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REPORT FROM THE COMMISSION

State Aid Scoreboard

- Autumn 2007 Update -

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EXECUTIVE SUMMARY

This autumn 2007 update of the State Aid Scoreboard focuses on the State aid situation in the twenty-five Member States for the year 2006 and the underlying trends. The main aim is to assess Member States progress towards meeting the Lisbon objectives and response to successive European Councils call for “less and better targeted aid”. This update of the Scoreboard also includes a detailed state of play regarding aid for research and development (R&D) as well as aid granted under block exemption regulations. It also includes the customary summary of ongoing efforts to recover unlawful aid and an overview of ongoing work to modernise State aid control through legislative and policy means.

The Member States' response to Council calls for less State aid: appreciable downward trend in the overall volume of State aid

The overall level of State aid for industry and services (total State aid less agriculture, fisheries and transport)[1] shows a significant downward trend in the mid- to long-term perspective. <u>In relation to GDP, and during a period of steady economic growth, State aid decreased by 15% from 0.50% of GDP in the period 2001-2003 to 0.43% of GDP in the period 2004-2006</u> (see Table 2). Also in absolute terms, total State aid decreased from an annual average of € 53.1 billion to an annual average of € 47,6 billion in the two consecutive periods. This positive development can be attributed to mainly three factors:

- First, and in line with expectations in a period of economic growth, Member States granted considerably less rescue and restructuring aid, accounting for half of the decrease over the two periods. In absolute terms, rescue and restructuring aid decreased from € 6.2 billion to € 1.8 billion.
- Second, state aid to the coal sector shows a continued downward trend.
- Third, <u>this downward trend is even more accentuated in the EU-10</u>. Here, pre-accession commitments and continued efforts after accession contributed likewise as these Member States continue to adjust their State aid policies and practices to the requirements under EU State aid law and policies.

At the same time, aid to environmental protection has increased significantly in recent years. Aid for all other objectives has remained relatively stable.

The trend of the overall EU-25 level of State aid does not only reflect the broader strategic choices or changes in national policies but is likewise influenced by a relatively small number of large cases (for example, restructuring aid in Germany to *Bankgesellschaft Berlin (BGB)*, amounting to some € 8 billion in the years 2001 and 2002, € 4 billion for Polish coal in 2003, € 1.4 billion to *Alstom* in France 2004, and € 750 million restructuring aid to *BAWAG* in Austria 2006).

[1] The overall level of State aid, including aid to the agriculture, fisheries and transport sector stood in 2006 at € 67 bn and accounted for 0.58% of GDP. This figure excludes subsidies to the railway sector (some estimated € 37 bn in 2006 – see table 5) as well as aid for the compensation of services of general economic interest.

The EU average of State aid for industry and services expressed as percentage of GDP hides differences between Member States. The sharpest falls can be observed in Czech Republic, Cyprus and Malta, largely due to the phasing out of pre-accession measures, and in Poland due to the declining aid to the coal industry. Denmark, Germany, Ireland and Spain experienced also a significant decrease. By contrast, State aid in relation to GDP increased significantly during the two periods under review in Austria and Finland. In 2006, Germany accounted for € 16 billion of the total of € 48 billion of the aid for industry and services. More significantly, its share of aid expressed as percentage of GDP (0.69%) is considerably higher than the EU average (0.42%), with half of German aid awarded for environmental and energy saving objectives and 14% of the aid awarded for coal production Other Member States with a high share include Sweden (0.94%) where the aid is almost entirely awarded for environmental and energy saving objectives, Portugal (0.91%) due to a large regional aid tax scheme in Madeira, as well as Hungary (0.93%) and Malta (1.77%) though most of the aid measures in question are either being phased out under transitional arrangements or limited in time. Among those Member States with a relatively low share of aid to GDP (less than 0.25%) are the three Baltic countries together with Greece, Luxembourg, the Netherlands and the United Kingdom.

Almost two thirds of Member States have reacted positively to Council's call to redirect State aid towards horizontal objectives and more than 90% of their State aid is now granted for horizontal objectives

The clear move towards "better targeted aid" continues with almost two third of Member States now awarding more than 90% of their aid to horizontal objectives. On average, aid earmarked for horizontal objectives, accounted for 85% of total aid for industry and services in 2006. This compares to 83% in 2005, 76% in 2004 and around 50% in the mid Nineties. In welcoming this trend, one should be aware that much of the increase in horizontal aid can be attributed to an increase in tax exemptions for the environment and energy saving, in particular for energy intensive industries. The three main horizontal objectives remain environment and energy saving (29% of total aid), regional economic development (19%) and R&D (14%). Environment and energy saving was extensively supported by the Nordic countries, Germany, the Netherlands and the United Kingdom. Regional development was favoured mainly by EU-10 and Mediterranean countries. Research and development was favoured most by Finland, France, the Netherlands, Belgium, Italy, the Czech Republic and Estonia.

The clear positive shift towards horizontal objectives is even more significant in the EU-10 Member States as they continue to adjust their State aid policies and practices

It is encouraging to see that all EU-10 Member States have progressively redirected aid towards horizontal objectives. The share of horizontal objectives in total aid for industry and services increased in the EU-10 Member States by 36 percentage points between 2001-2003 and 2004-2006, compared to an overall increase of 17 points in this period.

State aid for R&D is moderately increasing

As regards State aid to R&D, total expenditure stood at € 6.7 billion in 2006. After a significant increase in 2001, the level of R&D aid has remained rather stable at the beginning of the decade, but shows a slight upward trend in the most recent years (+1.7%).

Under the new R&D&I framework that entered into force at the beginning of 2007, the Commission approved so far 42 R&D&I schemes and ad hoc cases with a total budget of more than € 12 bn. The first year of application has shown that a good preparation by the Member State and a fruitful co-operation with the Commission allows for a more detailed assessment while producing decisions within a timeframe very similar to what was observed under the old framework. 15 of those schemes involved innovation aid, thus exploiting the expansion of activities eligible for aid provided by the new Framework.

Furthermore, a comparison between State aid expenditure data on R&D with Eurostat data on overall private and public R&D investment suggests that only a small part of public R&D spending is subject to notification under the State aid rules. This, together with the enlarged scope of R&D&I activities eligible for aid under the new framework, demonstrate the high flexibility for Member States to boost investment in research, development and innovation.

Overall private and public investment in R&D still falls short of the Barcelona target of 3% and stood at 1.85% in 2005 (of which 0.64 percentage points were government spending). Only Finland and Sweden exceed the Barcelona target for expenditure on R&D (3% of GDP) while another four Member States (Germany, Denmark, Austria and France) reach levels of R&D expenditure between 2 and 3% of GDP. State aid to R&D represents a relatively small share in public funding. For the EU-25, State aid expenditure for R&D stood at 0.06% of GDP in 2006.

Member States have been able to introduce more than 2500 block exempted aid measures

In areas where sufficient experience to define general compatibility criteria has been built up, the Commission introduced so-called block exemption regulations enabling Member States to implement aid that does not raise concerns as to its compatibility without further proceedings before the Commission. Block exemptions for aid to SMEs (2001, amended in 2004 to include R&D for SMEs), training aid (2001), employment aid (2003) and regional investment aid (2007), as well as for certain types of aid in the fisheries sector (2004) and aid to SMEs in the agricultural sector (2004, amended with effect of 2007), have come into force over the past few years.

Experience has shown that the objectives of the block exemption regulations have been largely met, with Member States able to introduce almost 1700 block exempted measures in the period 2001 – 2006. This has been accompanied by a significant reduction in the number of notified measures for these types of aid. In 2006 alone, the Commission has received more than 400 information forms on newly introduced BER measures.

In the first three quarters of 2007, Member States informed the Commission that they implemented an additional number of more than 800 block exempted measures, bringing the total number of block exempted measures to more than 2500 since the adoption of the first state aid exemption regulation in 2001. The reason for this significant increase is threefold:

- First, many State aid measures are co-financed by EU structural funds. Member States therefore tend to introduce a significant number of new state aid block exemption measures at the beginning of a structural funds programming period (now 2007 – 2013). This concerns in particular measures for aid to SMEs (246) and aid to training (86).

- Second, the Commission observes a high take-up rate for the new possibility to block exempt regional investment aid (154 new measures).

- Third, the widening of block exemption possibilities for State aid to SMEs active in the agricultural sector has almost tripled the total number of new measures communicated by the Member States to the Commission in the field of agriculture.

In 2006, Member States granted around € 3 billion of State aid under block exempted measures

As regards expenditure, an estimated € 3 billion was awarded in 2006 under the three block exemption regulations for SMEs in the manufacturing and services sector, training and employment, while still another € 6 billion was awarded for the same objectives under notified aid measures. Aid to SMEs accounted for € 1.9 billion, while € 0.6 billion were spent for training aid and another € 0.6 billion for aid to employment. In 2006, four Member States accounted for more than 75% of total expenditure. Italy made up for 36% of the total expenditure, followed by Poland (20%), Germany (13%) and the United Kingdom (9%).

The significant increase in 2007 of newly introduced block exempted measures, combined with sizeable budgets of many of the new measures seems to indicate a steep increase in expenditure under block exemption regulations.

Increasing use of block exemptions over time but with considerable variations by objective and between Member States

The extent to which block exempted aid has over time replaced notified aid can be established by comparing total expenditure granted under a given horizontal objective with the expenditure under block exemption for the same objective. Results show that Member States have increasingly made use of the block exemption possibilities, even though with considerable variations by objective and between Member States. For training aid around 80% of overall expenditure was reported by Member States under block exempted measures, the share was 35% for SME aid but less than 20% for employment aid. The good take up rate for the newly introduced block exemption for regional aid as well as the increased use of other block exemption regulations in 2007 suggests that one important factor for a high acceptance of block exemptions by Member States is their availability at the beginning of a Structural Funds programming period.

Other aspects of the State aid policy

In addition to the general trends in State aid, the autumn 2007 update of the State Aid Scoreboard provides details on sectoral aid, recovery of unlawful aid and on legislative and policy developments.

INTRODUCTION

This autumn 2007 update of the State Aid Scoreboard focuses on the State aid situation in the twenty-five Member States for the year 2006[2] and the underlying trends. The main aim is to assess Member States progress towards meeting the Lisbon objectives and response to successive European Councils call for "less and better targeted aid". The European Council of March 2005 invited Member States to "*continue working towards a reduction in the general level of State aid, while making allowance for any market failures. This movement must be accompanied by a redeployment of aid in favour of support for certain horizontal objectives such as research and innovation and the optimisation of human capital. The reform of regional aid should also foster a high level of investment and ensure a reduction in disparities in accordance with the Lisbon objectives.*" These goals were underlined by the Commission Recommendation on the Broad Economic Policy Guidelines for 2005-2008.[3]

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 State aid awarded by the Member States in 2006 and then examining the underlying trends.

Parts Two and Three contain an overview of ongoing efforts to recover unlawful aid and summarise ongoing work to modernise State aid control through legislative and policy means.

This version of the Scoreboard is available on the Competition Directorate General's Internet side, under the following address:

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

In addition, a permanent online Scoreboard consisting of a series of key indicators and a range of statistical information for the EU Member States is available under the same address.

The spring 2008 Scoreboard will include in particular a special chapter on the State aid situation in Bulgaria and Romania.

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

This chapter provides an overview of State aid granted in the EU Member States in 2006 and examines the underlying trends. The main purpose is to measure the extent to which Member States have met the call for less and better targeted aid. After the considerable fall in the level of aid at the end of the nineties, the underlying trend was at the beginning of this decade stable rather than downward. In contrast, the past three years (2004-2006) show a moderate downward trend, with clearly lower overall aid levels. The vast majority of Member States also continues to shift the emphasis from supporting individual companies or sectors towards tackling horizontal objectives. This movement is even more accentuated in the EU-10

[2] Bulgaria and Romania have become Member States on 1 January 2007. The State aid expenditure of these countries will be included regularly as from the autumn 2008 update of the Scoreboard.

[3] COM(2005) 141 final, 12.4.2005

Member States as they continue to adjust their State aid policies and practices to the requirements under EU State aid law and policies.

1. STATE AID IN ABSOLUTE AND RELATIVE TERMS

Total State aid[4] granted by the Member States stood at € 67 billion in 2006. In absolute terms, Germany granted the most aid (€ 20 billion) followed by France (€ 10 billion), Italy (€ 5.5 billion), Spain (€ 5 billion) and the United Kingdom (€ 4 billion).

In sectoral terms, around € 44 billion of aid was earmarked for the manufacturing and services sectors, € 16.6 billion for agriculture and fisheries, € 3.5 billion for coal, € 2.2 billion for the transport (excluding railways) sector and € 0.6 for the other non manufacturing sectors.[5]

Table 1: State aid awarded in the EU Member States, 2006

	Total State aid less railways in billion €	Total State aid for industry and services (= total State aid less agriculture, fisheries and transport) in billion €	Total State aid less railways as % of GDP	Total State aid for industry and services (= total State aid less agriculture, fisheries and transport) as % of GDP
EU-25	**66.7**	**47.9**	**0.58**	**0.42**
EU-15	**61.1**	**44.7**	**0.56**	**0.41**
EU-10	**5.6**	**3.2**	**0.91**	**0.52**
Belgium	1.2	0.9	0.39	0.28
Czech Republic	0.8	0.6	0.66	0.51
Denmark	1.3	1.0	0.59	0.46
Germany	20.2	16.0	0.87	0.69
Estonia	0.1	0.0	0.41	0.08
Ireland	1.0	0.5	0.57	0.28
Greece	0.6	0.3	0.26	0.15
Spain	4.9	3.9	0.50	0.39
France	10.4	7.4	0.58	0.41
Italy	5.5	3.8	0.37	0.26
Cyprus	0.1	0.1	0.76	0.48
Latvia	0.3	0.0	1.80	0.15
Lithuania	0.1	0.1	0.54	0.23
Luxembourg	0.1	0.0	0.32	0.13
Hungary	1.4	0.8	1.57	0.93
Malta	0.1	0.1	2.29	1.77
Netherlands	1.9	1.3	0.35	0.24
Austria	2.3	1.6	0.90	0.60
Poland	2.3	1.2	0.85	0.45
Portugal	1.5	1.4	0.93	0.91
Slovenia	0.3	0.1	0.83	0.48
Slovakia	0.2	0.2	0.51	0.45
Finland	2.6	0.6	1.53	0.35
Sweden	3.5	2.9	1.15	0.94
United Kingdom	4.2	3.1	0.22	0.16

State aid as defined under Article 87(1) EC Treaty that has been granted by the EU Member States for all sectors except railways and has been examined by the Commission. All data are quoted at constant prices. The amounts of State aid already recovered or to be recovered by Greece in respect of Olympic Airways and/or Olympic Airlines are as yet not fully established and are the subject of several ongoing legal procedures including two actions taken by the Commission against Greece (Case C-369/07 and Case C-419/06). For the purposes of this scoreboard edition, data for Greece include only provisionally data for aid to Olympic Airways as reported by Greece. Source: DG Competition, DG Energy and Transport, DG Agriculture and DG Fisheries.

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

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

State aid measured as a percentage of GDP

In relative terms, State aid amounted to below 0.6% of EU Gross Domestic Product (GDP) in 2006. This average hides significant disparities between Member States: the share of total aid to GDP ranges from 0.4% or less in Belgium, Greece, Italy, Luxembourg, the Netherlands and the United Kingdom to 1% or more in Latvia, Hungary, Malta, Finland and Sweden (Table 1). The high proportion in some of the EU-10 Member States is due largely to pre-accession measures which are being phased out under transitional arrangements or limited in time. In Sweden, it can be attributed to the very high amounts of aid for environment and energy saving which represents 86% of total aid. In Finland and Latvia, the explanation can be found in the relatively large amount of aid to agriculture which represents almost 75% for Finland and around 67% in Latvia.

Indeed, due to the particularities associated with aid to agriculture and fisheries, it is worth looking at total aid less these sectors (= total aid to the industry and services). This second indicator produces a rather different ranking of Member States. For example, Finland and Latvia are below the EU average with aid for the industry and services standing at respectively 0.35% and 0.15% of GDP.

It is important to bear in mind that some aid measures can not be quantified and are therefore not included in the scoreboard figures.[6] Although the number of measures is limited, the distortion of competition is often very significant and has an impact on the overall level of State aid, e.g., the unlimited State guarantees previously available to Electricité de France (EDF) or the German Landesbanken. Another example is the aid to France Telecom, part of which cannot be quantified[7] and the other part may be underestimated.[8] Moreover, of the 115 recovery decisions adopted since 2001, there are 21 cases for which the aid can not yet be quantified (See recovery of unlawful aid – Part Two below).

Appreciable downward trend in the overall volume of State aid

At the Stockholm European Council in 2001, the Member States pledged to demonstrate a downward trend in State aid in relation to GDP. The 'State aid as percentage of GDP indicator' takes into account the general economic situation in the particular Member State. The degree to which Member States have achieved the goal to reduce State aid or not can be measured by looking at total State aid relative to GDP over a period of one year, i.e. the trend from 2005 to 2006 or by observing the underlying trend over the periods 2001-2003 and 2004-2006. In order to eliminate as far as possible annual fluctuations and the effects of delayed reporting,[9] the latter option is preferred.

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

7 C 13a/2003 Mesures Financières-France Telecom.

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

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

In the EU-15,[10] the downward trend of the volume of State aid[11] in the end of the 1990s has levelled off since 2000 and fluctuated in the past years around 0.6 % of GDP or € 60 billion (see Table 2 below). The results show a modest downward trend in the volume of total State aid for EU-25 over the last 3 years, 2004 – 2006. As there is a break in the time series for agriculture data due to a change in the method to collect data in 2004, it is not possible to draw conclusions on a long-term trend for State aid levels on that basis. Therefore, observations on the underlying trend are based on data for total aid for industry and services (= total aid less agriculture, fisheries and transport).

Total aid for industry and services shows a significant downward trend in the mid- to long-term perspective. In relation to GDP, and during a period of steady economic growth, State aid decreased by 15% from 0.50% of GDP in the period 2001-2003 to 0.43% of GDP in the period 2004-2006 (see Table 2). Also in absolute terms, total State decreased from an annual average of € 53.1 billion to an annual average of € 47.6 billion in the two consecutive periods.

This positive development can be attributed to mainly three factors:

- First, and in line with expectations in a period of economic growth, Member States granted considerably less rescue and restructuring aid, accounting for half of the decrease over the two periods.[12] While rescue and restructuring aid accounted for 12% of total aid (or 0.06 % of GDP) in the period 2001 – 2003, it stood at only 4% (or 0.02% of GDP) in the years 2004 – 2006. In absolute terms, rescue and restructuring aid decreased from € 6.2 billion to € 1.8 billion.

- Second, state aid to the coal sector shows a continued downward trend.

- Third, this downward trend is even more accentuated in the EU-10. Here, pre-accession commitments and continued efforts after accession contributed likewise as these Member States continue to adjust their State aid policies and practices to the requirements under EU State aid law and policies.

At the same time, aid to environmental protection has increased significantly in recent years. Aid for all other objectives has remained relatively stable.

The trend of the overall EU-25 level of State aid does not only reflect the broader strategic choices or changes in national policies but is likewise influenced by a relatively small number of large cases (for example, restructuring aid in Germany to *Bankgesellschaft Berlin (BGB),* amounting to some € 8 billion in the years 2001 and 2002, € 4 billion for Polish coal in 2003, € 1.4 billion to *Alstom* in France 2004, and € 750 million restructuring aid to *BAWAG* in Austria 2006).

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10 Only EU-15 is presented here because transport aid figures for EU-10 are not comparable for the pre-accession period.

11 Total State aid less railways.

12 Rescue and restructuring aid is included in the totals for sectoral aid. See tables 9 and 10.

Table 2: Trend in the level of State aid in the EU Member States, 1996-2006

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	Annual average 2001-03	Annual average 2004-06
EU-25													
Total state aid less railways in billion €									67.5	66.6	66.7		
as % of GDP									0.62	0.60	0.58		
Total state aid less agriculture, fisheries and transport in billion €					48.0	50.5	56.8	52.0	47.5	47.3	47.9	53.1	47.6
as % of GDP					0.46	0.48	0.53	0.49	0.44	0.43	0.42	0.50	0.43
EU-15													
Total state aid less railways in billion €	77.9	98.9	66.1	57.1	59.1	62.3	65.6	57.0	61.7	60.9	61.1	61.6	61.2
as % of GDP	0.93	1.12	0.73	0.61	0.60	0.62	0.65	0.56	0.59	0.58	0.56	0.61	0.58
Total state aid less agriculture, fisheries and transport in billion €	58.3	78.9	50.2	40.3	42.6	45.9	50.6	41.6	43.7	44.2	44.7	46.0	44.2
as % of GDP	0.70	0.90	0.55	0.43	0.43	0.46	0.50	0.41	0.42	0.42	0.41	0.46	0.42

Note: The exceptionally high figure in 1997 can be largely attributed to the Credit Lyonnais case in France (approximately €21 bn). Similarly the relatively high figure in 2002 is due in part to the substantial guarantee awarded as a part of the restructuring package to Bankgesellschaft Berlin AG (C 28/2002). For the EU-10, data on agriculture are available for 2004, 2005 and 2006 only. Source: DG Competition, DG Energy and Transport, DG Agriculture and DG Fisheries.

The EU average of State aid for industry and services expressed as percentage of GDP hides differences between Member States. The sharpest falls can be observed in Czech Republic, Cyprus and Malta, largely due to the phasing out of pre-accession measures, and in Poland due to the declining aid to the coal industry. Ireland, Denmark, Spain and Germany experienced also a significant decrease. The decrease in Ireland was primarily the result of the lowering of the Irish Corporation Tax[13] coupled with an increase in GDP. In Denmark, the decline was mainly due to the reductions of several aid measures for environment and training. In Spain, the decrease can mainly be explained by declining expenditure for the coal industry. In Germany the decrease can also be explained by the diminishing aid to the coal industry in addition to the above mentioned *BGB* case. By contrast, State aid in relation to GDP increased significantly during the two periods under review in two Member States: in Sweden the increase can be attributed to the aid for the environment and energy saving measures. In Austria, it can be explained by the restructuring aid to *BAWAG* in 2006.

Sectoral distribution of aid

1.1. Overview

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

Although the data do not provide an accurate picture of the final recipients of the aid, they nevertheless give some indication as to which sectors are favoured by each Member State. In 2006, around 65% of State aid in the Member States was earmarked for the manufacturing[14] and services sectors. A further 24% was directed towards agriculture and fisheries, 5% for

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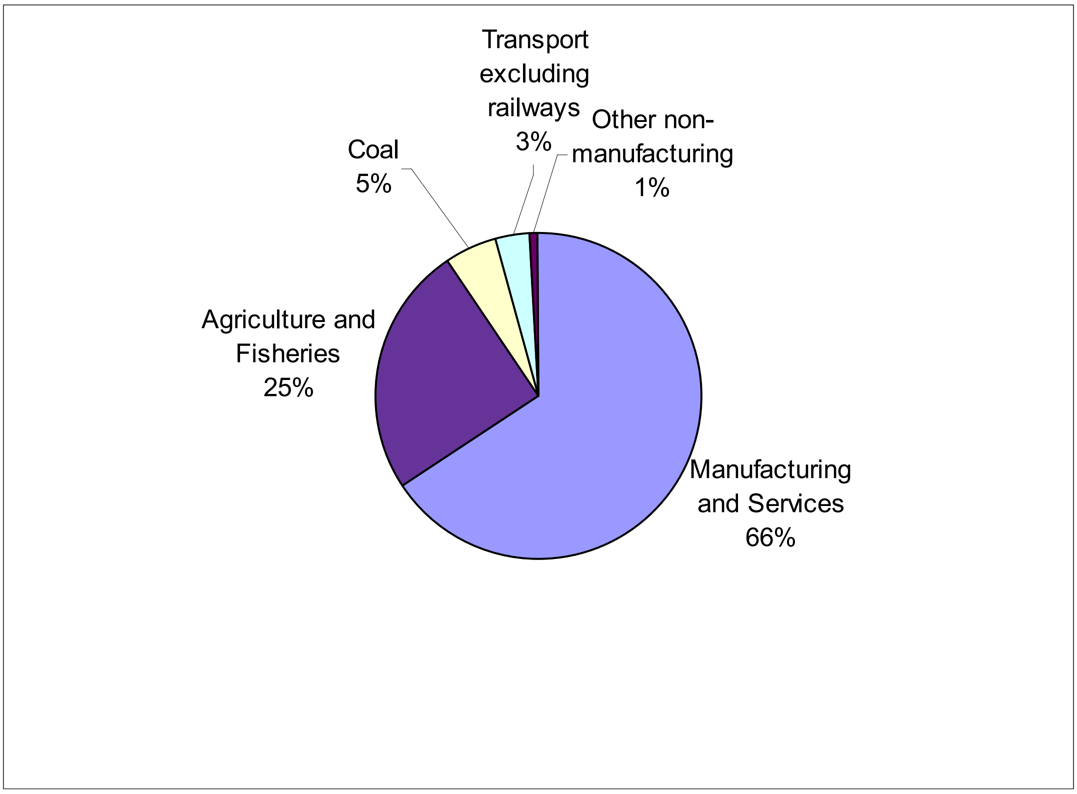
13 The Corporation Tax rate in Ireland has been lowered progressively in recent years and is 12.5% from 2003. This has reduced the comparative value of the preferential 10% rate to the manufacturing sector, therefore contributing to the decline, in monetary terms, of aid to this sector.

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

coal and 3% to the transport (excluding railways) sector and the remaining 1% went to other non manufacturing sectors[15] (Graph 1). The sectoral distribution is relatively stable over time with the exception of the coal sector which is clearly decreasing.

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 80% or more of overall aid in Denmark, Portugal, Slovakia and Sweden. Aid to the agricultural and fisheries sectors accounted for 60% or more of total aid in Estonia, Latvia and Finland, while the share of aid to the coal industry was relatively high in Spain[16] (22%), Germany (11%) and Poland (7%).

Graph 1: Total State aid by sector, EU-25, 2006



Note: State aid as defined under Article 87(1) EC Treaty that has been granted by Member States for all sectors except railways and has been examined by the Commission. Source: DG Competition, DG Energy and Transport, DG Agriculture and DG Fisheries.

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

16 For Spain, aid to the coal industry for 2006 has been estimated on the basis of notified budgets. Part of the aid was approved in July 2006 (N 352/2006), while another part of the aid (NN 80/2006) is still under investigation. For more information on aid to the coal industry, see the Commission Report on the Application of Council Regulation (EC) No 1407/2002 on State Aid to the Coal Industry, 21.5.2007, COM (2007) 253 final and its annex SEC (2007) 602. Both available on the web page http://ec.europa.eu/dgs/energy_transport/state_aid/energy_en.htm.

Table 3: Sectoral distribution of aid by Member State, 2006

% of total								Million euro
	Manufacturing	Services (including tourism, financial, media and culture)	Agriculture	Fisheries	Coal	Transport excluding railways	Other non-manufacturing	Total
EU-25	**58**	**7**	**24**	**0**	**5**	**3**	**1**	**66723**
Belgium	70	2	25	0	-	3	-	**1225**
Czech Republic	73	4	22	0	-	1	-	**755**
Denmark	77	3	10	4	-	7	-	**1289**
Germany	66	3	20	0	11	1	0	**20219**
Estonia	14	6	79	1	-	-	-	**54**
Ireland	38	12	48	2	-	0	-	**988**
Greece	49	8	37	1	-	5	1	**556**
Spain	49	8	18	1	22	2	0	**4879**
France	65	6	23	0	-	5	-	**10389**
Italy	60	9	21	1	-	8	0	**5511**
Cyprus	27	36	35	-	-	2	0	**111**
Latvia	8	0	67	-	-	25	-	**291**
Lithuania	35	7	58	1	-	-	-	**128**
Luxembourg	29	12	59	-	-	0	-	**110**
Hungary	55	1	34	0	3	7	-	**1407**
Malta	74	3	19	0	-	4	-	**115**
Netherlands	65	3	23	1	-	8	-	**1865**
Austria	19	37	32	0	-	1	11	**2310**
Poland	46	0	46	-	7	0	0	**2310**
Portugal	13	85	1	1	-	0	-	**1450**
Slovenia	47	4	42	0	6	-	0	**254**
Slovakia	86	2	11	-	2	-	0	**223**
Finland	22	1	74	0	-	3	0	**2552**
Sweden	79	3	12	0	-	5	0	**3515**
United Kingdom	60	6	21	0	0	5	7	**4215**

Due to the rounding of figures, the percentages of some Member states do not sum up to exactly 100. Coal data in table 3 can differ from those published in the Commission Report on the Application of Council Regulation (EC) No 1407/2002 on State Aid to the Coal Industry because the 2006 data in the Report are based on Member States' notified budgets and scoreboard data are based on expenditure reported by Member States to the Commission. Source: DG Competition, DG Energy and Transport, DG Fisheries and DG Agriculture.

1.2. State aid to the transport sector

State aid to the transport sector is governed by special rules in the Treaty, as well as secondary legislation and rules of soft law. These rules are the following:

– **Land transport (road, rail, inland waterways):** Article 73 of the Treaty, as implemented by Regulations 1191/69[17], 1107/70[18] and 1192/69[19];

[17] 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.

[18] 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.

[19] 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.

– **Aviation:** Community guidelines on financing of airports and start-up aid to airlines departing from regional airports;[20]

– **Maritime transport:** Community guidelines on State aid to maritime transport[21].

In the transport sector, Member States spend considerable resources for the provision of services of general economic interest and on the construction, the management and the maintenance of infrastructure.

Community law foresees a number of mechanisms allowing for and encouraging the provision of services of general economic interest; the Commission must, however, verify whether the public financing granted complies with the rules laid down in order to ensure that this financing does not distort competition.

The public financing of transport infrastructure raises more and more questions about the application of the State aid rules, as many infrastructures are operated on a commercial basis and either by private undertakings or under public-private-partnerships. The Commission, in its decision practice, considers that the financing and supervision of the building of transport infrastructure constitutes a measure of economic policy and land planning deriving out of the State's sovereignty[22]. Nevertheless, the question arises as to whether the way a State finances an infrastructure in the framework of its public policy may amount to State aid to undertakings active at one or more of the following three levels:

– The construction of the infrastructure;

– The use of the infrastructure;

– The management and operation of the infrastructure[23].

In the EU-25, for the transport sector as a whole, excluding railways (see figures below in the paragraph on railways), around € 2.2 billion of aid was awarded per year over the period 2004-2006, a 15% increase compared to the annual average over the period 2001-2003 (€ 1.9 billion).

Almost 70% of total transport aid (around € 1.5 billion per year) was awarded to the maritime sector during the period 2004-2006. The largest amounts were given by Italy, France, Sweden, the Netherlands and the United Kingdom.

Over the period 2004-2006, an annual average of € 173 million of aid was awarded to the air transport sector (Table 4).

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20 OJ C 312/2005 of 9.12.2005, p.1-14

21 OJ C 13/2004 of 17.1.2004, p. 3-12

22 See e.g. Decision in State aid case 713/1997 *Rion Antirion motorway bridge*, point 37 and Decision in State aid case N 478/2004 *Irish Rail*, point 30; Decision N 597/2007 *Thessaloniki submerged tunnel project.*

23 See e.g. Decision in State aid case 713/1997 *Rion Antirion motorway bridge*, point 39, Decision in State aid case N 60/2006, *Project Main Port Development Rotterdam*, point 39; Decision N 597/2007 *Thessaloniki submerged tunnel project;*. Decision in State aid case N 478/2004, *Irish Rail*, point 26 with further references.

Table 4: State aid to the transport sector (excluding railways), EU-25, 2001-2006, in million €

Transport sector	Annual average 2001-2003	Annual average 2004-2006
Road and combined transport	407	546
Maritime transport	1159	1471
Inland water transport	10	15
Air transport	347	173
Total	1922	2205

Source: DG Energy and Transport

With respect to the different transport sectors, the following developments can be observed:

Land transport

Railways

Much of the public financing of 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 is exempted from notification in accordance with Regulation 1191/69 and 1192/69. Member States are however required to report to the Commission overall public expenditure to this sector. Disparities between Member States may reflect different interpretations of the scope of this annual reporting exercise (Table 5).

Table 5: Subsidies([1]) to the railway sector, 2000-2006, in million €

	2000	2001	2002	2003	2004	2005	2006
EU-25	**33281**	**41984**	**40729**	**39527**	**40393**	**42754**	***37016***
EU-15	**33281**	**41984**	**40729**	**38629**	**39077**	**41469**	***35462***
EU-10	**-**	**-**	**-**	**898**	**1316**	**1285**	**1554**
Belgium	2164	2205	2278	2412	2057	3129	3226
Czech Republic	-	-	-	239	239	264	270
Denmark	672	731	714	813	813	916	937
Germany	9308	9385	9515	9144	8239	8114	8001
Estonia	-	-	-	12	12	12	12
Ireland	373	440	491	544	416	576	603
Greece	446	625	552	636	329	257	275
Spain	1350	1349	1346	1338	1370	455	563
France	6482	8770	9132	7921	9120	9912	10100
Italy	6246	6839	7236	6006	5699	6040	**6040*
Latvia	-	-	-	3	15	23	31
Lithuania	-	-	-	0	5	6	3
Luxemburg	208	255	264	293	310	315	394
Hungary	-	-	-	451	411	439	560
Netherlands	2051	2686	2946	3322	2936	2779	2687
Austria	649	649	664	647	632	533	637
Poland	-	-	-	104	172	184	310
Portugal	16	22	25	58	56	64	74
Slovenia	-	-	-	88	297	139	145
Slovakia	-	-	-	0	165	218	223
Finland	403	359	412	489	562	516	467
Sweden	851	852	892	1003	1167	1271	1415
UK	2061	6817	4261	4002	5371	6592	45

(*) 2006 data for Italy are not available and have, for comparability reasons, been estimated as equal to 2005 amount.

(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. Source: DG Energy and Transport.

Public transport by bus

In the bus transport sector, the Commission is faced with similar problems as in the railway sector. The major part of the public financing of the bus transport services operated under a public service obligation is not notified to the Commission, either because the financing is not deemed by Member States to constitute State aid within the meaning of Article 87 (1) of the EC Treaty, or because it represents compensation for public services in accordance with Regulation 1191/69/EC. Therefore, the aid amount reported in the table 4 for road and combined transport sector can be underestimated. Following the complaints of competitors in the bus transport sector, the Commission initiated in 2006 – 2007 formal investigation procedures in Austria, Germany and Ireland; further investigations in these and other Member State are ongoing.

Road haulage

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

Aviation

The Communication from the Commission *Community guidelines on financing of airports and start-up aid to airlines departing from regional airport*[24] (2005 guidelines) add to the Commission's 1994 guidelines[25] on the application of Article 87 and 88 of the Treaty. They are designed to cover all new aspects relating to the financing of airports and start-up aid for new routes.

Since the entry into force of the 2005 guidelines, the Commission has adopted a number of positive decisions, relating to the two main types of State aid defined by the 2005 guidelines – State aid to the airports and start-up aid to airlines.

The State aid relating to airport infrastructure aimed mainly at financing construction, extension, and purchase of the equipment with the aim to comply with safety and security standards and to be able to accommodate bigger aircrafts and related increase of passengers. Indeed, as the operation of the airports constitutes an economic activity, the Commission assessed these measures in view of the State aid rules and in particular, it assessed its impact on competing airports. In most of these cases the Commission considered that the planned investments had a positive impact on regional development, which outweighed the potentially negative impact on competition. Under the 2005 guidelines, the Commission has thus far authorized a total of € 121 million for airport infrastructure, and € 163 million for start-up aid for new routes.

The Commission is also examining a large number of complaints concerning investment aid and start-up aid. In some of these files, the Commission has opened the formal investigation procedure.

Building on its experience, the Commission can also draw the first conclusions as to what the main problems are in dealing with notifications and complaints. With respect to investment aid for airport infrastructure, the difficulty encountered relates in particular to the question of the midterm viability of the investment and the impact on competing airports. In order to assess these points, the Commission needs a business plan, and may have to open the formal investigation procedure in the future in major cases, in order to allow competitors to comment. In this respect, there are interesting questions with respect to the definition of product markets and geographic markets.

In relation to the start up aid, most of the identified difficulties relate to the contracts with low cost companies, the non-discriminatory nature of the aid and the appropriate assessment of marketing aid and in particular the calculation of "additional costs".

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24 See the footnote n°20.

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

Maritime transport

Almost 70% of total transport aid (around € 1.5 billion per year) was awarded to the *maritime sector* during the period 2004-2006. The largest amounts were given by Italy, France, Sweden the Netherlands and the United Kingdom.

1.3. State aid to the agriculture and fisheries sectors

The total amount of State aid awarded to the agricultural sector was estimated at € 16 billion in 2006. Germany (€ 4 billion), France (€ 2.4 billion) and Finland (€ 1.8 billion) reported the highest figures. The data are based on an annual reporting exercise introduced for the first time in 2004.

For 2006, expenditure figures by type of aid measure (investment aid, environmental protection, encouraging quality products etc.) used by the various Member States in the agricultural sector show the following: in Germany, almost 46% of the aid expenditure was linked to investment in agricultural holdings; in France, two thirds of the aid expenditure was dedicated to investment in agricultural holdings. On the contrary, in Finland, aid is distributed above all among livestock sector (26%), compensation for less favoured areas (22%) and many other objectives.

In almost all Member States, aid was mainly granted to sector A1 (Crop and animal production, hunting and related service activities) and through budget aid measures (grants, interest subsidies, guarantee fee subsidies).

Furthermore, a general analysis of the measures examined by the Commission between 1 January 2006 and 31 December 2006 provides a useful overview of the situation in the EU-25 Member States.

Table 6: Main procedure types of aid measures for the agricultural sector, EU-25 (cases on which a decision has been taken by the Commission in 2006)

Member State	Notified aid	Non notified aid	Exemption agriculture
EU-25	**317**	**27**	**119**
Belgium	4	1	2
Czech Republic	43	0	1
Denmark	4	0	0
Germany	20	8	1
Estonia	1	0	0
Ireland	3	0	0
Greece	6	0	0
Spain	31	0	16
France	24	4	26
Italy	99	1	16
Cyprus	3	0	1
Latvia	5	2	5
Lithuania	5	0	0
Luxembourg	0	0	0
Hungary	3	0	0
Malta	1	0	0
Netherlands	12	3	19
Austria	12	0	4
Poland	4	1	6
Portugal	3	0	0
Slovenia	1	0	1
Slovakia	7	1	1
Finland	5	0	0
Sweden	3	0	0
United Kingdom	18	6	20

Source: DG Agriculture

This involved 317 new aid measures which comprise aid schemes and (rather rare) one-off support measures for individual companies. These new notifications frequently cover more than one type of aid. For example, investment aid may be combined with aid for consultancy costs or technical support with aid for encouraging quality products. Furthermore, there were 27 non notified aid measures (aid which was put into effect in breach of the obligation to notify, or before it was approved). Of the total of 344 aid measures, 100 or 30% concerned Italy, followed by the Czech Republic (43 / 12.5%), Spain (31 / 9%) and Germany and France (both with 28 / 8%).

The situation is different as regards the application of the Block Exemption Regulation for Agriculture to the aid granted to small and medium-sized agricultural enterprises. Out of a total of 119 block exempted measures, France applied 26 times (22%), followed by the United Kingdom (20 / 17%), Netherlands (19 / 16%) and both Spain and Italy (16 / 13.5%).

The total amount of State aid awarded to the fisheries sector was estimated at around € 287 million in 2006[26]. Spain (€ 58.37 million), Denmark (€ 53.77 million), France (€ 43.26 million) and Italy (€ 40.2 million) reported the highest figures. The data are based on the figures received from Member States' annual reports on existing aid schemes.

Expenditure figures are not available by type of aid measures used by the various Member States in the fisheries sector.

Table 7: Main procedures types of aid measures for the fisheries sector, EU-25 (cases in which a decision has been taken by the Commission in 2006)

Member State	Notified aid	Non notified aid	Exemption fisheries
EU-25	**13**	**9**	**24**
Belgium	0	0	0
Czech Republic	2	0	0
Denmark	0	0	0
Germany	0	0	0
Estonia	0	0	3
Ireland	0	0	1
Greece	0	0	0
Spain	3	0	3
France	0	1	0
Italy	2	1	5
Cyprus	0	0	0
Latvia	0	0	2
Lithuania	0	0	0
Luxembourg	0	0	0
Hungary	0	0	0
Malta	0	0	0
Netherlands	4	0	4
Austria	0	0	0
Poland	0	0	0
Portugal	1	0	0
Slovenia	0	0	0
Slovakia	0	0	0
Finland	0	0	4
Sweden	0	0	0
United Kingdom	1	7	2

Source: DG Fisheries

[26] The figure includes aid granted under the "*de minimis*" rules. Furthermore, this figure may include for some Member States the part of the budget corresponding to Community funds as some of them have included co-financed measures in their report without individualising which amount was awarded by national resources and which by Community funds.

Out of a total of 24 exemptions, Italy submitted 5 information forms, representing 21 % of the total of information forms received from all Member States. Finland and the Netherlands submitted 4 information forms each.

Table 8: New cases registered in 2006

Member State	Notified aid	Non notified aid	Exemption fisheries
EU-25	**27**	**4**	**24**
Belgium	0	0	0
Czech Republic	7	0	0
Denmark	0	0	0
Germany	0	0	0
Estonia	0	0	3
Ireland	0	0	1
Greece	1	0	0
Spain	3	2	3
France	1	0	0
Italy	6	1	5
Cyprus	0	0	0
Latvia	0	0	2
Lithuania	0	0	0
Luxembourg	0	0	0
Hungary	0	0	0
Malta	0	0	0
Netherlands	6	0	4
Austria	0	0	0
Poland	0	0	0
Portugal	1	0	0
Slovenia	0	0	0
Slovakia	0	0	0
Finland	1	0	4
Sweden	0	1	0
United Kingdom	1	0	2

Source: DG Fisheries

1.4. State aid to the coal sector

The European Coal and Steel Community Treaty expired on 23 July 2002. Thereafter, a Council Regulation established a new legal framework for State aid to the Community coal industry.[27]

Detailed information on aid to the coal industry has been published by the Commission in an exhaustive report on State aid to the coal industry[28] in May 2007.

[27] Council Regulation (EC) No 1407/2002 on State Aid to the Coal Industry (OJ L205, 2.8.2002, p. 1-8)

1.5. State aid to the steel sector

Since the European Coal and Steel Community Treaty expired on 23 July 2002, the general State aid rules have been applied for the steel sector, with the exception that no investment or restructuring aid may be granted to steel production unless it is closure aid.[29]

In 2006, total aid to the steel sector amounted to € 148 million, which was granted by the United Kingdom (climate change levy - € 132 million) and Belgium (€ 1.52 million) as environmental aid, the Czech Republic (€ 8 million) for different objectives (R&D, environment, regional development) and Slovakia as employment aid (€ 6 million). There is a clear decreasing trend in the aid to the steel sector from an annual average of € 502 million in the period 2001-2003 to € 205 million in the period 2004-2006. The downward trend can be largely explained by the fact that some Member States (such as France and Sweden) stopped or reduced considerably (the Czech Republic) granting State aid after the year 2003 to companies in the steel sector.

1.6. State aid to the shipbuilding sector

The amount of State aid to the shipbuilding sector fell from an annual average of € 832 million for the period 2001-2003 to € 342 million for the period 2004-2006. In 2006, an estimated € 213 million was granted to the shipbuilding sector mainly by Germany (38% of the EU total), the Netherlands (15%), Denmark (14%), Poland (13%) and Malta (10%).

2. STATE AID FOR HORIZONTAL OBJECTIVES

2.1. Overview

State aid for horizontal objectives, i.e. aid that is not granted to specific sectors, is usually considered as being better suited to address market failures and thus less distortive than sectoral and ad hoc aid. 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 economic development are the most prominent horizontal objectives pursued with State aid. Due to data constraints,[30] this section looks at horizontal objectives in the context of total aid for industry and services.

In 16 Member States, more than 90% of all the aid awarded in 2006 was for horizontal objectives

On average, aid earmarked for horizontal objectives, accounted for 85% of total aid for industry and services in 2006. This compares to 83% in 2005, 76% in 2004 and around 50%

[28] Commission Report on the Application of Council Regulation (EC) No 1407/2002 on State Aid to the Coal Industry and Commission staff working document

[29] Aid under the Commission Regulation (EC) No 70/2001 of 12 January 2001 on State aid to SMEs (OJ L 10, 13.01.2001, p. 33-42) remains possible with the exception of larger projects as defined in Art. 6 of the said SME-Regulation.

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

in the mid Nineties. In welcoming this trend, one should be aware that much of the increase in horizontal aid can be attributed to an increase in tax exemptions for the environment and energy saving, in particular for energy intensive industries. The three main horizontal objectives were environment and energy saving (29% of total aid), regional economic development (19%) and R&D (14%) – see Table 9.

The remaining 15% was aid directed at specific sectors: coal (7%), services (5%)[31] and manufacturing (2%) 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 (see section 1 above). Another factor that keeps the volume of sectoral and individual aid artificially low is that Commission decisions which follow an unlawful aid procedure[32] tend to refer to aid that was granted up to several years previously and involve ad hoc awards of aid to individual companies. Although the data for all years are adjusted retrospectively when the Commission takes its decision, the overall level is underestimated.

In 16 Member States (Belgium, Czech Republic, Denmark, Estonia, Greece, France, Italy, Cyprus, Latvia, Lithuania, Luxembourg, the Netherlands, Slovakia, Finland, Sweden, the United Kingdom), 90% or more of all the aid awarded in 2006 was earmarked for horizontal objectives. In 2005, Cyprus had only 45% of horizontal aid and has now 96%. This is due to the expiry of an important tax exemption scheme for sectoral development,[33] accounting for half of total aid in Cyprus.

In another group of five Member States (Germany, Spain, Ireland, Poland, Slovenia), the share of horizontal aid was between 70% and 90% while in several others the share was significantly lower: Hungary (52%), Austria (51%), Portugal (14%), Malta (7%), The low share of horizontal aid (and thus relatively high share of sectoral aid) in Malta can be explained with a tax relief measure under Business Promotion Act,[34] while in Portugal it is due to a large regional aid tax scheme in Madeira which in practice benefits a limited number of sectors. In 2005 and 2006, Hungary granted sectoral aid mainly through an Investment tax benefit scheme. As for Austria, it usually had more than 90% horizontal aid in previous years. Its position in 2006 is due to restructuring aid granted to *BAWAG*.

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

When making comparisons between Member States, it is important to bear in mind that aid measures are classified according to their primary objective at the time the aid was approved and not according to the final recipients of the aid. Notwithstanding the measurement difficulties, the data do give an indication as to which horizontal objectives are favoured by Member States (see Table 9). The largest proportion of aid was directed exclusively to the environment and energy saving objectives (29% of the total State aid for industry and services), which were extensively supported by the Nordic countries, Germany, the Netherlands and the United Kingdom (86% of the total aid in Sweden, 68% in the

31 These percentages exclude those measures with a horizontal objective that are nevertheless earmarked for the manufacturing and services sectors.
32 Such cases are denoted by a 'NN' case number.
33 Special tax regime under the International Business Enterprises Act.
34 MT/6/2002.

Netherlands, 50% in Germany, 36% in Finland, 35% in the United Kingdom and 34% in Denmark).

The second most favoured horizontal objective was regional development (19% of total aid), which was mainly supported by EU-10 and Mediterranean countries (76% of the total aid in Slovakia, 67% in Latvia, 65% in Greece, 44% in the Czech Republic, 29% in Spain). An additional 14% of the aid went to research and development activities, which was favoured most by Luxembourg (29%), Estonia (28%), Finland and the Czech Republic (27%), France (23%), the Netherlands (21%), Belgium (20%) and Italy (19%).

Other objectives were supported to a lesser extent: small and medium-sized enterprises (11% of total aid),[35] employment (7%), training (1%) and other horizontal objectives (4%) which include objectives such as commerce and internationalization, innovation, culture, heritage conservation, social aid, natural disasters and risk capital.

The relative importance of objectives is slightly different in the EU-10 countries where aid to the environment and energy saving does not come in the "top 3". The most favoured objective is aid for Regional development (34% of total aid for industry and services), followed by employment aid (17%), R&D (9%) and SME's (9%). The position of employment in EU-10 is due mainly to a Polish scheme for disabled people under the block exemption regulation.[36]

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[35] This figure only captures aid exclusively earmarked for SMEs. In addition, risk capital aid which accounts for 0.6 % of total aid (included in "other horizontal objectives") is also exclusively directed to SMEs. Total aid granted to SMEs is much higher since most schemes for other horizontal objectives like environment and energy saving, regional development, research and development are open to companies regardless of their size.

[36] XE 11/2004

Table 9: State aid for horizontal objectives and sectoral aid as % of total aid, 2006

	Horizontal Objectives								Sectoral aid (2)					
	Total of Horizontal Objectives	Environment and energy saving	Regional development n.e.c. (1)	Research and development	SME	Training	Employment aid	Other horizontal objectives (e.g. commerce, culture, natural disast, risk capital, innovation and social aid)	Total of Sectoral aid (2)	Manufacturing Sectors	Coal	Other Non Manufacturing sectors	Services	Total aid for industry and services in million €
EU-25	**85**	**29**	**19**	**14**	**11**	**1**	**7**	**4**	**15**	**2**	**7**	**1**	**5**	**47903**
EU-10	**78**	**2**	**34**	**9**	**9**	**3**	17	**4**	**22**	**15**	**7**	**-**	**0**	**3241**
Belgium	**98**	20	18	20	31	3	3	3	**2**	2	-	-	0	**884**
Czech Republic	**100**	3	44	27	18	2	6	-	**0**	0	-	-	0	**584**
Denmark	**96**	34	0	7	0	0	51	3	**4**	3	-	-	0	**1021**
Germany	**85**	50	19	11	3	0	0	1	**15**	0	14	-	1	**16003**
Estonia	**100**	4	19	28	8	7	3	32	**0**	-	-	-	-	**11**
Ireland	**80**	1	25	14	16	3	7	15	**20**	11	-	-	8	**491**
Greece	**90**	6	65	2	8	-	5	5	**10**	-	-	1	8	**319**
Spain	**72**	5	29	15	9	1	4	9	**28**	0	27	0	0	**3861**
France	**97**	1	19	23	26	1	19	8	**3**	3	-	-	1	**7382**
Italy	**96**	3	21	19	33	6	7	6	**4**	0	-	0	4	**3843**
Cyprus	**96**	0	9	5	18	12	-	51	**4**	-	-	0	4	**70**
Latvia	**100**	8	67	-	23	1	-	0	**0**	0	-	-	-	**25**
Lithuania	**100**	18	30	11	30	6	5	-	**0**	-	-	-	-	**54**
Luxembourg	**100**	6	16	29	33	-	-	16	**0**	0	-	-	-	**45**
Hungary	**52**	2	25	7	4	1	6	7	**48**	43	5	-	-	**833**
Malta	**7**	-	-	0	1	3	-	3	**93**	92	-	-	1	**89**
Netherlands	**97**	68	2	21	1	0	1	5	**3**	2	-	-	0	**1270**
Austria	**51**	20	7	10	12	0	1	1	**49**	0	-	-	49	**1551**
Poland	**85**	1	33	3	7	4	37	0	**15**	2	13	0	0	**1230**
Portugal (3)	**14**	0	3	0	5	3	3	0	**86**	0	-	-	86	**1418**
Slovenia	**88**	3	31	13	20	1	11	8	**12**	2	10	-	-	**147**
Slovakia	**95**	0	76	2	10	4	1	1	**5**	3	2	-	-	**199**
Finland	**97**	36	12	27	6	0	7	7	**3**	1	-	-	2	**590**
Sweden	**99**	86	5	4	0	-	0	4	**1**	-	-	-	1	**2890**
United Kingdom	**90**	35	19	18	5	4	1	8	**10**	0	1	9	0	**3096**

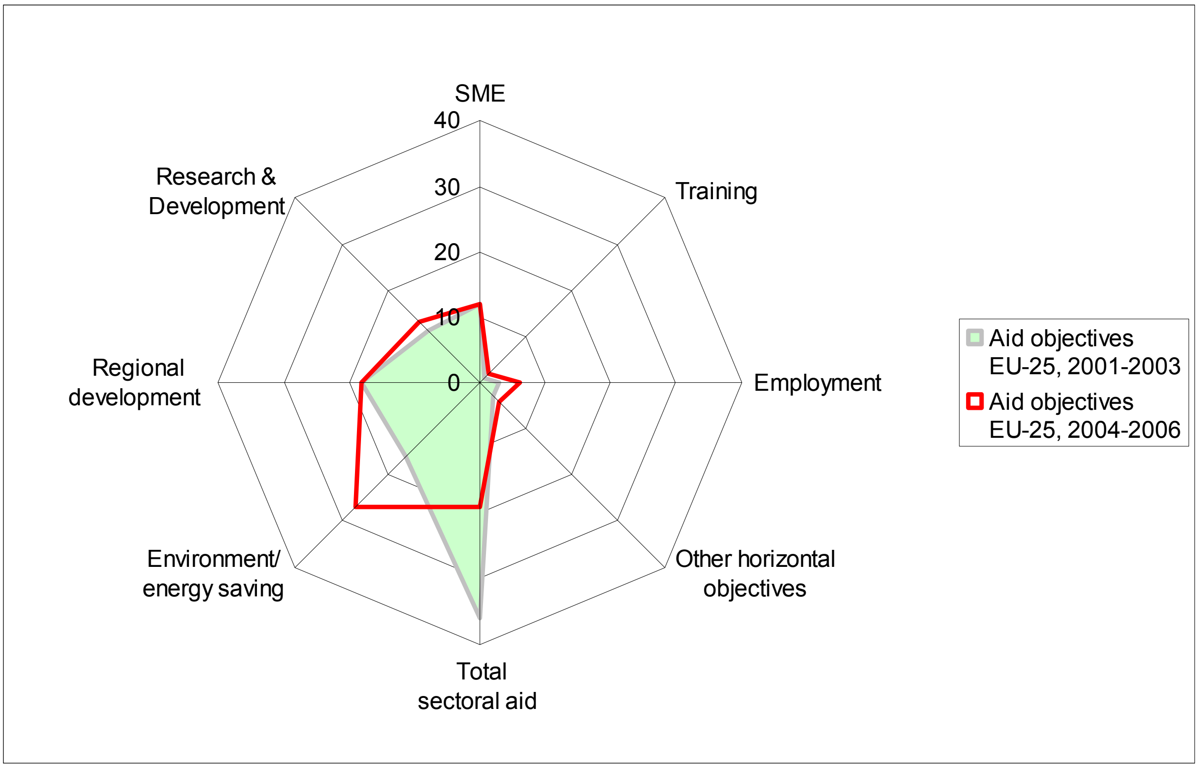
(1) Aid for general regional development not elsewhere classified. (2) Aid for specific sectors awarded under measures for which there was no horizontal objective as well as aid for rescue and restructuring. (3) Aid which continues to be paid out under the aid scheme E 19/94 Zona Franca da Madeira (OJ C 290, 3.10. 1996, p. 13), as reviewed by the Commission, is classified as sectoral aid. Aid granted under the aid scheme N 222/A/2002 Aid scheme for Zona Franca da Madeira for the period 2003-2006 (OJ C 65, 19.3.2003, p.23 as corrected by OJ C 134, 7.6. 2003, p. 10) is classified as regional aid. Source: DG Competition.

2.2. Trend in State aid for horizontal objectives and sectoral 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. It is encouraging to see that all EU-10 Member States are progressively redirecting aid towards horizontal objectives. The share of horizontal objectives in total aid for industry and services increased in the EU-10 Member States by 36 percentage points between the two three-year periods 2001-2003 and 2004-2006, compared to an overall increase in the EU-25 of 17 percentage points in this period (see Table 10 below).

This upward trend in the EU-25 was almost exclusively the result of a significant increase in aid for environmental and energy saving objectives (+ 11.6 points). Employment aid (+ 2.6 points) and research and development (+ 1.7 points) increased slightly while sectoral aid decreased, in particular for services (including financial services) (-8.4 points) and – attributable only to some Member States – coal (- 7.2 points). The decrease in sectoral aid to services was particularly significant in the Czech Republic, where € 2 billion restructuring aid was awarded to the banking sector in 2003 and in Germany (BGB in 2001 and 2002). Aid to the coal industry fell, most significantly, by 44.1 percentage points in Poland. For the Union as a whole, there was no significant change in the share of aid for other horizontal objectives such as regional aid, SME and training. The following graph illustrates this evolution.

Graph 2: Trend in share of primary objectives as % of total aid (2004-2006 compared to 2001-2003)



Source: DG Competition

The clear positive trend was observed, to varying degrees, in the majority of Member States. The share of horizontal aid increased more than the average (+17 points) in 7 countries, particularly in 5 EU-10 countries: the Czech Republic (+78.2points), Lithuania (+73.6 points), Latvia (+51.7 points), Poland (+30.8 points) and Cyprus (+28.5 points). The remarkable increase in these countries can mainly be explained by an increase in regional aid (the Czech Republic, Latvia, Lithuania, Poland), employment aid (Poland), aid to SME's (Lithuania, Latvia) and aid for R&D (Czech Republic). The two other Member States with significant increases in the share of horizontal aid were Ireland (+26.2 points) and Germany (+20.4 points). Ireland spent more on aid to SME's (+9.8 points, in particular in the hotels and tourism sector) and on aid for research and development (+ 4.8 points), while the increase in Germany can be largely explained by a shift towards aid for the environment and energy saving.

In contrast, the share of horizontal aid in total aid decreased in Austria (-21.8 points) because of the large amount of restructuring aid awarded to *BAWAG*[37] in 2006. Also Denmark (-2.4 points), Belgium (-0.7 points) and Sweden (-0.4 points) saw a slightly decreasing share of

[37] C 50/2006 (NN 68/2006) Restructuring aid to *BAWAG (decision 27.6.2007).*

horizontal aid, with horizontal aid however still accounting for more than 95% of total aid in these three Member States.

Over the period under review, there were appreciable increases in the share of total aid for environmental and energy saving in Sweden (+27.8 points), Germany (+19.3 points), the Netherlands (+17.5 points) and Lithuania (+10.6 points). For the EU-10, the most significant change was in regional aid (+ 18.7 points), especially in the Czech Republic (+ 41.2 points), Latvia (+37.2 points) and Lithuania (+31.5 points).

Table 10: Trend in share of primary objectives in total aid between 2001-2003 and 2004-2006 as percentage point difference

	Horizontal Objectives								Sectoral aid (2)						
	Total of Horizontal Objectives	Environment and energy saving	Regional development n.e.c. (1)	Research and development	SME	Training	Employment aid	Other horizontal objectives (e.g.commerce, culture, natural disast, risk capital, social aid and innovation)	Total of Sectoral aid (2)	Manufacturing Sectors	Coal	Other Non Manufacturing sectors	Services	Total aid Ifor industry and services in million € as annual average 2001-2003	Total aid for industry and services in million € as annual average 2004-2006
EU-25	**17.0**	11.6	-0.2	1.7	0.0	0.4	2.6	1.0	**-17.1**	-1.3	-7.2	-0.3	-8.4	**53101**	**47577**
Eu-10	**36.0**	-0.4	18.7	4.5	2.5	0.1	7.5	3.2	**-36.7**	8.1	-16.2	-0.2	-28.4	**7058**	**3382**
Belgium	**-0.7**	9.5	-19.9	1.2	11.9	2.7	-6.6	0.5	**0.7**	0.7	-	-	0.0	**873**	**777**
Czech Republic	**78.2**	3.4	41.2	21.8	9.8	0.3	1.6	-	**-83.0**	-7.2	1.0	-	-76.8	**2430**	**456**
Denmark	**-2.4**	-6.8	-0.2	0.4	-0.3	-2.6	6.6	0.5	**2.4**	1.0	-	-	1.4	**1406**	**1102**
Germany	**20.4**	19.3	-0.6	1.2	-0.3	0.2	0.1	0.6	**-20.4**	-1.5	-3.0	-	-15.9	**18745**	**15485**
Estonia	**5.5**	-6.4	-11.8	8.3	0.6	2.9	1.3	10.6	**-0.8**	-	-	-	-0.8	**10**	**12**
Ireland	**26.2**	0.9	3.3	4.8	9.8	0.2	-0.8	8.0	**-26.2**	-22.6	-	-	-3.6	**663**	**445**
Greece	**2.2**	4.5	-19.7	2.4	4.5	-	7.7	2.8	**-2.2**	-5.3	-	0.6	2.5	**433**	**307**
Spain	**14.3**	2.8	6.3	5.9	1.0	-2.6	-0.7	1.6	**-14.3**	-2.8	-11.5	0.0	0.0	**4913**	**3771**
France	**10.1**	-1.4	1.6	-0.5	-2.6	-0.1	12.5	0.7	**-10.1**	3.2	-12.4	-0.2	-0.6	**6287**	**7403**
Italy	**0.3**	0.4	-7.3	4.2	-4.6	3.7	4.8	-1.0	**-0.3**	-1.7	-	0.0	1.4	**5479**	**4388**
Cyprus	**28.5**	0.2	0.5	2.7	0.2	4.4	-	20.5	**-28.5**	-17.6	-	-3.8	-7.1	**298**	**115**
Latvia	**51.7**	2.8	37.2	-	13.6	0.4	-	-2.2	**-51.2**	-51.2	-	-	-	**28**	**24**
Lithuania	**73.6**	10.6	31.5	6.5	19.4	2.6	3.9	-1.0	**-73.6**	-69.2	-	-4.3	-	**52**	**39**
Luxembourg	**0.0**	4.1	-25.2	11.5	9.2	-	-	0.3	**0.0**	0.0	-	-	-	**59**	**46**
Hungary	**7.1**	-2.4	3.4	2.2	-3.3	0.1	-1.0	8.1	**-7.1**	-10.4	3.8	-	-0.5	**855**	**812**
Malta	**0.9**	-	-	0.0	0.3	1.2	-	-0.6	**-0.9**	3.3	-	-0.5	-3.6	**172**	**112**
Netherlands	**1.5**	17.5	-5.9	-4.8	-1.5	0.0	0.4	-4.3	**-1.5**	-1.8	-	-	0.3	**901**	**1124**
Austria	**-21.8**	8.4	-8.0	-22.7	4.9	-2.3	-1.9	-0.1	**21.8**	-0.3	-	-0.3	22.4	**660**	**1106**
Poland	**30.8**	-1.0	12.5	1.3	3.0	-1.0	15.7	0.4	**-30.8**	14.8	-44.1	0.3	-1.8	**2897**	**1446**
Portugal	**-3.2**	0.0	-2.0	0.5	-3.5	2.5	-0.6	0.0	**3.2**	-2.4	-	-	5.6	**1281**	**1362**
Slovenia	**10.3**	-10.3	15.3	-2.3	3.4	-0.4	-0.5	5.1	**-11.5**	-14.8	3.0	1.0	-0.6	**164**	**140**
Slovakia	**14.3**	0.0	10.6	-1.8	3.1	2.5	0.4	-0.6	**-14.3**	0.6	-2.1	-4.7	-8.1	**151**	**227**
Finland	**0.2**	8.7	-0.3	-6.1	-2.7	0.0	0.3	0.2	**-0.2**	0.3	-	-	-0.5	**448**	**569**
Sweden	**-0.4**	27.8	-3.9	-8.4	-2.4	-1.0	0.1	-12.7	**0.4**	-	-	-	0.4	**676**	**2628**
United Kingdom	**5.3**	5.1	0.4	-4.3	-3.1	3.2	0.4	3.6	**-5.2**	-1.1	-0.5	-3.9	0.3	**3219**	**3683**

Source: DG Competition

(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.

2.3. State aid for research and development (R&D)[38]

Investment in R&D is a crucial factor to strengthen the competitiveness of the EU economy 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. Two thirds of this expenditure should be funded by the private sector. 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, the exact range and balance of which depend on the national context and form the policy mix. These public measures might contain State aid that could distort competition by favouring some enterprises over others. On the other hand, State aid may in certain circumstances be the best available option to provide incentives triggering additional private R&D investment. 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.

Figures for 2005 show that investment in R&D is not sufficient to meet the Barcelona objectives: for the EU-25 as a whole, R&D investment stood at 1.85% of GDP, Sweden and Finland being the only Member States to reach the 3% level with 3.86% and 3.48% respectively. Drawing conclusions from the so far sluggish development of R&D investment, it is clear that with growth remaining at the current level, the European economy will not achieve the Barcelona targets by 2010. Rather, growth needs to be accelerated and new impetus given to investment in R&D.

As regards State aid to R&D, total expenditure stood at € 6.7 billion in 2006. After a significant increase in 2001, the level of R&D aid has remained rather stable, but shows a slight upward trend in the most recent years (+ 1.8% - see Table 11). State aid to R&D represents a relatively small share in public funding (EU-wide, 0.06% of GDP in 2006) although there are significant differences between Member States. In five Member States the R&D aid expenditure relative to the GDP in 2006 was above the average mark of 0.06% of GDP: Czech Republic (0.14% of GDP), Finland (0.10% of GDP), France (0.09%), Germany (0.08%), and Hungary (0.07%).

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38 Innovation aid measures are included in chapter 2.2.

Table 11: State aid for research and development (R&D)

	Aid to Research & Development (in million €), 2006	Share of R&D aid in total aid, annual average 2004-2006	Share of R&D aid in total aid (% point difference 2001-2003 and 2004-2006)	Share of R&D aid to GDP (in %), 2006	Gross domestic expenditure on R&D (1)		Gross domestic public expenditure on R&D as a percentage of GDP in 2005 (2)
					as a percentage of GDP in 2005	of which percentage financed by government	
EU-25	6685	12.80	1.68	0.06	1.85	34.7	0.64
Belgium	176	21.34	1.19	0.06	1.82	**23.5	0.43
Czech Republic	155	23.25	21.60	0.14	1.42	40.9	0.58
Denmark	76	4.31	0.42	0.03	2.44	**27.1	0.66
Germany	1809	10.36	1.15	0.08	2.51	*30.4	0.76
Estonia	3	23.37	8.33	0.02	0.94	*44.1	0.41
Ireland	69	11.90	4.80	0.04	1.25	32.9	0.41
Greece	7	2.97	2.37	0.00	0.64	**46.4	0.30
Spain	593	13.91	5.85	0.06	1.12	*41.0	0.46
France	1688	19.27	-0.53	0.09	2.13	*37.6	0.80
Italy	726	17.53	4.22	0.05	*1.10	n.a.	n.a.
Cyprus	4	3.15	2.73	0.02	0.4	*63.7	0.25
Latvia	-	-	-	-	0.57	46	0.26
Lithuania	6	7.42	6.48	0.02	0.76	62.7	0.48
Luxembourg	13	24.88	11.52	0.04	1.56	11.2	0.17
Hungary	61	4.96	2.17	0.07	0.94	49.4	0.46
Malta	0	0.03	0.03	0.00	0.61	***59.8	0.36
Netherlands	263	22.92	-4.77	0.05	*1.78	**36.2	0.64
Austria	157	11.67	-22.68	0.06	2.36	36.4	0.86
Poland	33	2.25	1.26	0.01	0.57	60.7	0.35
Portugal	6	1.25	0.48	0.00	0.81	**60.1	0.49
Slovenia	20	16.42	-2.28	0.06	1.22	27.2	0.33
Slovakia	5	1.21	-1.79	0.01	0.51	57	0.29
Finland	161	26.96	-6.06	0.10	3.48	*26.3	0.92
Sweden	107	3.42	-8.37	0.03	3.86	**23.5	0.91
United Kingdom	550	16.78	-4.30	0.03	*1.73	*32.8	0.57

(1) Source: Eurostat, (2) Calculations based on Eurostat data, (*) 2004 data, (**) 2003 data, (***) 2002 data

More than € 12 bn new aid to research, development and innovation approved under the new R&D&I framework

The new Community Framework for State aid for Research and Development and Innovation (OJ C 323, 30.12.2006) entered into force on 1 January 2007, replacing the 1996 Framework for State aid for R&D. The new Framework follows the logic of the State Aid Action Plan (SAAP) by, on the one hand, allowing for new types of aid for innovation purposes whilst, on the other hand, introducing a more refined economic approach for large sums of aid.

Member States have agreed to adapt their existing aid schemes by 31 December 2007 in order to make them compatible with the new framework. All notifications pending on 1 January 2007 and all subsequent notifications are assessed under the new framework. Until 30 November 2007, the Commission approved 42 schemes and ad hoc cases in favour of R&D&I on the basis of the new Framework with a total budget of € 12186 million. 15 of those schemes involved innovation aid, thus exploiting the expansion of activities eligible for aid provided by the new Framework

In addition, the Commission completed a more detailed assessment of eight large[39] applications of approved R&D aid schemes, on which it adopted decisions as depicted in the following table:

Table 12: Large cases of aid for R&D for which the Commission completed an in depth assessment

Aid number	Name of project	Member State	Aid amount	Date of decision	Approval or opening
N 674/06	NeoVal	France	€ 26.49 million	21.02.07	approval
C 9/07	TRENT 1000	Spain	€ 27.85 million	21.03.07	opening
N 854/06	TVMSL	France	€ 37.57 million	11.05.07	approval
N 887/06	Bernin 2010	France	€ 14.3 million	11.07.07	approval
N 89/07	HOMES	France	€ 39.10 million	12.09.07	approval
N 185/07	NANOSMART	France	€ 80 million	12.09.07	approval
N 349/07	OSIRIS	France	€ 32 million	10.10.07	approval
C 51/07	VHD	France	€ 96 million	13.11.07	opening

This detailed assessment examines whether a market failure exists, whether aid can be considered an appropriate instrument to remedy the market failure, it examines whether the aid has an incentive effect and whether the aid is necessary to realise the aided project and whether it is proportionate; the distortive effects of the aid and its expected effects on trade are also examined and the positive and negative effects are then balanced in the Community interest. Such an assessment obviously is more demanding, both for the Member State in question and for the Commission, than the more summary tests carried out under the former framework.[40]

However, the first year of application has shown that a good preparation by the Member State and a fruitful co-operation with the Commission can produce decisions upon notification within a timeframe very similar to what was observed under the old framework.

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

40 Aid sums over € 5 million for projects exceeding € 25 million.

Risk capital aid

From the entry into force of the Community Guidelines on State aid to promote Risk Capital investments in small and medium-sized enterprises (OJ C 194, 18.08.2006) and up to 30 November 2007, the Commission approved 16 schemes in favour of Risk Capital with a total budget of € 1837 million. It opened investigations regarding one scheme with a budget of € 130 million. This Framework also follows the line of the SAAP by distinguishing safe harbours, which allow for a light assessment, and derogations for which a more detailed analysis is called for.

2.4. 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 € 11.9 billion of aid[41] was earmarked exclusively for assisted 'a' regions[42] in 2006. With the exception of Cyprus, and the cities of Prague and Bratislava which qualify for assistance at 'c' level,[43] the entire territories of the EU-10 Member States are eligible at 'a' level. Although a number of aid measures in these countries are not earmarked for a specific region, the aid is thus deemed to be 'reserved for' assisted regions.

The EU-wide figure of € 11.9 billion represented 25% 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 13) 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.

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41 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.

42 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.

43 Article 87(3)(c)

Table 13: State aid specifically earmarked for assisted 'a' regions, 2006

	Total state aid for industry and services, mio €	Aid for assisted 'a' regions, mio €	Aid for assisted 'a' regions as a percentage of total aid for industry and services
EU-25	**47903**	11932	25
Czech Republic	584	235	40
Germany	16003	2112	13
Estonia	11	11	100
Ireland	491	366	74
Greece	319	319	100
Spain	3861	1528	40
France	7382	2228	30
Italy	3843	1124	29
Latvia	25	25	100
Lithuania	54	53	100
Hungary	833	833	100
Malta	89	89	100
Austria	1551	13	1
Poland	1230	1230	100
Portugal	1418	1261	89
Slovenia	147	147	100
Slovakia	199	129	65
Finland	590	1	0
United Kingdom	3096	231	7

Note: There are no assisted 'a' regions in Belgium, Denmark, Cyprus, Luxembourg, the Netherlands and Sweden. For Czech Republic, Spain, Ireland, Portugal, Slovakia, all measures qualify for either 'a' or 'c' status. The figures in the table above refer to those measures which were specifically earmarked for 'a' regions. In Cyprus, all measures qualify for 'c' assisted status. All 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. Community funds and instruments are excluded.

Source: DG Competition.

3. AID AWARDED UNDER THE BLOCK EXEMPTION REGULATIONS (BER)

Council Regulation on the application of Articles 92 and 93 to certain categories of horizontal State aid (Enabling Regulation)[44] aimed at prioritisation and simplification in the state aid field with an intended threefold effect:

- In areas where the Commission has sufficient experience to define general compatibility criteria, Member States would be able to implement aid that does not raise concerns as to its compatibility without further proceedings before the Commission.
- Due to the direct applicability of regulations in the Member States (Article 249 EC), compliance with the BER could be ensured through private enforcement before national courts.

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[44] Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 (now 87 and 88 respectively) of the Treaty establishing the European Community to certain categories of horizontal State aid, (OJ L 142, 14.05.1998, p. 1-4).

- BER enable the Commission to concentrate its resources on the most distortive cases.[45]

On the basis of the Enabling Regulation, 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. The block exemption regulation on SMEs was amended in February 2004 as regards the extension of its scope to include aid for research and development.[46]

At the end of 2006, the Commission adopted two additional block exemption regulations which will apply from 2007 to 2013, the same period as for the next programming period for EU structural funds. These are:

- Regulation 1628/2006 on regional investment aid[47] following which Member States will no longer have to notify regional investment aid schemes to the Commission if they fulfil the conditions set out in the Regulation, and

- Regulation 1857/2006 on State aid to SMEs active in the production of agricultural products and amending Regulation (EC) No 70/2001[48] (for SMEs active in the processing and marketing of agricultural products) which replaces the previous BER in the agricultural sector.

Furthermore, the period of application of Regulations (EC) No 2204/2002 on State aid for employment, (EC) No 70/2001 on State aid for small and medium sized enterprises and (EC) No 68/2001 on training aid have been extended until 30 June 2008[49] to allow for the necessary period of preparation of a future general block exemption Regulation.[50]

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45 Evaluation report on the application of the Council Regulation (EC) No 994/98 of 7 May 1998 regarding the application of Articles 87 (ex-Article 92) and 88 (ex-Article 93) of the EC Treaty to certain categories of horizontal State aid, pursuant to Article 5 of this Regulation (COM/2006/0831 final), 21.12.2006, p. 3.

46 Commission Regulation (EC) No 70/2001 of 12 January 2001 on State aid to SMEs (OJ L 10, 13.01.2001, p. 33-42) and No 364/2004 of 25 February 2004 amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development (OJ L 63, 28.02.2004, p. 22-29);
Commission Regulation (EC) No 68/2001 of 12 January 2001 on training aid (OJ L 10, 13.01.2001, p. 20-29) and No 363/2004 of 25 February 2004 amending Regulation (EC) No 68/2001 (OJ L 63, 28.02.2004, p. 20-21);
Commission Regulation (EC) No 2204/2002 of 5 December 2002 on State aid for employment (OJ L 337, 13.12.2002, p. 3-14);
Commission Regulation (EC) No 1/2004 of 23 December 2003 on State aid to SMEs active in the production, processing and marketing of agricultural products (OJ L 1, 03.01.2004, p. 1-16);
Commission Regulation (EC) No 1595/2004 of 8 September 2004 on State aid to SME active in the production, processing and marketing of fisheries products (OJ L 291 of 14.09.2004, p. 3-11).

47 Commission Regulation (EC) No 1628/2006 of 24 October 2006 on State aid to national regional investment aid (OJ L 302, 01.11.2006, p. 29-40).

48 Commission Regulation (EC) No 1857/2006 of 15 December 2006 on State aid to SMEs active in the production of agricultural products and amending Regulation (EC) No 70/2001(OJ L 358 of 16.12.2006, p. 3-21).

49 Commission Regulation EC No 1976/2006 of 20 December 2006 amending Regulations (EC) No 2204/2002, (EC) No 70/2001 and (EC) No 68/2001 as regards the extension of the periods of application (OJ L 368 of 23.12.2006, p. 85-86).

50 See Part III, 7. Draft legislation, p. 40.

3.1. Number of block exempted measures introduced by Member States

Experience has shown that the objectives of the Enabling Regulation have been largely met,[51] with Member States able to introduce almost 1700 block exempted measures in the period 2001 – 2006. This has been accompanied by a significant reduction in the number of notified measures for these types of aid. In 2006 alone, the Commission has received more than 400 information forms on newly introduced BER measures (see Table 14).

Table 14: Number of measures for which information forms were submitted under the State aid block exemption regulations, 2001- 30.9.2007, EU-27

Type of State aid block exemption	Year							
	2001	2002	2003	2004	2005	2006	2007 (30.9.07)	Total number 2001-30.9.2007
SME	102	123	139	149	197	183	246	1139
Training	48	80	55	79	68	57	86	473
Employment			8	21	26	35	27	117
Regional investment							154	154
Agriculture				72	88	119	307	586
Fish				1	22	24	0	47
Total	150	203	202	322	401	418	820	2516

Note: The table excludes cases withdrawn. Figures for the EU-10 are included as of 1May 2004, for Bulgaria and Romania as of 1 January 2007. Source: DG Competition, DG Agriculture, DG Fish

In the first three quarters of 2007, Member States informed the Commission that they implemented an additional number of more than 800 block exempted measures, bringing the total number of block exempted measures to more than 2500 since the adoption of the first state aid exemption regulation in 2001.

The reason for this significant increase is threefold:

First, many state aid measures are co-financed by EU structural funds. Member States therefore tend to introduce a significant number of new state aid block exemption measures at the beginning of a structural funds programming period (now 2007 – 2013). This concerns in particular measures for aid to SMEs (246) and aid to training (86).

Second, the Commission observes a high take-up rate for the new possibility to block exempt regional investment aid (154 new measures). In particular Spain (33), Austria (23), the United Kingdom (16), the Czech Republic (13) and Hungary and Poland (each 10) informed the Commission of considerable numbers of block exempted regional aid measures.

[51] Evaluation report on the application of the Council Regulation (EC) No 994/98 of 7 May 1998 regarding the application of Articles 87 (ex-Article 92) and 88 (ex-Article 93) of the EC Treaty to certain categories of horizontal State aid, pursuant to Article 5 of this Regulation (COM/2006/0831 final), 21.12.2006, p. 11.

Third, the new Regulation 1857/2006 on State aid to SMEs active in the production of agricultural products and amending Regulation (EC) No 70/2001 (for SMEs active in the processing and marketing of agricultural products) has been approved in the agricultural sector to replace the previous BER. As a result, the total number of measures communicated by the Member States through this exemption in the field of agriculture has highly increased. By 30 September 2007, Member States had informed on the implementation of 307 block exempted measures (compared to 92 put into effect at the same date in 2006, see Table 14). As a further consequence the number of measures being notified for these types of aid to SMEs has fallen considerably during 2007 as Member States increasingly use the exemption. The data on this question will be analysed in the Scoreboard spring 2008 update.

Exemptions for state aid measures to SMEs active in the fisheries sector are not possible in 2007.[52]

3.2. Expenditure under block exempted measures

As regards expenditure, an estimated € 3 billion was awarded in 2006 under the three block exemption regulations for SMEs in the manufacturing and services sector, training and employment. Aid to SMEs accounted for € 1.9 billion, while € 0.6 billion were spent for training aid and another € 0.6 billion for aid to employment. In 2006, four Member States accounted for more than 75% of total expenditure. Italy made up for 36% of the total expenditure, followed by Poland (20%), Germany (13%) and the United Kingdom (9%) (see Table 15).

52 BER for aid to SMEs active in the fisheries sector will possibly be adopted during the first quarter of 2008. The Draft Commission Regulation 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 is available in OJ C 248 of 23.10.2007, p. 13.

Table 15: Aid awarded under the block exemption regulations, in million €, 2006

Member States	SME	Training	Employment	Total	Total BER as percentage of total Horizontal aid	SMEs active in the agriculture sector	Total BER as percentage of total Agriculture aid	SMEs active in the fisheries sector	Total BER as percentage of total Fisheries aid
EU-25	**1865**	**564**	**584**	**3012**	***7.4***	**258.2**	*1.6*	**28.044**	***9.87***
Belgium	76	21	12	109	*12.6*	1.9	*0.6*	-	-
Czech Republic	76	-	2	78	*13.5*	0.5	*0.3*	-	-
Denmark	1	-	-	1	*0.1*	-	-	-	-
Germany	343	52	9	404	*3.0*	5.4	*0.1*	-	-
Estonia	2	1	0	3	*24.1*	-	-	0.472	*100*
Ireland	51	3	-	54	*13.7*	-	-	-	-
Greece	25	-	15	40	*13.9*	-	-	n.a.	*n.a.*
Spain	45	26	4	75	*2.7*	100.4	*11.4*	24.250	*41.54*
France	97	-	2	99	*1.4*	21.7	*0.9*	-	-
Italy	840	233	12	1085	*29.5*	29.1	*2.5*	2.880	*7.16*
Cyprus	5	-	-	5	*7.3*	4.2	*10.7*	-	-
Latvia	5	-	-	5	*21.1*	20.4	*10.5*	-	-
Lithuania	2	3	3	8	*14.1*	-	-	-	-
Luxembourg	12	-	-	12	*26.0*	-	-	-	-
Hungary	13	-	43	56	*12.9*	1.9	*0.4*	-	-
Malta	1	0	-	1	*19.4*	-	-	-	-
Netherlands	10	0	1	11	*0.9*	23.4	*5.4*	0.420	*2.21*
Austria	44	3	-	47	*6.0*	6.2	*0.8*	-	-
Poland	86	54	454	594	*56.9*	0.5	*0.1*	-	-
Portugal	1	30	-	30	*15.3*	-	-	-	-
Slovenia	-	1	-	1	*0.5*	5.0	*4.7*	0.013	*14.37*
Slovakia	2	0	1	4	*2.0*	10.6	*44.3*	-	-
Finland	2	-	-	2	*0.3*	0.3	*0.0*	0.007	*0.50*
Sweden	-	-	5	5	*0.2*	-	-	-	-
United Kingdom	126	136	21	284	*10.2*	26.7	*2.9*	0.003	*0.11*

Source: DG Competition, DG Agriculture, DG Fish

Concerning expenditure for SMEs in agriculture, more than € 250 million was awarded in 2006 under the block exemption regulation. Spain made up for around 40% of total expenditure followed by Italy (11%) and United Kingdom (10%).

As regards expenditure in the fisheries sector, in 2006, an estimated € 28 million was awarded under the block exemption regulation for fisheries, as shown in Table 15.[53]

3.3. Share of block exempted aid in aid directed at horizontal objectives

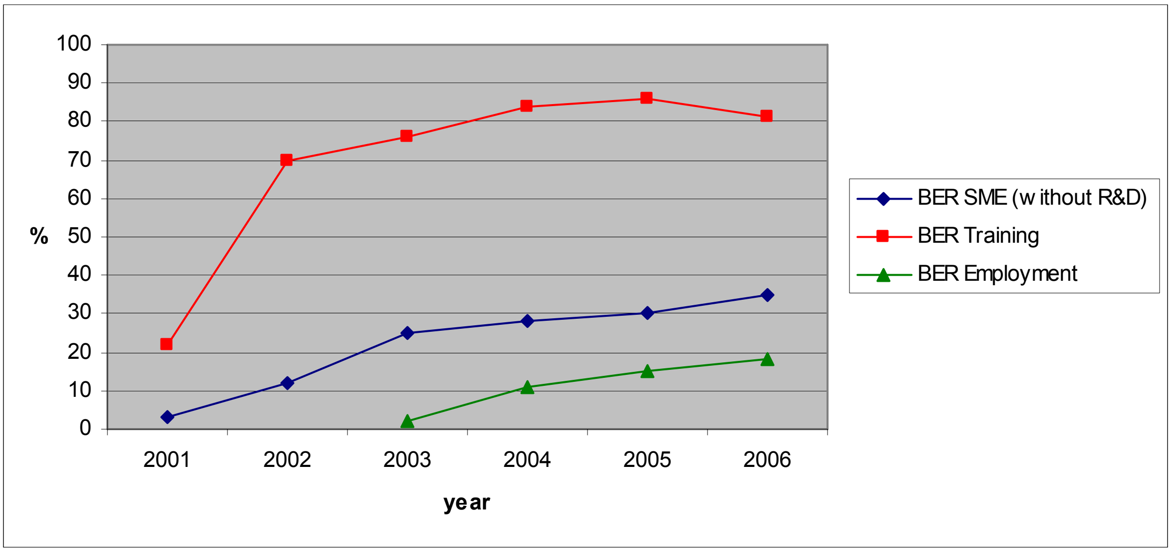
It is also worth looking at the share of block exempted aid in total aid directed at horizontal objectives. EU-wide, aid under the BER for aid to SMEs in the manufacturing and services sector, to training and to employment represented around 7% of all aid directed at horizontal objectives though for several Member States the share was considerably higher: Poland (57%), Italy (30%), Luxembourg (26%), Estonia (24%), Latvia (21%) and Malta (19%) (see Table 15).

The extent to which block exempted aid has over time replaced notified aid can be established by comparing total expenditure granted under a given horizontal objective with the

53 Information from Member States annual reports is only available for the year 2006.

expenditure under block exemption for the same objective. Results show that Member States have made increasingly use of the block exemption possibilities, even though with considerable variations by objective and between Member States.

Graph 3: Trend in the share of exempted aid in total aid directed at the same horizontal objective, EU 25



Note: Data for the EU 10 are included as of 1 May 2004. Source: DG Competition.

For training aid, in 2006 around 80% (€ 0.6 bn) of overall expenditure (€ 0.7 bn) was reported by Member States under block exempted measures. While Estonia, Lithuania, Netherlands, Austria and Poland granted training aid in 2006 exclusively and Germany, Italy and United Kingdom to a large extent through block exemptions, other Member States made little or no use of the block exemption possibility.

For aid to SMEs active in the manufacturing and services sector data of 2006 show that € 1.9 bn or more than one third (35%) of all aid directed to the primary objective SME were spent under block exempted measures, compared to another € 3.4 billion SME aid granted on the basis of notified aid measures. Based on expenditure data for 2006, block exempted aid accounted in Estonia, Greece, Latvia, the Netherlands, Poland, Czech Republic, Germany, Ireland, Italy, Luxemburg, Malta and the United Kingdom for around 60% and more of their aid to SMEs.

Less than one fifth of overall expenditure for employment aid was granted in 2006 under the employment BER (€ 0.6 bn) though for some Member State it was the main tool to grant employment aid. Poland, the United Kingdom, Greece, Sweden, Lithuania, and Estonia introduced employment aid exclusively by block exempted measures; Slovakia and Hungary at a high proportion. In total, another € 2.6 billion employment aid was notified outside the exemptions in 2006. This low take up rate has been explained in the Evaluation Report on the functioning of the block exemptions with the fact that some Member States perceived its provisions as too complex and more restrictive compared with the previous guidelines for employment aid.[54] An additional reason may be that many employment aid measures tend to be co-financed under Community funds and are set up for an entire programming period while the employment BER entered into force only in 2003, half way through the previous programming period 2000 – 2006.

For the agricultural sector, even if Member States are increasingly using the block exemption regulation (for example, Slovakia granted nearly 45% of its aid under block exemption), only 2% of total aid was awarded by exemptions in 2006.

Aid in the fisheries sector was granted in 2006 for around 10% by exemptions after the BER being in force for more than two years. All State aid granted by Estonia fell under the scope of the BER. Other Member States granted a high percentage of their total State aids under the exemption, i.e. Spain (42%) and Slovenia (14%) (Table 15).

The significant increase in 2007 of newly introduced block exempted measures, combined with sizeable budgets of many of the news measures seems to indicate a steep increase in expenditure under block exemption regulations.

4. STATE AID INSTRUMENTS

Most favoured aid instrument in the EU-25 is the grant

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

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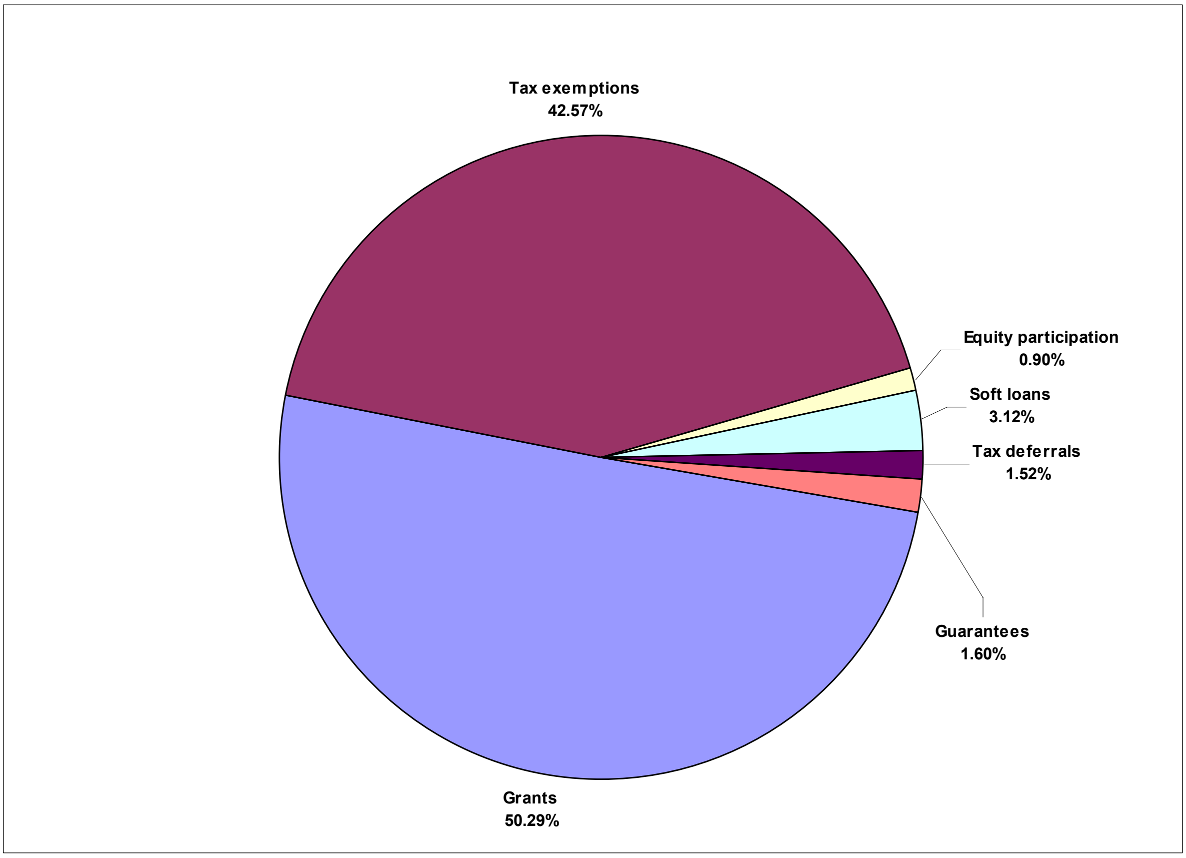
54 Evaluation report on the application of the Council Regulation (EC) No 994/98 of 7 May 1998 regarding the application of Articles 87 (ex-Article 92) and 88 (ex-Article 93) of the EC Treaty to certain categories of horizontal State aid, pursuant to Article 5 of this Regulation (COM/2006/0831 final, 21.12.2006, p.8).

Graph 4: Share of each aid instrument in total aid for manufacturing and services, EU-25, 2004–2006



Note: This section on aid instruments excludes the coal sector. Source: DG Competition

During the period 2004-2006, grants accounted for more than 50% of total aid in the manufacturing and service sectors. In addition to aid awarded through the budget, other aid is paid through alleviation from the tax or social security system. Tax exemptions made up for almost 43% of the total (Graph 4 and Table 16). Belgium, Denmark, Estonia and Luxembourg provided at least 85% of their aid in the form of grants, other Member States tended to make greater use of tax exemptions: accounting for 80% or more of total aid in Portugal and Sweden. A similar instrument is a tax deferral which was used by seven Member States during the period under review. Tax deferrals accounted for 13% of all aid in Italy compared with an EU average of 2%.

Table 16: State aid to the manufacturing and services sectors by type of instrument, 2004-2006

TYPE OF AID INSTRUMENT						% of total
	Grants	Tax exemptions	Equity participation	Soft loans	Tax deferrals	Guarantees
EU-25	50	43	1	3	2	2
Belgium	94	1	0	5	-	1
Czech Republic	65	27	-	3	-	5
Denmark	90	7	4	0	-	0
Germany	39	57	1	1	-	1
Estonia	85	1	-	0	-	14
Greece	76	23	-	-	-	1
Spain	52	37	1	11	-	0
France	52	38	1	7	0	2
Ireland	47	51	1	0	1	0
Italy	66	17	0	4	13	0
Cyprus	53	43	-	-	-	4
Latvia	53	42	-	4	0	0
Lithuania	53	41	4	-	3	-
Luxembourg	98	-	-	2	-	-
Hungary	39	58	1	1	-	1
Malta	30	57	-	2	9	2
Netherlands	81	11	0	0	3	4
Austria	70	0	-	7	-	23
Poland	52	41	0	3	0	4
Portugal	8	87	0	4	1	0
Slovenia	84	10	1	3	-	3
Slovakia	37	63	-	-	-	-
Finland	62	32	1	6	-	0
Sweden	18	81	0	1	-	0
United Kingdom	60	39	1	0	0	0

Note: due to rounding not all percentage figures sum up precisely to 100. Source: DG Competition

There are other forms of aid instrument which vary from one Member State to another. One such category covers transfers in which the aid element is the interest saved by the recipient during the period for which the capital transferred is at his disposal. The financial transfer takes the form of a soft loan or tax deferral (mentioned already above). The aid elements in this category are much lower than the capital values of the transfers. EU-wide, soft loans represented around 3% of all aid to manufacturing and services. In Spain, France and Austria, the proportion was 7% or more.

Aid may also be in the form of state equity participation which represented around 1% of all aid to the manufacturing and service sectors. Finally, aid may be provided in the form of guarantees. The aid elements are generally much lower than the nominal amounts guaranteed, since they correspond to the benefit which the recipient receives free of charge or at lower than market rate if a premium is paid to cover the risk. EU-wide, guarantees made up for almost 2% of total aid. During the period under review, the guarantees were used by Austria (23% of total aid), mainly to the banking sector (aid to *BAWAG*), and in Estonia (14 % of total aid).

PART TWO: RECOVERY OF UNLAWFUL AID[55]

Article 14 (1) of the Procedural Regulation 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 30 June 2007, there were 50 pending recovery decisions (see in Annex I the complete list), compared to 93 on 31 December 2004 and 60 on 31 December 2006. In the first half of 2007, 15 pending recovery cases were closed, whilst five recovery decisions were taken (see Table 17). The geographical distribution of pending recovery cases is the following: Spain has the highest number of pending recovery cases (15), which represents 30% of the EU total. Nine of the Spanish pending cases refer to Basque fiscal schemes.

Taken together, Germany, Italy and France account for a further 50% of all pending recovery cases. Germany has reduced its share in the total number of pending cases from 47% in 2004 to 18% in June 2007 (mainly as a result of the closure of a large number of old insolvency cases).

It should also be noted that there are no pending cases in 15 of the 27 Member States.

Table 17: Pending recovery cases by Member State, first semester 2007

	Situation 01/01/2007	New cases 01.01.-30.06.2007	Cases closed 01.01.-30.06.2007	Situation 30/06/2007
Spain	17	1	3	15
Germany	16	1	8	9
Italy	11	2	3	10
France	6	1	1	6
Netherlands	2	0	0	2
Portugal	2	0	0	2
Greece	1	0	0	1
Belgium	1	0	0	1
Ireland	1	0	0	1
Poland	1	0	0	1
Finland	1	0	0	1
Slovakia	1	0	0	1
TOTAL	60	5	15	50

Source: DG Competition

Table 18 provides data on the amounts of aid to be recovered under the 115 recovery decisions adopted since 2000[56]. For 94 of these decisions, relatively accurate information exists on the amount of aid involved. This information shows that the total amount of aid to

[55] With the exception of Table 20, this section covers only aid to industry and services excluding coal mining, i.e. aid to agriculture, fisheries and transport excluded.

[56] On 30 June 2007, there were still further six recovery decisions pending that were adopted before 1 January 2000.

be recovered on the basis of decisions adopted between 1 January 2000 and 30 June 2007 is at least € 9.07 billion.[57]

Table 18: Trend in the number of recovery decisions and amounts to be recovered(*) 2000- 2007 (state of play – 30.06.2007)

	Date of Decision								
	2000	2001	2002	2003	2004	2005	2006	1S07	total
Nr.of decisions adopted	16	20	23	10	23	12	6	5	115
Total aid known to be recovered (in mio €)	247.0	1026.5	1095.4	1015.6	5112.9	338.7	132.6	103.2	9071.9
amounts recovered (In mio €)	218.1	1068.8	1470.1	1230.3	5301.4	24.9	45.3	0.0	9358.9
Of which:									
(a) Principal reimbursed/or in blocked account	17.1	912.0	1037.6	894.6	3155.3	22.1	0.3	0.0	6039.0
(b) Aid lost in bankruptcy	201.0	76.3	29.0	0.7	870.9	0.0	45.0	0.0	1222.9
(c) Interest		80.5	403.5	335.0	1275.2	2.8	0.0	0.0	2097.0
Aid registered in bankruptcy	15.6	16.9	6.2	133.8	0.0	7.5	0.0	0.0	180.0
Amount outstanding (***)	28.9	38.2	28.8	120.3	1086.7	316.6	87.3	103.2	1810.0
% still pending to be recovered (**)	**11.7%**	**3.7%**	**2.6%**	**11.8%**	**21.3%**	**93.5%**	**66%**	**100%**	**20.0%**

Notes:

(*) Only for decisions for which the aid amount is known.

(**) Amount excluding interest.

(***) Total aid known to be recovered less principal reimbursed and aid lost in bankruptcy

Source: DG Competition

For 21 of the recovery decisions adopted since 2000, the Member States concerned have not yet submitted reliable information on the aid amount involved. Most of these decisions (namely 17) concern aid schemes. Especially in relation to fiscal and social security schemes, Member States appear to have difficulties in collecting accurate information (the main reasons given were: large number of beneficiaries; aid granted is partially compatible, which requires a full examination of each individual file; older records are no longer kept). The Commission continues its efforts to obtain information from the Member States on the aid amounts involved.

57 The autumn 2005 State aid Scoreboard (COM(2005)624 final of 9 December 2005) reported a total of € 9.4 billion. This discrepancy is due to the fact that some Member States submitted a revised estimate of the amounts to be recovered under some schemes.

Of the € 9.07 billion of aid to be recovered under decisions adopted since 2000, some € 6 billion of illegal and incompatible aid had been effectively recovered by 30 June 2007 (this compares to € 2.3 billion of aid reported as recovered in December 2004)[58]. In addition, a further € 2.1 billion of recovery interests was recovered. In addition to the amounts effectively recovered, a further € 1.2 billion of unlawful and incompatible aid was "lost" in bankruptcy proceedings[59] and € 180 million of illegal and incompatible aid has been registered in ongoing bankruptcy proceedings. This leaves € 1.8 billion of illegal and incompatible aid still to be recovered (i.e. 20% of the total).

During the first half of 2007 no significant amounts have been recovered and the majority of the cases closed refer to insolvent companies, in which the illegal and incompatible aid is usually not (or only very partially) recovered.

Recovery of illegal incompatible state aid is still a lengthy process: Six of the recovery decisions the execution of which was still pending on 30 June 2007 were adopted before 1 January 2000. Of the 115 decisions adopted between 2000 and June 2007, only 71 have been closed by the June 2007 (see Table 19).

Table 19: Trend in the closure of recovery cases (state of play – 30.06.2007)

	Date of the Decision								
	2000	2001	2002	2003	2004	2005	2006	2007	Total
Nr of recovery decisions adopted	16	20	23	10	23	12	6	5	115
Nr of recovery cases that are closed on 30/06/07	14	11	16	5	17	5	3	0	71

In its State Aid Action Plan, the Commission announced that it would monitor more closely the execution of recovery decisions by Member States. Where Member States do not take all measures available to implement such decisions, the Commission has taken a strict line and systematically initiated infringement proceedings against the Member State concerned in accordance with Articles 88(2), 226 and 228(2) of the EC Treaty.

58 Total amount recovered (including interest and aid lost in bankruptcy reported in December 2004 was € 3.1 billion, and in December 2005 € 8.2 billion).

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

Table 20: The pending recovery cases for which the Commission has decided to bring the case before the Court of Justice and for which the illegal and incompatible aid is not yet recovered

Case number/title	MS	Court case	State of play and recent developments
CR 44/1997 - Magefesa	SPAIN	C-499/99	02/07/02: ECJ judgment condemning SPAIN for failing to implement CEC decision
CR 49/1998 - Employment measures	ITALY	C-99/02	01/04/04: ECJ judgment condemning ITALY for failing to implement CEC decision
CR 48/1999 CR 49/1999 CR 50/1999 CR 52/1999 CR 53/1999 CR 54/1999 Basque fiscal aid schemes	SPAIN	C-485/03, C-486/03, C 487/03, C-488/03, C-489/03 C-490/03	14/12/06: ECJ judgment condemning SPAIN for failing to implement CEC decision 11/07/07: Commission sent letter of formal notice to Spain
CR 03/1999 - Spanish shipyards I	SPAIN	C-404/03	26/06/03: ECJ judgment condemning SPAIN for failing to implement CEC decision 18/10/04: Commission sent letter of formal notice to Spain
CR 38/1998 - Kimberly Clark/Scott Paper	FRANCE	C-232/05	05/10/06: ECJ judgment condemning FRANCE for failing to execute CEC decision
CR 27/1999 - Municipalizzate	ITALY	C-207/05	01/06/06: ECJ judgment condemning ITALY for failing to execute CEC decision 19/07/07: Commission sent a letter of formal notice to Italy
CR 62/2000 - Thuringen Porzellan (Kahla)	GERMANY	C-39/06	16/02/05: Commission decision to initiate Art. 88(2) action against GERMANY. 24/01/06: Application lodged at the ECJ pursuant to Article 88(2)

Case number/title	MS	Court case	State of play and recent developments
			Press release: IP/05/189
CR 62/2003 - Urgent employment measures	ITALY	C-280/05	06/04/05: Commission decision to initiate Art. 88(2) action against ITALY 11/07/05: Application lodged at the ECJ pursuant to Article 88(2) Press release: IP/05/395
CR 58/2000 CR 59/2000 CR 60/2000 Basque fiscal aid schemes	SPAIN	C-177/06	21/12/05: Commission decision to initiate Art. 88(2) action against SPAIN 04/04/06: Application lodged at the ECJ pursuant to Article 88(2) 20/09/07: ECJ judgment condemning SPAIN for failing to execute CEC decision Press release: IP/05/1655
CR 57/2003 - Tremonti Bis	ITALY		25/01/06: Commission decision to initiate Art. 88(2) action against ITALY Press release: IP/06/77
CR 36/2001 - Beaulieu Ter Lembeek	BELGIUM	C-187/06	25/01/06: Commission decision to initiate Art. 88(2) action against BE 12/04/06: Application lodged at the ECJ pursuant to Article 88(2) Press release: IP/06/77
CR 8/2004 - Fiscal incentives for newly listed companies	ITALY		19/07/06: Commission decision to initiate Art. 88(2) action against ITALY Press release: IP/06/1040
CR 13b/2003 - France Telecom – Business Tax Scheme	FRANCE	C-441/06	19/07/06: Commission decision to initiate Art. 88(2) action against FRANCE 25/10/06: Application lodged at the ECJ pursuant to Article 88(2) 18/10/07: ECJ judgment condemning FRANCE for failing to execute CEC decision Press release: IP/06/1014

Case number/title	MS	Court case	State of play and recent developments
CR 57/2002 - Exonérations fiscales en faveur de la reprise d'entreprises en difficulté - Article 44 septies CGI	FRANCE	C-214/07	24/10/06: Commission decision to initiate Art. 88(2) action against FRANCE Press release: IP/06/1471
C 11/2004 - Olympic Airways / Olympic airlines	GREECE	C-419/06	26/04/06 Commission decision to initiate Art. 88(2) action against GREECE Press release: IP/06/531
C 19/2002 - Olympic Airways	GREECE	C-415/03 C 369/07	26/04/06: Commission decision to initiate Art 228 action against GREECE failure to comply with judgement of Court of Justice (case C-415/03) Press release: IP/06/531
CR 81/1997 - Social security reductions – Venezia e Chioggia	ITALY		10/05/07: Commission decision to initiate Art. 88(2) action against ITALY Press release: IP/07/648
CR 3/2002 – Aid to Refractarios especiales	SPAIN		18/07/2007: Commission decision to initiate Art. 88(2) action against SPAIN Press release: IP/07/1138

PART THREE: LEGISLATIVE AND POLICY DEVELOPMENTS

State Aid Action Plan

The Commission continues to implement various aspects of the State aid Action Plan (SAAP),[60] which set out in June 2005 the guiding principles for a comprehensive reform of State aid rules and procedures over the next five years. Since the last Scoreboard was published in the spring, the Commission has adopted the following final or draft legislative texts:

[60] COM(2005) 107 final, 7.6.2005

1. NEW LEGISLATION

Commission Regulation on *de minimis* aid in the fisheries sector

The European Commission adopted in July 2007 a Regulation increasing the ceiling of the so-called *de minimis* aid to the fisheries sector.[61] *De minimis* aid is aid deemed not to distort competition. Under the new Regulation, the ceiling is set at € 30 000 per three-year period, per beneficiary, on condition that the total amount of such aid represents less than 2.5% of the annual national fisheries output. None of this aid may be used to purchase or construct new vessels or to enhance existing fleet capacity. Member States have to record all relevant information to show that these conditions have been respected.

Notice on the implementation of decisions to recover unlawful and incompatible State aid

To further improve the enforcement of recovery decisions, the European Commission adopted on 25 October 2007 a "Notice on the implementation of decisions ordering Member States to recover unlawful and incompatible state aid"[62]. The notice provides guidance to Member States as to how to achieve a more immediate and effective execution of recovery decisions. Effective recovery is indeed essential to ensure that distortions of competition resulting from illegal and incompatible aid are put to an end. The Notice emphasises that improving the enforcement of state aid decisions is a shared responsibility between the Commission and the Member States. It recalls the principles applying to the recovery of state aid as confirmed by the Community Courts and defines the respective role of the Commission and of the Member States in the recovery procedures.

Communication on services of general interest

On 20 November 2007, the European Commission adopted, as a part of the Single Market package[63], the Communication on "Services of general interest, including social services of general interest: a new European commitment"[64]. The document develops the set of principles established in the specific Protocol on services of general interest (SGI) attached to the draft Lisbon Treaty. The Communication also proposes a strategy further promoting the quality of social services, such as social housing, childcare, support for families and persons in need. This communication follows up on a previous White Paper and large public consultation. More specifically, the Communication includes initiatives, including an interactive assistance tool, aimed at clarifying the implementation of Community rules, in particular State aid and public procurement ones, in the area of services of general economic interest (SGEI) and at helping public authorities, service providers and users to better understand and apply these rules.

In these two fields, the publication of the Communication is accompanied by two Commission staff working documents. Especially as far as State aid issues are concerned, the "Frequently asked questions: Application of State aid rules to public service compensation for

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61 OJ L 193 of 25.07.2007, p. 6-12
62 OJ C 272 of 15.11.2007 p. 4-17,
63 COM(2007)724
64 COM(2007)725

services of general economic interest"[65], provides answers to the most often raised questions on the application of State aid rules, such as the SGEI package taken by the Commission in 2005 to services of general economic interest.

PSO Regulation for land transport

On 23 October 2007, the Council and the Parliament adopted the text for a new Regulation on Public Service Obligations in the field of inland transport[66]. This regulation will enter into force two years after its publication in the Official Journal of the European Union. It will replace the existing Regulations 1191/69/EC and 1107/70/EC. As of its entry into force, State aid granted in the form of compensation for public service obligations in inland transport will be mainly governed by this new Regulation. In addition, Article 73 of the Treaty can be applied directly for cases not covered by the new Regulation, and Regulation 1192/69/EC remains in force for certain compensation payments to railway companies.

2. DRAFT LEGISLATION

Revised draft General Block Exemption Regulation

In September 2007, the European Commission invited interested parties to submit comments on the revised draft general block exemption of the Commission in the State aid area,[67] accompanied by a revised explanatory memorandum drawn up by the Commission's services. The new so-called 'general block exemption' Regulation aims at simplifying and consolidating into one text the four existing block exemptions for aid to SMEs including research and development aid in favour of SMEs, aid for employment, training aid and regional aid. In addition, the new Regulation would also allow the block exemption of three new types of aid: environmental aid, aid in the form of risk capital and exempting Research and Development aid (R&D) also in favour of large enterprises. Subsidies which fulfilled the conditions laid down in the new Regulation would be considered as compatible with state aid rules without requiring prior notification to the Commission. Following consultations, the Commission intends to adopt the final version of this regulation before the summer of 2008.

Second draft Community guidelines on State aid for environmental protection

The current Community guidelines on State aid for environmental protection[68] expire at the end of 2007. After the publication of a first draft in May 2007, the Commission services published a revised draft on the DG Competition's website[69] in September 2007. The final adoption of the revised Environmental guidelines is envisaged for the beginning of next year. The Commission intends to prolong the current guidelines till the adoption of the new ones.

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65 SEC(2007)1516

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

67 OJ C 210, 8.9.2007, p. 14–40, see also the Commission services document with track changes, facilitating the comparison to the first draft of April 2007.

68 OJ C 37, 3.2.2001, p. 3-15

69 DG Competition's Public consultations web page

Draft Commission Regulation on *de minimis* aid in the agricultural production sector

In July 2007, with the publication in the Official Journal, all interested parties were invited to submit their comments on a draft regulation raising the ceiling for small amounts of aid ("*de minimis*" aid) in the agriculture sector to € 6 000 per beneficiary over any period of three years and the maximum total per Member State to 0.6% of the value of agricultural output.[70] The draft regulation also sets out a clearer definition of the scope of such aid. It gives the Member States greater room for manoeuvre in granting aid without distorting competition.

Following the consultation process, the Commission intends to adopt a definitive regulation towards the end of 2007.

Draft revised Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees

The draft notice, published for public consultation in July 2007, updates the Commission's approach to State aid granted in the form of guarantees and aims to give Member States more detailed guidance about the principles on which the Commission intends to base its interpretation of Articles 87 and 88 and their application to State guarantees[71]. These principles are currently laid down in the present Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees.[72] Experience gained in the application of the Notice since 2000 suggests that the Commission's policy in this area should be reviewed. In this connection, the Commission wishes to recall for instance its recent practice in various specific decisions with respect to the need to undertake an individual assessment of the risk of the losses related to each guarantee for schemes. The Commission intends to further make its policy in this area as transparent as possible so that its decisions are predictable and that equal treatment is ensured. In particular, the Commission wishes to provide SMEs and Member States with safe harbours predetermining, for a given company and on the basis of its financial rating, the minimum margin that should be charged for a State guarantee in order to be deemed as not constituting aid. Likewise, any shortfall in the premium charged in comparison with that level could be deemed as the aid element.

Proposal for amendment to Implementing Regulation

After approving the proposal for modification of Regulation 794/2004[73] in June 2007, the Commission presented its text on DG Competition's website and invited interested parties to submit their comments.[74] The final adoption of a Commission Regulation amending Regulation (EC) 794/2004 is envisaged by the end of 2007. The proposed amendments concern mainly the compulsory use of the electronic notification system (SANI), the introduction of two new notification forms following the adoption of the new guidelines on risk capital investments and the new R&D&I framework as well as a new method of calculation of recovery interest rate.

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70 OJ C 151, 5.7.2007, p. 16-20
71 DG Competition's State aid reform web page
72 OJ C 71, 11.3.2000, p. 14–18
73 OJ L 140, 30.4.2004, p. 1-134
74 DG Competition's Public consultations web page

Draft communication on a new method for calculation of reference and discount rates

The Commission services prepared a draft Communication on the revision of the method for setting the reference and discount rates[75]. The reference rate is used to measure the grant equivalent of aid and to calculate the aid element resulting from interest subsidy schemes. The methodology to set the reference rate, which is currently laid down in a Commission letter to the Member States and several Commission notices, refers to the five-year interbank swap rate, in the relevant currency, plus a premium of 75 basis points. In cases where the five-year interbank swap rate is not available, the base rate is set at the level of yield on five-year State bonds, plus a premium of 25 basis points, plus 75 basis points. This methodology has certain shortcomings: data are not available for several new Member States; the methodology uses a one-size-fits-all approach to credit risk and the debtors' creditworthiness and collaterals are insufficiently taken into account. The new methodology is to be based on the following parameters:

- Calculation basis: 1 year IBOR. This rate is more widely available than the 5 year swap-rate;
- Margins have to be added to take account of the creditworthiness and the collateralisation. These margins vary from 60 basis points to 1000 basis points.

The adoption by the Commission of the new methodology is envisaged by the end of 2007.

Draft Commission Regulation on the application of Article 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

In October 2007, The Commission, by publication in the Official Journal,[76] invited interested parties to submit comments on the draft regulation which exempts Member States from the obligation to notify State aid given to small and medium sized undertakings involved in production, processing and marketing of fisheries products - provided that certain requirements are met.

Revision of the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty

The current Rescue and Restructuring Aid Guidelines expire in October 2009.[77] To prepare the revision of these Guidelines, the Commission invited in September 2007 all Member States and all other interested parties to convey their experience on the basis of the questionnaire published on DG Competition's website.[78] At the same time, the Commission published an invitation to tender concerns a *Study on counterfactual scenarios to restructuring State aid: observed developments when no aid is granted to firms in difficulty*.[79]

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75 DG Competition's State aid legislation web page

76 OJ C 248, 23.10.2007, p. 13-22

77 OJ C 244, 1.10.2004, p. 2-17

78 DG Competition's Public consultations web page

79 DG Competition's Calls for tenders web page

The autumn 2006 scoreboard contains an in-depth analysis of rescue and restructuring aid in the Member States over the period 2000-2005.[80]

3. REGIONAL AID MAPS

Regional aid maps 2007-2013 approved for all 27 Member States

By the end of November 2007 the Commission had approved under EC Treaty State aid rules the regional aid maps covering the period 2007-2013 for all 27 Member States.[81] These decisions form part of a wider exercise to review regional aid systems in all Member States. A regional aid map defines the regions of a Member State eligible for national regional investment aid for large enterprises under EC Treaty state aid rules and establishes the maximum permitted levels of such aid in the eligible regions. The adoption of a regional aid map is a pre-condition to ensure the continuity of the regional policy and Structural Funds programmes as from January 2007, as the validity of all previous maps expired on 31st December 2006.

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 and a wide array of statistical tables:

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

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

State aid Register – a second transparency tool

The Commission's State aid Register 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 1st 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://ec.europa.eu/competition/state_aid/register/

Annual Competition Report

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

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80 COM(2006)761, 11.12.2006
81 DG Competition's Regional aid web page

Competition Policy Newsletter

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://ec.europa.eu/competition/publications/cpn/

State Aid Weekly e-News

State Aid Weekly e-News is issued every week to present the latest developments in the area of State aid. It features information on new legislative texts and proposals, decisions of the European Commission and the Courts of the European Union and other state aid-related documents and events.

http://ec.europa.eu/competition/state_aid/newsletter/index.html

METHODOLOGICAL NOTES

The Scoreboard covers State aid as defined under Article 87(1) EC Treaty that is granted by the Member States and has been examined by the Commission. Accordingly, general measures and public subsidies that have no effect on trade and do not distort or threaten to distort competition are not dealt with in the Scoreboard as they are not subject to the Commission's investigative powers. For example, a general tax break for expenditure on research and development is not considered as State aid although it may well appear in Member States national budgets as public support for research and development. See also box on "What is a State aid" on page 11 of the spring 2005 update of the Scoreboard.

All State aid data refer to the implementation of Commission decisions and not cases that are still under examination. There may be discrepancies with figures published in previous Scoreboards for a number of reasons: first, provisional or estimated figures may now be replaced by final data; second, when the Commission takes a decision on a non-notified aid measure, the aid in question is attributed to the year(s) in which it was awarded. In cases that result in expenditure over a number of years, the total amount is 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 2006.

This autumn 2007 edition of the Scoreboard focuses largely on the year 2006. 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.

Community funds and instruments are excluded.

The following symbols have been used in the Scoreboard:

n.a. not available

- real zero

0 less than half the unit used

Further information on methodological issues may be found on the online Scoreboard:

http://ec.europa.eu/competition/state_aid/studies_reports/conceptual_remarks.html

ANNEX I: PENDING RECOVERY DECISIONS (30 JUNE 2007)

Working title		Decision date	Decision number	Official Journal	Page	Publication date
Loan to Chupa Chups	Spain	10-05-2007	2007/613/EC	JOCE L/244/2007	20	2007-09-19
Rescue and restructuring aid to Ernault	France	04-04-2007	2007/674/EC	JOCE L/277/2007	25	2007-10-20
Restructuring aid to Nuova Mineraria Silius	Italy	21-02-2007	2007/499/EC	JOCE L/185/2007	18	2007-07-17
Biria Gruppe	Germany	24-01-2007	2007/492/EC	JOCE L/183/2007	27	2007-07-13
C52/05 - Digital Decoders - Italy	Italy	24-01-2007	2007/374/EC	JOCE L/147/2007	1	2007-06-08
Exemption from corporate tax for capital gains of certain operations/transactions by public undertakings	Portugal	04-07-2006	2006/748/EC	JOCE L/307/2006	219	2006-11-07
Ad hoc financing of Dutch public broadcasters	Netherlands	22-06-2006				
Measures in favour of Frucona Kosice	Slovakia	07-04-2006	2007/254/EC	JOCE L/112/2007	14	2007-04-30
Aid to Huta Częstochowa SA	Poland	05-07-2005	2006/937/EC	JOCE L/366/2006	1	2006-12-21
Exemption from excise duty for the production of alumina in Gardanne	France	07-02-2007	2007/375/EC	JOCE L/147/2007	29	2007-06-08
Exemption from excise duty for the production of alumina in Shannon	Ireland	07-02-2007	2007/375/EC	JOCE L/147/2007	29	2007-06-08
Exemption from excise duty for the production of alumina in Sardinia	Italy	07-02-2007	2007/375/EC	JOCE L/147/2007	29	2007-06-08
Aid to Componenta Corporation	Finland	20-10-2005	2006/900/EC	JOCE L/353/2006	36	2006-12-13
Fiscal incentives for newly listed companies	Italy	16-03-2005	2006/261/EC	JOCE L/094/2006	42	2006-04-01
Aid to Chemische Werke Piesteritz GmbH	Germany	02-03-2005	2005/786/EC	JOCE L/296/2005	19	2005-11-12
Fiscal incentives for outward FDI	Italy	14-12-2004	2005/919/EC	JOCE L/335/2005	39	2005-12-21
Tremonti bis	Italy	20-10-2004	2005/315/EC	JOCE L/100/2005	46	2005-04-20
Aid to Hellenic shipyards I	Greece	20-10-2004	2005/246/EC	JOCE L/075/2005	44	2005-03-22
Aid to Siderurgica Anon	Spain	16-06-2004	2005/827/EC	JOCE L/311/2005	22	2005-11-26

Working title		Decision date	Decision number	Official Journal	Page	Publication date
Urgent measures in support of employment	Italy	30-03-2004	2004/800/EC	JOCE L/352/2004	10	2004-11-27
Article 44 septies CGI	France	16-12-2003	2004/343/EC	JOCE L/108/2004	38	2004-04-16
Aid to Space Park Bremen Development GmbH & Co KG	Germany	17-09-2003	2004/167/EC	JOCE L/061/2004	66	2004-02-27
Aid to Minas Rio Tinto sal	Spain	27-05-2003	2004/300/EC	JOCE L/098/2004	49	2004-04-02
Export aid scheme Mecklenburg-Vorpommern	Germany	05-03-2003	2003/595/EC	JOCE L/202/2003	15	2003-08-09
Aid to Hilados y Tejidos Puigneró S.A.	Spain	19-02-2003	2003/876/EC	JOCE L/337/2003	14	2003-12-23
Fiscal aid scheme - Açores	Portugal	11-12-2002	2003/442/EC	JOCE L/150/2003	52	2003-06-18
Aid to Refractarios especiales	Spain	27-11-2002	2003/283/EC	JOCE L/108/2003	21	2003-04-30
Aid to Kahla (Porzellan GmbH)	Germany	13-05-2003	2003/643/EC	JOCE L/227/2003	12	2003-09-11
Aid to Municipalizzate	Italy	05-06-2002	2003/193/EC	JOCE L/077/2003	21	2003-03-24
Aid to the Beaulieu Group (Ter Lembeek)	Belgium	24-04-2002	2002/825/EC	JOCE L/296/2002	60	2002-10-31
Aid to SKL Motoren- und Systemtechnik GmbH	Germany	09-04-2002	2002/898/EC	JOCE L/314/2002	75	2002-11-18
Fiscal aid - Province of Vizcaya (III)	Spain	20-12-2001	2003/86/EC	JOCE L/040/2003	11	2003-02-14
Fiscal aid - Province of Alava (III)	Spain	20-12-2001	2003/28/EC	JOCE L/017/2003	20	2003-01-22
Fiscal aid - Province of Guipuzcoa (III))	Spain	20-12-2001	2003/192/EC	JOCE L/077/2003	1	2003-03-24
Fiscal aid - Province of Guizpuzcoa (II)	Spain	11-07-2001	2002/894/EC	JOCE L/314/2002	26	2002-11-18
Fiscal aid - Province of Vizcaya (II)	Spain	11-07-2001	2003/27/EC	JOCE L/017/2003	1	2003-01-22
Fiscal aid - Province of Vizcaya (I)	Spain	11-07-2001	2002/806/EC	JOCE L/279/2002	35	2002-10-17
Fiscal aid - Province of Guipuzcoa (I)	Spain	11-07-2001	2002/540/EC	JOCE L/174/2002	31	2002-07-04
Fiscal aid - Province of Alava (I)	Spain	11-07-2001	2002/820/EC	JOCE L/296/2002	1	2002-10-30
Fiscal aid - Province of Alava (II)	Spain	11-07-2001	200/892/EC	JOCE L/314/2002	1	2002-11-18
France Telecom - Taxe professionnelle	France	02-08-2004	2005/709/EC	JOCE L/269/2005	30	2005-10-14
Aid to Lintra beteiligungsholding Gmbh	Germany	28-03-2001	2001/673/EC	JOCE L/236/2001	3	2001-09-05
Manure processing scheme	Netherlands	13-12-2000	2001/521/EC	JOCE L/189/2001	13	2001-07-11
Aid for Kimberly Clark/Scott Group	France	12-07-2000	2002/14/EC	JOCE L/012/2002	1	2002-01-15
Social security reductions - Venezia et Chioggia	Italy	25-11-1999	2000/394/EC	JOCE L/150/2000	50	2000-06-23
Employment aid measures (Loi Nr 196/97)	Italy	11-05-1999	2000/128/EC	JOCE L/042/2000	1	2000-02-15
Aid for Magefesa	Spain	14-10-1998	1999/509/EC	JOCE L/198/1999	15	1999-07-30
Aid for Dieselmotorenwerk Vulkan GmbH	Germany	21-04-1999	1999/600/EC	JOCE L/232/1999	24	1999-09-02
Borotra aid scheme	France	09-04-1997	1997/811/EC	JOCE L/334/1997	25	1997-12-05
Aid for Hamburger Stahlwerke GmbH	Germany	31-10-1995	1996/236/EC	JOCE L/078/1996	31	1996-03-28

Source: DG Competition