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**State Aid Scoreboard
- Spring 2008 Update -**

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EXECUTIVE SUMMARY

Environmental and energy aid

1) Environmental aid measures need to be examined by the Commission to ensure that the benefits they bring about outweigh any distortion of competition.

The EU is at the forefront of international efforts to combat climate change - one of the greatest environmental, social and economic threats facing the planet. The EU has played a key role in the development of the two major treaties addressing the issue, the 1992 UN Framework Convention on Climate Change and its Kyoto Protocol, agreed in 1997. Moreover, the EU has been taking serious steps to address its own greenhouse gas emissions since the early 1990s. An integrated EU energy policy that gives substantial weight to energy efficiency and renewable energy is the EU's response to volatile oil and gas prices, the fear of energy supply disruption and the impact on climate change of the high use of fossil energies.

Within this broad context, the Commission has recently revised the role that State aid plays in supporting the EU environmental and energy policy objectives, by adopting a new set of guidelines as part of the climate change package that the European Commission adopted in January 2008.

Member States resort to a wide range of national environmental policy measures to protect their environment: to limit pollution of air, water and soil, to protect natural resources, to promote renewable energy sources and energy savings, to manage waste, etc. Many of these objectives are targeted through general measures, i.e. applied throughout a particular country without regional or sectoral selectivity, or are addressed through market-based instruments, such as the Emission Trading Scheme and the Energy Taxation Directive, which don't entail State aid.

However, there are also environmental measures or exemptions from general measures (e.g. environmental tax relief) which favour certain companies or the production of certain goods. Such measures may distort competition between companies and it is therefore important that the benefits they bring about are carefully balanced against the distortion of competition they cause. The adoption of the new Guidelines on State aid for environmental protection, in the context of the energy and climate change package, opens up new opportunities for Member States in this field that are worth exploring.

As well as describing the key elements in the new guidelines, this Scoreboard takes a look at the extent to which Member States have used the previous guidelines on State aid for environmental protection adopted in 2001.

2) Over the last 7 years, 98 % of the 350 environmental aid measures examined by the Commission were found to be compatible with the internal market.

In the seven years that these guidelines have been in force, the Commission has taken around 350 decisions. Drawing on these decisions, the Scoreboard provides clear examples of when environmental targeted measures constitute State aid and when this aid can be considered as compatible with the common market. The majority of examples are chosen among cases recently approved by the Commission and constitute either typical or innovative cases in the different sub-areas where environmental aid can be granted (i.e. renewable energy, energy

saving, waste management, etc.). In the vast majority of environmental aid cases (98 %), the Commission found them to be compatible. It is however worth noting that this high figure includes cases in which the Commission may have identified certain issues related to the compatibility. Such issues can often be resolved within the scope of the notification procedure through a change in the measure.

3) Increasing use of environmental aid guidelines but considerable variations from one Member State to another.

As the case studies in section 1.6 show, environmental aid encompasses a wide range of objectives, including support measures for renewable energy, energy-saving, waste management, rehabilitation of polluted industrial sites and improvement of production processes. For these types of measures, aid granted by Member States pursues a direct benefit to the environment. State aid expenditure data for such cases can therefore be taken as a proxy measure for the intended environmental benefit, regardless of the form in which the aid may be awarded (grant, tax exemption, guarantee, etc.). This represented approximately 47 % of total environmental aid expenditure in 2006 (around €6.7 billion).

A second category of State aid measures assessed under the environmental aid guidelines are reductions or exemptions from environmental taxes. Here, the environmental objective of the measure is pursued by the tax itself. Any reduction or exemption from environmental taxes, i.e., the part of the measure constituting aid, has an indirect environmental objective by facilitating the introduction or modification of such taxes (going beyond the minima imposed by European Directives for example). Expenditure data currently available for this category of aid schemes indicate the amount of tax revenue foregone and can therefore not serve as a proxy measure for the environmental benefit the taxes themselves have brought. In 2006, some 53 % of total expenditure (around €7.5 billion) fell under this category.

Any analysis of State aid expenditure for environmental purposes must therefore take account of the fact that a large proportion of aid comprises tax exemptions from environmental taxes, usually benefiting energy intensive industries including sometimes big polluters, that had to be accepted in order to allow for certain types of environmental taxes to be introduced. Although the tax exemptions from environmental taxes do not by themselves aim directly at reaching higher environmental standards, such exemptions are only allowed where the taxes themselves are intended to make a significant contribution to protecting the environment and where the exemptions do not undermine the general objectives pursued. For this reason, the new State aid guidelines for environmental protection require that where companies do not pay at least the Community minimum or where the tax in question is not subject to Community-wide harmonisation, long term derogations from environmental taxes remain only possible when Member States can demonstrate that they are necessary and proportionate.

Although the number of new environmental aid measures has remained relatively stable for the majority of Member States since 2001, total expenditure for environmental purposes doubled between 2001 and 2006 from € 7 to € 14 billion. In relative terms, environmental aid amounted to 0,12 % of EU-27 GDP in the period 2004 - 2006 compared with 0.08 % in the period 2001 – 2003. This average hides significant disparities between Member States. The largest aid grantors in 2004 - 2006 were Sweden (0.77 % of GDP), Denmark (0.35 %), Germany (0,32 %) followed by Austria, the Netherlands and Finland each of which granted aid above the EU average. Environmental aid expenditure in the United Kingdom stood at half the EU-27 average, while all other Member States, including Spain, France and Italy, granted aid amounting to less than one quarter of the EU-27 average in terms of GDP. The overall level of expenditure in environmental aid measures in the EU is strongly influenced by

the largest aid grantors, Germany and Sweden, in which tax exemptions account for over 90 % of total environmental aid in each country. A CO₂ tax reduction for industry and a tax exemption from the energy tax on electricity led to a remarkable rise in aid expenditure for Sweden from 2003 onwards. In Germany, expenditure has risen steadily following the approval in 2002 of a measure that prolonged several tax exemptions from the German energy taxation on electricity and mineral oils.

Data show that, leaving aside aid in the form of tax exemptions, the trend in the level of environmental aid remains stable.

New Member States: Bulgaria and Romania

4) Romania responds to call for less aid but has a relatively low share of 'better targeted' aid.

In 2006, total State aid for industry and services for the two new Member States was € 31 million for Bulgaria and € 545 million for Romania (EU-27 total was € 49 billion). In relative terms, total aid represented 0.12 % of Bulgarian GDP which was significantly lower than the EU-12 average (0.51 %) and the EU-27 average (0.42 %). In Romania, the share of aid to GDP was significantly higher, representing 0.56 % of GDP. When aid is expressed in per capita terms, a different picture emerges with regard to the relative position of Romania: 51 PPS¹ per person was around half the EU-27 average (99 PPS per person) while Bulgaria's 11 PPS per person was the lowest in the EU.

Following relatively high awards of aid for restructuring and privatisation earlier in the decade, the trend in both new Member States for the period immediately prior to accession is clearly downward. As to the response for better targeted aid, Bulgaria granted 79 % of total aid in 2006 for horizontal objectives while Romania awarded only 19 % (EU-27 average is 84 %). Bulgaria and Romania will be fully integrated into the autumn 2008 Scoreboard.

Cutting red tape

5) Remarkable rise in the use made of block exemption regulations ... but significant variations among Member States remain.

In 2007, there were 777 cases² notified by Member States. While the number of notifications is lower than the exceptionally high level in 2006 (922 notifications), it remains significantly above the level in 2004 and 2005. Moreover, the decrease is in line with the Commission's commitment to facilitate the granting of aid through block exemptions and focus its scrutiny on the most distortive types of aid.

In 2007, Member States were able to introduce more than 1100 measures without prior notification to the Commission. This compares with 410 block exempted measures in 2006. The reasons for this significant increase are threefold: the beginning of a new programming period for EU Structural Funds, a high take-up rate for the new block exemption on regional investment aid (189 measures in 2007, many of which would have been notified in the past) and a sharp increase, following new recent legislation, in the number of measures exempted in the agricultural sector (496 which is four times more than 2006). There were also significant increases in the number of measures for aid to SMEs primarily active in the industry and

¹ Purchasing Power Standards are used to take account of differences in price levels between countries.

² This includes industry, services, transport, coal, agriculture and fisheries.

services sectors (from 183 in 2006 to 303 in 2007), for training aid (57 to 108) as well as a stable picture for employment aid (31 in 2007).

6) Over the last five years, DG Competition has managed to reduce by 1.4 months the average length of the preliminary examination procedure for notified aid cases.

The State Aid Action Plan (SAAP) acknowledged the existence of shortcomings in the length and predictability of State aid procedures and called for actions to modernise them. The Commission has since made efforts to improve its internal practice and increase efficiency in the State aid field. It has recently started a dialogue with Member States on how to further improve the efficiency of State aid procedures and has adopted internal measures to reduce the time required to treat state aid notifications. Thanks to these measures, the average length of the preliminary examination procedure for a notified case fell by 1,4 months over the last five years. The average duration is now around 5 months. As to the proportion of cases closed within a certain period of time, the results show that 46 % were closed within 4 months and 70 % were closed within 6 months.

The Commission will continue its efforts to reduce the time required to treat cases. However, any further reduction would seem possible only if Member States also contribute to the process by improving the quality and the completeness of the information submitted to the Commission. Improving State aid rules and practices is indeed a shared responsibility between the Commission and the Member States, and the Commission will continue the dialogue with Member States to see what each party can do to further improve State aid procedures and practice.

7) By end of 2007, the Commission had enforced recovery of € 7 billion of illegal and incompatible aid.

The purpose of recovery of unlawful and incompatible aid is to re-establish the situation that existed on the market prior to the granting of the aid. This is necessary to ensure that the level-playing field in the internal market is maintained. In line with the SAAP, recent efforts have resulted in a marked improvement in the execution of recovery decisions, leading to an increase in the amount of incompatible aid recovered and a decrease in the backlog of pending cases. At the end of 2007, there were 49 pending recovery decisions compared to 93 at the end of 2004 and 60 at the end of 2006.

The total amount of aid to be recovered on the basis of decisions adopted between 2000 and 2007 is at least € 9 billion. Of this figure, some € 7 billion of illegal and incompatible aid had been effectively recovered by 31 December 2007 together with a further € 2.4 billion of interest. Recovery is effected in accordance with the applicable national procedures provided they allow for immediate and effective execution of the Commission decision. As a result, illegal aid is returned to the aid granting authority. Bearing in mind the important differences between State aid recovery and cartel fines, it can be noted that between 2003 and 2007, the Commission imposed around € 7 billions in cartel fines (<http://ec.europa.eu/comm/competition/cartels/statistics/statistics.pdf>).

INTRODUCTION

The spring 2008 update of the State aid Scoreboard aims to present State aid for environmental protection in the context of the European Union's fight against climate change. It provides an overview of how Member States use the possibilities to grant aid under the environmental aid guidelines and of available expenditure data on environmental aid.

This update of the Scoreboard³ is divided into five main parts. Part One focuses on State aid for environmental protection. Part Two presents the State aid situation in Bulgaria and Romania in the period prior to their accession. The main aim is to assess their progress towards meeting the Lisbon objectives and response to successive European Councils calls for “less and better targeted aid”. This overview complements the data and analysis provided in the autumn 2007 Scoreboard which covered the same time period for the EU-25 Member States.

Parts Three and Four focus on ongoing efforts to recover unlawful aid and summarise ongoing work to modernise State aid control through legislative and policy means.

Part Five provides an overview of State aid procedures in 2007 including statistics on State aid measures falling under the six block exemption regulations (block exemptions for aid to SME, training aid, employment aid, regional aid, aid to SME in the agricultural sector and certain types of aid in the fisheries sector). It also reports on the progress made by the Commission with regard to shortening the time required to treat State aid notifications.

In addition to this paper edition, a permanent online Scoreboard consisting of a series of key indicators and a range of statistical information for the EU Member States is available on the Competition Directorate General's Internet site, under the following address:

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

The autumn 2008 Scoreboard will cover State aid awarded in EU-27 for the year 2007.

³ The scoreboard does not take into account coordination aid envisaged in Article 73 which may include intended positive effects on the environment.

1. PART ONE: SPECIAL FOCUS ON STATE AID FOR ENVIRONMENTAL PROTECTION

1.1. The European Union fight against climate change

Climate change is one of the greatest environmental, social and economic threats facing the planet.⁴ The EU is at the forefront of international efforts to combat climate change and has played a key role in the development of the two major treaties addressing the issue, the 1992 [United Nations Framework Convention on Climate Change](#) and its [Kyoto Protocol](#), agreed in 1997. Moreover, the EU has been taking serious steps to address its own greenhouse gas emissions since the early 1990s.

An integrated EU energy policy that gives substantial weight to energy efficiency and renewable energy is the EU's response to volatile oil and gas prices, the fear of energy supply disruption and the impact on climate change of the high use of fossil energies.

Sustainable development, security of supply and competitiveness are precisely the objectives of the Green Paper on a European Energy Strategy⁵ which was adopted by the Commission early 2006. By October the same year, the Commission proposed an Action Plan⁶ to reduce energy use, followed in early 2007 by a Commission proposal for an integrated energy and climate change package⁷ with significant reduction targets in greenhouse gas emissions by 2020. Most of these proposals were endorsed by the 2007 Spring European Council.⁸ Agreement was reached on an integrated climate and energy policy, including a number of headline political targets and a detailed action plan on how to realise them:

- On climate change, the Spring Council agreed on an independent EU commitment to reduce greenhouse gases by at least 20 % by 2020, compared to 1990 levels, plus a commitment to extend this reduction to 30 % if other developed countries were to commit themselves to comparable emissions reductions and economically more advanced developing countries contribute adequately according to their responsibilities and respective capabilities.
- On the internal market for gas and electricity, the Spring Council stated the need for effective unbundling of supply and production activities from network activities.
- On renewable energies, the Spring Council agreed on a binding target of 20 % of total EU energy consumption by 2020 with a minimum of 10 % for the share of biofuels in overall EU transport petrol and diesel consumption.

In response to the above-mentioned Council conclusions the Commission presented, on 23 January 2008, its proposal for an energy and climate change package⁹ which included:

- Proposal amending the EU emissions trading Directive.¹⁰

⁴ http://ec.europa.eu/environment/climat/home_en.htm.

⁵ A European Strategy for Sustainable, Competitive and Secure Energy, [COM\(2006\)105 final of 8 March 2006](#).

⁶ Action Plan for Energy Efficiency: Realising the Potential, [COM\(2006\)545 final of 19 October 2006](#).

⁷ An Energy Policy for Europe, [COM\(2007\)1 final of 10 January 2007](#) and Limiting Global Climate Change to 2degrees Celsius – The way ahead for 2020 and beyond, [COM\(2007\)2 final of 10 January 2007](#).

⁸ Brussels European Council 8/9 March 2007 – Presidency Conclusions – [7224/1/07 Rev 1 of 2 May 2007](#).

⁹ 20 20 by 2020 – Europe's climate change opportunity, [COM\(2008\)30 final of 23 January 2008](#).

- Proposal relating to the sharing of efforts to meet the Community's independent greenhouse gas reduction commitment in sectors not covered by the Emission Trading System (hereinafter, ETS).¹¹
- Proposal for a Directive promoting renewable energy.¹²
- Proposal for a legal framework on carbon capture and storage.¹³
- New guidelines on State aid for environmental protection (hereinafter Environmental Aid Guidelines).

The revised Environmental aid Guidelines are an important part of the Energy and Climate Change package aiming to provide the right incentives for Member States and for industry to increase their efforts for the environment. They aim to strike the right balance between generous support mechanisms for well targeted environmental aid and the preservation of competition which is necessary for the well-functioning of the market based instruments introduced by the package. **The guidelines are the only part of the package that will immediately enter into force.**

1.2. Various means to support environmental objectives

One of the main tools with which Member States can address environmental concerns is the correct application of the "polluter pays principle" (hereinafter, PPP). This principle aims to ensure that the cost of environmental protection is internalised by the companies and reflected in the final price of their products and that competition is not distorted by public intervention relieving undertakings from these costs. Nevertheless, environmental costs have for too long been hidden costs, which means that, in many cases, economic activities do not fully account for their impact on the environment. But the use of market-based instruments (hereinafter, MBI) could change this tendency. If pollution becomes a real economic cost, companies will tend to maximize their profits by reducing this cost component and therefore reducing at the same time pollution. In addition, if polluting goods are more expensive, demand will be automatically re-oriented towards less polluting sectors offering cheaper and more environmentally friendly goods. This, in turn, will stimulate growth and jobs¹⁴ since it has the potential to boost the creation and development of new eco-industries.

The EU has increasingly favoured MBIs (such as taxes, charges or tradable permit schemes) because they provide flexible and cost-effective means to correct certain market failures and to reach certain policy objectives avoiding, at the same time, distortions in the Internal Market.¹⁵

¹⁰ For further details see "Questions and answers on Commission's proposal to revise the EU Emissions Trading System", [MEMO/08/35 of 23 January 2008](#).

¹¹ For further details see "Questions and answers on the Commission's proposal for effort sharing", [MEMO/08/34 of 23 January 2008](#).

¹² For further details see "Memo on renewable energy and climate change package", [MEMO/08/33 of 23 January 2007](#).

¹³ For further details see "Questions and answers on the proposal for a directive on the geological storage of carbon dioxide", [MEMO/08/36 of 23 January 2008](#).

¹⁴ Each new reporting cycle for the Lisbon Strategy shows that Member States increasingly accept that resource efficiency and climate change are closely linked to growth and jobs. See the Strategic Report on the renewed Lisbon Strategy for growth and jobs: launching the new cycle (2008-2010) – Keeping up the pace for change, [COM\(2007\)803 final of 11 December 2007](#).

¹⁵ See the Green Paper on market-based instruments for environment and related policy purposes, [COM\(2007\)140 final of 28 March 2007](#). See also Using the market for cost-effective environmental policy - Market-based instruments in Europe, European Environment Agency Report, No.1/2006.

However, if market based instruments are to bring about these changes, it is essential that the markets in which they operate are not distorted. And this is where competition and State aid control policy play a significant role. According to the State aid Action Plan (hereinafter, SAAP) of 7 June 2005, "State aid policy safeguards competition in the Single Market and it is closely linked to many objectives of common interest, like services of general economic interest, regional and social cohesion, ... environmental protection It must contribute by itself and by reinforcing other policies to making Europe a more attractive place to invest and work, building up knowledge and innovation for growth and creating more and better jobs".¹⁶

Reaching these objectives requires a strict application of the State aid control policy which is able to identify which State measures involve aid and which among them are to be considered as compatible with the Internal Market after a careful analysis of the positive and negative effects involved ("balancing test").

1.3. Examples of market-based instruments

One of the most well-known market-based instruments is the ETS. Based on a European Directive,¹⁷ the world's first and biggest international emissions trading scheme began operating on 1 January 2005. The ETS requires Member States' governments to draw up national allocation plans (hereinafter NAPs) for each trading period. NAPs fix the total amount of CO₂ that can be emitted by all the installations in each country covered by the scheme as well as the number of emission allowances allocated to each individual installation. An installation that emits more CO₂ than it has allowances for would need to buy additional allowances in the market, while one that emits less has the possibility to sell its surplus allowances.

The Commission scrutinises the plans¹⁸ and has the power to require changes if it finds a plan incompatible with the agreed criteria. Early in 2006 the first compliance cycle of the EU ETS ended and over 10 000 energy-intensive installations – representing almost half of EU's CO₂ emissions – had to report their emissions for 2005. Data showed lower emissions than expected resulting in a surplus of allowances which made the price drop. Mid-2006 Member States had to notify their NAPs for the second trading period (2008 to 2012), explaining how they intended to allocate emission allowances for that period, in which the average total emissions from EU ETS sectors are capped at an average of around 6.5 % below 2005 total emissions levels within the system. NAPs for the first trading period could not be based on verified emission data. The Commission based its assessment of the NAPs for the second trading period on 2005 verified emissions and used a formula in a systematic way to ensure effectiveness of the scheme and equal treatment of Member States.

¹⁶ See point 15 SAAP.

¹⁷ Directive 2003/87/EC of the European Parliament and of the Council, of 13 October 2003, establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, [OJ L 275 of 25 October 2003, p.32](#).

¹⁸ The Commission's task is to scrutinise Member States' proposed NAPs against 12 allocation criteria listed in the Emissions Trading Directive. The criteria seek, among other things, to ensure that plans are consistent with reaching the EU's and Member States' Kyoto commitments, with actual verified emissions reported in the Commission's annual progress reports and with technological potential to reduce emissions. Criterion 5 provides that allocation must not discriminate between companies or sectors in such a way as to unduly favour certain undertakings or activities, in accordance with the requirements of the Treaty, in particular Articles 87 and 88 EC thereof. The Commission decisions approving, in part or in full, the different NAPs can be found in DG Environment's web-site: http://ec.europa.eu/environment/climat/2nd_phase_ep.htm

The climate change package adopted by the Commission on 23 January 2008 includes a proposal to revise this mechanism. According to the proposal, there will be one EU-wide cap on the number of emission allowances instead of national caps which decreases along a linear trend-line also beyond 2020, a much larger share of allowances will be auctioned instead of allocated for free and harmonised rules governing the free allocation will be introduced. The scope of the system is proposed to be widened so that a number of new industries will also be included. Finally, Member States will be allowed to exclude small installations from the scope of the system, provided that they are subject to equivalent emission reduction measures.

Another good example is the Energy Taxation Directive¹⁹ covering taxes levied on energy consumption. Among other things the Directive introduces minimum tax levels for all competing sources of energy. The Directive has the following main objectives:

- Reduce existing distortions of competition between operators of different Member States as a result of divergent energy tax approaches.
- Reduce distortions of competition between different energy products as only mineral oils were subject to Community tax legislation before the Energy Taxation Directive entered into force.
- Increase the incentive to make a more efficient use of energy, thereby reducing dependency on imports and levels of emissions.

Member States have, of course, the possibility to strengthen the positive effects by introducing higher taxation levels than the minima imposed by the Directive (see box on environmental taxation).

1.4. Environmental measures: When do they constitute State aid? When are they compatible with the Internal Market?²⁰

Member States resort to a wide range of national environmental policy measures to protect their environment: to limit pollution of air, water and soil, to protect natural resources, to promote renewable energy sources and energy savings, to manage waste, etc. Many of these objectives are targeted through general measures, i.e. applied throughout a particular country without regional or sectoral selectivity. However, there are also environmental measures or exemptions from general measures (e.g. environmental tax relief) which favour certain companies or the production of certain goods. Such measures may distort competition between companies and it is therefore important that the benefits they bring about are carefully balanced against the distortion of competition they cause.

The EC Treaty gives the European Commission the monopoly in carrying out this balancing test. To this end, Member States are required to notify to the Commission all planned State aid measures before putting them into effect. Then the Commission carries out a two steps analysis: (1) whether the measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty, and, if yes, (2) whether such potential distortion of competition is justified and balanced against the positive effects of the measure. If the aid is justified and the distortion of competition is marginal, it will be considered as compatible with the common market and approved by the Commission. Only then is the Member State free to put it into place.

¹⁹ Council Directive 2003/96/EC, of 27 October 2003, restructuring the Community framework for the taxation of energy products and electricity, [OJ L 283 of 31 October 2003, p. 51](#).

²⁰ For further details on this issue see State aid Scoreboard – Autumn 2005 update, [COM \(2005\) 624 final of 9 December 2005](#).

As with any measure, an environmental support measure qualifies as State aid as defined under Article 87(1) of the EC Treaty if it fulfils all the following four criteria:

- Financed through State resources (transfer of State resources *and* imputable to the State)
- Advantage for the undertaking
- Selectivity
- Distortion to competition and effect on trade between Member States.

In some cases, the interpretation as to whether one or other criteria is fulfilled and thus whether or not the measure constitutes State aid is difficult and complex. Some examples relevant for environmental measures are given below.

Financing through State resources includes grants from the central, regional or local government's budget, revenue forgone i.e. environmental tax relief, or government authorities selling (buying) environment related goods and services or land below (above) market price. State resources are also transferred where a fund is set up by the State and is financed by contributions imposed and managed by the State.²¹ For instance, in Austria²² there is an obligation to purchase renewable energy and energy produced by co-generation of heat and power to prices fixed above the market price ('feed-in tariffs'). The feed-in tariffs are financed from the eco-balance group (Ökobilanzgruppe), whose representatives are mainly or fully owned by the State. The group is controlled by the State, for example by State approval of important decisions and control of national auditors. The obligation, as well as the calculation of the feed-in tariff, is set out by the law. Although the costs of the administering body are in the end, according to law, partly borne by the final electricity consumers, partly by electricity traders, the Commission took the view that the fact that the money is in the control of the State makes the measure financed by State resources. This is in line with the statement of the Court of Justice in the *Stardust Marine* case²³ that no distinction is to be drawn between cases where the aid is granted directly by the State and those where it is granted by public or private bodies which the State establishes or designates with a view to administering the aid. In the *PreussenElektra* case,²⁴ the Court of Justice decided that to the extent that the German law imposed on private electricity distributors to pay a higher feed-in price for electricity generated from renewable sources, it does not involve transfer of State resources. Most environmental support measures constitute an **advantage for the undertaking**, but in some cases the Commission has found that there is no economic advantage.²⁵

²¹ This was recently confirmed in the opinion of Advocate-General Mengozzi of 24 January 2008 in case [C-206/06 Essent Netwerk Noord and others](#).

²² Joint cases [NN 162/A/2003](#) and [N 317/A/2006](#) (renewable energy) and joint cases [NN 162/B/2003](#) and [N 317/B/2006](#) (co-generation of heat and power), OJ C 221 of 14 September 2006.

²³ ECJ judgement of 16 May 2002 on case [C-482/99 Stardust Marine case](#).

²⁴ ECJ judgement of 13 March 2001 on case [C-379/98 Preussen Elektra AG v Schleswig AG](#).

²⁵ For instance, in the Netherlands case *Waste disposal system for car wrecks* ([C 11/2001](#), OJ L 68, 12 March 2002), the Commission found that there is no economic advantage for the companies and, therefore, no State aid. The aim of the waste management system is to ensure that companies that produce and sell cars also take the responsibility for a high degree of recycling of car wrecks. This measure corresponds to the polluter pays principle. The Dutch government has declared that all car producers and importers have to pay charge for each car which is registered in the Netherlands. The resources are paid to car dismantling companies. As the charge for car producers and importers and premiums to the dismantling companies correspond to the cost of recycling, the Commission found that there is no advantage and consequently no State aid for car producers or for car dismantling companies.

If **discrimination and selectivity** in State support measures can be avoided, they can be considered as general measures which do not constitute State aid. However, there are many examples of the contrary, see for example the *Adria-Wien Pipeline GmbH* case²⁶ concerning an Austrian legislative measure, which provides tax exemptions from energy taxes on natural gas and electricity. Although the exemptions were based on objective automatic criteria without the administrative authorities having any discretionary power in selecting the beneficiaries, and the measure gave benefits for a very large number of undertakings, the Court of Justice found that the measure is selective. One of the main reasons for this conclusion was that the tax exemption is applied only for undertakings whose activity is mainly in the manufacturing sector. The Court stated that undertakings in the services sector may, just like undertakings in the manufacturing sector, be major consumers of energy and incur high level of energy taxes and therefore they are in disadvantaged position. Based on these arguments the Court of Justice regarded these measures to be selective and to be State aid. On the contrary, in the *British Aggregates* case²⁷ there was an exemption of certain types of aggregates from the scope of the United Kingdom aggregates levy. The plaintiffs claimed that this constituted unlawful State aid. The Court of First Instance disagreed and confirmed that a tax levy applicable on virgin aggregates but not on waste aggregates was not selective, as the scope of the levy was justified by the logic and nature of the tax system (namely to promote the environment by discouraging new quarrying and by encouraging waste recycling).

1.5. State aid decisions on environmental protection

Use of environmental guidelines on State aid varies considerably from one Member State to another.

In the seven years since their adoption in 2001, the Commission has taken around 350 decisions on the basis of the environmental guidelines (out of a total of 2825 decisions taken over this period in the area of industry and services). From 2001-2004, the number of decisions was around 40 per year. This figure increased to 52 in 2005, 64 in 2006 and peaked at 70 in 2007. The upward trend is largely the result of the EU-10 accession coupled with a significant rise in the number of Swedish measures.

Over the period 2001-2007, Italy, the Netherlands, the United Kingdom and Germany each introduced around 40-45 measures. For a second group of Member States, Austria, Sweden, Spain, Denmark, the Czech Republic and France, the Commission took decisions on around 20-25 measures. In all other Member States, the number of measures was no more than 12.

Up to 98 % of environmental aid measures were found to be compatible with the State aid rules.

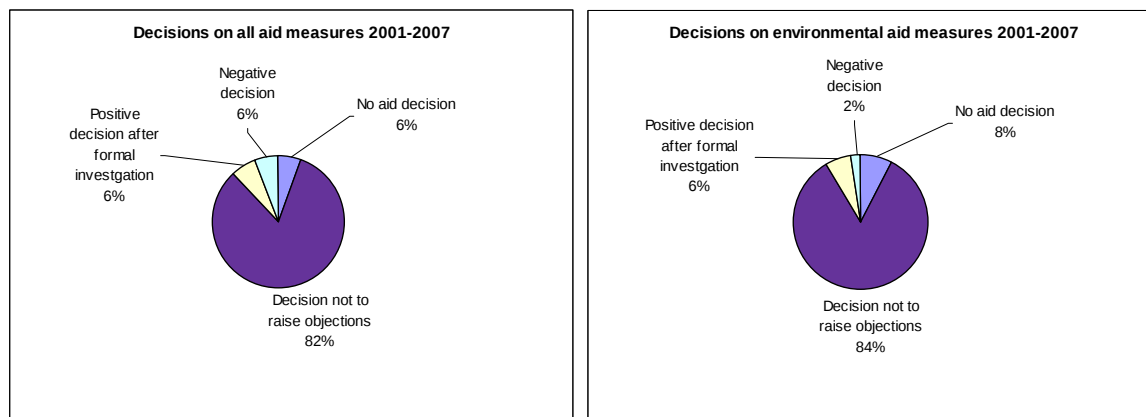
In the vast majority of environmental aid cases, the Commission approved the measures without a formal investigation, concluding that the examined aid was compatible with the State aid rules (84 % of all decisions on environmental aid) or did not constitute State aid (8 %). It is however worth noting that this high figure includes cases in which the Commission may have identified certain issues related to the compatibility. Such issues can often be resolved within the scope of the notification procedure through a change in the measure. For the remainder, the Commission carried out a formal investigation after which it approved the aid (6 %) or took a negative decision (2 %). These figures are broadly in line

²⁶ ECJ judgment of 8 November 2001 on case [C-143/99](#) *Adria-Wien Pipeline GmbH*.

²⁷ CFI judgment of 13 September 2006 on case [T-210/02](#) *British Aggregates*.

with those for all other objectives though the share of incompatible environmental aid (2 %) is lower than the average for total aid over the same period (6 %) while there are also more no aid decisions in the environmental area. See Figure 1.

Figure 1: Decisions on aid measures 2001-2007



Note: Decisions in the field of industry and services only. Source: DG Competition

1.6. Environmental aid measures qualifying as compatible State aid: case studies

The Commission has examined and approved a wide range of environmental aid measures on the basis of the environmental aid guidelines. As the examples below show, support measures for renewable energy, energy-saving, waste management, rehabilitation of polluted industrial sites and improvement of production processes are normally considered to be in the interest of the Community and therefore compatible with the Internal market provided that the benefits outweigh the distortion of competition. Relief from environmental taxes can also be of Community interest, since such taxes may not be introduced to the same extent, in particular on energy-intensive companies, if no relief is allowed. The Commission also approved certain aid to the road transport sector with a positive impact on environmental protection.²⁸

Renewable energy

In, for example, the Netherlands the production of energy from renewable energy sources and combined heat and power production (CHP) is supported by the State. In February 2007, the Dutch Government decided on a new target for the reduction of CO₂ emissions: 30 % reduction by 2020. One of the instruments to reach this target is the modification and prolongation of existing schemes for renewable energy and CHP transforming them into a new scheme. The modification also widened the scheme to include support to production of biogas. The subsidies for electricity produced from renewable energy compensate for the difference between production costs of the electricity from renewable energy sources and the market price of conventional electricity, and the subsidies are annually corrected on the basis of the realised energy prices for that year. The subsidy is financed through a compulsory contribution by electricity consumers imposed by legislation. The total budget of the 10 duration period of the scheme is € 2 503 million (of which € 2 221 million is support for renewable sources and the remaining part concerns CHP). The Commission approved the scheme in December 2007.²⁹ It considered that the measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty. As the objective of the measure clearly is in the interest of the Community and there is no over-compensation, the measure was found to be in line with the Environmental aid guidelines (in particular point 59) and compatible with the common market in accordance with Article 87(3)(c).

²⁸ [N 649/2006](#), OJ C 139, 23.6.2007, p. 13 and [N 607/2006](#), OJ C 307, 18.12.2007, p. 10

²⁹ [N 478/2007](#), OJ C 39 of 13 February 2008, p. 3.

Another example of aid for renewable energy sources is a German measure, which was last approved by the Commission in 2006, supporting the use of renewable energies with investment aid.³⁰ The aid may be provided for solar collector installations, biomass installations for heating or CHP, electric heat pump installations for water and/or room heating, energy conservation measures for buildings, geothermic installations, photovoltaic installations and small hydroelectric plants (up to 500 kW). For 2006, the budget of the scheme was € 180 million. While some of the support was considered to fall outside Article 87(1) since it benefited aid to schools and public bodies, the part of the scheme relating to undertakings fall within the scope of State aid provisions. However, since the maximum aid intensity is limited to 40 % and the programme meets the conditions in point 30, 31 and 32 of the Environmental aid guidelines, it was approved by the Commission under Article 87(3)(c).

Energy-saving

In 2005, Sweden introduced a scheme to stimulate owners of public premises to carry out investments in energy efficiency, energy savings measures and conversion into renewable energy sources.³¹ The investments will contribute to the fulfilment of targets in the energy and climate policies and could constitute a positive example for other parts of the construction and property sector. For the energy saving measures, support can be provided by 30 % of the eligible costs for measures such as connection to district cooling, installation of electricity efficient lighting, ventilation, motors and heating systems and, under certain conditions, other energy saving measures such as climate shell or heat recycling of buildings. Support is given for labour costs and material for investments in land, buildings and equipment, but will not cover the development and manufacturing of machines and transports. The expected total budget is approximately € 210 million for the 4 year period of the scheme. As the majority of the beneficiaries would be either public or private undertakings carrying out management and renting out properties, the Commission found that activities were of an economic nature falling within Article 87(1). The Commission assessed the compatibility of the aid under Article 87(3)(c) and the Environmental aid guidelines, in particular section E.1.3 on rules applicable to investment in energy, and found that the energy saving measures could be approved.

Waste management

In 2002, the French government introduced an aid scheme for the elimination of dangerous waste for water.³² The objective of the scheme is to preserve water resources by promoting the elimination of waste that can pollute the subsurface and surface water or disturb the functioning of municipal purification plants. In order to achieve that objective, the scheme aims at orienting the waste pollutants, which are normally put in a disposal, in the relevant elimination procedures, successful at the technical level and optimal at the environmental level. The aid is provided to enterprises that produce the waste when these enterprises treat the waste in appropriate procedures in order to significantly reduce the potential pollutant. Grants are calculated on the basis of the difference between the cost to treat waste in the dedicated procedure and the cost of disposal for the same waste. Each beneficiary can benefit from the aid for a maximum of 5 years, either as a fixed level of 50 % during that period or at an aid level which is degressive in a linear manner from 100 % to 0 % during the 5 year period. The scheme was found to constitute State aid which is in line with the Environmental aid guidelines (particularly points 42 to 46). Since the scheme is covered by the guidelines and does not lead to over-compensation, the Commission approved the scheme on the basis of Article 87(3)(c).

Rehabilitation of polluted industrial sites

In February 2005, the Dutch government notified the Commission of a prolongation of an existing aid scheme subsidising parts of the costs of rehabilitation of sites that continue to be used for industrial

³⁰ [N 458/2006](#), OJ C 9 of 13 January 2007, p.1. The scheme was originally authorised under the number [N 668/1999](#) (OJ C 362 of 16 December 2000, p. 9) and has later been later amended and prolonged.

³¹ The original scheme, [N 524/2004](#) (OJ C 226 of 15 September 2005, p. 6), was slightly modified and approved by the Commission in its decision on [N 312/2006](#), OJ C 219 of 12 September 2006, p. 3.

³² [N 496/2002](#), OJ C 108 of 7 May 2003, p. 5.

purposes.³³ The Soil Protection Agreement is a covenant between a number of national and regional bodies which agreed on a scheme to partly support the rehabilitation of Dutch polluted industrial sites, in cases where no private party can be held liable for the pollution. For different classes of beneficiaries, depending on their involvement in the pollution and the date when the property was acquired, aid intensities vary from 60 % to 15 %, with a bonus of 10 % for SMEs. The total budget since the introduction of the original scheme in 2002 is € 1 130 million for the period up to the end of 2007. The scheme was found to constitute State aid but as it is in line with point 38 of the Environmental aid guidelines, the Commission approved it under Article 87(3)(c).

Investment aid to improve production processes

In 2005, the Italian authorities notified support for the plant of CIBA Specialty Chemicals S.p.A. in Sasso Marconi³⁴. The plant is mainly dedicated to the production of plastics additives, which are substances used to delay the aging and rusting effect. The notified project consisted of eleven interventions in the production process aiming at reducing the environmental impact of the factory in Sasso Marconi. They aimed at, inter alia, reducing the use of washing waters, reducing the amount of chlorine acids and liquid waste. The interventions started in 2006 and the investment will be effective as of 2010. The total costs of the investment are € 5.4 millions. The Italian State proposed to support CIBA with a grant of € 883 250, and thus the intensity of the aid was of 25 %.

The Italian authorities provided evidences for each of the eleven interventions that this project goes beyond the best available techniques that were recently drafted in the BAT Reference Document (BREF) for organic fine chemicals of December 2005 and the BREF for common waste water and waste gas treatment and management systems in the chemical sector of February 2003. Aid was, thus, only provided for investments that led to improvements beyond this conversion. Consequently, it was considered to be in line with point 29 of the Environmental aid guidelines, whereby investment aid may be authorised for investments improving on the applicable Community standards. Accordingly, the Commission decided not to raise objections against it.

Relief from environmental taxes

In Denmark an electricity tax was introduced in 1977, an electricity distribution charge was implemented in 1999 and a CO₂ tax was introduced in 1992. All VAT registered companies in Denmark (except liberal professions) can benefit from exemptions from the electricity tax and the electricity distribution charge. In addition, energy-intensive business (with or without voluntary agreements) is partly relieved from the CO₂ tax.³⁵ The tax levels are well above the Community minimum tax levels. For example, in 2004 the total amount of these taxes for electricity was some 24 times higher than the minimum levels. When the measure was notified in 2004, the total amount for the refunds from the concerned taxes was approximately € 268 million. The Commission considered the tax measures to constitute State aid under Article 87 (1), as the companies who receive the relief have an advantage compared to other undertakings. The Commission approved the relief since it was in line with the rules on operating aid in the form of tax reductions or tax exemptions in Environmental aid guidelines as well as with the Energy Taxation Directive.³⁶ According to the guidelines, non-degressive tax exemptions covering a 10-year period from environmental taxes can in certain cases be justified when the tax levels in a Member State exceeds that laid down by Community legislation. An assessment of the Danish case showed that i) the taxes have an appreciable positive impact on environmental protection, ii) the derogations had been decided when the tax was adopted, iii) the taxes resulted in beneficiaries paying an amount higher than the Community minimum tax

³³ [N 85/2005](#), OJ C 228 of 17 September 2005, p. 9. The original scheme was [N 520/2001](#), OJ C 146 of 19 June 2002, p. 8.

³⁴ [N 506/2005](#), OJ C 276 of 14 November 2006, p. 16.

³⁵ [NN 75/2004](#), OJ C 275 of 8 November 2005, p. 4.

³⁶ Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, [OJ L 283 of 31 October 2003, p. 51](#).

level and iv) the Danish authorities committed themselves to re-notifying the scheme if it were to exceed 10 years. The tax relief could therefore be approved on the basis of Article 87(3)(c).

Energy-intensive companies that enter into voluntary agreements pay a lower rate of the CO₂ tax.³⁷ Companies with heavy processes, such as melting, concentration and dying related to cement production, condensed milk and sugar, can sign agreements with the Ministry of Energy to implement energy-saving investments in order to benefit from further reduction of the CO₂ tax. The obligations are considered to replace the steering effect of the energy tax on electricity used in the production processes of the undertakings. The fact that energy costs constitute an important part of these companies' total costs is an additional incentive for the companies to implement energy-saving measures. The scheme and modifications thereof has been notified many times to the Commission, each time with a budget relating only to the modification in question. The scheme was found to be in line with the conditions of the Environmental guidelines (in particular point 51.1(a)) and the Energy Taxation Directive, and authorised by the Commission authorised on the basis of Article 87(3)(c).

1.7. State aid expenditure on environmental protection

As the case studies above show, environmental aid encompasses a wide range of objectives, including support measures for renewable energy, energy-saving, waste management, rehabilitation of polluted industrial sites and improvement of production processes. For these types of measures, aid granted by Member States pursues a direct benefit to the environment. State aid expenditure data for such cases can therefore be taken as a proxy measure for the intended environmental benefit, regardless of the form in which the aid may be awarded (grant, tax exemption, guarantee, etc.). This represented approximately 47 % of total environmental aid expenditure in 2006 (around €6.7 billion).

A second category of State aid measures assessed under the environmental aid guidelines are reductions or exemptions from environmental taxes. Here, the environmental objective of the measure is pursued by the tax itself. Any reduction or exemption from environmental taxes, i.e., the part of the measure constituting aid, has an indirect environmental objective by facilitating the introduction or modification of such taxes. Expenditure data currently available for this category of aid schemes indicate the amount of tax revenue foregone and can therefore not serve as a proxy measure of the environmental benefit the taxes themselves have brought. In 2006, some 53 % of total expenditure (around €7.5 billion) fell under this category.

Any analysis of State aid expenditure for environmental purposes must therefore take account of the fact that a large proportion of aid comprises tax exemptions from environmental taxes, usually benefiting energy intensive industries including sometimes big polluters, that had to be accepted in order to allow for certain types of environmental taxes (going beyond the minima imposed by European Directives for example) to be introduced. That share of tax exemptions is strongly influenced by the largest environmental aid grantors, Germany and Sweden.³⁸

Such exemptions are only allowed where the taxes themselves are intended to make a significant contribution to protecting the environment and where the exemptions do not undermine the general objectives pursued. For this reason, the new State aid guidelines for environmental protection require that where companies do not pay at least the Community minimum or where the tax in question is not subject to Community-wide harmonisation, long

³⁷ N 459/1995, OJ C 324 of 5 December 1995; N 61/1996, OJ C 300 of 10 October 1996; N 272/1997, OJ C 377 of 12 December 1997; [N 840/A/2000](#), OJ C 358 of 15 December 2001, p. 4; [N 540/2002](#), OJ C 78 of 1 April 2003, p. 3, and [N 317/A/2004](#), OJ C 226 of 15 September 2005, p. 6.

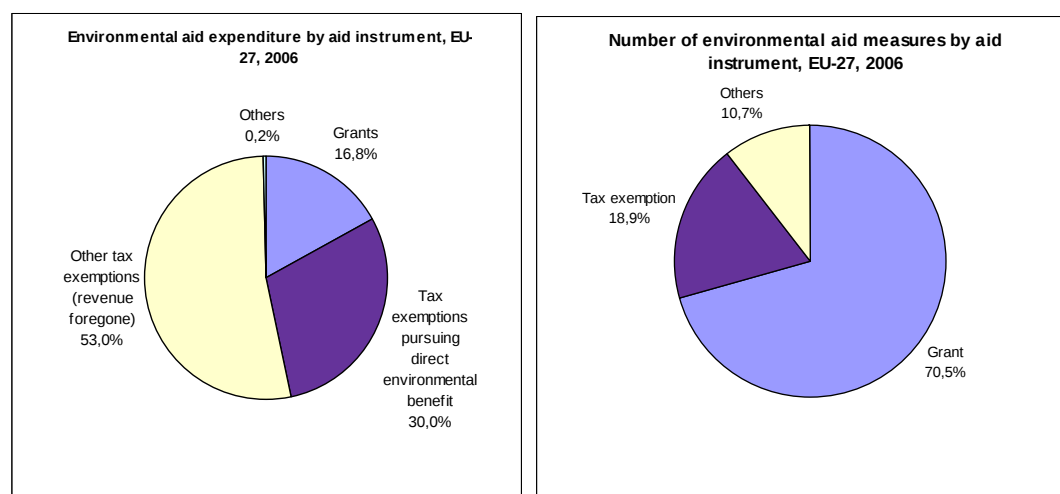
³⁸ See explanatory note to table 1.

term derogations from environmental taxes remain only possible when Member States can demonstrate that they are necessary and proportionate.

EU-wide, aid in the form of grants represents around 17 % of total environmental aid although the proportion is higher, for example, in the Netherlands which awards a significant proportion of its aid in the form of subsidies for the production of energy from renewable energy sources and combined heat and power production (CHP).

Looking at the share of each aid instrument in terms of number of measures paints a rather different picture: aid in the form of grants account for 70 % of the total number of environmental aid measures while tax exemptions make up less than 20 % of the total (Figure 2).

Figure 2: Environmental aid instruments (in terms of expenditure and number of measures)



Source 2: DG Competition. Note: Data refer to all environmental aid measures for which there may be ongoing expenditure.

The amount of environmental aid doubled between 2001 and 2006

In 2006, the EU-27 Member States awarded 14 billion of State aid under the environmental aid guidelines compared with € 7 billion in 2001. The largest environmental aid grantors in absolute terms, which together granted more than 90 % of total environmental aid, were Germany (€ 8 billion), Sweden (€ 2.5 billion), the United Kingdom (€ 1 billion), the Netherlands (€ 860 million) and Denmark (€ 600 million). In more than half the Member States, expenditure did not exceed € 20 million in 2006.

Large disparities between Member States in the share of environmental aid as a percentage of GDP

In relative terms, environmental aid amounted to 0.12 % of EU-27 Gross Domestic Product (GDP) in the period 2004-2006. This average hides significant disparities between Member States. The largest aid grantors in relative terms were Sweden (0.77 % of GDP), Denmark (0.35 %) and Germany (0.32 %), followed by Austria, the Netherlands and Finland each of which granted aid above the EU average. Environmental aid expenditure in the United Kingdom stood at half the EU-27 average, while all other Member States, including Spain, France and Italy, granted aid amounting to less than one quarter of the EU-27 average in terms of GDP (see Table 1). It is worth noting that even if tax exemptions are excluded from the figures, the ranking of Member States is broadly similar.

Leaving aside aid in the form of tax exemptions, the trend in the level of environmental aid is stable.

EU-wide, total environmental aid as a percentage of GDP has increased from 0.08 % in the period 2002 - 2004 to 0.12 % in the period 2004 - 2006. However, this upward trend is largely the result of significant increases in the use of tax exemptions: their share in total environmental aid has increased from 69 % in 2001 to 83 % in 2006. As regards aid in the form of grants or other State aid instruments with a direct impact on the environment, there has been no significant increase in the overall expenditure.

Box: Environmental taxation

Significant differences between Member States in the level of environmental taxation ... though indicator does not necessarily reflect a country's policy on environmental protection.³⁹

Data on the share of environmental taxes to total taxation indicate that roughly one Euro out of every fifteen in revenue derives from environmental taxes. Environmental tax revenues in the last five years have been on the decline, at least in the EU-15. In contrast, in the EU-12 Member States, which originally levied low environmental taxes, revenues from this kind of taxes have shown a strong progression over time, so that by now there is practically no difference vis-à-vis the EU-15 in this respect.

Looking at the ratio of environmental tax-to-GDP most Member States tend to fall in a band ranging from 2 % to 3 % of GDP, or slightly higher. At 5.8 % in 2005, Denmark displayed by far the highest level of "green" taxes followed by the Netherlands (4 %).

A high share of environmental tax revenue as such does not necessarily represent an indication of a high priority being attributed to environmental protection. Energy taxes were originally used purely as revenue raising instruments, without environmental purposes. Furthermore, the level of this indicator also says nothing about the achievement of environmental policy goals, as revenue increases could conceivably result from changes in the economy towards production and consumption patterns that are resource intensive and lead to even higher pollution. Moreover, if green taxes act as an efficient disincentive, they will over time reduce the recourse to environmentally harmful goods and thereby erode the tax base, leading to a gradual fall in revenue. In addition, if tax breaks on environmentally friendly products or processes are granted, the same objective -protecting the environment- results in lower tax revenues. In either case we would witness a falling tax-to-GDP ratio for environmental taxes despite an increase in environmental protection.

Vast majority of environmental aid awarded through schemes

Over the period 2001-2007, around 12 % of environmental aid decisions involved individual awards of aid to companies as opposed to aid schemes. However, in terms of expenditure, individual aid amounted to only 2 % of total environmental aid.

Table 1: Trend in the share of environmental aid, 2001-2006

³⁹ For further information on this issue, see ["Taxation trends in the European Union"](#), 2007 Edition, Eurostat Statistical Books or the Commission Staff Working Document accompanying the Green Paper on market-based instruments for environment and energy related policy purposes, [SEC \(2007\) 388 of 28 March 2007](#).

Member State	Average annual expenditure on environmental aid, 2001-2003 (mio)	Average annual expenditure on environmental aid, 2004-2006 (mio)	Environmental aid as % of GDP, 2004-2006	Trend in environmental aid as a % of GDP between 2001-2003 and 2004-2006, percentage point difference
Sweden	400	2286	0,77%	+ 0,62
Denmark	701	749	0,35%	0,00
Germany	5213	7294	0,32%	+ 0,08
Austria	160	361	0,14%	+ 0,08
Netherlands	460	742	0,14%	+ 0,05
Finland	131	216	0,13%	+ 0,05
EU-27	8453	13365	0,12%	+ 0,04
United Kingdom	890	1203	0,06%	+ 0,02
Slovenia	35	16	0,05%	- 0,08
Belgium	15	87	0,03%	+ 0,02
Czech Republic	49	25	0,02%	- 0,03
Lithuania	-	4	0,02%	+ 0,02
Spain	60	151	0,02%	+ 0,01
Hungary	28	8	0,01%	- 0,03
Greece	5	17	0,01%	+ 0,01
Cyprus	2	1	0,01%	- 0,01
Luxembourg	0	2	0,01%	+ 0,01
France	172	102	0,01%	0,00
Romania	12	9	0,01%	0,00
Italy	67	72	0,00%	0,00
Latvia	-	1	0,00%	0,00
Poland	50	10	0,00%	- 0,02
Estonia	1	0	0,00%	- 0,01
Ireland	3	6	0,00%	0,00
Portugal	1	1	0,00%	0,00
Slovakia	-	0	0,00%	0,00
Bulgaria	3	0	0,00%	- 0,01
Malta	-	-	-	-

Note: Member States are ranked in descending order according to their level of environmental aid as a percentage of GDP. Data for Romania and Bulgaria in the first column refer to the period 2002 - 2003. In Germany and Sweden, tax exemptions account for over 90 % of total environmental aid in each country. A CO₂ tax reduction for industry and a tax exemption from the energy tax on electricity (C 42/2003 OJ L 165 of 25 June 2005, N 156/2004, OJ C 137 of 4 June 2005, N 588/2005, OJ C 72 of 24 March 2006) led to a remarkable rise in aid expenditure for Sweden from 2003 onwards. In Germany, expenditure has risen steadily following the approval in 2002 of a measure that prolonged several tax exemptions from the German energy taxation on electricity and mineral oils (N 449/2001, OJ C 137 of 8 June 2002).

1.8. The new guidelines on State aid for environmental protection

In the SAAP the Commission announced that, in view of the necessary revision of the Community Guidelines on State aid for environmental protection, "In 2005, the Commission will start reflecting on ways and means to better address the challenges and opportunities that sustainable development creates, as set out in the Lisbon and Sustainable Development Strategies, especially with the aim of ensuring a full internalisation of environmental costs. In particular, the Commission will attempt to encourage eco-innovation and improvements in productivity through eco-efficiency in line with the Environmental Technologies Action Plan (ETAP). Certain measures might also be exempted under the general block exemption from the obligation to notify the aid".⁴⁰

This reflection process was finalised on 23 January 2008 with the adoption by the Commission of the new guidelines, which will enter into force the day after their publication in the Official Journal⁴¹ (hereinafter, OJ). The guidelines will be applicable until 31 December 2014.

The main idea behind the revised guidelines is that Member States should not use State aid as the main tool to address environmental concerns. As shown in section 1.2 above, Member States have several other means at hand (such as regulatory measures, market-based mechanism, etc.) that should be used for this purpose in the first place. State aid should remain a fallback option to be used only when it can be proved that the targeted objective cannot be reached by other means.

But, in certain cases, granting State aid may be justified to give private firms an incentive to invest more in environmental protection or to relieve some firms from a relatively high financial burden in order to enforce a stricter environmental policy overall. However, it should not be possible to grant badly targeted or excessive State aid which not only distorts competition but is also counterproductive for meeting environmental objectives.

The new Environmental aid Guidelines make sure that competition is not unduly distorted by support mechanisms – e.g. subsidies, tax exemptions – that Member States develop for the environment. They ensure that State aid measures are better targeted and that the positive effects outweigh the negative effects in terms of distortions of competition. Furthermore, they guarantee that, at the same time, businesses receive sufficient – but not more – incentive to make more environmentally friendly investments or to use, for example, more renewable energy. These new rules introduce more economic analysis, focus on the most distortive measures and define clear rules for tax exemptions and ETS.

Compared to the previous guidelines, the revised version brings about improvements in the following areas.⁴²

- Introduction of a clearer and more user-friendly definition of eligible costs based on the concept of "extra investment costs" (see box below). Indeed, the allowable aid amount is calculated in relation to the extra investment cost that is necessary to achieve the level of environmental protection compared to either an installation fulfilling the mandatory standard or, in the absence of standards, a method of production which is less

⁴⁰ See point 46 SAAP.

⁴¹ Community guidelines on State aid for environmental protection, [OJ C 82 of 1 April 2008](#).

⁴² For further details see "State aid: guidelines on State aid for the environment – frequently asked questions", [MEMO/08/31 of 23 January 2008](#).

environmentally friendly. This is so because only State aid which has an additional effect on the environment should be authorised.

- Increased aid intensities which, in certain cases, can go up to 100 % of the eligible costs. This is allowed, for example, when State aid is linked to a bidding (thus, competitive) process or to support the production of renewable energy and cogeneration where operating aid maybe granted in addition to investment aid in order to cover the full difference between the cost of producing the energy and the market price for the energy concerned.
- Clarification of the treatment of tax reductions/exemptions. The possibility for long term derogations from environmental taxes is maintained by the new guidelines provided that, after the reduction, the companies concerned still have to pay, at least, the Community minimum. In all other cases, including non-harmonised taxes, Member States must demonstrate that such derogations are both necessary and proportionate.
- New provisions on aid for early adaptation to standards, aid for environmental studies, aid for district heating, aid for waste management, including recycling, and aid involved in tradable permit schemes.
- Introduction of a detailed assessment method for cases involving large aid amounts to individual beneficiaries, which have greater potential to distort competition and trade. All other cases will be subject to a standard assessment and, most likely, some of them will be even block-exempted once the Commission adopts the future General Block Exemption Regulation (hereinafter, GBER).⁴³ As a consequence, Member States would be relieved from the notification obligation and would be able to use a simplified method to calculate the aid amount involved in measures falling under the scope of the GBER. The result would be a considerable reduction of the administrative burden in the field of environmental aid.

Annex I provides a comparison of the 2001 and 2008 guidelines on State aid for environmental protection.

Concept of Extra Costs

When it comes to investment aid, extra costs are calculated either by clearly identifying the part of the investment improving the environmental protection (e.g. a filter) or by comparing the total investment costs with a reference investment that does not achieve the same higher level of environmental protection. The appropriate reference investment has to be decided on a case by case basis and must be an investment which would be a credible alternative without the aid. For example, for an investment in renewable energy, the reference investment is normally a conventional power plant, while for an investment in co-generation of heat and power, the reference investment is normally an investment in separate production of heat or power.

For operating aid, extra costs are defined as the difference between production costs (including investment costs and a normal return on capital) and the market price. Only investment costs which have actually been borne by the undertaking can be included in the extra costs.

Summing up, the new guidelines on State aid for environmental protection provide a series of measures that complement and support the achievement of greater environmental protection

⁴³ The adoption of the GBER is foreseen for before the summer break.

in cases where the PPP cannot be properly implemented and the production costs are not properly accounted for by industry. In such market failure situations, State aid can be an appropriate tool. It may also enable individual undertakings to change their behaviour and adopt more environmentally friendly processes or invest in greener technologies. Finally, it may encourage Member States to move beyond Community standards and to efficiently support the production of renewable energy and energy cogeneration. The new guidelines aim to facilitate the ease with which Member States may award environmental aid provided that the state aid measures are well-targeted and that the positive effects outweigh the negative effects in terms of distortions of competition. While cases involving large aid amounts to individual beneficiaries will now be subject to a detailed assessment method, the introduction of a future GBER would mean that Member States will be relieved from the notification obligation for a number of other cases, thereby reducing the administrative burden in the field of environmental aid.

2. PART TWO: STATE AID IN BULGARIA AND ROMANIA

The fifth enlargement of the EU which started in 2004 with the accession of ten new Member States was completed by the accession of Bulgaria and Romania in 2007. This chapter provides an overview of State aid expenditure for industry and services in these two new Member States in the period prior to accession.

Figures are presented in relation to both the EU-27 and EU-12⁴⁴ averages. The main purpose is to measure the extent to which these two Member States have met the call for less and better targeted aid. Figures presented in this chapter are based on the first reports provided by Bulgaria and Romania as Member States although they cover the period prior to accession, from 2002 to 2006. This overview complements the data and analysis provided in the autumn 2007 Scoreboard which covered the same period for the EU-25 Member States. Bulgaria and Romania will be fully integrated into the next update of the Scoreboard in autumn 2008.

2.1. State aid in absolute and relative terms

In 2006, total State aid for industry and services granted by all current 27 Member States stood at € 48.7 billion. For the same period, total State aid granted is estimated at € 31 million for Bulgaria and € 545 million for Romania.

Table 2: State aid in Bulgaria, Romania and other 5th enlargement countries, 2006

	Total State aid for industry and services in million €	State aid as percentage of GDP (%)	Population (million)	State aid per capita (PPS)
EU 27	48 747.5	0.42	491.1	99
EU 12	3817.2	0.51	103.4	64
Bulgaria	31.4	0.12	7.7	11
Romania	544.8	0.56	21.6	51
Czech Republic	583.7	0.51	10.3	95
Estonia	10.7	0.08	1.3	13
Cyprus	70.0	0.48	0.8	104
Latvia	24.5	0.15	2.3	19
Lithuania	53.5	0.23	3.4	30
Hungary	832.9	0.93	10.1	141
Malta	88.9	1.77	0.4	318
Poland	1230.5	0.45	38.1	56
Slovenia	146.9	0.48	2.0	100
Slovakia	199.3	0.45	5.4	67

Source: DG Competition

In relative terms, State aid may be expressed as a percentage of GDP or as a per capita measure. Total State aid for industry and services represented 0.12 % of Bulgarian GDP which was significantly lower than the average for EU-12 (0.51 %) and the EU-27 average (0.42 %). In Romania, total State aid was significantly higher, representing 0.56 % of GDP.

When aid is expressed in per capita terms, a different picture emerges with regard to Romanian's relative position. When purchasing power standards (PPS)⁴⁵ are used, the level of

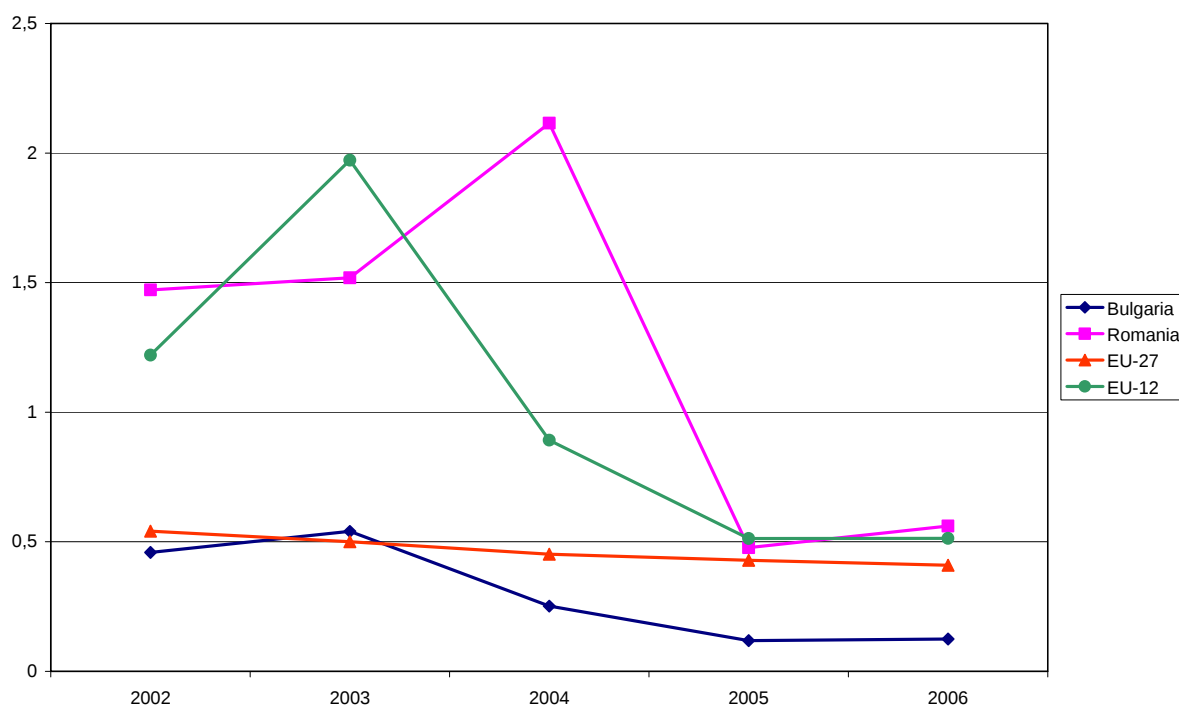
⁴⁴ The ten Member States which acceded in 2004 plus Bulgaria and Romania.

⁴⁵ State aid per capita is expressed in terms of Purchasing Power Standards (PPS) and therefore take account of differences in price levels between countries. In general, when PPS are used instead of exchange rates, the gap between high-income and low-income countries narrows as price levels in low income countries tend to be low compared to richer countries.

aid awarded in Romania in 2006 was around half the EU-27 average (51 PPS per person as against 99 PPS per person) and significantly below the EU-12 average of 64 PPS per person. Bulgaria also granted much less: its level of 11 PPS per capita is the lowest in the EU.

An analysis of the trend in aid as a percentage of GDP over the last five years shows that only once, in 2003, did the level of aid granted in Bulgaria exceed the EU-27 average. Since that year, there has been a stable, downward trend (See: Figure 3). For Romania, the share of aid to GDP during this period always exceeded the EU average. It peaked in 2004 but since then, the level of aid has reduced significantly. The trend in Romania is thus comparable to that of other EU-12 Member States prior to accession, i.e. the level of aid is significantly higher in the years before joining the EU due largely to the processes of restructuring and privatisation.

Figure 3: State aid in Bulgaria and Romania as % of GDP in comparison to the EU averages, 2002-2006



Source: DG Competition. A full set of data for this graph can be found in Table 1 in Annex II

2.2. Sectoral distribution of aid

Over the period 2002-2006, Bulgaria granted 75 % of its total State aid to manufacturing,⁴⁶ 7 % to coal and 18 % to other non-manufacturing⁴⁷ which largely consisted of aid for district heating companies and the mining industry. Over the same period, Romania granted around 70 % of its aid to manufacturing, followed by aid to non-manufacturing 21 % (largely for mining) and coal 8 %.

⁴⁶ 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, SMEs, 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.

⁴⁷ Other non-manufacturing includes sector such as electricity, gas and water supply, mining and quarrying, oil and gas extraction, Real estate, renting and business activities etc.

Table 3: Sectoral distribution of State aid for industry and services, 2002-2006

	% of total					mio €
	Manufac- turing	Coal	Financial Services	Other Services	Other Non Manufac- turing	Total
EU-27	74	12	7	5	2	257 956
EU-12	58	20	15	3	4	31 960
Bulgaria	75	7	-	-	18	320
Romania	70	8	0	1	21	4 957

Source: DG Competition

2.3. State aid by objective

Aid to support specific sectors is likely to distort competition more than aid for horizontal objectives such as R&D, safeguarding the environment, regional development and support to SMEs and also tends to favour other objectives than identified market failures. Moreover, a significant part of such aid is granted to rescue or restructure companies, which is inevitable in transition from planned to market economies and in case of privatisation of companies in difficulty. Table 4: State aid for horizontal objectives and particular sectors in Romania, Bulgaria and the EU, 2002-2006

Table 4: State aid for horizontal objectives and particular sectors in Romania, Bulgaria and the EU, 2002-2006

	Annual averages					
	Bulgaria		Romania		EU-27	EU-12
	mio €	%	mio €	%	%	%
Horizontal objectives	34.5	54	162.9	16	73	33
Environment and energy saving	1.3	2	10.3	1	23	2
Regional development (1)	21.1	33	95.6	10	18	14
Research and development	0.3	1	12.7	1	12	3
SME	0.2	0	15.6	2	11	4
Training	-	-	0.0	0	2	1
Employment aid	9.4	15	9.2	1	4	6
Other horizontal objectives (e.g. commerce, culture, natural disasters, risk capital, innovation and social aid)	2.1	3	19.5	2	4	2
Sectoral aid (2)	29.6	46	828.5	84	27	67
Manufacturing	13.8	22	540.3	55	6	27
<i>of which shipbuilding</i>	-	-	8.5	1	1	2
<i>of which steel</i>	4.5	7	99.7	10	1	5
<i>of which motor vehicle</i>	0.2	0	35.2	4	0	3
Coal	4.5	7	76.0	8	12	20
Other Non-manufacturing	11.2	18	207.6	21	1	4
Financial services	-	-	-	-	7	15
Other services	0.0	0	4.6	0	1	1
Total aid for industry and services	64.0	100	991.4	100	100	100

Note: All figures are expressed in euros at 2006 constant prices so that the effect of inflation is removed; (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.

During the period 2002-2006, Bulgaria granted 54 % of total State aid for horizontal objectives while Romania granted only 16 %. These shares of horizontal aid are rather low in comparison to the EU-27 average (73 %) though they are more in line with the EU-12 average of 33 %. The disparity with the EU-15 Member States (79 %) can be explained in part by relatively strong support for several industries (e.g., coal, mining, steel and other manufacturing industries) before accession in the context of privatisation or restructuring.

Looking at the situation in 2006, the share of horizontal objectives in Bulgaria increased to 79 %. The largest share of horizontal aid was granted for regional development (72 % of total State aid) and R&D (6 %). In the same year, Romania granted only 19 % of total State aid for horizontal objectives – mainly for regional development (10 %) and R&D (4 %).

2.4. State aid instruments in the industry and services

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.

Table 5: Share of each aid instrument in total aid to industry and services, 2004-2006

	Grants	Tax exemptions	Equity participation	Soft loans	Tax deferrals	Guarantees
EU-27	49	43	1	3	2	2
EU-12	45	41	1	2	9	3
Bulgaria	15	75	-	2	2	6
Romania	25	28	1	1	44	0

Source: DG Competition

In Bulgaria, during the period 2004-2006, the most widely-used aid instruments were tax exemptions (75 %) followed by grants (15 %). Other instruments such as guarantees, tax deferrals and soft loans were scarcely used, amounting to less than 10 % of total State aid. In Romania during this period, the majority of aid was awarded in the form of tax deferrals (44 %) followed by tax exemptions (28 %) and grants (25 %).

3. PART THREE: RECOVERY OF UNLAWFUL AID

Article 14 (1) of the Procedural Regulation⁴⁸ 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".⁴⁹ This article establishes an obligation on the Commission to order recovery of unlawful and incompatible aid unless this would be contrary to a general principle of law. The purpose of recovery, as held by the ECJ on several occasions, is to re-establish the situation that existed on the market prior to the granting of the aid. This is necessary to ensure that the level-playing field in the internal market is maintained, in accordance with Article 3 g) of the EC Treaty. According to the ECJ, the "re-establishment of the previously existing situation is obtained once the unlawful and incompatible aid is repaid by the recipient who thereby forfeits the advantage which he enjoyed over his competitors in the market, and the situation as it existed prior to the granting of the aid is restored".⁵⁰ In order to eliminate any financial advantages incidental to unlawful aid, interest is to be recovered on the sums unlawfully granted. Such interest must be equivalent to the financial advantage arising from the availability of the funds in question, free of charge, over a given period.⁵¹

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

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

In 2007 the Commission continued its efforts to achieve more effective and immediate execution of recovery decisions. Significant progress towards recovery was made during that period. As of 31 December 2007, there were 49 pending recovery decisions (see complete list in Annex III), compared to 93 on 31 December 2004 and 60 on 31 December 2006. In the second half of 2007, six pending recovery cases were closed, whilst four recovery decisions were taken and one case is re-opened (see Table 6). The geographical distribution of pending

⁴⁸ Council Regulation No 659/1999 of 22 March 1999, [OJ L 83/1, 27.March.1999, p. 1-9](#)

⁴⁹ When state aid is granted without respecting Art. 88.3, the state aid becomes unlawful. The Commission must assess the compatibility of the state aid granted with the EC Treaty and other applicable legislation.

⁵⁰ [Case C-348/93](#), *Commission v Italy* [1995] ECR I-673, paragraph 27

⁵¹ [Case T-459/93](#), *Siemens v Commission* [1995] ECR II-1675, paragraph 97 to 101

recovery cases is the following: Spain has the highest number (14), which represents 29 % 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 49 % of all pending recovery cases. Germany has reduced its share in the total number of pending cases from 47 % in 2004 to 14 % in December 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 16 of the 27 Member States.

Table 6: Pending recovery cases by Member State, second semester 2007

	Situation 01.07.2007	New cases 01.07.-31.12.2007	Cases closed 01.07.- 31.12.2007	Situation 31.12.2007
Spain	15	0	1	14
Italy	10	1	0	11
Germany	9	0	2	7
France	6	0	0	6
Netherlands	2	1	0	3
Portugal	2	0	0	2
Greece	1	1	0	2
Belgium	1	0	1	0
Ireland	1	0	0	1
Poland	1	2	2	1
Finland	1	0	0	1
Slovakia	1	0	0	1
Total	50	5	6	49

Source: DG Competition

Table 7 provides data on the amounts of aid to be recovered under the 119 recovery decisions adopted since 2000.⁵² For 114 of these decisions, relatively accurate information exists on the amount of aid involved. This information shows that the total amount of aid to be recovered on the basis of decisions adopted between 1 January 2000 and 31 December 2007 is at least € 9 billion.⁵³

⁵² On 30 June 2007, there were still further six recovery decisions pending that were adopted before 1 January 2000.

⁵³ 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.

**Table 7: Trend in the number of recovery decisions and amounts to be recovered (1)
2000- 2007 (state of play – 31.12.2007)**

	Date of Decision								
	2000	2001	2002	2003	2004	2005	2006	2007	Total
No. of decisions adopted	16	20	23	10	23	12	6	9	119
Total aid known to be recovered (in mio €)	247.0	1146.8	1206.1	1015.0	4854.5	29.2	280.8	189.0	8968.5
amounts recovered (in mio €)	218.1	1125.4	1510.6	1230.3	6369.5	21.2	151.8	2.2	10629.0
Of which:									
(a) Principal reimbursed/or in blocked account	17.1	962.1	1061.9	894.6	3960.9	14.2	94.5	2.2	7007.5
(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		87.0	419.7	335.0	1537.7	7.0	12.3	0.0	2398.7
Aid registered in bankruptcy	15.6	16.9	0.0	133.8	0.0	7.5	0.0	0.0	173.8
Amount outstanding (3)	28.9	108.4	115.2	119.7	22.7	15	141.3	186.8	738.1
% still pending to be recovered (2)	12 %	9 %	10 %	12 %	1 %	51 %	50 %	99 %	8 %

Notes: (1) Only for decisions for which the aid amount is known. (2) Amount excluding interest. (3) Total aid known to be recovered less principal reimbursed and aid lost in bankruptcy. Source: DG Competition

For 5 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 concern aid schemes. Of the € 9 billion aid to be recovered under decisions adopted since 2000, some € 7 billion of illegal and incompatible aid had been effectively recovered by 31 December 2007 (this compares to € 2.3 billion of aid reported as recovered in December 2004).⁵⁴ Besides, a further € 2.4 billion of interest was recovered. In addition to the amounts effectively recovered, a further € 1.2 billion of unlawful and incompatible aid was “lost” in bankruptcy proceedings⁵⁵ and € 173 million of illegal and incompatible aid has been registered in ongoing bankruptcy proceedings. This leaves € 0.73 billion of illegal and incompatible aid still to be recovered (i.e. 8 % of the total).

Recovery of illegal incompatible State aid is still a lengthy process: Of the 49 pending recovery cases, 21 were adopted more than four years ago, and five even more than eight years ago. Of the 119 decisions adopted between 2000 and 2007, only 75 have been closed by the December 2007 (see Table 8).

⁵⁴ 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).

⁵⁵ 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 8: Trend in the closure of recovery cases (state of play – 31.12.2007)

	Date of the Decision								Total
	2000	2001	2002	2003	2004	2005	2006	2007	
No of recovery decisions adopted	16	20	23	10	23	12	6	9	119
No of recovery cases that are closed on 30.06.07	14	10	18	6	17	6	2	2	75

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

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

4. PART FOUR: LEGISLATIVE AND POLICY DEVELOPMENTS

State Aid Action Plan

The Commission continues to implement various aspects of the State aid Action Plan (SAAP),⁵⁶ 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 autumn, the Commission has adopted the following final or draft legislative texts.⁵⁷

4.1. New legislation

New method for setting reference and discount rates

On 12 December 2007, the Commission adopted a new method for setting reference and discount rates used in the analysis of State aid cases for calculating the grant equivalent of aid and the aid element resulting from interest subsidy schemes.⁵⁸

The new methodology is based on the one-year inter-bank offered rate (IBOR) increased by margins ranging from 60 to 1000 basis points, depending on the creditworthiness of the company and the level of collateral offered. This approach is in line with the revised international capital framework introduced by the latest recommendations of the Basel Committee on banking supervision (the Basel II Accords) and should be more in conformity with the market than the current methodology. The new method will enter into force on 1 July 2008, in order to give financial institutions and other stakeholders the necessary time to adjust.

Improved procedural rules

The Commission clarified, on 30 January 2008⁵⁹, its rules on the notification of State aids and ensured faster procedures by amending the Regulation which establishes complementary procedural provisions for the application of the EC Treaty State aid rules (the so-called "Implementing Regulation").⁶⁰ The modifications will inter alia introduce additional notification forms and require the compulsory use of an electronic notification system and a secured e-mail system by 1 July 2008. Moreover, the new general notification form will provide additional information to the Commission allowing quicker decision-making procedures. The new Regulation takes account of comments received from a public consultation in the course of 2007.⁶¹

The new Regulation provides for information to be gathered through the general information notification form on outstanding recovery orders and on aid granting authorities. It will also require the publication of the full text of approved aid schemes on the internet. The method

⁵⁶ [COM\(2005\)107 final of 7 June 2005.](#)

⁵⁷ All State aid legislation developments including adopted legislation and proposed drafts can be followed on DG Competition's website: [State aid legislation](#), [State aid reform](#).

⁵⁸ [OJ C 14 of 19 January 2008, p. 6.](#)

⁵⁹ This regulation was already adopted in principle by the Commission on 12 December 2007; see [IP/07/1911](#)

⁶⁰ [OJ L 82 of 25 March 2008, p. 1](#)

⁶¹ [DG Competition's public consultations web page.](#)

for the calculation of interest rates for the recovery of unlawful aid is also modified in order to reflect the changes in the methodology of setting the reference and discount rates.

New State aid guidelines for environmental protection

In December 2007, the Commission prolonged the validity of the 2001 environmental aid guidelines, which were to expire at the end of 2007, till the end of April 2008 or the adoption of new guidelines.⁶²

As part of the Energy and Climate Change package, the Commission adopted on 23 January 2008 the new Guidelines on State aid for environmental protection.⁶³ For further details, see Part One of this Scoreboard.

New notice on State aid in the form of guarantees

Following two rounds of public consultations,⁶⁴ the Commission adopted in May 2008 a new Notice on State aid in the form of guarantees.⁶⁵ The main aim of revising the 2000 Notice⁶⁶ was to set out clear and transparent methodologies to calculate the aid element in a guarantee and to provide simplified possibilities allowing for the development of SMEs.

The new Notice confirms that this assessment should be based on the Market Economy Investor Principle. As a consequence, the methodologies primarily rely on proper risk assessment through rating. However, this rating does not have to be provided by one of the international rating agencies, but can also be the internal rating of the lending bank, which normally has to rate companies when issuing a loan.

Guarantees are of particular importance for SMEs, as they are often confronted with low equity and a lack of stable resources. Therefore, the new Notice sets out also particular rules for SMEs which will allow them to assess the aid element of a guarantee in a simple way. In particular, the Commission provides SMEs and Member States with optional tools such as 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.

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

On 20 December 2007, the Commission adopted a Regulation on *de minimis* aid in the agricultural production sector.⁶⁷ The decision follows public consultation conducted in the second half of 2007.⁶⁸ The Regulation raises the ceiling for small amounts of aid ("*de minimis*" aid) in the agriculture sector to € 7 500 per beneficiary over any period of three years and the maximum total per Member State to 0.75 % of the value of agricultural output.

⁶² [OJ C 316 of 28 December 2007, p. 58.](#)

⁶³ [OJ C 82 of 1 April 2008, p. 1](#)

⁶⁴ [DG Competition's public consultations web page.](#)

⁶⁵ [DG Competition's State aid reform web page](#)

⁶⁶ [OJ C 71 of 11 March 2000, p. 14–18.](#)

⁶⁷ [OJ L 337 of 21 December 2007, p. 35.](#)

⁶⁸ [OJ C 151 of 5 July 2007, p. 16.](#)

The 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.

Guidelines for the examination of State aid to fisheries and aquaculture

On 11 March 2008, the Commission adopted the new Guidelines for the examination of State aid to fisheries and aquaculture.⁶⁹

These new Guidelines have been drawn up in order to take into account, in particular, Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund.⁷⁰ The new rules will allow Member States to grant state aid for most of the measures included in the EFF. However, due to their specific character, aid for the replacement of engines and fishing gear aid and aid for the sustainable development of fisheries areas have not been included. In addition to EFF aid, the new guidelines will allow Member States to grant state aid for compensation for damages caused by natural disasters, exceptional occurrences or bad weather events. The guidelines will also, under certain conditions, allow state aid in the form of tax relief and labour related costs for EU vessels fishing for tuna and tuna-like species outside EU waters and beyond 200 nautical miles. This last measure is designed to discourage EU operators registering their fishing vessels in third countries which do not ensure proper control over the activities of their fishing fleet, especially in terms of illegal, unreported and unregulated fishing. Finally, the new rules provide the conditions regarding state aid for the marketing of fisheries products from the EU's outermost regions and, following the statement of 14 June 2006 by Council and Commission, for state aid related to the development of the fishing fleet in the outermost regions.

The new Guidelines will be used by the Commission with effect from 1 April 2008 for the assessment of all State aid notified or intended to be applied on or after that date.

Regulation on public passenger transport services

The legislative framework for PSO currently in force dates from 1969 and was last amended in 1991. In view of the evolving European market for public passenger transport services and in order to provide legal certainty to both operators and public authorities involved in public transport new legislation had to be developed. In parallel to the 3rd railway package *Regulation (EC) No 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road and repealing Regulations (EEC) n° 1191/69 and 1107/70* has been adopted and published.⁷¹

The Regulation will enter into force on 3 December 2009 with a 10 year transition period for the way contracts are being awarded. The main provisions of the Regulation are the following:

- An obligation for competent authorities to conclude Public Service Contracts with a maximum duration when they grant exclusive rights and/or financial compensation in return for the discharge of public service obligations.
- A general obligation to respect competitive tender for the selection of the undertakings that will provide the transport services. However, the Regulation provides for the cases when contracts may be awarded directly: self-production or in-house operation, transport by rail, thresholds – 2 million euros/year for SME and emergency contracts.- Compensations granted

⁶⁹ [OJ C 84 of 3 April 2008, p.10.](#)

⁷⁰ [OJ L 223 of 15 August 2006, p. 1](#)

⁷¹ [OJ L 315 of 3 December 2007, p. 1.](#)

respecting the Regulation are compatible aid and exonerated of notification under art 88 of the Treaty."

Guidelines on State aid to railway undertakings

In April 2008, the Commission adopted Guidelines on State Aid to railway undertakings which provide guidance on the compatibility of the State aid rules regarding railway undertakings.⁷² They include sector specific provisions (notably related debt write-off, purchase of rolling stock for regional passenger transport, restructuring of freight branch) that take account of the railway sector's specificities in order to encourage the process of market opening as well as to strengthen its competitiveness.

4.2. Draft legislation

Third draft of General Block Exemption Regulation

In March 2008, the Commission invited interested parties to submit comments on the new draft general block exemption Regulation (GBER) in the State aid area.⁷³ It is a third draft that includes changes following previous public consultations.

The new GBER aims at simplifying and consolidating into one text the four existing block exemptions for aid to SMEs including R&D 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 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 this consultation, the Commission intends to adopt the final version of this Regulation before the summer of 2008.

Review of the Framework on State Aid to Shipbuilding

In March 2008, the Commission invited, in a form of public consultation,⁷⁴ Member States and other interested parties to express their views on the proposed review of the Framework on State Aid to Shipbuilding. The Framework⁷⁵ entered into effect on 1 January 2004, to be applied initially for period of three years, until 31 December 2006. On 28 October 2006, the Commission took a decision to continue to apply this Framework for a further two-year period, until 31 December 2008.⁷⁶ The Commission is now considering to prolong the Framework for a further three years, until 31 December 2011 to have more time for the assessment of current sector-specific instruments for State aid to shipbuilding.

Draft Block Exemption Regulation for fisheries

In October 2007, the Commission invited interested parties to submit comments on the new block exemption regulation for the fisheries sector.⁷⁷

This new fisheries block exemption regulation follows the same approach as the previous fisheries block exemption regulation, Regulation (EC) No. 1595/2004,⁷⁸ which ceased to apply from 31 December 2006, but has been aligned with the new conditions for structural aid

⁷² [DG Energy and Transport' State aid web page.](#)

⁷³ [DG Competition's public consultations web page.](#)

⁷⁴ [DG Competition's public consultations web page.](#)

⁷⁵ [OJ C 317 of 30 December 2003, p. 11.](#)

⁷⁶ [OJ C 260 of 28 October 2006, p.7.](#)

⁷⁷ [OJ C 248 of 23 October 2007, p. 13.](#)

⁷⁸ [OJ L 291 of 14 September 2004, p. 3.](#)

to the fisheries sector, introduced by Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund.⁷⁹

⁷⁹

[OJ L 223 of 15 August 2006, p. 1.](#)

5. PART FIVE: STATE AID CONTROL PROCEDURES

5.1. Registered Aid Cases

The Commission controls the Member States' granting of State aid by means of a formal and transparent procedure. According to the Procedural Regulation,⁸⁰ *"any plans to grant new aid shall be notified to the Commission in sufficient time by the Member State concerned"*. In around 8 % of registered aid cases, it was not the Member State but the Commission who had to initiate the control procedure after finding out about the existence aid following, for example, a complaint.⁸¹

In 2007, there were 859 State aid cases⁸² registered by the Commission: 777 cases were notified by Member States, 78 were non-notified cases initiated by the Commission and 4 were cases examining existing aid (Table 9). While the number of notifications is lower than the exceptionally high level in 2006 (922), this figure remains significantly above the level in 2004 and 2005. Moreover, the decrease is in line with the Commission's commitment to facilitate the granting of aid through block exemptions and focus policy on the most distortive types of aid. In 2007, Member States were able to introduce more than 1100 measures without prior notification to the Commission. This compares with 410 block exempted measures in 2006. See section 5.3.

Of the 777 notifications, 53 % concerned largely the industry and services sectors, 33 % agriculture, 8 % transport and 6 % fisheries. Italy submitted the largest number (119) accounting for 15 % of the total, followed by Germany 12 %, Spain 12 %, France 9 % and the United Kingdom for 6 %.

Table 9: Number of registered aid cases in 2007

Sector	Notified aid cases	Non-notified aid cases	Existing aid cases	Total
Agriculture	254	15	-	269
Manufacturing and services	415	32	4	451
Fisheries	45	5	-	50
Transport and coal	63	26	-	89
Total	777	78	4	859

Source: DG Competition, DG Maritime and Fisheries Affairs, DG Agriculture, DG Transport.

5.2. Commission Decisions

The Commission took 629 final State aid decisions⁸³ in 2007. In the vast majority of cases, the Commission approved the measures without a formal investigation, concluding that the examined aid was compatible with the State aid rules (87 % of all decisions in 2007) or did not constitute State aid (5 % of all decisions). Where the Commission has doubts whether certain aid measures comply with the rules, it carries out a formal investigation during which

⁸⁰ Council Regulation No 659/1999 of 22 March 1999, [OJ L 83/1, 27.03.1999, p. 1-9](#).

⁸¹ In 2007 there were almost 250 registered complaints, some of which may have led (or may lead) to new registered cases.

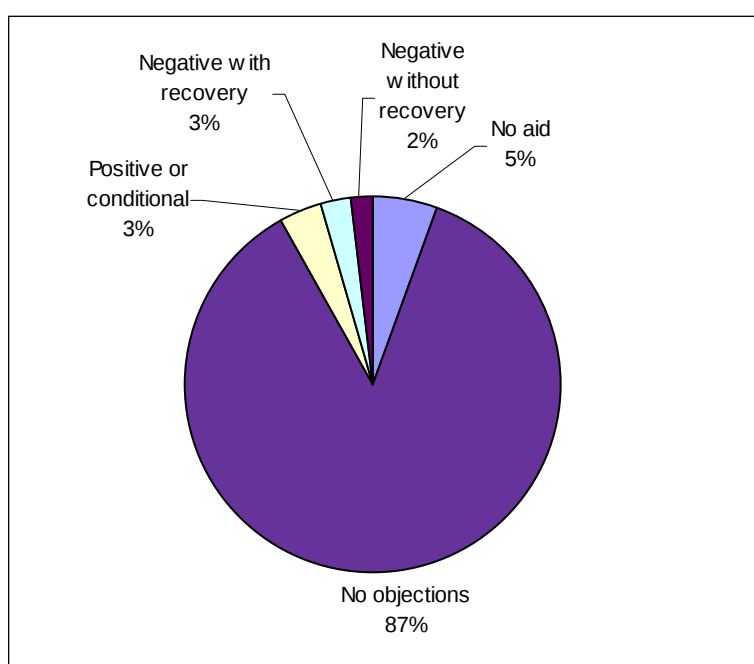
⁸² This figure excludes measures submitted under the block exemption regulations.

⁸³ Included in this figure are: decisions do not constitute aid, decisions not to raise objections, positive decisions, conditional decisions and negative decisions.

third parties and all Member States are invited to provide observations. At the end of this investigation procedure, the Commission either takes a positive, conditional or no aid decision (3 % of all decisions) or finds that the measure does not comply with State aid rules and hence is not compatible with the common market and takes a negative decision (5 % of all decisions made up of 3 % with recovery and 2 % without recovery).⁸⁴ See Figure 4.

In total, 69 of the decisions concerned unlawful aid. These cases are taken up by the Commission in reaction to a complaint or *ex officio* (case started at the Commission's own initiative). The figures also include cases notified by a Member State, but for which the measure was fully or partially implemented by the Member State before the Commission's final decision (i.e., cases where the standstill clause was not respected). See special focus on this topic in the spring 2007 Scoreboard.⁸⁵ In 27 of the decisions taken in 2007, the Commission had opened a formal investigation procedure, reaching a (partly) negative decision in 18 cases.

Figure 4: State aid decisions 2007, EU-27



Source: DG Competition, DG Maritime and Fisheries Affairs, DG Agriculture, DG Transport.

5.3. Aid awarded under the State aid block exemption regulations⁸⁶

Experience has shown that the objectives of the Enabling Regulation have been largely met⁸⁷ with Member States able to introduce more than 2800 block exempted measures in the period 2001 – 2007 under a series of block exemption regulations for SMEs, employment, training, regional investment, agriculture and fisheries. This has been accompanied by a significant reduction in the number of notified aid measures for these types of aid since 2001. The recent

⁸⁴ Negative decisions without recovery are almost exclusively decisions based on notified aid. Negative decisions to recover aid are the result of unlawful aid (i.e. non-notified) being awarded.

⁸⁵ [COM\(2007\) 347 final, 28.June.2007.](#)

⁸⁶ For full set of legislation, see http://ec.europa.eu/comm/competition/state_aid/legislation/block.cfm.

⁸⁷ See page 11 of the Evaluation report on the application of Council Regulation (EC) No 994/98 of 7 May 1998, [COM\(2006\)831 final of 21 December 2006.](#)

upward trend is in line with one of the key objectives in the SAAP, that is to facilitate the granting of aid through block exemptions and focus more on the most distortive types of aid.

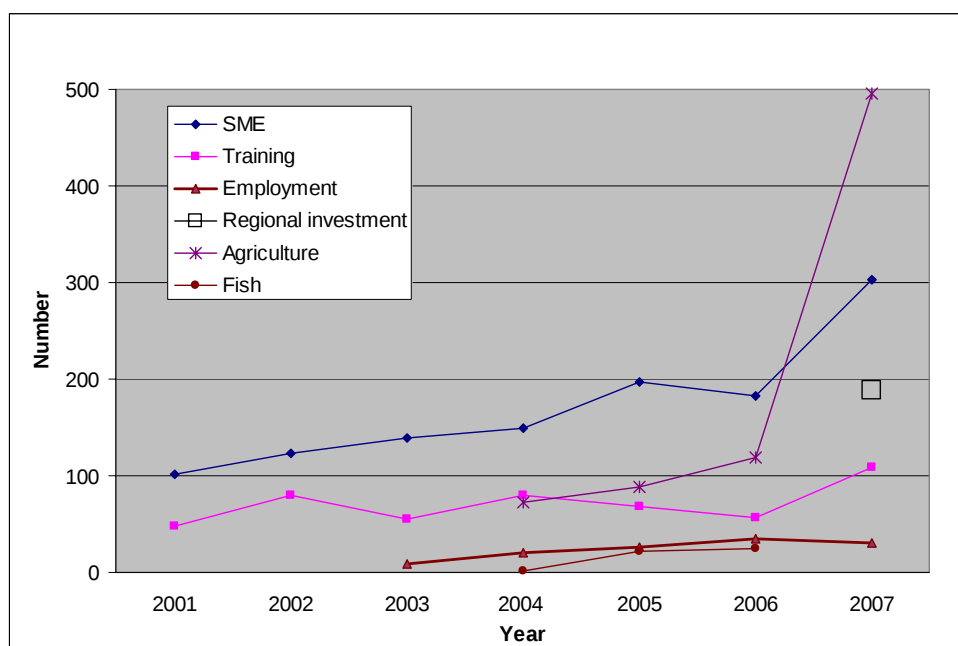
In 2007 alone, Member States introduced over 1100 block exempted measures, more than double the figure for 2006. The reasons for this significant increase are threefold:⁸⁸ the beginning of a new programming period for EU Structural Funds, a high take-up rate for the new possibility to block exempt regional investment aid and a sharp increase (four times more than 2006) in the number of measures exempted in the agricultural sector, following new recent legislation.⁸⁹ Member States introduced 303 measures on aid for SMEs primarily active in the industry and services sectors, 496 exempted measures for SMEs active in the agricultural sector, 108 on training aid (almost double the number for 2006), 189 measures for regional investment and 31 on aid to employment. No exempted aid in the fisheries sector was possible in 2007 though a new block exemption Regulation is expected to be adopted in 2008⁹⁰ (Figure 5 and Table 2 in Annex II).

⁸⁸ See point 3.1 of the State aid Scoreboard Autumn 2007 Update, [COM\(2007\) 791 final of 13 December 2007](#).

⁸⁹ Regulation 1857/2006 to exempt aid to SMEs active in the production of agriculture products and amending Regulation (EC) No 70/2001 (for SMEs active in processing and marketing of agricultural products).

⁹⁰ 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, [OJ C 248 of 23 October 2007, p. 13](#).

Figure 5: Trend in the number of BER measures introduced by Member States 2001-07



Source: DG Competition, DG Agriculture, DG Maritime and Fisheries Affairs. Reading notes: The regional investment BER came into force from 1 January 2007; no exempted aid in the fisheries sector was possible in 2007.

Note: A full set of data for this graph can be found in Table 2 in Annex II.

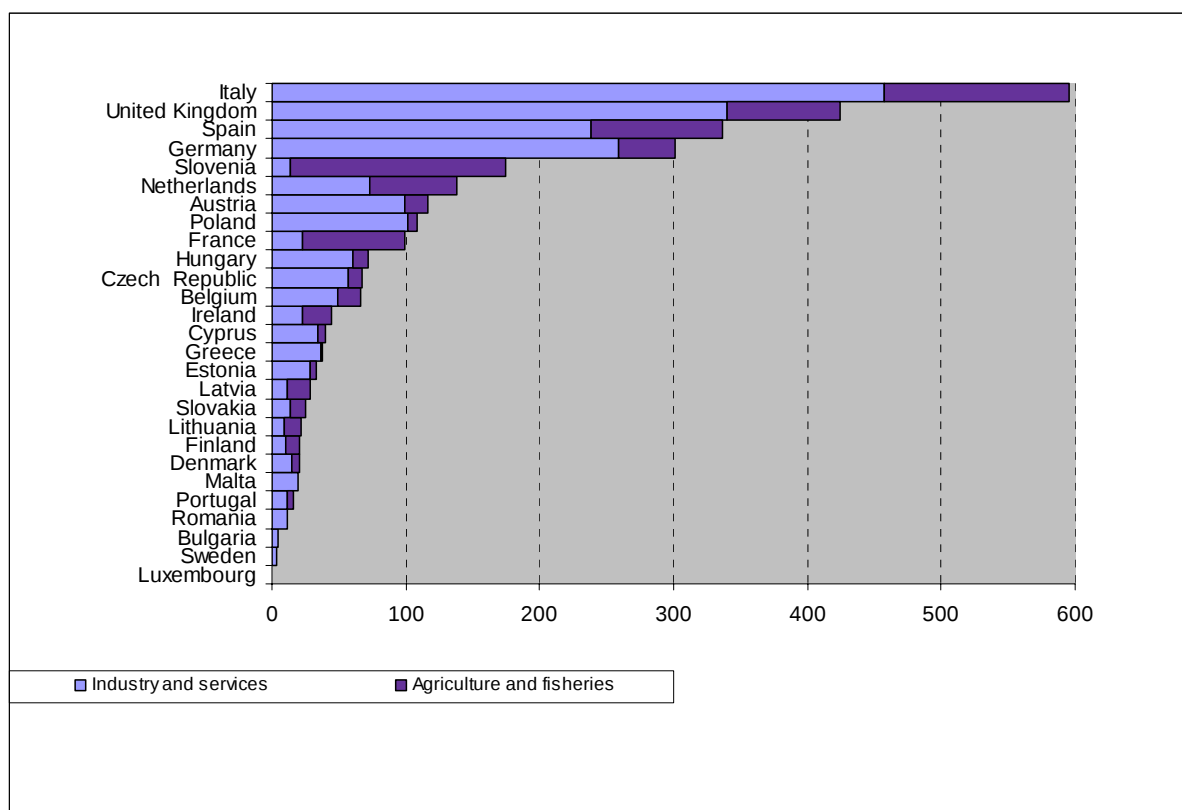
Four Member States, Italy (21 % of the total number of measures), the United Kingdom (15 %), Spain (12 %) and Germany (11 %) accounted for almost 60 % of all the information forms submitted during 2001-2007. The EU-12 Member States accounted for more than 600 measures submitted since 2004 (Figure 6 and Table 3 in Annex II).

As regards expenditure under the block exempted measures, Member States awarded €12 billion under the BER for industry and services in the period 2001 - 2006 (Figure 7). More detailed data for 2006 were included in the autumn 2007 Scoreboard.⁹¹ New data for 2007 will be published in the autumn 2008 Scoreboard.

⁹¹

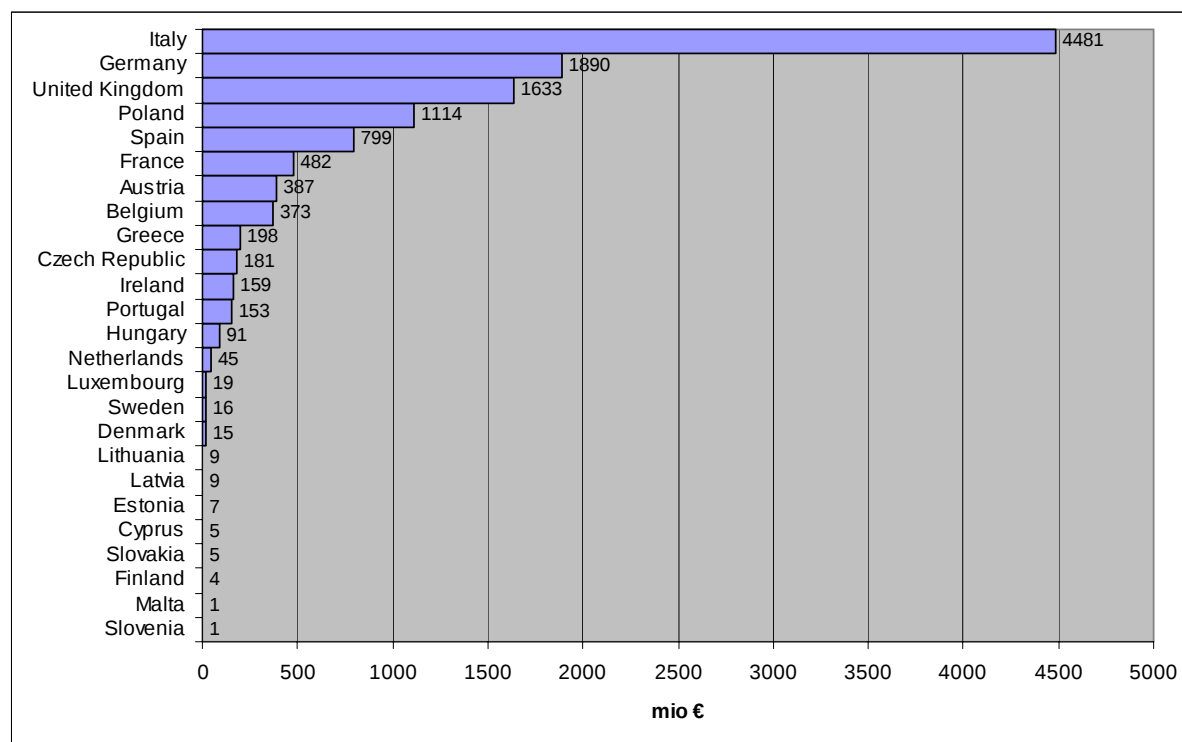
[COM\(2007\)791 final of 13 December 2007.](#)

Figure 6: Number of block exemption measures introduced, by Member State, 2001-07



Source: DG Competition, DG Agriculture, DG Maritime and Fisheries Affairs. Note: A full set of data for this graph broken down by type of block exemption Regulation can be found in Table 3 in Annex II

Figure 7: Aid awarded under the block exemption Regulations, industry and services, in million €, 2001-2006



Source: DG Competition. Note: Data for EU-10 Member States are included from 2004 onwards.

5.4. Duration of State aid procedures

The SAAP acknowledged the existence of shortcomings in the length and predictability of State aid procedures and called for actions to modernise them. The Commission has since made efforts to improve its internal practice and administration and increase efficiency in the State aid field. It has, for example, adopted internal measures to reduce the time required to treat State aid notifications and has started a dialogue with Member States on how to further improve the efficiency of State aid procedures.

In this context, DG Competition recently carried out a statistical analysis in order to have an overview of the duration of the preliminary examination procedure in notified aid cases. Almost 1000 notified cases decided⁹² between 1/1/2004 and 30/06/2007 were examined. It should be recalled that Article 4(5) of the Procedural Regulation sets a period of two months for the conclusion of the preliminary examination "following the receipt of a complete notification". Article 5(1) requires the Commission to request all necessary additional information from the notifying Member State when the notification is incomplete. In practice, the incompleteness of notifications causes the need for additional information and consequently prolongs the two-month period.

The statistical results show that in the period under review the average duration of the preliminary examination following the receipt of the complete notification is approximately 1.8 months. However, in about 80% of the cases the original notification cannot be considered complete, thus the Commission has to request additional information. This extends the

⁹²

The sample includes no aid decisions, decisions not to raise objections and decisions to open the formal investigation procedure (Articles 4(2), 4(3) and 4(4) of the Procedural Regulation).

duration of the preliminary examination for notified cases by 3.4 months to an average of 5.2 months. As to the proportion of cases closed within a certain period of time, the results show that 46 % were closed within 4 months and 70 % were closed within 6 months. Finally, it is also apparent that the duration of notified procedures has decreased constantly over the last five years.

The Commission has managed to reduce the length of the preliminary examination procedure in the last five years by 1.4 months. The Commission will continue its efforts to reduce the time required to treat cases. However, any further reduction would seem possible only if Member States also contribute to the process by improving the quality and the completeness of the information submitted to the Commission, in particular at the point of notification. Improving State aid rules and practices is indeed a shared responsibility between the Commission and the Member States, and the Commission will continue the dialogue with Member States to see what each party can do to further improve State aid procedures and practice.

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 measures submitted by Member States. It is updated daily and thus ensures that the public has timely access to the most recent State aid decisions. http://ec.europa.eu/competition/state_aid/register/

Annual Report on Competition Policy

The Commission publishes an Annual Report on Competition Policy which summarises the most important policy and legal developments as well as the latest case-law. http://ec.europa.eu/competition/annual_reports/

Competition Policy Newsletter

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

State Aid Weekly e-News

State Aid Weekly e-News, now in its third year of production, is distributed free of charge to more than 3000 subscribers. It sets out the activities of the Commission in the area of State aid, including the latest legislative developments, Commission decisions, news, upcoming events, reports and studies. http://ec.europa.eu/competition/state_aid/newsletter/index.html

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. 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: COMPARISON OF 2001 AND 2008 COMMUNITY GUIDELINES ON STATE AID FOR ENVIRONMENTAL PROTECTION

Main provisions concerning compatible aid

	2001 Environmental Aid Guidelines	2008 Environmental Aid Guidelines
<u>Aid for renewable energy and energy efficient co-generation</u> <i>Investment aid</i> (on the basis of extra-costs) <i>Operating aid</i>	40 % for large undertaking 50 % for SME 5 % or 10% regional bonus 10 % bonus serving an entire Community. Member States may be able to grant up to 100 % for renewable energy where it can be shown to be necessary. Option 1: Aid to compensate for the full difference between the production cost of renewable energy and the market price of the energy concerned (including fair return on capital), until total depreciation. Option 2: Operating aid by using market mechanism, notably green certificates. Option 3: Operating aid calculated on basis of external costs avoided. Option 4: Aid must be limited to 5 years, and must be degressive from 100 % to zero, or limited to 50 % in case of non degressive aid.	60 % for large undertakings 70 % for medium 80 % for small 100 % if competitive bidding process No regional bonus No bonus for serving an entire Community Options of guidelines are maintained, however option 3 is always subject to a detailed assessment

	2001 Environmental Aid Guidelines	2008 Environmental Aid Guidelines
<u>Investment aid for SME to adapt to new EC standards</u>	15 % for a period of 3 years from adoption of the standard.	No aid after mandatory date of transposition Aid of 15 % for large undertakings (20 % for medium and 25 % for small) if adaptation to standards more than 3 years <i>before</i> date of transposition. Aid of 10 % for large undertakings 15 % for medium and 20 % for small) if adaptation between 1 and 3 years before date of transposition.
<u>Aid for environmental studies</u>	Not covered	50 % for large undertakings 60 % for medium 70 % for small.
<u>Aid for district heating using conventional sources of energy</u>	Covered under the provision for energy saving	50 % for large undertakings 60 % for medium 70 % for small 100 % if competitive bidding process.
<u>Aid for waste management</u>	Not authorised for management of waste of other undertakings.	50 % for large undertakings 60 % for medium 70 % for small.
<u>Aid for relocation</u>	Covers undertakings creating major pollution.	Covers undertakings creating major pollution and in addition relocation of establishments that fall under the SEVESO II Directive.
<u>Aid for remediation of polluted sites</u>	Covers 100 % of cost and further 15 % of the cost of the work.	Covers 100 % of the cost.
<u>Aid in favour of CO2 capture</u>	Not covered	No detailed criteria due to lack of experience, but it is mentioned that the Commission will have a generally positive attitude towards State aid for such supports provided that they are environmentally safe. They will be assessed directly on the basis of Article 87(3) (b) or (c) of the Treaty.
<u>Aid involved in tradable</u>	Not covered	General criteria based on practice when investigating existing national allocation plans under the EU ETS ending in 2012. Certain additional

	2001 Environmental Aid Guidelines	2008 Environmental Aid Guidelines
<u>permit schemes</u>		criteria for assessing necessity and proportionality do not apply for trading period ending in 2012.
<u>Aid under the form of tax reduction or exemption</u>	Provisions applicable to new taxes: • Reductions/exemptions may be declared compatible up to 10 years without conditions if the companies <i>pay at least</i> the EC minimum for <i>harmonised taxes</i> and a significant part of domestic taxes which have <i>not been harmonised</i>.. If companies <i>do not pay at least</i> the EC minimum, reductions/exemptions may be declared compatible up to 10 years if the undertakings conclude agreements to improve environment or conditions which have the same effect. These provisions may be applied to existing taxes if the tax has an appreciable positive impact on environment and if the derogations has been decided when the tax was adopted or become necessary following significant economic modifications.	Provisions applicable to new <u>and existing</u> taxes Reductions/exemptions may be declared compatible up to 10 years without conditions if the companies <i>pay at least</i> the EC minimum of a <i>harmonised tax</i>. If companies <i>do not pay at least</i> the EC minimum, reductions/exemptions or if they introduced reductions/exemptions from a <i>non-harmonised tax</i> it may be declared compatible up to 10 years if these derogations are necessary and proportionate: • New criteria to assess necessity have been developed. • Proportionality is demonstrated if undertakings pay normally 20 % of the national tax (a significant part) or conclude agreements. In addition a new option relying on a benchmark method to determine the proportional amount of tax for has been introduced.
<u>Type of assessment</u>	Only one type of assessment	A <i>standard assessment</i> for small cases and a <i>detailed assessment</i> for individual cases above a certain aid amount or above a certain production level. However, only one type of assessment for tax reductions/ exemptions from environmental taxes. (Future Block exemption Regulation will entail state aid for environmental protection and thus not require any assessment by the Commission)

Note: The percentages in the table refer to the aid intensities. Source: DG Competition

ANNEX II: STATISTICAL TABLES

Table 1: State aid in Bulgaria and Romania in comparison to the EU averages, 2002-2006

	2002	2003	2004	2005	2006	Annual average 2002-04	Annual average 2005-06
EU-27							
Total State aid for industry and services in million €	58 .146	53 .417	49 603.	48 042.	48 747.	53 722.	48 395.
As % of GDP	0..54	0.50	0.45	0.43	0.42	0.50	0.42
EU-12							
Total State aid for industry and services in million €	7 .505	11 635	5 474	3 529	3 817	8 205	3 673
As % of GDP	1.22	1.97	0.89	0.51	0.51	1.35	0.51
Bulgaria							
Total State aid for industry and services in million €	92	113	56	28	31	87	30
As % of GDP	0.46	0.54	0.25	0.12	0.12	0.41	0.12
Romania							
Total State aid for industry and services in million €	1 259	1 139	1 595	419	545	1 331	482
As % of GDP	1.47	1.52	2.12	0.48	0.56	1.69	0.52

Source: DG Competition

Table 2: Number of measures for which information forms were submitted under the State aid block exemption regulations, 2001-2007, EU-27

Type of State aid block exemption	Year							Total number 2001-2007
	2001	2002	2003	2004	2005	2006	2007	
SME	102	123	139	149	197	183	303	1196
Training	48	80	55	79	68	57	108	495
Employment			8	21	26	35	31	121
Regional investment							189	189
Agriculture				72	88	119	496	775
Fish				1	22	24		47
Grand total	150	203	202	322	401	418	1127	2823
Total less agriculture and fish	150	203	202	249	291	275	631	2001

Note: The table excludes cases withdrawn. Figures for the EU-10 are included as of 1 May 2004, for the EU-2 as of 1 January 2007. Source: DG Competition, DG Agriculture, DG Maritime and Fisheries Affairs

Table 3: Number of measures by Member State for which information sheets were submitted under the State aid block exemption regulations, 2001-2007

(Note: Member States are ranked in descending order according to the total number of BER measures)

Member State	Type of block exemption Regulation						Grand total	Total less agriculture and fish
	SME	Training	Employment	Regional investment	Agriculture	Fish		
EU-27	1196	495	121	189	775	47	2823	2001
Italy	316	126	14	1	120	18	595	457
United Kingdom	215	103	5	17	80	4	424	340
Spain	151	40	12	35	93	5	336	238
Germany	147	86	13	13	42	0	301	259
Slovenia	5	4	1	4	159	1	174	14
Netherlands	66	3	3	1	61	4	138	73
Austria	61	15	0	23	17	0	116	99
Poland	49	5	26	21	7	0	108	101
France	9	5	6	3	76	0	99	23
Hungary	22	10	17	12	11	0	72	61
Czech Republic	33	5	1	18	10	0	67	57
Belgium	6	37	3	3	17	0	66	49
Ireland	11	10	0	2	20	1	44	23
Cyprus	15	10	7	2	6	0	40	34
Greece	26	4	3	3	1	1	38	36
Estonia	12	10	3	3	1	4	33	28
Latvia	9	1	0	1	16	2	29	11
Slovakia	11	1	1	1	11	0	25	14
Lithuania	4	2	1	2	12	1	22	9
Finland	6	1	0	3	5	6	21	10
Denmark	9	4	0	2	5	0	20	15
Malta	9	6	3	1	0	0	19	19
Portugal	2	4	0	5	5	0	16	11
Romania	0	0	0	11	0	0	11	11
Bulgaria	1	2	1	1	0	0	5	5
Sweden	0	1	1	1	0	0	3	3
Luxembourg	1	0	0	0	0	0	1	1

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

ANNEX III: PENDING RECOVERY DECISIONS (1 JANUARY 2008)

Case number	Working title	MS	Date of the decision	Num. of the decision	OJ
CR 36a / 2006	Terni Companies	Italy	20/11/2007		Not yet published
CR 23/2006	Technologie Buczek	Poland	24/10/2007		Not yet published
CR 37/2005	Tax-exempt reserve fund for certain companies	Greece	18/07/2007		Not yet published
CR 32/2005	Rescue and restructuring aid to Ernault	France	04/04/2007	2007/674/EC	OJ L 277 of 20/10/2007, p. 25
CR 16/2006	Restructuring aid to Nuova Mineraria Silius	Italy	21/02/2007	2007/499/EC	OJ L 185 of 17/07/2007, p. 18
CR 79/2001	Exemption from excise duty for the production of alumina in Gardanne	France	07/02/2007	2007/375/EC	OJ L 147 of 8/06/2007, p. 29
CR 78/2001	Exemption from excise duty for the production of alumina in Shannon	Ireland	07/02/2007	2007/375/EC	OJ L 147 of 8/06/2007, p. 29
CR 80/2001	Exemption from excise duty for the production of alumina in Sardinia	Italy	07/02/2007	2007/375/EC	OJ L 147 of 8/06/2007, p. 29
CR 38/2005	Biria Gruppe	Germany	24/01/2007	2007/492/EC	OJ L 183 of 13/07/2007, p. 27
CR 52/2005	Digital Decoders - Italy	Italy	24/01/2007	2007/374/EC	OJ L 147 of 8/06/2007, p. 1
CR 30/2005	Restructuring aid to Kliq NV	Netherlands	19/07/2006	2006/939/EC	OJ L 366 of 21/12/2006, p. 40
CR 30/2004	Exemption from corporate tax for capital gains of certain operations/transactions by public undertakings	Portugal	04/07/2006	2006/748/EC	OJ L 307 of 7/11/2006, p. 219
CR 2/2004	Ad hoc financing of Dutch public broadcasters	Netherlands	22/06/2006		Not yet published
CR 25/2005	Measures in favour of Frucona Kosice	Slovakia	07/06/2006	2007/254/EC	OJ L 112 of 30/04/2007, p. 14
CR 37/2004	Aid to Componenta Corporation	Finland	20/10/2005	2006/900/EC	OJ L 353 of 13/12/2006, p. 36
CR 8/2004	Fiscal incentives for newly listed companies	Italy	16/03/2005	2006/261/EC	OJ L 094 of 1/04/2006, p. 42
CR 43/2001	Aid to Chemische Werke Piesteritz GmbH	Germany	02/03/2005	2005/786/EC	OJ L 296 of 12/11/2005, p. 19
CR 12/2004	Fiscal incentives for outward FDI	Italy	14/12/2004	2005/919/EC	OJ L 335 of 21/12/2005, p. 39
CR 57/2003	Tremonti bis	Italy	20/10/2004	2005/315/EC	OJ L 100 of 20/04/2005, p. 46
CR 40/2002	Aid to Hellenic shipyards I	Greece	20/10/2004	2005/246/EC	OJ L 075 of 22/03/2005, p. 44

Case number	Working title	MS	Date of the decision	Num. of the decision	OJ
CR 13b/2003	France Telecom - Taxe professionnelle	France	02/08/2004	2005/709/EC	OJ L 269 of 14/10/2005, p. 30
CR 95/2001	Aid to Siderurgica Anon	Spain	16/06/2004	2005/827/EC	OJ L 311 of 26/11/2005, p. 22
CR 62/2003	Urgent measures in support of employment	Italy	30/03/2004	2004/800/EC	OJ L 352 of 27/11/2004, p. 10
CR 57/2002	Article 44 septies CGI	France	16/12/2003	2004/343/EC	OJ L 108 of 16/04/2004, p. 38
CR 39/2001	Aid to Minas Rio Tinto sal	Spain	27/05/2003	2004/300/EC	OJ L 098 of 2/04/2004, p. 49
CR 62/2000	Aid to Kahla (Porzellan GmbH)	Germany	13/05/2003	2003/643/EC	OJ L 227 of 11/09/2003, p. 12
CR 94/2001	Export aid scheme Mecklenburg-Vorpommern	Germany	05/03/2003	2003/595/EC	OJ L 202 of 9/08/2003, p. 15
CR 70/2001	Aid to Hilados y Tejidos Puigneró S.A.	Spain	19/02/2003	2003/876/EC	OJ L 337 of 23/12/2003, p. 14
CR 35/2002	Fiscal aid scheme - Açores	Portugal	11/12/2002	2003/442/EC	OJ L 150 of 18/06/2003, p. 52
CR 3/2002	Aid to Refractarios especiales	Spain	27/11/2002	2003/283/EC	OJ L 108 of 30/04/2003, p. 21
CR 27/1999	Aid to Municipalizzate	Italy	05/06/2002	2003/193/EC	OJ L 077 of 24/03/2003, p. 21
CR 44/2000	Aid to SKL Motoren- und Systemtechnik GmbH	Germany	09/04/2002	2002/898/EC	OJ L 314 of 18/11/2002, p. 75
CR 60/2000	Fiscal aid - Province of Vizcaya (III)	Spain	20/12/2001	2003/86/EC	OJ L 040 of 14/02/2003, p. 11
CR 58/2000	Fiscal aid - Province of Alava (III)	Spain	20/12/2001	2003/28/EC	OJ L 017 of 22/01/2003, p. 20
CR 59/2000	Fiscal aid - Province of Guipuzcoa (III)	Spain	20/12/2001	2003/192/EC	OJ L 077 of 24/03/2003, p. 1
CR 53/1999	Fiscal aid - Province of Guipuzcoa (II)	Spain	11/07/2001	2002/894/EC	OJ L 314 of 18/11/2002, p. 26
CR 54/1999	Fiscal aid - Province of Vizcaya (II)	Spain	11/07/2001	2003/27/EC	OJ L 017 of 22/01/2003, p. 1
CR 52/1999	Fiscal aid - Province of Vizcaya (I)	Spain	11/07/2001	2002/806/EC	OJ L 279 of 17/10/2002, p. 35
C 50/1999	Fiscal aid - Province of Guipuzcoa (I)	Spain	11/07/2001	2002/540/EC	OJ L 174 of 4/07/2002, p. 31
CR 48/1999	Fiscal aid - Province of Alava (I)	Spain	11/07/2001	2002/820/EC	OJ L 296 of 30/10/2002, p. 1
CR 49/1999	Fiscal aid - Province of Alava (II)	Spain	11/07/2001	2002/892/EC	OJ L 314 of 18/11/2002, p. 1
CR 41/1999	Aid to Lintra beteiligungsholding GmbH	Germany	28/03/2001	2001/673/EC	OJ L 236 of 5/09/2001, p. 3
CR 4/2000	Manure processing scheme	Netherlands	13/12/2000	2001/521/EC	OJ L 189 of 11/07/2001, p. 13

Case number	Working title	MS	Date of the decision	Num. of the decision	OJ
CR 38/1998	Aid for Kimberly Clark/Scott Group	France	12/07/2000	2002/14/EC	OJ L 012 of 15/01/2002, p. 1
CR 81/1997	Social security reductions - Venezia et Chioggia	Italy	25/11/1999	2000/394/EC	OJ L 150 of 23/06/2000, p. 50
CR 49/1998	Employment aid measures (Loi Nr 196/97)	Italy	11/05/1999	2000/128/EC	OJ L 042 of 15/02/2000, p. 1
CR 44/1997	Aid for Magefesa	Spain	14/10/1998	1999/509/EC	OJ L 198 of 30/07/1999, p. 15
CR 18/1996	Borotra aid scheme	France	09/04/1997	1997/811/EC	OJ L 334 of 5/12/1997, p. 25
CR 28/1994	Aid for Hamburger Stahlwerke GmbH	Germany	31/10/1995	1996/236/EC	OJ L 078 of 28/03/1996, p. 31

**ANNEX IV: 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	Working title	MS	Court case	State of play and recent developments
CR 44/1997	Aid to Magefesa	Spain	C-499/99	02/07/02: ECJ judgment condemning Spain for failing to implement CEC decision
CR 49/1998	Employment aid measures (Loi Nr 196/97)	Italy	C-99/02	01/04/04: ECJ judgment condemning Italy for failing to implement CEC decision 19/7/07: Commission sent letter of formal notice to Italy
CR 48/1999 CR 49/1999 CR 50/1999 CR 52/1999 CR 53/1999 CR 54/1999	Fiscal aid - Province of Alava (I) Fiscal aid - Province of Alava (II) Fiscal aid - Province of Guipuzcoa (I) Fiscal aid - Province of Vizcaya (I) Fiscal aid - Province of Guipuzcoa (II) Fiscal aid - Province of Vizcaya (II) (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	Aid for Kimberly Clark/Scott Group	France	C-232/05	05/10/06: ECJ judgment condemning France for failing to execute CEC decision

Case number	Working title	MS	Court case	State of play and recent developments
CR 27/1999	Aid to 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 Art. 88(2) 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	Fiscal aid - Province of Alava (III) Fiscal aid - Province of Guipuzcoa (III) Fiscal aid - Province of Vizcaya (III) (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

Case number	Working title	MS	Court case	State of play and recent developments
CR 36/2001	Beaulieu Ter Lembeek	Belgium	C-187/06	25/01/06: Commission decision to initiate Art. 88(2) action against Belgium 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
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
CR 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
CR 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

Case number	Working title	MS	Court case	State of play and recent developments
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