-15 average of 0.40%. Germany (0.68%) and Portugal (0.96%) remain well above the average.

11 The total covers aid to manufacturing, services, coal, agriculture, fisheries and part of the transport sector but excludes aid to the railway sector (see section 1.3).

Graph 1: State aid as a percentage of GDP, 2003



Source: DG Competition

Downward trend in the level of State aid in the vast majority of Member States

From the relatively high levels of State aid in the early and mid-nineties, the overall volume of aid[12] fell dramatically from € 74 billion in 1996 to € 55 billion in 1999 (Table 2). The four Member States that contributed most to this marked decrease were Italy, Germany, France and the United Kingdom. In Germany, this can be attributed to the phasing out of the enormous restructuring programme[13] carried out in the new German Bundesländer. In Italy too, aid to the least developed regions fell sharply while in France, aid levels were particularly high in the mid to late 1990s due to the large amounts of rescue and restructuring aid awarded to the banking sector. In the United Kingdom, aid to the coal sector dropped considerably over this period.

Between 1999 and 2001, total aid hovered around the € 55 billion mark, rising to € 57 billion in 2002 but then falling in 2003 by some € 4 billion to € 53 billion. However, the underlying trend as measured by the two periods 1999-2001 and 2001-2003 does not show any significant change in the overall level of aid (Table 2).

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12 Total excludes aid to the railway sector.

13 Aid given via the Treuhandanstalt or the Bundesanstalt für vereinigungsbedingte Sonderaufgaben.

Table 2: Trend in the level of State aid, EU-15, 1992-2003

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Average 1999-2001	Average 2001-2003
Total state aid less railways in billion €	75.1	80.2	77.3	76.0	73.9	93.8	62.8	55.0	55.2	55.3	57.4	52.8	55.2	55.2
Total state aid less agriculture, fisheries and transport in billion €	57.9	64.1	59.0	56.4	55.4	74.9	47.6	39.0	39.8	40.2	40.9	37.3	39.7	39.5
Total aid less railways as % of GDP	1.09	1.18	1.10	1.00	0.95	1.15	0.74	0.63	0.60	0.59	0.61	0.57	0.61	0.59
Total aid less agriculture, fisheries and transport as % of GDP	0.84	0.94	0.84	0.74	0.71	0.91	0.56	0.45	0.43	0.43	0.44	0.40	0.44	0.42

Note: The exceptionally high figure in 1997 can be largely attributed to the Credit Lyonnais case in France. Source: DG Competition.

At the Stockholm European Council in 2001, Member States pledged to demonstrate a downward trend in State aid in relation to GDP by 2003. This indicator can be measured by looking at year on year changes, i.e. the trend from 2002 to 2003 or by observing the underlying trend over the periods 1999-2001 and 2001-2003. In order to eliminate as far as possible annual fluctuations, the latter option is preferred. For the Union as a whole, total aid amounted to 0.59% of GDP on average for the period 2001-2003 compared with 0.61% during 1999-2001. A slight decrease can be observed in ten Member States. Ireland experienced the sharpest fall between the two periods under review. In Ireland, this is primarily the result of a cut in the Irish Corporation Tax[14] coupled with an increase in GDP. In contrast, aid in relation to GDP increased slightly in four Member States though for three of them the rise can be explained largely by increases in aid for horizontal objectives: R&D and environment aid in the United Kingdom, aid for energy saving in Sweden, and aid for several horizontal objectives including cohesion in Italy. In spite of the increases, these three Member States lie below the EU-15 average. In Portugal, the increase is due largely to a sizeable increase in a regional aid tax scheme in Madeira that mainly supports financial services[15] (Graph 2).

In making comparisons between Member States, it is important to bear in mind the effect that the trend in GDP has on this indicator. Member States which have experienced relatively high economic growth over the period under review could theoretically increase the level of aid and still demonstrate a downward trend.

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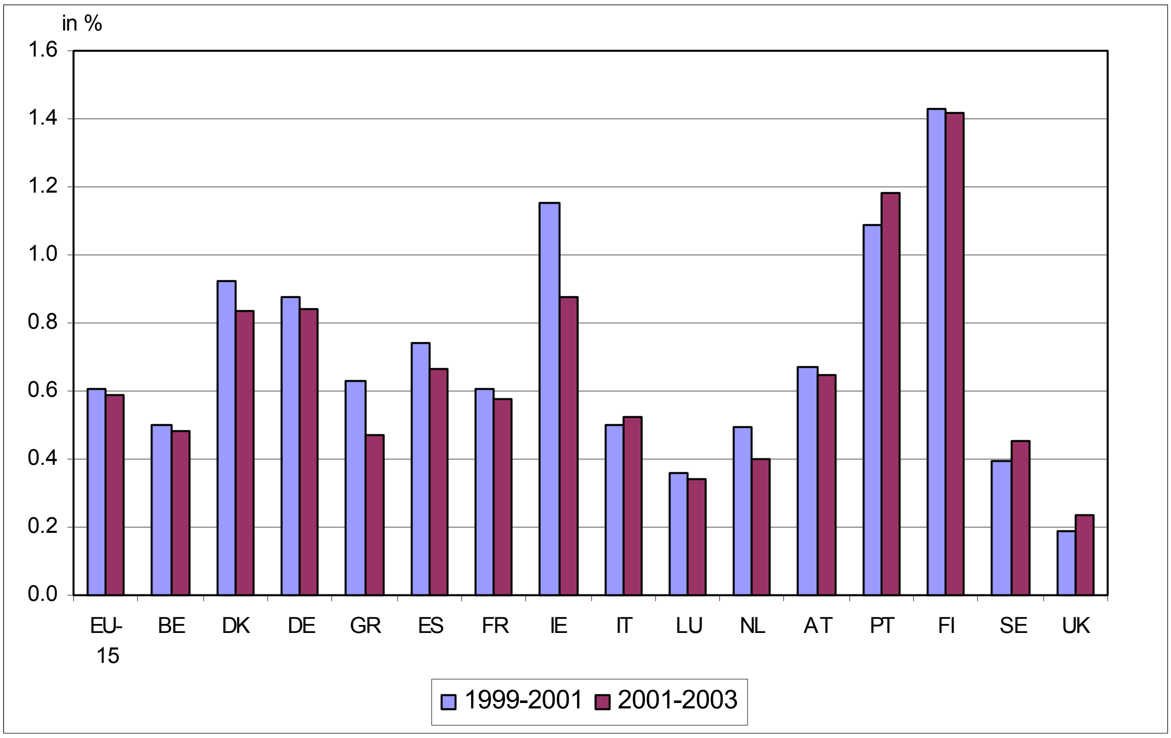
14 The rate of corporation tax in Ireland has been cut progressively in recent years and is 12.5% from 2003. This has reduced the comparative value of the preferential 10% rate to the manufacturing sector, therefore contributing to the decline, in monetary terms, of aid to this sector.

15 Although the scheme was stopped in 2000 and there are no new companies benefiting from the aid, there is considerable ongoing expenditure. Payments will cease in 2011.

Graph 2: Trend in State aid as a percentage of GDP, 1999 – 2003 (Stockholm 'Reduction' indicator)



Source: DG Competition.

1.2. Sectoral distribution of aid

Sectoral distribution of aid varies considerably among Member States and over time

The data currently available do not provide an accurate picture of the final recipients of the aid. Nevertheless, they do give some indication as to which sectors are favoured by each Member State. In 2003, around 60% of State aid in the Union was earmarked for the manufacturing[16] and service sectors. A further 27% was directed towards agriculture[17] and fisheries, 10% for coal and the remaining 2% going to the transport (excluding railways) sector (Graph 3)

There are significant differences between Member States in the sectors to which they direct aid (Table 3). Aid directed at the manufacturing and service sectors represented between 70% and 80% of total aid in Denmark, Italy, Portugal and the United Kingdom. Aid to the agricultural and fisheries sectors accounted for 20% or less of overall aid in Denmark, Germany, Spain and Italy while in Austria, the Netherlands and Finland the share was more than 60%. Aid to the coal industry made up 20% of total aid in Germany and 28% in Spain.

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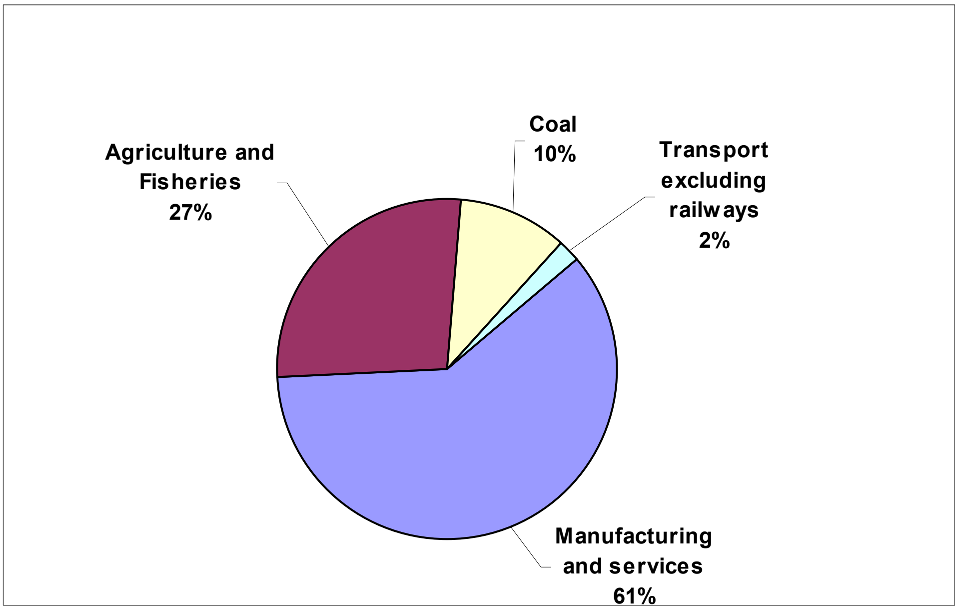
16 For the purposes of the Scoreboard, the manufacturing sector includes aid for steel, shipbuilding, other manufacturing sectors, aid for general economic development and aid for horizontal objectives including research and development, SMEs, environment, energy saving, employment and training for which the specific sector is not always known. As a result, data on aid to manufacturing may be overestimated.

17 Data for the agricultural sector refer to the year 2002 as figures for 2003 are not yet available.

Between 1999-2001 and 2001-2003, this sectoral distribution remained relatively unchanged.

Graph 3: Total State aid by sector, EU-15, 2003



Note: (Potentially) distortive State aid as defined under Article 87(1) EC Treaty that has been granted by the fifteen Member States for all sectors except railways and has been examined by the Commission. Source: DG Competition, DG Transport and DG Fisheries and DG Agriculture. Data for agriculture refer to the year 2002.

Table 3: Sectoral distribution of aid by Member State, 2003

	% of total							Million euro
	Manufacturing	Services (including tourism, financial, media and culture)	Agriculture	Fisheries	Coal	Transport excluding railways	Other non-manufacturing	Total
EU-15	55	6	26	1	10	2	0	52775
BE	57	4	37	0	-	1	-	1075
DK	71	3	20	0	-	6	-	1254
DE	62	5	12	0	20	1	0	16431
EL	51	2	44	2	-	-	1	615
ES	49	2	18	3	28	0	0	4019
FR	40	3	40	0	10	5	0	8827
IE	37	8	55	1	-	0	-	934
IT	74	6	16	1	-	3	0	7087
LU	51	-	49	-	-	-	-	71
NL	33	0	66	1	-	-	-	1505
AT	36	3	60	0	-	0	-	1495
PT	14	63	22	1	-	0	-	1616
FI	24	1	74	0	-	0	-	2028
SE	57	7	25	0	-	10	0	1609
UK	70	0	24	2	1	3	1	4209

Due to the rounding of figures, the percentages of some Member states do not sum up to exactly 100. Source: DG Competition, DG Transport and DG Fisheries and DG Agriculture. Data for agriculture refer to the year 2002.

1.3. State aid to the transport sector

The Commission's State aid control in the transport sector is rather complex arising from the need to take account not only of the general provisions on State aid, but also the special rules in the Treaty and secondary legislation dealing specifically with transport, in particular Article 73 of the Treaty as implemented by Regulations (EEC) No 1191/69[18], (EEC) No 1107/70[19] and (EEC) No 1192/69[20]. In addition, to reinforce the Internal market and economic and social cohesion, Article 154 EC Treaty provides for Community support, in the context of open and competitive markets, of trans-European networks. The transport sector, in particular the railways, continues to benefit from a considerable amount of public financial support. Relatively large subsidies are paid as compensation for the provision of services of general economic interest (SGEI) and, as such, some of them are exempted from prior notification to the Commission[21]. This may also apply to a substantial part of public investment in transport infrastructures that are open to all users on a non-discriminatory basis and which do not benefit a particular undertaking carrying out an economic activity. As such these subsidies do not constitute State aid in the meaning of Article 87(1).

For the transport sector as a whole, excluding railways, around € 1.5 billion of aid was awarded per year over the period 2001-2003. This represents an increase of around 50% in relation to the period 1999-2001 (Table 4).

Two-thirds of total transport aid (around € 1 billion) was awarded to the maritime sector every year during the period 2001-2003. Sizeable amounts were given by Denmark, France, Italy, the Netherlands, Sweden and the United Kingdom.

Before liberalisation of the airline sector, considerable amounts of aid (exceeding € 2.5 billion in 1994 and 1995) were awarded to national airlines for restructuring in the mid-nineties. Since 1997, however, aid levels to the industry have fallen dramatically though some aid continues to be authorised. Over the period 2001-2003, an annual average of € 265 million of aid was awarded to the air transport sector (Table 4). The increase as compared to the previous period is mainly due to the impact that the 11/9/2001 attacks had on the aviation industry and the subsequent public support measures that became necessary following those attacks.

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18 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.

19 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.

20 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.

21 In particular, Article 17(2) of Regulation (EEC) 1191/69 exempts from the notification procedure compensations paid pursuant to the provisions laid down in the regulation.

Table 4: State aid to the transport sector (excluding railways), 1999-2003

€ million

Transport sector	Annual average 1999-2001	Annual average 2001-2003
Road and combined transport	129	196
Maritime transport	691	998
Inland water transport	4	3
Air transport	116	265
Total	**940**	**1 462**

Source: DG Energy and Transport

Railways

The Commission has for some years pursued a policy of shifting the balance between modes of transport and promoting modes that are less damaging to the environment in order to achieve a sustainable transport system. In its 2001 White Paper on a common transport policy[22], the Commission recalled that rail transport was the strategic sector on which the success of the efforts to shift the balance will depend. The Commission therefore continues to take a favourable approach to aid in the rail sector, both with regard to rail services and, in particular, to investments in rail infrastructure which, due to heavy investments costs, are not viable without public co-financing. For example, in 2002 the Commission took some important decisions related to the infrastructure management of the main national railway network in the United Kingdom. First, it approved a financial rescue package to ensure the continued provision of rail infrastructure services, without which the UK rail sector risked imminent collapse. Subsequently, the Commission approved a financial package to allow a newly established company, Network Rail, to take over responsibility for operating and managing the UK rail network on a not-for-profit basis. The overall figure of around € 36 billion was deemed not to constitute State aid.

Much of the public financial support to the 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 Treaty, or because it represents compensation for public services in accordance with Regulation (EEC) No 1191/69. Member States are however required to report overall public expenditure to this sector. Disparities between Member States may reflect different interpretations of the scope of this annual reporting exercise (Table 5).

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[22] White Paper "European Transport Policy for 2010: Time to Decide".

Table 5: Subsidies(1) to the railway sector, 1998-2004

in million current €

	1999	2000	2001	2002	2003	2004
EU-15	20.221	26.308	26.150	27.486	24.891	n.a.
BE	1.783	1.815	1.843	1.905	2.024	1.909
DK	120	181	197	213	202	243
DE	5.218	4.760	4.871	4.887	4.433	3.475
EL	514	446	625	552	636	n.a.
ES	1.061	1.112	1.107	1.098	1.089	1.119
FR	4.577	4.857	6.146	6.244	4.890	6.205
IE	41	206	219	277	321	180
IT	3.822	4.578	5.045	5.483	4.268	3.920
LU	112	134	162	178	201	207
NL	1.693	1.974	2.613	2.865	3.232	2.668
AT	15	13	13	16	13	n.a.
PT	9	8	13	15	35	36
FI	357	330	283	331	407	488
SE	763	817	816	844	n.a.	n.a.
UK	137	5.077	2.198	2.577	3.141	n.a.

(1) Includes all public subsidies that have been communicated to the Commission as well as subsidies that have been notified and authorised by the Commission under relevant State aid rules. However the figures exclude compensation for services of general economic interest. Data for EL, AT, PT and SE are provisional. Source: DG Energy and Transport.

See also section 3.9 on legislative and policy developments in the transport sector.

1.4. State aid to the coal and steel sectors

The European Coal and Steel Community Treaty expired on 23 July 2002 upon which a new Council Regulation was established as the new legal framework for state aid to the Community coal industry[23].

The overall amount of State aid to the coal sector in the Union of fifteen continued to decrease from an annual average of € 7.1 billion for the period 1999-2001 to € 6.1 billion for the period 2001-2003. Germany contributed most to this fall (Table 6).

In 2003, around € 5.4 billion was granted to the EU-15 coal sector with some 60% of this figure related to current production. As from 2003, aid to current production will decrease significantly and steadily in line with the agreements on the reduction of volumes of aid to the coal industry until 2005. 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.

Only four Member States granted aid to the coal sector in 2003: Germany (€ 3.3 billion), Spain (€ 1.1 billion), France (€ 900 million) and the United Kingdom (€ 22 million). With regard to Germany, the Commission approved the restructuring plan for the period 2003-2005, which foresees a reduction in total aid from € 3.3 billion in 2003 to € 2.7 billion in 2005. Spain also notified a restructuring plan concerning the period 2003-2005, but the

[23] Council Regulation (EC) No 1407/2002 of 23 July 2002. In addition, the provisions of Article 88 EC Treaty and Council Regulation (EC) No 659/1999 also apply.

Commission has opened an investigation procedure and has not yet approved the aid measures. Finally, aid measures were approved to cover the costs of closure of the last underground mines in France which closed in April 2004 as well as for an investment aid scheme in the United Kingdom covering the period 2003-2005 and amounting to just under € 90 million.

Table 6: State aid to coal mining, 1999 - 2003

	Yearly average of aid not destined to current production (in million €)		Yearly average of aid destined to current production (in million €)	
	1999 - 2001	**2001 - 2003**	1999 - 2001	**2001 - 2003**
EU-15	2413	**2673**	4688	**3463**
DE	990	**1125**	3685	**2610**
ES	759	**836**	786	**614**
FR	665	**705**	384	**280**
UK	-	**8**	93	**46**

Note: The Commission has not yet approved the aid to the Spanish coal industry for 2003. Source: DG Energy and Transport

State aid to the steel sector fell dramatically from € 424 million in 1997 to € 58 million in 1998 after which it has remained relatively stable. A total of € 95 million was awarded in 2003 almost exclusively for environmental purposes.

1.5. State aid to the shipbuilding sector

The amount of State aid to the shipbuilding sector fell from an annual average of € 1 151 million for the period 1999-2001 to € 658 million for the period 2001-2003. The highest amounts of aid were given to the restructuring of public yards in Spain in 2000 (just over € 1 billion). In 2003, a total of € 685 million was granted to the EU-15 shipbuilding sector mainly by Germany (55%), France (13%) and Denmark (8%).

Some 55% of the overall figure constituted operating aid, and represented essentially the use of the temporary defensive mechanism (TDM) schemes approved by the Commission pursuant to a Council Regulation permitting exceptionally and temporarily direct aid in support of contracts for the building of container ships, chemical and product tankers and LNG carriers. In 2004, the Council decided to extend the TDM until 31 March 2005 when it expires definitively.

1.6. State aid for horizontal objectives

State aid for horizontal objectives, i.e. aid that is not granted to specific sectors, is usually considered as being targeted to market failures and as being less distortive than sectoral and ad hoc aid. Research and development, safeguarding the environment, energy saving, support to small and medium-sized enterprises, employment creation, the promotion of training and aid for regional development are the most prominent horizontal objectives pursued with State aid. In contrast, aid to support specific sectors is likely to distort competition more than aid for horizontal objectives and also tends to favour other objectives than identified market failures. Moreover, a significant part of such aid is granted to rescue or restructure companies in difficulty, one of the most potentially distortive types of State aid.

Due to data constraints, this section looks at horizontal objectives in the context of total aid less agriculture, fisheries and transport.

In ten of the EU-15 Member States, more than 90% of all the aid awarded in 2003 was for horizontal objectives, including cohesion

In the EU-15 aid earmarked for horizontal objectives, including cohesion objectives, accounted for 79% of total aid less agriculture, fisheries and transport in 2003. The four main horizontal objectives were environment and energy saving (23% of total aid), regional economic development (21%), R&D (14%) and SMEs (13%) – see Table 7.

The remaining 21% was aid directed at specific sectors (mainly coal) including aid to rescue and restructure ailing firms. In interpreting these figures, however, it is important to bear in mind that some aid measures can not be quantified. Although the number of 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. Another factor that keeps the volume of sectoral and ad hoc aid artificially low is that Commission decisions which follow a formal investigation procedure 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 clearly underestimated.

In ten of the fifteen Member States, more than 90% of all the aid awarded in 2003 was earmarked for horizontal objectives, including cohesion. However, in Germany (73%), Spain (63%), France (76%), Ireland (64%) and Portugal (19%), the share was significantly lower. The high share of sectoral aid in Portugal was due to the previously mentioned regional aid tax scheme in Madeira. In Ireland, although aid awarded through the Irish Corporation Tax[24] has decreased significantly it still accounts for a relatively high share of total aid. Finally, Germany, France and Spain have relatively high shares of aid to the coal sector (see also Section 1.4). It should be noted that in Member States with relatively low overall aid levels, the grant of a single, relatively large ad hoc aid may cause large variations.

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 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 each Member State (see Table 7). For example, the share of total aid directed exclusively to research and development in Belgium, the Netherlands, Austria and Finland was more than twice the EU-15 average of 14%. Sweden (75% of total aid), Denmark (49%), Finland (38%) and Germany (38%), the Netherlands (27%), Austria (24%) and the United Kingdom (22%) tended to favour environmental objectives (EU-15 average 23%)[25].

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[24] The rate of corporation tax in Ireland has been cut progressively in recent years and is 12.5% from 2003. This has reduced the comparative value of the preferential 10% rate to the manufacturing sector, therefore contributing to the decline, in monetary terms, of aid to this sector.

[25] Including aid for energy saving which was reported separately in previous updates of the Scoreboard.

Table 7: State aid for horizontal objectives and sectoral aid, 2003

Percentage of total aid less agriculture, fisheries and transport

	EU-15	BE	DK	DE	EL	ES	FR	IE	IT	LU	NL	AT	PT	FI	SE	UK
Horizontal Objectives	**79**	**100**	**94**	**73**	**97**	**63**	**76**	**64**	**96**	**100**	**91**	**99**	**19**	**99**	**100**	**99**
Research and Development	14	30	4	10	1	5	21	12	16	21	45	37	2	32	7	24
Environment and energy saving	23	1	49	38	4	4	5	2	6	0	27	24	0	38	75	22
SME	13	32	0	4	1	15	24	3	33	3	2	10	10	6	2	12
Commerce	1	1	-	0	-	0	3	-	0	-	4	0	0	3	-	0
Culture and heritage conservatio	2	4	4	1	1	2	5	6	-	-	-	-	0	4	11	0
Employment aid	3	5	33	0	2	4	1	16	8	-	0	4	2	6	-	0
Training aid	3	3	4	0	-	14	1	4	7	-	-	6	3	0	-	5
Regional development n.e.c. (1)	21	24	0	20	84	19	17	22	27	76	14	17	2	9	5	35
Sectoral aid (2)	**21**	**-**	**6**	**27**	**3**	**37**	**24**	**36**	**4**	**-**	**9**	**1**	**81**	**1**	**-**	**1**
Coal	14	-	-	23	-	35	19	-	-	0	-	-	-	-	-	1
Manufacturing	3	-	6	3	3	2	5	27	1	0	9	1	1	-	-	0
Services	4	-	-	1	0	0	-	9	3	0	0	1	80	1	-	-
Total aid less agriculture, fisheries and transport in million €	**37.334**	**655**	**921**	**14.398**	**333**	**3.174**	**4.806**	**417**	**5.689**	**36**	**497**	**590**	**1.254**	**519**	**1.039**	**3.006**

(1) Aid for general regional development not elsewhere classified. (2) Aid for specific sectors awarded under measures for which there was no horizontal objective as well as aid for rescue and restructuring. Source: DG Competition.

The Commission has also collated some information on secondary objectives[26]. This improves in particular the data coverage of aid earmarked for SMEs. In 2003, just under € 5 billion, 13% of total aid, was made up of measures for which the primary objective was SMEs. In addition, almost €1 billion of aid, 3% of total aid, was directed exclusively at SMEs as a 'secondary' objective. For the most part, the primary objective of these aid measures was R&D. Combining primary and secondary objectives, 38% of aid in Belgium was earmarked exclusively for small and medium-sized enterprises, 33% in Italy, 27% in France and 25% in the United Kingdom compared with an EU-15 average of 15%.

1.7. Trend in State aid for horizontal objectives

In the mid-1990s when State aid levels were much higher, the share of total aid granted for horizontal objectives was around 50%. In line with the commitments undertaken at the various European Councils, Member States have however continued to redirect aid towards such horizontal objectives. Looking at recent trends, the share of total aid for horizontal objectives increased by 5 percentage points over the period 1999-2001 to 2001-2003 (from 71% to 76% of total aid). This upward trend was largely the result of significant increases in aid for the environment and energy saving (+6 points) and research and development (+2 points) as well as a reduction in sectoral aid for some Member States. See sections 1.7.1 and 1.7.2 for more detailed analysis.

The positive trend was observed, to varying degrees, in the majority of Member States, particularly in Ireland (+16 points), Spain (+10 points) and Germany (+6 points) and Italy (+6 points). In four Member States, the trend was slightly downward but for three of them, the share of total aid earmarked for horizontal objectives remains relatively high (85% or more). The exception is Portugal where the share of horizontal aid fell due largely to the increase in sectoral aid.

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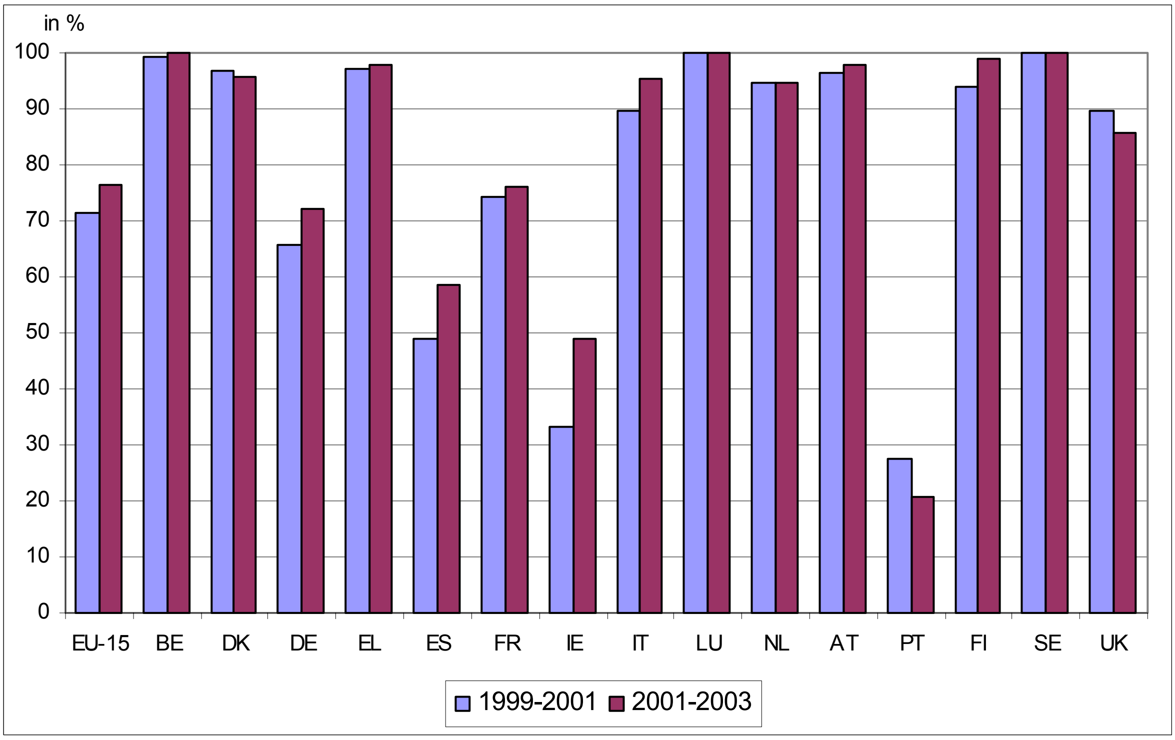
26 For the purposes of the Scoreboard, a secondary objective is one for which, in addition to the primary objective, the aid was exclusively earmarked at the time the aid was approved. For example, a scheme whose primary objective is R&D may also be limited exclusively to SMEs.

Over the periods under review, there were appreciable increases in the share of total aid for environmental and energy saving objectives in Sweden (+21 points), Finland (+12 points), the Netherlands (+12 points) and Germany (+10 points) while the share of aid for R&D rose by between 4 and 6 points in France, Ireland, the Netherlands and the United Kingdom.

Graph 4: Share of State aid directed to horizontal objectives, 1999-2003 (Stockholm 'Redirection' indicator)



Note: State aid less agriculture, fisheries and transport for which a breakdown by horizontal/sectoral objective is not available. Source: DG Competition.

1.7.1. State aid for environmental objectives and energy saving

The spring 2004 European Council declared that sustainable growth must be environmentally sound. It emphasised further that the improvement in energy efficiency and increased use of renewable energy sources are essential not only for environmental but also for competitiveness reasons.

The favourable attitude of the Commission towards environmental aid is reflected by the provisions of the Community guidelines on State aid for Environmental Protection. Decisions taken in 2004 to approve individual aids and aid schemes include many of the different areas covered by the Guidelines, such as aid for waste management and aid for renewable energy sources, wind power, solar power and biofuels. In a few cases, the Commission approved aid directly on the basis of Article 87(3)(c) since, despite a positive effect on the environment, the aid did not fall within the scope of the Guidelines. These cases concerned e.g., pipeline transport and aid for safety and the environment. In a number of cases, however, the Commission found that aid was not compatible with the common market, since the companies involved had to make the investments to live up to Community standards anyway. It also carefully assessed the eligible costs in some cases to make sure grants for companies were truly aimed at environmental benefits, taking into account, e.g., the cost savings generated by the investment concerned.

State aid earmarked for the environment and energy saving objectives continues to rise significantly. In 2003, expenditure in this area stood at € 8.5 billion, more than double the 1999 level. The share in total aid (less agriculture, fisheries and transport) rose from 13% over the period 1999-2001 to 18% during 2001-2003. By 2003, this proportion stood at 23%.

Germany accounts for more than € 5 billion of this figure due primarily to its large ecological tax scheme of aid granted since 1999 to a wide range of undertakings in the form of tax relief, mainly on mineral oils used as fuel, and on electricity[27]. The three Nordic Member States (Denmark, Finland and Sweden) also devote a large share of their State aid to such objectives (see Table 7). Sweden, for example, spent 75% of its state aid on environment and energy saving in 2003. Almost three quarters, i.e. € 568 million, of all aid to environment and energy saving were taken up by an energy tax exemption on electricity used in production processes. The exemption has been granted to the manufacturing industry with the objective to steer towards energy saving and energy efficiency. Following a Commission investigation into this aid, Sweden, on 1 July 2004, has brought the measure into line with new requirements under the Community guidelines on State aid for environmental protection as well as with the Energy Taxation Directive.

1.7.2. State aid for research and development (R&D)

Investment in R&D is a crucial factor to make the EU economy competitive and to ensure sustainable growth. The Barcelona European Council of March 2002 recognised this by setting the objective for expenditure on R&D to 3% of GDP by 2010. In addition, two thirds of this expenditure should be funded by the private sector. Following this, the spring 2004 European Council stressed in particular that besides public funding, increased private funding of investment is crucial to achieve a sustainable level of 3% and accorded priority status to the strengthening of business investment in R&D.

National governments have a range of measures to choose from to fund and consequently trigger R&D. These public measures, when granted on a selective basis, might contain State aid. Even though State aid constitutes only a small part of public R&D funding, competition could be distorted by favouring some enterprises over others. On the other hand, state aid may in certain circumstances be the best available option to provide incentives triggering R&D. The Commission thus tries to strike a balance through the application of the framework on R&D aid thereby ensuring that R&D is furthered to the largest extent while minimising distortions of competition as far as possible.

Figures for 2003 show that investment in R&D is not sufficient to meet the Barcelona objectives: for the Union as a whole, R&D investment stood at 2.0% of GDP, Sweden and Finland being the only countries to reach the 3% level with 4.3 and 3.5% respectively[28]. 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

[27] N 449/2001 (OJ C 137, 8.6.2002).
[28] Source: DG Research ; Data: OECD, Eurostat.

Barcelona targets by 2010. Rather, growth needs to be accelerated and new impetus given to investment in R&D[29].

As regards (potentially) distortive State aid to R&D, total expenditure stood at € 5.3 billion in 2003. The underlying trend is upward with the total rising from € 4.8 billion over the period 1999-2001 to € 5.5 billion in 2001-2003. In spite of this increase, State aid to R&D represents a relatively small share in public funding (EU-15, 0.06% of GDP in 2003) although there are significant differences between Member States.

Table 8: State aid for research and development (R&D)

	EU-15	BE	DK	DE	EL	ES	FR	IE	IT	LU	NL	AT	PT	FI	SE	UK
Aid to Research & Development (in million €), 2003	5271.3	195.6	40.8	1460.0	5.0	152.2	1000.2	48.8	934.3	7.5	221.8	217.3	26.6	166.7	72.0	722.5
Share of R&D aid in total aid, annual average 2001-2003	14	20	4	10	1	8	22	6	14	15	31	37	1	38	11	25
Share of R&D aid in total aid (% point difference 1999-2001 and 2001-2003)	1.7	2.4	-5.0	1.1	0.7	0.1	4.5	5.2	1.0	-2.8	5.6	3.1	-0.2	2.1	-6.2	3.9
Share of R&D aid to GDP (in %), 2003	0.06	0.07	0.02	0.07	0.00	0.02	0.06	0.04	0.07	0.03	0.05	0.10	0.02	0.12	0.03	0.05

Source: DG Competition.

1.8. State aid supporting regional development and cohesion

Each Member State targets part of its State aid towards the least developed regions, the so-called ‘assisted regions’. For the Union as a whole, an estimated € 7.6 billion of aid[30] was earmarked exclusively for assisted ‘a’ regions[31] in 2003, of which some € 3.1 billion was approved under the Guidelines for national regional aid. The € 7.6 billion represented around one fifth of total aid (less agriculture, fisheries and transport for which a regional breakdown is not available).

Disparities between the Member States in the levels of aid reserved for assisted ‘a’ regions (Table 9) reflect not only differences in regional policy but also the size of each country’s eligible population as well as the extent to which each Member State grants aid at a sub-central level.

Aid to the assisted ‘a’ regions fell dramatically from a peak of € 28 billion in 1993 to € 9 billion in 2000, due largely to the phasing out of the restructuring programme in the new German Bundesländer. Aid to the assisted ‘a’ regions in Germany stood at € 1 billion in 2003. The level of aid to the poorer, southern regions in Italy also fell rapidly from a peak of

29 In May 2005, the Commission will adopt a Communication following up the action plan which has been worked out to implement the Barcelona Council conclusions. The Communication will report on the progress made towards achieving the Barcelona targets and provide detailed figures on R&D expenditure and funding.

30 This figure includes all aid specifically earmarked for assisted ‘a’ regions regardless of the overall objective of the aid. However, due to an absence of data on the final beneficiaries of the aid, it is not possible to quantify the amount of aid granted through nation-wide schemes from which assisted regions will also clearly benefit. See spring 2003 update of the Scoreboard for further information on methodological issues.

31 Article 87(3)(a) provides that aid “to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment” may be considered compatible with the common market. The ‘a’ regions are largely identical to the Objective 1 regions under the EU Structural Funds.

€ 9 billion in 1995 to just over € 2 billion in 2000. However, since then, there has been a remarkable upturn.

Table 9: State aid specifically earmarked for assisted 'a' regions, 2003

	EU-15	BE	DK	DE	EL	ES	FR	IE	IT	LU	NL	AT	PT	FI	SE	UK
Total state aid less agriculture, fisheries and transport, mio €	37333.9	654.8	921.5	14398.4	332.9	3174.2	4805.6	417.2	5688.6	35.9	497.3	589.5	1253.8	519.3	1038.6	3006.3
Aid for assisted 'a' regions, mio €	7 603	-	-	1 003	333	916	647	382	2 859	-	-	46	1 254	-	-	162
Aid for assisted 'a' regions as a percentage of total aid	20	-	-	7	100	29	13	92	50	-	-	8	100	-	-	5

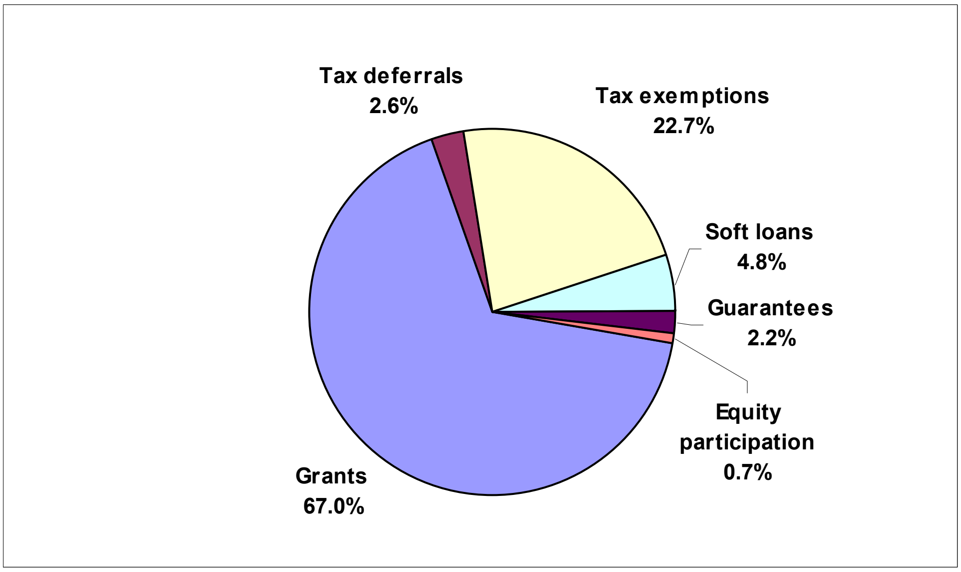
Note: There are no assisted 'a' regions in B, DK, L, NL and S. * In 2000, Lisboa and Vale do Tejo changed from 'a' to 'c' status. Data are not yet available on specific aid schemes to this region so all aid is still classified under assisted 'a' regions. ** Data exclude agriculture, fisheries and transport for which a regional breakdown is not available. It is therefore not possible to measure aid to assisted 'a' regions as a proportion of total State aid. Source: DG Competition.

1.9. State aid instruments

Majority of Member States tend to provide aid to manufacturing and services in the form of grants …

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

Graph 5: Share of each aid instrument in total aid for manufacturing and services, EU, 2001 – 2003



Source: DG Competition

… though significant differences still exist in the use of instruments

During the period 2001-2003, grants accounted for around two-thirds (67%) of total State aid in the manufacturing and service sectors. In addition to aid awarded through the budget, other aid is paid through the tax or social security system. Tax exemptions made up 23% of the total. While Belgium, Denmark, Spain, Luxembourg, Austria and Sweden provided at least 85% of their aid in the form of grants, other Member States tended to make greater use of tax exemptions, particularly Germany (29%), Ireland (62%) and Portugal (82%). A similar instrument is a tax deferral which was used by only seven Member States during the period under review. Tax deferrals accounted for 17% of all aid in Italy compared with an EU-15 average of 3%.

There are other forms of aid instrument which vary from one Member State to another (Table 10). 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. The aid elements in this category are much lower than the capital values of the transfers. In the EU-15 soft loans represented around 5% of all aid to manufacturing and services. In France and the United Kingdom the proportion was more than double this average.

Aid may also be in the form of state equity participation which represented less than 1% of all aid to the manufacturing and service sectors. Finally, aid may be provided in the form of guarantees. The aid elements are 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. Guarantees were awarded by most Member States although the aid made up only 2% of total aid in the Union.

Table 10: State aid for manufacturing and services by type of aid instrument, 2001 – 2003

TYPE OF AID INSTRUMENT						% of total
	Grants	Tax deferrals	Tax exemptions	Soft loans	Guarantees	Equity participation
EU-15	67.0	2.6	22.7	4.8	2.2	0.7
BE	85.3	1.2	6.4	6.0	1.1	0.1
DK	94.3	-	5.7	-	0.0	-
DE	64.3	-	29.0	1.6	4.1	1.0
EL	72.6	-	27.1	0.3	0.0	-
ES	93.8	0.0	-	6.0	0.0	0.2
FR	59.9	0.1	26.0	11.3	2.7	-
IE	35.2	0.4	62.1	0.2	0.1	1.9
IT	69.2	17.5	9.1	3.5	0.1	0.6
LU	96.3	0.0	-	3.7	-	-
NL	63.5	10.1	18.1	4.9	3.4	0.0
AT	89.8	-	-	7.2	3.0	-
PT	11.7	0.6	82.2	5.2	0.0	0.3
FI	68.5	-	19.1	5.9	0.1	6.4
SE	86.5	-	7.9	4.6	0.1	1.0
UK	56.7	-	27.0	15.2	-	1.1

Source: DG Competition

1.10. State aid situation in the new Member States

This section includes a concise update of the data presented in the autumn 2004 Scoreboard, which dealt in detail with the specific state aid situation in the new Member States. For methodological reasons, the data are not completely comparable with those of the EU-15 Member States (see autumn 2004 Scoreboard for more explanation on methodology and other enlargement-related issues).

Total State aid[32] granted by the ten new Member States during the four-year period prior to accession was estimated on average at € 6.1 billion per year. In absolute terms, the three biggest countries in terms of population awarded the most aid: Poland, the Czech Republic and Hungary accounted for 86% of total aid in the ten new Member States. During the period under review, the level of State aid increased from € 5 billion in 2000 to € 9.2 billion in 2003. The increase was caused by very large awards of aid in 2002 to the Czech banking sector (€ 2.6 billion) and in 2003 to the Polish coal sector (almost € 4 billion). See Table 11 and Annex I for more detailed figures.

Table 11: State aid in the new Member States, 2000 – 2003

	EU-15	New MS	CZ	EE	CY	LV	LT	HU	MT	PL	SI	SK
Total State aid less agriculture, fisheries and transport in million €	39 839	**6 066**	2 050	8	315	27	41	769	155	2 403	168	130
State aid as percentage of GDP (%)	0.43	**1.38**	2.73	0.11	2.76	0.28	0.29	1.10	3.51	1.26	0.67	0.49
Population (million)	379.50	**74.63**	10.24	1.36	0.70	2.36	3.48	10.18	0.39	38.54	1.99	5.38
State aid per capita (PPS)	105	**160**	409	11	542	24	26	152	596	127	121	57

Source: DG Competition.

In terms of State aid as a percentage of GDP, aid amounted to 1.38% over the period 2000-2003. Although this is significantly higher than the EU-15 average of 0.43% over the same period, there were large disparities between the new Member States: Malta, Cyprus and Czech Republic reported aid levels, as a percentage of GDP, well above the average. Faced with a general banking crisis, the Czech Republic paid out € 2.6 billion in 2002 in the form of guarantees in order to restructure and subsequently privatise several banks. In Cyprus, aid was mainly granted through tax relief under the International Business Enterprises Act (almost 60% of total aid over the period 2000-2003). In Malta, restructuring aid to shipbuilding and the ship repair sector accounted for around 50% of total aid. All of the above measures are either being phased out under transitional arrangements or limited in time. If the aid amounts given under these types of aid measures are excluded, a different picture emerges: the overall level of state aid drops to 0.67% of GDP for the ten new Member States.

In contrast, the three Baltic States had by far the lowest shares: Estonia (0.11%), Latvia (0.28%) and Lithuania (0.29%). Moreover when aid is expressed in per capita terms, a slightly different picture emerges with the Slovak Republic joining the three Baltic states below the EU-15 average of 105 PPS per person.

In the context of redirecting aid, prior to accession, aid granted for horizontal objectives[33] accounted for around 24% of total aid in the new Member States. This share is rather low in

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[32] Total State aid less agriculture, fisheries and transport.

[33] Including aid for cohesion objectives (regional aid).

comparison to 79% in the EU-15 Member States in 2003. The disparity can be explained in part by the relatively strong support of several industries (e.g., financial sector, coal and steel) before accession in the context of privatisation or to ensure viability. There were large disparities between countries in the share of sectoral objectives ranging from 28% of total aid in Slovenia to 90% or more in Lithuania, the Czech Republic and Malta. In Estonia, no aid was earmarked for sectoral objectives.

The financial sector received the most support in these years (28%), due almost entirely to the legacy of a general banking crisis in the 1990s in the Czech Republic. A further 24% was directed towards the manufacturing sector[34], 23% for coal (mainly in Poland) and the remainder (1%) split between other non-manufacturing and service sectors.

For a variety of reasons, an accurate forecast of future expenditure levels is not possible for the new Member States. Nevertheless, the available data do show that for some new Member States, a large part of the aid awarded in 2003 was through measures that did not continue after accession. For others, the data show that a significant proportion of total aid was awarded under a transitional arrangement. This implies that aid levels are likely to remain relatively high up to the end of the transitional period but will probably decrease in the long term.

In order to prevent incompatible aid from being "imported" into the EU on the date of accession, a system was set up to examine measures which were put into effect in the Acceding Countries before 1 May 2004 and were still applicable after that date. This was known as the "existing aid" mechanism. During the first phase of the existing aid mechanism in 2002, some 222 measures were approved by the Commission and listed in the Treaty of Accession. During the second phase, the so-called interim procedure, overall 559 measures were submitted. A significant number of these measures was regarded as not applicable after accession and therefore was withdrawn by the countries. By March 2005 the Commission had approved 329 measures as existing aid in the course of the interim procedure. The number of measures varies considerably from one new Member State to another. While some opted to create aid schemes, such as Hungary, other countries such as the Czech Republic preferred to notify individual aid awards (Table 12). A few measures are still under assessment.

Table 12: State aid measures approved as existing aid upon accession[35]

	CZ	EE	CY	LV	LT	HU	MT	PL	SI	SK	Total
Approved and listed in the Treaty	120	3	31	6	3	21	7	7	15	9	**222**
Approved under the interim mechanism	118	11	21	19	13	23	1	42	18	63	**329**
Opening of formal investigation procedure	1	-	-	-	-	1	-	1	1	-	**4**
Under assessment as of March 2005	1	-	-	-	-	2	1	15	-	-	**19**

Source: DG Competition

34 This figure excludes aid earmarked for the manufacturing sector which had a horizontal objective.

35 The figures include state aid measures to the manufacturing, service and coal sectors as well as the fisheries sector.

1.11. State aid to the broadcasting sector

Starting in the seventies, broadcasting has gradually been opened up to competition. Accordingly, the Commission has had to investigate the financing of broadcasting systems in several Member States to check whether or not a particular case involves State aid and if so whether there has been any overcompensation. This section describes the State aid rules applicable to the public service broadcasting sector.

Funding of public broadcasters can be based on direct budgetary support, a licence fee or a combination of public funds. This funding normally compensates for the costs of the public service that the public broadcaster provides. According to the Court of Justice ruling on Altmark, compensation to undertakings that perform a service of general economic interest (SGEI) is not State aid, provided certain conditions are fulfilled.

Information concerning public funding granted to the broadcasting sector can be found in the publications of several institutions, e.g. in the Yearbooks of the European Audiovisual Observatory (EAO). Annex II of the Scoreboard gives brief summaries of the decisions that have been taken by the Commission since the adoption of the Communication on the application of State aid rules to public service broadcasting[36].

1.11.1. Policy context

As from the seventies, broadcasting has undergone important changes. Television broadcasting was traditionally an activity that the State reserved for itself or a State controlled operator, mainly as a consequence of the limited availability of broadcasting frequencies and the high barriers to entry. However, economic and technological developments made it increasingly possible for Member States to allow private operators to broadcast. Member States have therefore decided to introduce competition in the market. Important developments in broadcasting are still ongoing. Changes are occurring due to technological development, digital broadcasting based on various technological platforms is spreading more and more, pay-TV is establishing its market position and the borders between broadcasting and other media activities have become blurred.

Whilst opening the market to competition, Member States considered that public service broadcasting ought to be maintained, as a way to ensure the coverage of a number of areas and the satisfaction of needs such as cultural diversity, pluralism, social cohesion, linguistic diversity that private operators would not necessarily fulfil to the optimal extent. Increased competition, together with the presence of State-funded operators, has also led to a number of complaints by private operators alleging infringements of Article 87 of the Treaty.

1.11.2. The rationale behind public financing of public service broadcasting ("PSB")

Although public service broadcasting has a clear economic relevance, it is not comparable to a public service in any other economic sector. No other service has, at the same time, access to such a wide sector of the population, provides it with so much information and content, and by doing so conveys and influences both individual and public opinion. Public broadcasting is generally perceived as an important and reliable source of information. It thus enriches public debate and ultimately ensures that virtually all citizens participate to some degree in public

[36] OJ C 320, 15.11.2001, p. 5.

life. The importance of PSB for social, democratic and cultural life in the Union was confirmed in the Resolution of the Council and of the Representatives of the Governments of the Member States, Meeting within the Council of 25 January 1999 concerning public service broadcasting[37] (“the Resolution”).

As any other service of general economic interest (“public service”), PSB falls within the scope of Article 86(2) and Article 16 of the Treaty. In line with the Resolution and in the light of the particular nature of the broadcasting sector, the interpretation of the principles contained in those articles is outlined in the interpretative protocol on the system of public broadcasting in the Member States, annexed to the EC Treaty by the Treaty of Amsterdam ("the Protocol"). The Protocol, which forms an integral part[38] of the EC Treaty, emphasizes "that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism". This instrument also specifies that “the provisions of the Treaty establishing the European Community shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting insofar as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and insofar as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account.”

At the end of 2001, the Commission adopted a Communication on the application of State aid rules to public service broadcasting setting out the principles for the application of Articles 87 and 86(2) to State funding of public service broadcasting (“the Communication”) that takes into account the Amsterdam Protocol.

1.11.3. The need for State aid control and the relevant rules

As briefly mentioned, broadcasting has undergone a transformation from a reserved activity to a competitive one. PSB operators compete for audience and advertising revenues with private broadcasting operators, while in many cases they receive State funding for the fulfilment of the public service remit. Moreover, the activity of PSB operators is often not limited to the diffusion of programs and related activities. PSB operators are often allowed under their national legal system to develop purely commercial activities in addition to their public service task (e.g. sale of advertising space or programs). The availability for PSB operators of State resources in this competitive environment creates the need for State aid control. Otherwise these resources could be used to the advantage of the PSB operator and distort competition. The focus of the Commission‘s investigation in this area has been to determine whether or not a particular case involves State aid and if so whether there has been any overcompensation to undertakings performing the public service task.

It should be stressed that for a limited period there was considerable uncertainty as to whether or not State financing of PSB qualified as State aid within the meaning of Article 87(1). Following the Ferring judgement[39], it seemed that any compensation proportional to the net costs incurred in the discharge of a public service obligation was not to be considered as a

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37 OJ C 30, 5.2.1999, p. 1

38 According to Article 311 EC Treaty.

39 C-53/00 - Judgment of 22.11.2001, Ferring, Rec. 2001, p. I-9067.

State aid. With the Altmark judgement[40], the Court clarified the scope of its previous judgement. Compensations for the costs incurred in the discharge of a public service obligation do not qualify as State aid provided that a number of conditions are met. So far, the Altmark conditions have not been fulfilled in any broadcasting case brought to the Commission's attention. When these conditions are not met, State financing of public service broadcasters is generally to be regarded as State aid. Indeed, PSB operators are normally financed out of the State budget or through a levy on TV-set holders.

Article 86(2) allows to derogate to Article 87 to the extent necessary to allow the PSB operators to fulfil their PSB task. The Court has clarified that in order for a measure to benefit from such a derogation it is necessary to respect the principles of definition, entrustment and proportionality. In the case of PSB, this Article should be applied in the light of the Protocol, which refers to the "public service remit as conferred, defined and organised by each Member State" (definition and entrustment) and provides for a derogation from the Treaty rules in the case of the funding of public service broadcasting "in so far as such funding is granted to broadcasting organisations for the fulfilment of the public service remit ... and ... does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account" (proportionality).

These principles have been taken into account and further specified in the Communication. It is necessary to establish a precise official *definition of the public service mandate*. The Commission has recognised that a public service mandate encompassing "a wide range of programming in accordance with its remit", as stated by the Resolution, can in principle be considered as legitimate. The role of the Commission as regards this definition is limited to checking for manifest error. The public service remit should be *entrusted to one or more undertakings* by means of an official act. It is also necessary that the public service is actually supplied as provided for in that act. It is therefore desirable that an appropriate authority or appointed body *monitors its application*.

Compensation is justified only for the net costs of the public service mission. The *proportionality assessment* that the Commission must carry out is twofold. On the one hand, the Commission has to calculate the net cost of the public service task entrusted to the PSB operator and verify whether or not this cost has been overcompensated. Second, the Commission has to investigate any element at its disposal suggesting that the PSB has inflated this cost by deliberately not maximising revenues from the commercial exploitation of the public service activities.

Separation of accounts allows the Commission to carry out its proportionality test and examine alleged cross-subsidisation. Accordingly, Member States have been required by Directive 80/723/EEC[41] ("Transparency directive") to take the measures necessary to ensure that PSB operators make a separation in their accounts between costs and revenues of public service and non-public service activities.

[40] Judgement of 24 July 2003, Case C-280/00, Altmark Trans, ECR 2003 p. I-7747.

[41] OJ L 195, 29.7.1980, p. 35, as last amended by Directive 2000/52/EC (OJ L 193, 29.7.2000, p. 75).

1.11.4. Changing environment

Over the past number of years, the broadcasting sector has been subject to constant change pushed by technological development which has led to the creation of numerous new activities and services. Firstly, broadcasters in many Member States are increasingly preparing to switch from analogue to digital transmission of broadcasting signals. Due to this change, more frequencies will become available (the 'digital dividend') and thus new channels. The digital age is also changing the broadcasting landscape into one of communication. "Convergence" is the term used by the industry. Innovation will make broadcasters move into areas of new media, delivering new content over all kind of platforms, such as mobile, satellite, and Internet. Telecommunication operators are entering the broadcasting market by distributing TV signals over DSL. At the same time, other media companies, such as traditional publishing companies are also entering the new media market.

2. PART TWO: STATE AID CONTROL PROCEDURES AND RECOVERY

2.1. Registered aid cases

The Commission controls the Member States' granting of State aid by means of a formal and transparent procedure (Council Regulation (EC) No 659/1999). According to the regulation, "any plans to grant new aid shall be notified to the Commission in sufficient time by the Member State concerned." Although the vast amount of aid is notified, for around 15% of investigated aid cases, it was not the Member State but the Commission that had to initiate the control procedure after finding out about the aid, for example following a complaint[42].

In 2004, there were just under 700 cases[43] registered by the Commission: 570 cases were notified by Member States, 87 non-notified cases initiated by the Commission, 41 cases examining existing aid[44]. In addition, 322 information forms were submitted under the block exemption regulations (see below). Excluding the information forms, 47% of all registered cases in 2004 concerned the agricultural sector and 43% the manufacturing and service sectors. Of the remaining cases, 7% involved transport and energy and 4% the fisheries sector (Table 13).

Of the 570 notifications, more than 380 were received from the five largest EU-15 Member States: Italy accounted for 30%, Germany 13%, France 10%, Spain 8% and the United Kingdom 6%. Of the 87 non-notified cases, 20 concerned Italy, 19 Germany, 11 the United Kingdom and 7 France.

Table 13: Number of registered aid cases in 2004

[42] In 2004 there were 223 registered complaints, some of which may lead to new registered cases.

[43] This figure excludes the information sheets submitted under the block exemption regulations as well as the 72 cases which were withdrawn during the course of the year.

[44] The vast majority concerned agricultural cases in the new Member States.

Sector	Notified aid cases	Non-notified aid cases	Existing aid cases	Total
Agriculture	252	40	36	328
Manufacturing and services	257	36	5	298
Transport and energy	41	5	0	46
Fisheries	20	6	0	26
Total	570	87	41	698

Source: DG Competition, DG Fisheries, DG Agriculture, DG Transport.

With a view to reducing the administrative burden for specific types of aid, block exemptions for aid to SMEs, training aid, employment aid, certain types of aid in the fisheries sector and aid to SMEs in the agricultural sector have come into force over the past few years[45]. As one would expect, the number of notifications for these types of aid has fallen as Member States make increasing use of the possibilities offered by the block exemption regulations. By the end of January 2005, more than 900 information sheets had been submitted (see Table 14). In 2004 alone, the Commission received 151 information forms on exempted aid for SMEs, 78 forms on exempted training aid, 21 forms on exempted employment aid and 72 for SMEs in the agricultural sector.

Five Member States, Italy (26% of the total), the United Kingdom (22%), Germany (11%), Spain (8%) and Belgium (7%) accounted for 75% of all the information forms submitted in 2004. Compared with 2003, virtually all other Member States increased their use of the possibilities offered to exempt aid. Six of the ten new Member States also submitted information forms on exempted aid by the end of 2004.

Table 14: Trend in the number of information sheets submitted under the block exemption regulations

Type of block exemption regulation	Year					
	2001	2002	2003	2004	January 2005	Total as of end January 2005
SME	101	124	139	151	26	541
Training	48	81	53	78	6	266
Employment	0	0	8	21	2	31
SMEs in agriculture	-	-	-	72	2	74
Total number	149	205	200	322	36	838

Note: Figures exclude cases withdrawn. By the end of January 2005, 5 information sheets had been submitted under the recently adopted block exemption regulation for fisheries. Source: DG Competition, DG Fisheries, DG Agriculture.

45 Commission Regulations (EC) No 70/2001 of 12 January 2001 on State aid to SMEs (OJ L 10, 13.1.2001, p. 33); (EC) No 68/2001 of 12 January 2001 on training aid (OJ L 10, 13.1.2001, p. 20); (EC) No 2204/2002 of 5 December 2002 on State aid for employment (OJ L 337, 13.12.2002, p. 3); (EEC) No 1/2003 of 23 December 2003 on State aid to SMEs in the agricultural sector (OJ L 1, 3.1.2004, p. 1).

2.2. Commission decisions

In 2004, the Commission took 566 final decisions[46]. In the vast majority of cases, the Commission concludes that the examined aid is compatible with the State aid rules and allows Member States to award such aid without carrying out a formal investigation procedure. This was the case for around 87% of decisions taken in 2004. 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 the formal investigation procedure, the Commission either takes a positive or conditional decision (making up 6% of the decisions in 2004 in addition to the 87% of decisions approved without a formal procedure) or that it does not comply with State aid rules and hence is not compatible with the Common Market and takes a negative decision (7% of all decisions in 2004).

Table 15 shows the share of incompatible and compatible aid cases on which the Commission reached a decision between 2002 and 2004. Over this three-year period, the five largest EU-15 Member States accounted for more than 70% of all final decisions: Italy and Germany each made up around 20% of the total, France (13%), Spain (12%) and the United Kingdom (9%). Following accession in May 2004, ten final decisions were taken in 2004 on new aid measures in the new Member States.

Of the 118 negative decisions over this period, more than half concerned Germany (35) and Italy (25). Only two other Member States, Spain (13) and France (12) reached double-figures with as many as nine of the EU-15 Member States having less than five negative decisions in the last three years.

Just under half (47%) of all final decisions over the period 2002-2004 were in the manufacturing and service sectors, followed by agriculture (40%), fisheries (7%) and transport (6%). It is important to bear in mind that these figures do not distinguish between large and complex cases involving billions of euro and requiring a lengthy investigation and relatively minor measures for which the aid amount may be less than one million euro.

Table 15: Number of negative and positive decisions, 2002-2004

[46] Excluded under 'final' decisions are all decisions taken in 2004 to open a formal investigation procedure (42 in 2004), corrigenda, information injunctions, court cases, proposal appropriate measures as well as measures approved under the block exemption regulations for which there is no Commission decision as such. The total however includes those decisions in which the Commission decides that the notified aid does not in fact constitute aid as defined under Article 87(1). There were 22 such decisions in 2004. Also included under 'positive' decisions are the 4 conditional decisions taken in 2004.

	2002-2004				2004			
	Approved without objections	Other positive decisions	Negative	Total	Approved without objections	Other positive decisions	Negative	Total
Total	**1693**	**175**	**118**	**1986**	**470**	**54**	**42**	**566**
New MS	9	1	0	10	9	1	0	10
BE	61	11	8	80	18	7	3	28
DK	45	7	1	53	12	4	1	17
DE	299	43	35	377	76	9	10	95
EL	43	1	3	47	8	1	1	10
ES	203	17	13	233	41	4	3	48
FR	220	20	12	252	52	10	6	68
IE	45	4	1	50	16	2	0	18
IT	349	27	25	401	130	6	12	148
LU	5	0	2	7	1	0	0	1
NL	105	7	4	116	30	2	1	33
AT	48	6	3	57	8	1	1	10
PT	37	9	3	49	8	1	1	10
FI	35	1	1	37	8	1	0	9
SE	33	3	1	37	8	1	1	10
UK	156	18	6	180	45	4	2	51

Note: Some double-counting exists in those cases for which there is both a negative and positive decision. The category ‘other positive decisions’ is made up of positive and conditional decisions following a formal investigation procedure as well as all ‘no aid’ decisions. For the ten new Member States in 2004, 10 decisions were taken, 9 approved without objections and the other a no aid decision. Source: DG Competition, DG Fisheries, DG Agriculture, DG Transport.

2.3. Recovery of unlawful aid

Article 14(1) of Council Regulation (EC) No 659/1999 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.”

As of 31 December 2004, there were 93 pending recovery decisions, compared to 90 at the end of 2003. In the course of 2004, 19 cases were closed while a further 22 new recovery decisions were taken (Table 16). The “inflow” of new recovery cases is likely to remain high in 2005 and in 2006 (first recovery decisions for the ten new Member States are expected later this year).

The geographical distribution of pending recovery cases remains stable: Germany accounts for almost half the pending recovery cases (47%) followed by Spain (22%), Italy (12%) and France (11%). It should also be noted that there are no pending cases in six of the EU-15 Member States nor are there any as yet in the ten new Member States.

Table 16: Pending recovery cases by Member State, 2004

Member State	Situation 01/01/04	New cases In 2004	Cases closed in	Situation 31/12/2004
DE	44	8	8	44
ES	20	3	3	20
IT	8	5	2	11
FR	8	3	1	10
BE	5	0	2	3
NL	3	0	1	2
EL	1	0	0	1
PT	1	0	0	1
SW	0	1	0	1
AT	0	1	1	0
DK	0	1	1	0
TOTAL	90	22	19	93

Source: DG Competition.

Table 17 provides data on the amounts of aid to be recovered under the 91 recovery decisions adopted since 2000[47]. For 69 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 2000 and 2004 is € 9.7 billion. Half of this is due to decisions taken in 2004 (Landesbanken, France Télécom, Spanish shipyards).

[47] On 31.12.2004, there were still a further 21 recovery decisions pending that were adopted before 1.1.2000.

Table 17: Trend in the number of recovery decisions and amounts to be recovered, 2000-2004

	Date of Decision					
	2000	**2001**	**2002**	**2003**	**2004**	**Total**
Number of recovery decisions adopted	16	21	22	10	22	93
Number of recovery decisions for which the aid amount is known	15	12	17	8	17	69
Total aid* to be recovered (in million €)	361,6	1827,5	1577	1115,3	4822,2	9703,6
Aid already recovered (million €) Of which:	17,1	797,8	1438,8	1227,4	3272,1	6753,2
(a) Principal reimbursed/in blocked account	17,1	797,8	1036,4	892,4	2324,8	5068,5
(b) Aid lost in bankruptcy			1,2			1,2
(c) Recovery interest paid			402,4	335	947,4	1684,8
Amount outstanding (excluding interest)	344,5	1029,7	539,4	222,9	2497,4	4633,9
% still pending to be recovered	95,30%	56,30%	34,20%	20,00%	51,80%	47,80%

* Only for Decisions for which the aid amount is known

Source: DG Competition.

For 22 of the recovery decisions adopted since 2000, there is unfortunately no accurate information on the total volume of aid involved. Most of these decisions (namely 20) concern aid schemes. Especially in the fiscal and social security schemes, Member States often claim that it is particularly difficult to collect this information. Among the main reasons given: the large number of beneficiaries; aid granted is partially compatible, which requires a full examination of each individual file; older records are no longer kept.

Of the € 9.7 billion of aid to be recovered under decisions adopted since 2000, some € 6.7 billion (including interest) had been effectively recovered by the end of February 2005. Excluding interest, almost 50% of the total amount to be recovered is still pending.

Recovery of incompatible state aid is a lengthy process: 21 of the recovery decisions still pending at the end of 2004 were adopted before the year 2000. Of the 91 decisions adopted between 2000 and 2004, only 21 have been closed/are proposed to be closed by the end of 2004 (Table 18).

Table 18: Trend in the closure of recovery cases

	Year of the Decision					
	2000	2001	2002	2003	2004	Total
Number of recovery decisions adopted	16	21	22	10	22	91
Number of recovery cases closed as of 31/12/04	7	2	7	3	2	21

Source: DG Competition.

The time required to complete recovery procedures is particularly long in cases where beneficiaries are in insolvency proceedings. Of the 59 pending recovery cases that concern individual aid, 28 relate to companies that have been declared insolvent and that are at various stages of national bankruptcy proceedings. For 17 of these 28 companies, Member States have submitted information confirming that they are no longer active (but bankruptcy proceedings have not yet been completed). In most of these cases, the prospects of recovery are limited (insufficient mass to satisfy the bankruptcy claim)[48]. However, in these cases, we can normally conclude that the aid granted has no longer a significant distortive effect on competition (amount of aid involved: € 992 million excluding interests). In the 11 other insolvency cases, the original beneficiary of the aid may still be active or the economic activity concerned is continued by a successor company. The aid amount involved in such cases is € 401 million (of which only € 19 million has already been recovered). These are often very complex cases and require an active follow-up (to ensure that the recovery decision is not circumvented).

In a number of cases, the Commission found that Member States were not taking all measures available under national law to execute the decision. In 2004, seven such cases were identified and the Commission proposed to initiate Article 88(2) or 228(2) court proceedings against the Member State concerned.

The Commission will seek to achieve a more immediate and effective execution of recovery decisions, which will ensure equality of treatment of all beneficiaries. To this effect, the Commission will explore ways to monitor more closely the execution of recovery decisions by Member States. Recovery has to be carried out in accordance with national procedures. But where it appears that recovery is not carried out in an immediate and effective manner, the Commission could more actively pursue non-compliance under Articles 88(2), 226 and 228 of the Treaty.

3. Part Three: Legislative and Policy developments

3.1. A modernized State aid policy

As announced in the Commission's Communication to the Spring European Council "Working together for growth and jobs – A new start for the Lisbon agenda"[49], the

48 In these 17 cases, only € 4.1 million has been recovered to date (out of a total aid amount of € 903 million).

49 COM(2005) 24, 2.2.2005.

Commission will present a consultation document on the future of State aid policy before summer 2005. The review process for a series of guidelines and frameworks in the State aid field which has already been started will form part of the envisaged reform package.

3.1.1. Review of the regional aid guidelines

The Commission's approach to regional state aid will be updated for the period 2007-2013, to take account of developments in the seven years since the last guidelines were adopted in 1998, in particular enlargement. The Commission will accordingly review the **Community guidelines on regional aid (or 'RAG')** and integrate the **Multisectoral Framework on regional aid for large investment** projects into the guidelines. A final version of the guidelines should in principle be adopted by the end of 2005, in order to leave ample time for Member States and the Commission to ensure a smooth transition by the end of 2006.

3.1.2. Revision of Environmental aid Guidelines

Environmental protection is essential in itself and can also be a source of competitive advantage for the EU economy. In particular, it can provide opportunities for innovation, new markets and increased competitiveness through resource efficiency and investment. An important instrument to steer State aid towards the protection of the environment while keeping its distortive effects on the market to a minimum, are the Commission guidelines on state aid for environmental protection. Their current version will be applicable until the end of 2007 but reflections have already started now on how to address better the potential of sustainable development.

3.1.3. Review of the R&D Framework

In February 2005, the European Commission relaunched the Lisbon Strategy of 2000 to make the EU economy more competitive[50]. Given that R&D is a decisive factor for growth and employment and finally the competitiveness of the European economy, it is important to achieve a high level of investment in it. The spring European Council of 2004 recognised in particular the relative weakness of European private sector investment in R&D[51] stressing that it needs to be increased. To achieve this goal, the EU and Member States have to work together, mutually reinforcing themselves, and strengthen the interactions between public research bodies and industry.

State aid plays a vital role in the growth of R&D by enabling Member States to target market failures and provide right incentives to invest sufficiently in R&D. Moreover, public sector investment should secure greater leverage of private funds. In this context, the Community Framework for State aid for R&D has to be reviewed before its expiry on 31 December 2005. As reported in the autumn 2004 Scoreboard, the Commission has launched a study[52] to prepare the review, and a new text should enter into force at the beginning of 2006.

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[50] http://europa.eu.int/growthandjobs/index_en.htm

[51] EU-15: 56,2%; US: 63,1%; Japan: 73,9% (Source :DG Research; Data: OECD, Eurostat).

[52] "The impact of R&D state aid and its appraisal on the level of EU research expenditure in the context of the Barcelona European Council objectives."

3.1.4. *Communication on State aid to innovation*

In a competitive European economy, a high level of investment in R&D goes hand in hand with strong innovation. The Commission took account of this connection by adopting in November 2004 a Vade-mecum on Innovation which provides guidance on measures supporting innovation[53]. Moreover, the Commission intends to adopt a Communication on State aid and innovation later in 2005. This consultation paper may provide in particular suggestions for a more innovation-friendly environment.

3.1.5. *Services of General Economic Interest (SGEI)*

In order to increase legal certainty, particularly after the Altmark judgement, and to reduce the burden of notification in the area, the Commission presented a package on Services of General Economic Interest and public service compensation in February 2004. The package consists of a Commission Decision based on Article 86 of the Treaty, a Framework and a modification of the Transparency Directive.

The proposed Commission Decision limits the notification burden on Member States, by exempting all public service compensation that respects certain substantive conditions (in particular the absence of overcompensation) and whose amounts are under a certain threshold. Further, it completely exempts hospitals and social housing from notification without a threshold.

Where public service compensation exceeds the threshold foreseen in the Commission Decision, the notification obligation therefore remains. For these services, the Commission proposed a Community Framework which should give guidance to the Member States and their public authorities on how the Commission will assess their compatibility.

Finally, the package modifies the existing Transparency Directive to ensure clear separation of the operators' public service costs and costs for commercial services, to enable clear assessment of the costs of public services.

The Commission consulted with Member States in April 2004, and has received Opinions from both the Committee of Regions and the European Economic and Social Committee in 2004. The European Parliament adopted a report on the Commission package in February 2005. The Commission will take into account the comments received and adopt the final package in 2005.

3.2. State aid aspects in the implementation of the Emission Trading Scheme

The Commission's environmental policy comprises climate change including the Kyoto Protocol which aims at reducing the emission of greenhouse gases and entered into force on 16 February 2005.

The Emission Trading Scheme (ETS)[54] plays a major role to ensure compliance with the Kyoto Protocol by using a market based instrument. It is the first international trading system for CO_2 emissions and will cover more than 12000 installations in the EU-25 representing close to half of Europe's emissions of CO_2.

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53 http://europa.eu.int/comm/competition/state_aid/others/vademecum/innovation_vademecum.pdf

54 Introduced by Directive 2003/87/EC of 13 October 2003 (OJ L 275, 25.10.2003, p. 32).

The National Allocation Plans (NAPs) are the cornerstone of the ETS. They establish the allocation of emission allowances and the methods Member States plan to use for the 2005-2007 trading period. The underlying Emission Trading Directive requires the Commission to assess compliance of these plans with the ETS directive including their compliance with State aid rules since NAPs could include state aid and constitute distortive practices in the context of allowance allocation. One of the most distortive effects of emission allowance allocation would stem from allocating more allowances than needed to cover projected emissions giving companies an asset without a sufficient environmental counterpart.

The directive allows in the first trading period to sell up to a maximum of 5% of the allowances. To the extent that the allowances are not sold at market price or are given for free, State aid could be involved. A NAP could also contain State aid where Member States allow banking of allowances between trading periods[55].

Until now, the Commission has not taken any formal decision under State aid rules but screened all NAPs in order to identify if problems of incompatible State aid existed. By the end of 2004, the Commission had taken decisions on 21 NAPs[56] under the Emission Trading Directive.

3.3. State aid to the agricultural sector

The new Commission Regulation (EC) No 1/2004 granting exemption for certain types of State aid accorded to small and medium-sized agricultural enterprises entered into force on 24 January 2004. Member States will no longer be required to notify these aids to the Commission in advance to obtain approval.

Under Articles 3 and 19 of the Regulation, for individual aid or an aid scheme to be exempted, Member States must "at the latest 10 working days before the entry into force of an aid scheme, or the granting of individual aid outside any scheme, exempted by this Regulation, [……], forward to the Commission, with a view to its publication in the *Official Journal of the European Union*, a summary of the information regarding such aid scheme or individual aid in the form laid down in Annex I."

In accordance with this procedure, Member States have already communicated to the Commission services the summaries of 72 different measures in 2004. The Commission has published these summaries on the Internet at the following address: http://europa.eu.int/comm/agriculture/stateaid/exemption/index_en.htm

3.4. State aid to the fisheries sector

On 1 November 2004 a new set of rules on state aid to the fisheries sector came into force. These rules bring state aid policy into line with the reformed Common Fisheries Policy, adopted in December 2002. The new rules provide for a 'block exemption' for certain types

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55 To date, all Member States except France excluded banking.

56 On 7 July the Commission decided on the NAPs of Denmark, Ireland, the Netherlands, Slovenia, Sweden, Austria, Germany and the UK; on 20 October decisions were taken on the NAPs of Belgium, Estonia, Latvia, Luxembourg, the Slovak Republic, Portugal, Finland and France ; in late December decisions were taken on the NAPs of Cyprus, Hungary, Lithuania, Malta and Spain. The communications regarding these decisions and the decisions themselves can be found at http://www.europa.eu.int/comm/environment/climat/emission_plans.htm

of aid which will no longer have to be notified to and approved by the Commission before Member States can implement them. State aid in the fisheries sector which does not fall within the block exemption Regulation[57] will still have to be notified to the Commission. Such State aid will be subject to new Guidelines for the examination of State aid to fisheries and aquaculture[58], which also entered into force on 1 November 2004.

The measures covered by the block exemption relate to aid unlikely to threaten conservation or distort competition in a manner not in line with the EU interest and which therefore have never given rise to investigation procedures by the Commission. The aid concerned has to comply strictly with the criteria set out in the block exemption regulation, which are identical to those governing the allocation of EU funds under the Financial Instrument for Fisheries Guidance (FIFG). The block exemption will apply to aid granted to small and medium-sized enterprises (SMEs) for amounts below € 1 million or to aid designed to finance measures with a maximum eligible amount of € 2 million. To ensure the proper allocation of such aid, monitoring will take place through simplified ex-ante information of the Commission on the aid to be granted, published on the internet and the Official Journal, and ex-post reporting obligations.

In addition, on 6 October 2004 the Commission adopted a Regulation concerning "de minimis" aid for the agriculture and fisheries sectors[59], which entered into force on 1 January 2005. The Regulation exempts national aid of up to € 3 000 per farmer and fisherman over three years from the requirement of prior notification. To avoid distortions of competition, Member States granting such aid will have to respect an overall ceiling equal to 0.3% of agricultural or fisheries output. Member States may grant aid fulfilling all the conditions of the Regulation without prior approval by the Commission. However, they will have to keep registers to show that both ceilings have been respected.

As regards the role of aid to fisheries in the context of reducing overall State aid levels, it is worth noting the following:

– the very low absolute amount of State aid in Fisheries (EU-15, € 389 million in 2003);

– the fact that the State aid discipline applies to the Fisheries sector only insofar as the Council decides that it applies (Articles 36 and 37 of the EC Treaty);

– the complete parallelism of eligibility rules for structural funds aid in the Fisheries Sector and State aid compatibility, thus ensuring a coherence in the sectoral approach (which for example does not exist in the manufacturing sectors or agriculture).

3.5. State aid to the transport sector

<u>De minimis</u>

57 Commission Regulation (EC) No 1595/2004 of 8 September 2004 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium sized enterprises active in the production, processing and marketing of fisheries products (OJ L 291, 14.9.2004, p. 3).

58 OJ C 229, 14.9.2004, p. 5.

59 Commission Regulation (EC) No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid in the agriculture and fisheries sectors (OJ L 325, 28.10.2004, p. 4)

On 3 March 2004, the Commission adopted a draft regulation proposing to amend Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid. In the draft regulation, it is proposed to remove, with the exception of the acquisition of vehicles by road hauliers, the exclusion of transport from the *de minimis* rule, except in certain defined cases, and to exclude the coal sector from the scope of this regulation. Indeed, in the light of the Commission's experience in many State aid cases in the transport sector over the years, the Commission considers that it can be established that, with the exception of the acquisition of vehicles by road hauliers, aid to transport companies not exceeding a ceiling of EUR 100 000 over a period of three years is not liable to affect trade between Member States and does not distort or threaten to distort competition. With regard to the coal sector, which has been covered by the EC Treaty only since 24 July 2002, following the expiry of the ECSC Treaty, it has been subject to specific rules which prevent the application of other exemption regimes.

During 2005, and in accordance with Council Regulation (EC) No 994/98, the Advisory Committee on State aid will be consulted twice on the draft proposal (before publication in the OJ and prior to adoption of the final regulation) which is expected to be finally adopted by the Commission in autumn 2005.

Aviation

In the Commission decision concerning advantages granted by the Walloon Region and the publicly-owned Brussels South Charleroi Airport (BSCA) to the airline *Ryanair* in connection with its establishment at Charleroi, the Commission gave indications as to the means by which public authorities may support the opening of new air links from secondary airports and hence make better use of secondary airports providing regional benefits and a reduction of air congestion. Following this decision the Commission services have presented to the Member States (9 March 2005) a set of draft Community guidelines on financing of airports and start-up aid to airlines departing from regional airports, which aim to clarify and make more transparent the different possibilities that are at the disposal of regional airports to develop themselves on the market in total conformity with Community rules on State aid. The final text could be expected for adoption by mid-2005.

Rail

Revitalising the railway sector is one of the main objectives of European transport policy. Complementary to the gradual opening of the freight railway market, control of State aid will play an essential role in the establishment of a railway industry which is competitive and efficient. Therefore the Commission is envisaging a framework concerning the public financing of railway companies, which will be based on the principles of transparency, non-discrimination and proportionality, while taking into account the main objectives of European transport policy. This framework should provide Member States and third parties with the necessary transparency and clarity with regard to the application of the State aid Treaty rules to the railway sector and also take into account the ongoing liberalisation of the rail freight sector. A proposal for such a framework is envisaged for the end of 2005.

Maritime

On 17 January 2004 a new set of rules on State aid to maritime transport[60] came into force. The main changes are the introduction of a nationality requirement for seafarers on intra-community passengers traffic, the introduction of an EU-flag requirement for a share of ships benefiting from aid and a clarification on how and to which extent the guidelines could apply to the towage and dredging activities.

3.6. Enlargement

In December 2004, the competition chapters of the accession negotiations with Romania and Bulgaria were closed. Prior to closure, three elements had to be put in place: the necessary legislative framework, an adequate administrative capacity and a credible enforcement record. During the negotiations, the Commission emphasised in particular the need for the two countries to strengthen their State aid enforcement record, with special attention given in the case of Romania to the restructuring of its steel sector. A series of safeguard clauses are foreseen in the Accession Treaty, in the event the acceding countries fail to implement commitments undertaken in the context of the accession negotiations, as well as a provision for the possible postponement of the date of accession by one year in the event of either state being manifestly unprepared to meet the requirements of membership. In the case of Romania, the Treaty specifies that the Council may, on the basis of a Commission recommendation and after a detailed assessment in the autumn of 2005, decide on such a postponement, if it finds shortcomings in Romania's fulfilment of specific conditions in the competition area. There will be no list with existing aid measures attached to the Accession Treaty of Romania and no application of the interim procedure, until the Commission concludes that Romania's state aid enforcement record has reached a satisfactory level. Bulgaria is generally meeting the commitments and requirements arising from the accession negotiations for the Competition chapter and has not requested any transitional arrangements in the state aid area. The Accession Treaty with both Romania and Bulgaria is due to be signed on 25 April 2005.

The two other candidate countries, Croatia and Turkey are still waiting to open their membership negotiations. Article 70 of the Stabilisation and Association Agreement (SAA) with Croatia, which entered into force on 1 February 2005 lays down the country's obligations with regards to State aid. The date set by the European Council for the opening of negotiations with Turkey is 3 October 2005.

4. ONLINE STATE AID SCOREBOARD, REGISTER AND OTHER REPORTS ON STATE AID

The online Scoreboard contains electronic versions of this and previous Scoreboards as well as a set of key indicators, a wide array of statistical tables and internet-links to information on State aid policy issues of the Member States and the European Parliament.

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

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

State aid Register – a second transparency tool

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60 OJ C 13, 17.1.2004, p. 3.

The Commission's State aid Register has been online since 2001. The Register provides detailed information on all State aid cases which have been the object of a final Commission decision since 1 January 2000 as well as block exemption cases published in the Official Journal. It is updated daily and thus ensures that the public has timely access to the most recent State aid decisions. It is available on the homepage of the Competition Directorate General's Internet site:

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

Following an extensive review in the last quarter of 2004, a major revamp of the Register is foreseen and should hopefully be largely completed by the end of 2005.

Annual Competition Report and Competition Policy Newsletter

The Commission publishes an Annual Report on Competition Policy which summarises the most important legal developments and case-law of the year as well as statistical data on the Commission's work during the relevant year.

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

A Competition Policy Newsletter is also published three times a year by the Competition Directorate-General of the European Commission. It aims at describing and discussing in more detail legislative developments as well as interesting case-law and covers generally the preceding four months.

http://europa.eu.int/comm/competition/publications/cpn/

5. METHODOLOGICAL NOTES

The Scoreboard covers State aid as defined under Article 87(1) EC Treaty that is granted by the EU Member States and has been examined by the Commission. Accordingly, general measures and public subsidies that have no affect 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. Furthermore, Community funds and instruments are also excluded.

All State aid data refer to the implementation of Commission decisions and not cases that are still under examination, which once decided upon, may have an effect on historical data. State aid expenditure is attributed to the year it was made. In cases that result in expenditure over a number of years, the total amount is 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 2003.

This spring 2005 edition of the Scoreboard focuses largely on the year 2003. Data for the agricultural sector refer to the year 2002 as figures for 2003 are not yet available. In future, the Commission and Member States have pledged to reduce this time-lag with the result that 2004 data should be available in the autumn 2005 edition of the Scoreboard.

As in previous years, State aid data collected for the Scoreboard are grouped according to primary objectives which may be either horizontal or sector-specific. Information on the objective of the aid, or, the sector to which the aid is directed, refers to the time the aid was approved and not to the final recipients of the aid. For example, the primary objective of a scheme which, at the time the aid was approved, was exclusively earmarked for SMEs is classified as aid for 'SMEs'. In contrast, aid granted under, say, a regional development scheme may ultimately be awarded to SMEs, but is not regarded as such if, at the time the aid was approved, the scheme was open to all enterprises. A secondary objective is one for which, in addition to the primary objective, the aid was exclusively earmarked at the time the aid was approved. For example, a scheme for which the primary objective is R&D may have as a secondary objective 'SME' if it was directed exclusively at SMEs. As a result, the data now present a more accurate picture of the total amount of aid exclusively earmarked for SMEs though it is not possible to determine the total amount of aid that actually went to SMEs.

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://europa.eu.int/comm/competition/state_aid/scoreboard/conceptual_remarks.html

ANNEX I: STATE AID FOR HORIZONTAL OBJECTIVES AND PARTICULAR SECTORS IN THE NEW MEMBER STATES, 2000-2003

														Annual averages
	EU-15		**New MS**		**CZ**	**EE**	**CY**	**LV**	**LT**	**HU**	**MT**	**PL**	**SI**	**SK**
	mio €	**%**	**mio €**	**%**	**%**	**%**	**%**	**%**	**%**	**%**	**%**	**%**	**%**	**%**
Horizontal Objectives	**29.841**	**73**	**1.462**	**24**	**10**	**100**	**23**	**31**	**5**	**41**	**6**	**29**	**72**	**28**
R&D	5.286	15	**116**	2	2	13	0	-	1	2	-	1	16	4
Environment	6.868	16	**149**	2	2	15	1	0	-	3	-	2	17	1
SME	5.388	14	**147**	2	2	10	4	3	-	7	1	1	9	1
Commerce	377	1	**14**	0	-	8	2	2	2	-	4	-	-	1
Employment aid	1.211	2	**348**	6	1	-	-	-	-	4	-	11	21	-
Training aid	918	2	**79**	1	0	-	2	-	-	1	0	2	2	-
Heritage conservation, cultural aid	631	1	**44**	1	0	20	11	-	-	1	0	-	1	1
Natural disasters	54	0	**4**	0	-	-	0	-	-	-	-	-	2	-
Risk capital	24	0	**1**	0	-	-	-	-	-	0	-	-	-	-
Regional aid	9.085	23	**560**	9	3	33	4	25	3	24	-	11	4	20
Sectoral aid (1) (2)	**9.977**	**25**	**4.608**	**75**	**90**	-	**78**	**69**	**95**	**59**	**94**	**83**	**28**	**72**
Manufacturing	1.753	4	**1.441**	24	10	-	n.a.	68	64	56	89	12	20	54
of which shipbuilding	903	2	**105**	2	-	-	n.a.	-	0	-	46	1	-	1
of which steel	13	0	**246**	4	4	-	n.a.	-	-	-	-	5	7	22
of which motor vehicles	17	0	**73**	1	2	-	n.a.	-	-	-	-	0	-	31
Coal	6.657	17	**1.413**	23	0	-	n.a.	-	-	2	-	57	7	3
Other Non-manufacturing	240	1	**51**	1	1	-	n.a.	-	31	-	1	1	-	8
Financial Services	1.162	3	**1.685**	28	80	-	n.a.	-	-	0	-	1,5	-	6
Other services	165	0	**15**	0	-	-	n.a.	0,7	-	0	5	-	0	0
Total aid less agriculture, fisheries and transport in million €	**39.839**	**100**	**6.067**	**100**	**2.050**	**8**	**315**	**27**	**41**	**769**	**155**	**2.403**	**168**	**130**

ANNEX II: DECISIONS TAKEN BY THE COMMISSION IN THE FIELD OF BROADCASTING SINCE THE ADOPTION OF THE BROADCASTING COMMUNICATION

This Annex provides summaries of the decisions that have been taken by the Commission after the adoption of the Broadcasting Communication. Many of these decisions have focused on individual aid measures (ad hoc aid) granted by Member States to support the public service broadcaster. The Commission has focused on the question of checking that the financial support granted through these ad hoc measures, on top of the funds deriving from recurrent funding schemes, was proportional to the net cost of the PSB.

Positive decisions

Belgium – N 548/2001 – State Aid to local television stations in the French Community, decision adopted on 13.2.2002, OJ C 150, 22.06.2002, p. 7

In the local television stations case, the Government of the French community in Belgium supported 12 local television stations situated in the French community with € 3.27 million to carry out their public service tasks. The Commission concluded that the compensation of the public service costs of the local television stations was compatible with the Treaty.

United Kingdom - N 631/2001 – BBC licence fee, decision adopted on 22.5.2002, OJ C 23, 30.01.2003, p. 6

In the BBC licence fee case, the UK Government gave the approval to the BBC to run 9 new digital services, including both radio and television, under the public service mission. The total net costs of the nine digital services for 2002-2003 were £ 90 million. In the light of the case law at that time[61], the Commission considered that such compensation did not constitute a measure disproportionate to the net public service costs of BBC, and therefore did not constitute an aid within the meaning of Article 87(1). However, the Commission also noted that, even if the measure were to be considered as a state aid, the exception of Article 86(2) would apply, on the basis of which the measure would be compatible with the Treaty.

Portugal - C 85/2001 - Ad-hoc payments RTP, decision adopted on 15.10.2003, not yet published

On the top of the annual compensation payments, a number of ad hoc measures were implemented by Portugal for RTP. The Commission concluded that the measures amounting to PTE 68 006 million granted by Portugal to RTP in the form of an agreement with the social security scheme in 1993 (PTE 1206 million), capital injections in the period 1994-97 (PTE 46 800 million), a loan in 1998 (PTE 20 000 million) had to be regarded as state aid under Article 87 (1). However, the Commission found that the funding of RTP by means of ad-hoc aids was compatible with the common market under Article 86 (2), as the funding was proportionate to the net costs of well defined and entrusted public service obligations. Therefore, the State funding did not affect trading conditions and competition in the Community to the extent, which would be contrary to the common interest under Article 86 (2). It should be stressed that, in order to exclude any over-compensation, the Commission also took into account the recurrent financing of the broadcaster in the form of annual compensations.

61 C-53/00 Judgment of 22.11.2001, Ferring, Rec.2001, p.I-9067. The Court stated that any compensation proportional to the net costs incurred in the discharge of a public service obligation was not to be considered as a State aid.

Italy - C 62/1999 - Ad-hoc payments RAI, decision adopted on 15.10.2003, OJ L 119, 23.04.2004, 1

In a case concerning the Italian public broadcaster, the Commission found that over the period 1991 to 1995 RAI benefited from two State aid measures on top of the recurrent financing scheme (licence fee). These measures are: a tax exemption on the re-evaluation of RAI assets, which was used to cover the losses of 1993[62] and the capital injection of 1992 amounting to ITL 100 billion. The support that Italy granted to RAI by means of these measures and the licence fee mechanisms did not lead to any overcompensation of the net-cost of the general service task entrusted to it in this period and therefore the two measures constituted a compatible State aid within the meaning of Article 86 (2). The Commission also found that in that period RAI did not undercut advertising prices.

France - C 60/1999 – Ad-hoc payments France 2 and 3, decision adopted on 10.12.2003, OJ L 361, 8.12.2004, p. 21

The financing of France 2 and France 3 is rather complex, consisting of a licence fee and sponsorship. In addition, during the period 1988-1994, France 2 and France 3 benefited from other investment subsidies and France 2 from capital injections. The subsidies received by France 2 in the reference period amounted to 886.56 million FRF and by France 3 to 578.5 million FRF. From 1991 to 1994, France 2 was supported by capital injections totalling 910 million FRF. In its decision of 10 December 2003, the Commission concluded that the compensation in the form of grants and capital injections to France 2 and 3 constituted State aid under Article 87 (1) and was compatible with the common market within the meaning of Article 86 (2), since it did not lead to any overcompensation of the net costs of the public service tasks officially entrusted to France 2 and France 3. In the period 1988-1994, the public funds granted by the French authorities to France 2 and 3 were lower than the public service costs (taking into account all the revenues of both channels) and there was no evidence of anti-competitive behaviour of the public channels in the sale of advertising space.

Denmark - N 313/2004 – Recapitalisation of TV2,[63] decision adopted on 6.10.2004, not yet published

In order to restore the balance sheet of TV2 following the reimbursement of DKK 1 050 million, the Danish authorities planned to inject capital into the company amounting to DKK 440 million. The capital was to be granted directly from the general State budget. In addition, other measures were foreseen to restore the balance sheet of TV2 following the recovery. The Danish authorities would swap their current debt investment in the company for equity and the company would raise new commercial loans from private banks. The loans were to be unsecured and granted on market terms. The Commission concluded that the envisaged capital injection of DKK 440 million and the debt-for-equity swap were necessary to restore the capital that TV2 would need, in the wake of the incorporation, to carry out its public service obligations. Therefore, to the extent that these two measures included State aid elements within the meaning of Article 87(1), they were compatible with the Common Market under Article 86(2).

Negative decisions

Denmark - C 2/2003 - Financing of TV2, decision adopted on 19.05.2004, not yet published

The Commission calculated whether the State compensation was proportionate to the net cost TV2 had to bear in fulfilling its public service obligation and found that amount of aid that TV2/DENMARK received exceeded the cost of fulfilling its public service mission and that, during the period 1995-2002, TV2 had been overcompensated by DKK 628.2 million (€ 84.4 million). The Commission's investigation revealed that the Danish State, as owner of TV2, did not behave like a market investor when it decided to reinvest the annual amounts of excess compensation into TV2. Therefore, the

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62 The advantage deriving from this measure has not been quantified in the decision (see paragraph 128).

63 This decision follows the decision of reimbursement of illegal state aid (C 2/2003).

Commission concluded that the aid had overcompensated TV2 by some DKK 628.2 million which was not necessary for the accomplishment of TV2's public service mission under Article 86 (2). Accordingly, the Commission decided that Denmark should take all necessary measures to recover the aid.

The Commission also analysed TV2's behaviour in the television advertising market. Although the television advertising prices in Denmark were rather low, the Commission's investigation did not show that TV2 had chosen not to maximise its advertising revenues. The Danish authorities informed the Commission that, before recapitalising TV2, they will comply with the Decision and recover the amount specified in the decision from TV2, with interests. In addition, the Danish authorities stated that they will ex officio recover from TV2 the overcompensation for 2003 with interests. Consequently, the total recovery claim to be executed by the Danish authorities amounted to around DKK 1 050 million.

Existing aid

In the following four cases (France - C 60/1999 - Licence payments to France 2 and 3, Spain - NN 166a/1995 – RTVE, Italy - C 62/1999 – Licence fee to RAI, and Portugal - NN 85a/2001, NN 94a/1999, N 133a/2001 – RTP) the Commission concluded that the annual financing of public broadcasters constitutes existing aid. Accordingly, the national authorities were required to take appropriate measures to ensure that these schemes contain safeguards against any possible over-compensation. In general terms, the Commission recommended to the Member States the implementation of the following measures: (a) separation of accounts, (b) introduction of a legal mechanism to prevent over-compensation (c) ensure the commercial exploitation of public service in line with market terms and conditions and (d) establishment of a competent independent authority which should check the compliance of these rules. Italy, France and Spain agreed to implement the Commission recommendations, while the procedure is still underway for Portugal.