



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMISSION STAFF WORKING PAPER**

**Annex to the :**

**STATE AID ACTION PLAN**

**Less and better targeted state aid: a roadmap for state aid reform 2005–2009**

**(Consultation document)**

**IMPACT ASSESSMENT**

{COM(2005) 107 final}

## FOREWORD

1. The creation of a common market requires a level playing field for all the undertakings active on that market. State subsidies are obviously likely to create huge disparities between different competitors. In order to prevent such practices, the Treaty established the principle of the prohibition of State aids and only allowed for certain limited compatibility exceptions under the control of the Commission – the added value of the intervention of the Commission lies of course in having an independent adjudicator to decide on the compatibility of State measures, which if left to the sole control of Member States, would possibly be accepted, in particular in cases where the competitors affected would be mostly located outside of the aid granting Member State.
2. The State Aid Action Plan ‘Less and better targeted state aid: a roadmap for state aid reform 2005 – 2009’ is a consultation document outlining the work programme in the field of state aid policy for the next years. It describes the motivations and the plans for reforming the rules and practice of state aid policy, announces the various documents that could be amended and the possible subject of the amendments. It also gives the general principles that will underlie the reform process. In other words, the state aid action plan is not a legislative document and does not have a direct or immediate impact on state aid rules or on stakeholders. Its purpose is to launch a process of comprehensive and consistent reform and modernisation of state aid policy.
3. This impact assessment of the State Aid Action Plan reforming state aid policy follows the principle of proportionate analysis outlined in the Communication on Impact Assessment. *“According to this principle, the depth of the analysis should correspond to the likely significance of the impact of the proposals. This means that, if a DG considers that the potential impacts of its proposal are limited (or by contrast significant), it can vary the depth of its assessments. In addition, the assessment should be adapted to the specific circumstances of the policy domain concerned. In this sense, a DG presenting a Communication comprising broad policy proposals could find itself in a position where only a very schematic Extended Impact Assessment is possible”*.

### I. IDENTIFICATION OF THE PROBLEM

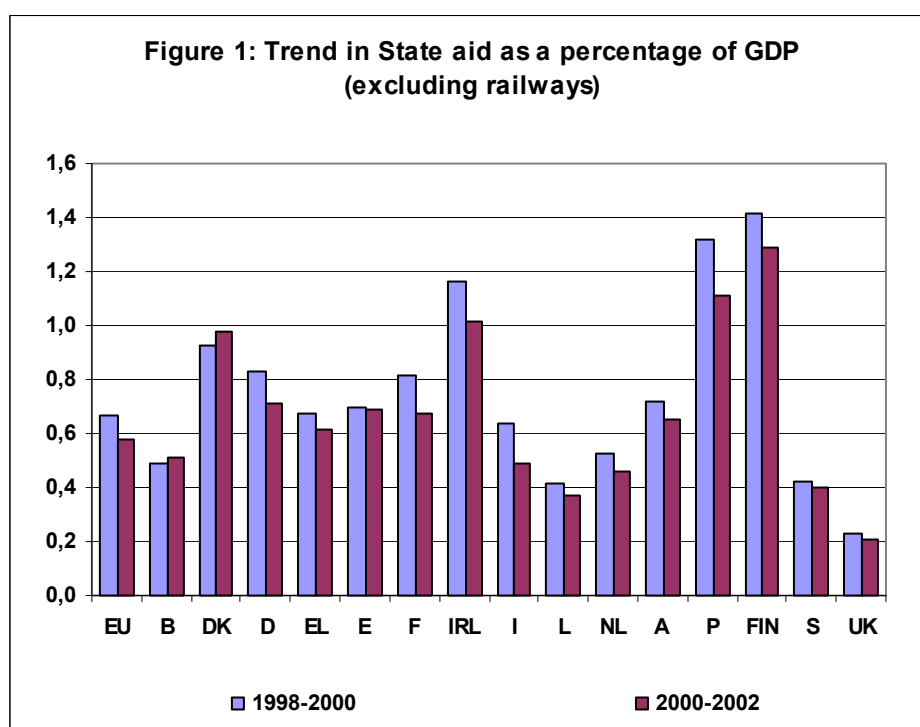
4. Ever since the signing of the Treaty of Rome in 1957 state aid policy has been an integral part of competition policy and the European Commission has been in charge of preventing that aid granted by Member States unduly distorts competition. As an introduction, it is worth reminding the **specificities and relevance of state aid policy**, which can explain why modern and efficient state aid rules and practice are important for the Union. It is also worth reminding that state aid rules have to be revised constantly.
5. The control of state aid is an exclusive competence of the Commission and when authorising state aid measures, state aid policy is closely linked to other political objectives of common interest, like public services of general economic interest, regional and social cohesion, employment, research and development, environmental

protection and culture and heritage conservation. To that extent, state aid can make an important contribution to the so-called **Lisbon Strategy**, which aims at enhancing the competitiveness of European economies and fostering growth and jobs through a balanced combination of economic, social and environmental goals.

6. Not only does state aid policy contribute to **competitiveness** through the preservation of competition in the Single Market, but it also has an impact on the ability of Member States to use public funds for giving aid in a certain way and can thus help **focusing Member States' attention** on certain objectives of common interest. Furthermore, state aid policy is relevant to the objective of good governance and reducing administrative burden, since it operates to a large extent through the notification by Member States of measures that could be qualified as state aid and needs to be authorised before they are implemented. This exercise can be **resource- and time-consuming** for the Commission and Member States.
7. In addition, state aid policy operates within a precise **legal framework** and has to follow a series of legal procedures. Article 87(1) of the Treaty declares any form of aid granted by a Member State to be incompatible with the common market in so far as it distorts or is likely to distort competition at the European level. However, this prohibition is not absolute. In particular, Article 87 of the Treaty allows aid to be given to e.g. facilitate the development of certain economic activities or of certain economic areas where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
8. In accordance with Article 88 of the EC Treaty, the Commission must, under the control of the Court of Justice, observe that Member States are complying with the State aid rules laid down in the EC-Treaty. The case law of the Court of Justice expressly recognises that the Treaty allows the Commission a margin of discretion to assess whether an aid can be compatible with the common market. The concrete application by the Commission in individual cases of the state aid rules laid down in the EC-Treaty has over the years for the sake of transparency, legal certainty and equal treatment been laid down in guidelines, frameworks and communications. In these instruments the Commission lays down its administrative practise based on concrete cases and the rulings by the Court of Justice by explaining the approach the Commission will follow in the assessment of different types of aid, and the factors which it will take account of in deciding whether or not to approve aid.
9. These instruments are especially important since they define the conditions under which aid can be authorised. This means in practice that Member States are limited in the way they can design aid measures, and also the Commission bound by these texts in declaring certain aid measures compatible. Such instruments can also reduce the administrative burden, since they can either eliminate the need to notify (block exemptions), or substantially simplify it (guidelines and frameworks).
10. Finally, it is worth reminding that state aid rules **must be in constant evolution** and require adjustments over time, because they must take account of political, economic and legal developments. It means that the instruments to assess state aids are subject to periodical revisions and that they often have a limited duration. Table 1 in annex provides a list of the current rules, as well their expiry dates.

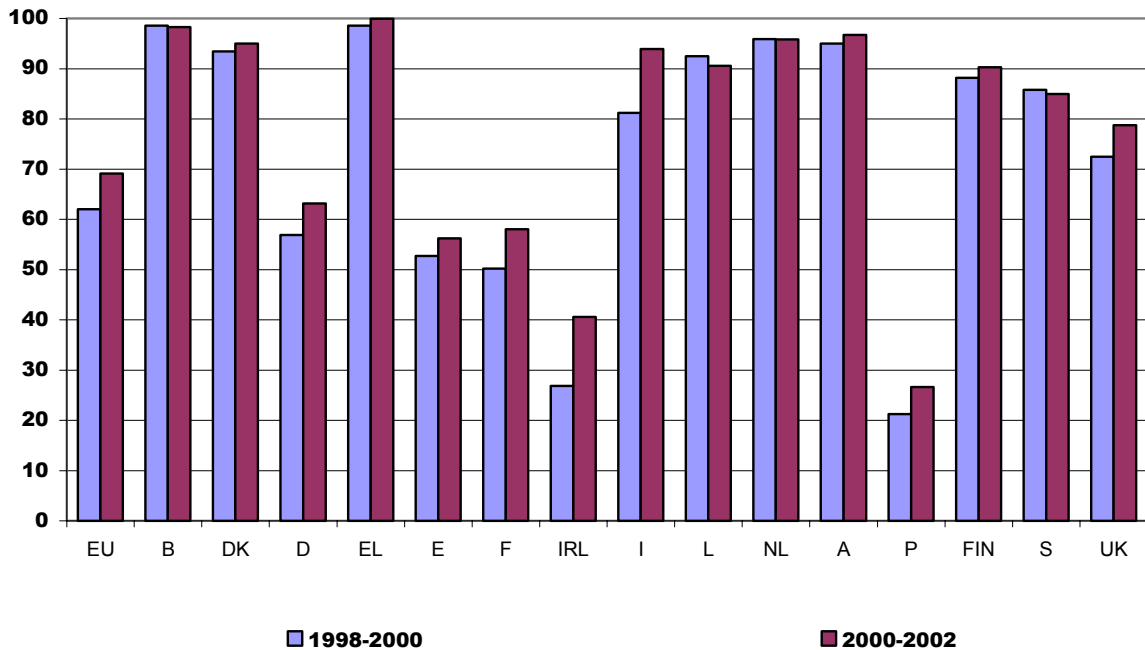
## A. The problems with the present rules and practice in state aid policy

11. There are several problems today, which require the Commission to consider updating the existing rules and practice of state aid policy.
12. A first range of problems relate to the Lisbon Strategy. As was clearly expressed by the European Council of November 2004, there is a need for **renewed impetus** to the so-called **Lisbon Strategy**. In line with the integrated approach to competitiveness, the Communication from the Commission on “A pro-active Competition Policy for a Competitive Europe” has made it clear that State aid policy can contribute to the Lisbon objectives by avoiding distortions of competition while allowing aid to horizontal measures (as opposed to sectoral measures) which address market failures. Progress has been made to reduce state aid, as can be seen from figure 1, but more can be done.



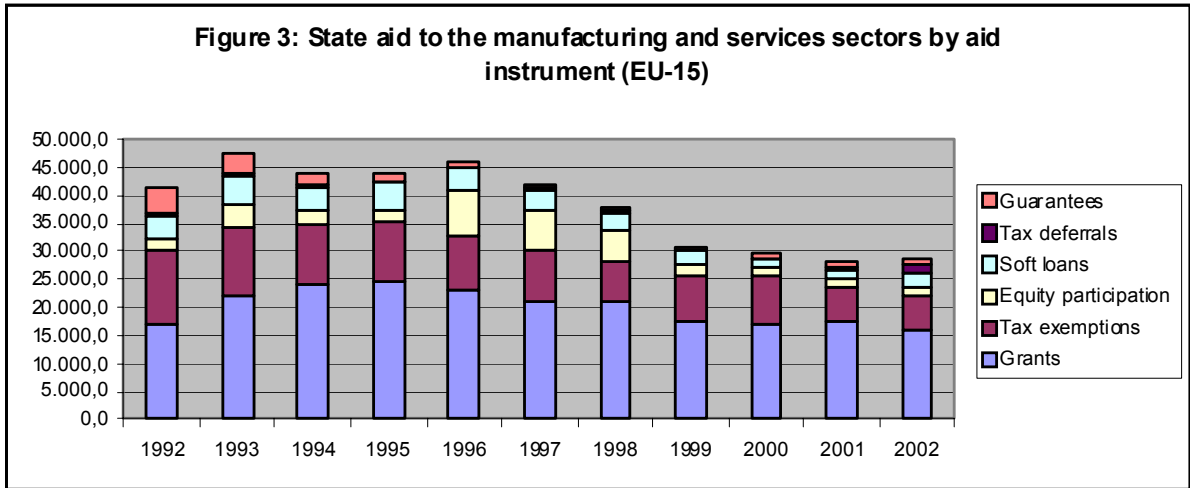
13. Also, experience shows that there is scope for further improvement to **facilitate the reorientation** of state aid. First, there has been criticism that the current rules do not sufficiently allow Member States to develop aid measures in favour of the Lisbon objectives and notably enterprise and innovation. It can indeed be difficult to design and administer aid schemes that contribute directly to Community objectives, although the schemes have only a very limited effect on competition between Member States. As can be seen from figure 2, even though progress has been made over time in terms of reducing the aid and re-orienting it towards horizontal objectives, the Union is still giving much aid for other purposes than horizontal objectives. This is particularly true of some Member States.

Figure 2: Trend in State aid to horizontal objectives (as % of total aid less agriculture, fisheries and transport)

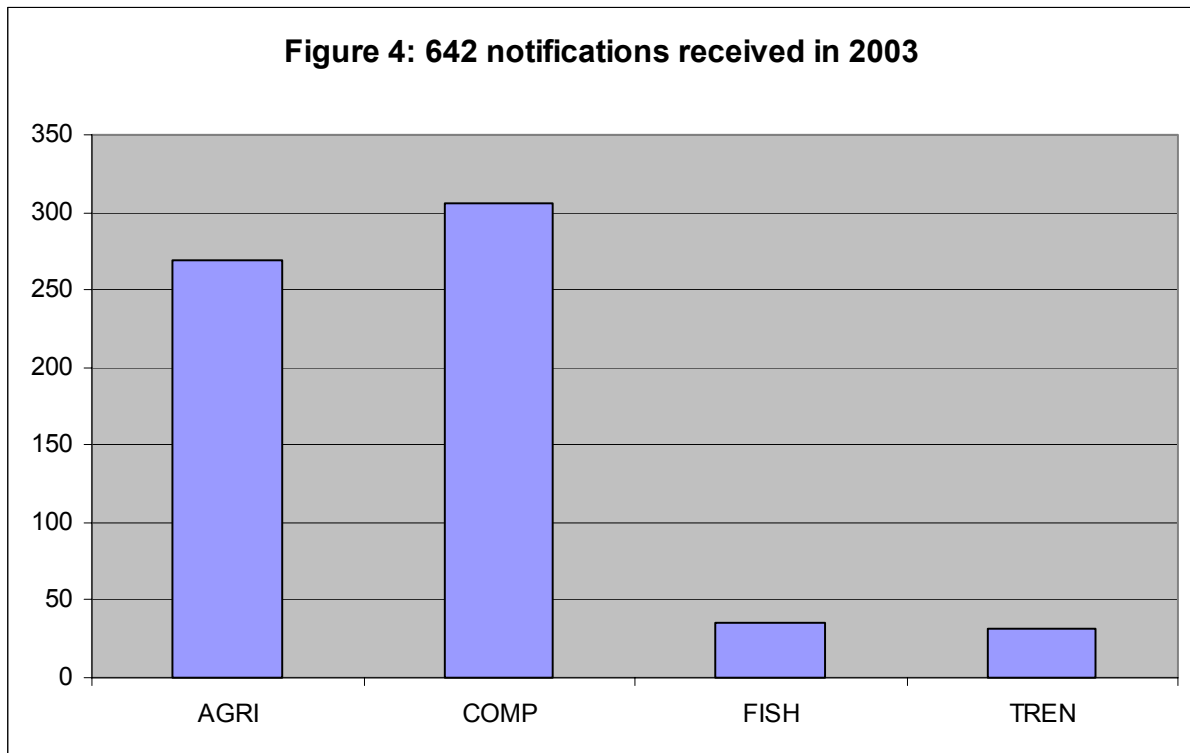


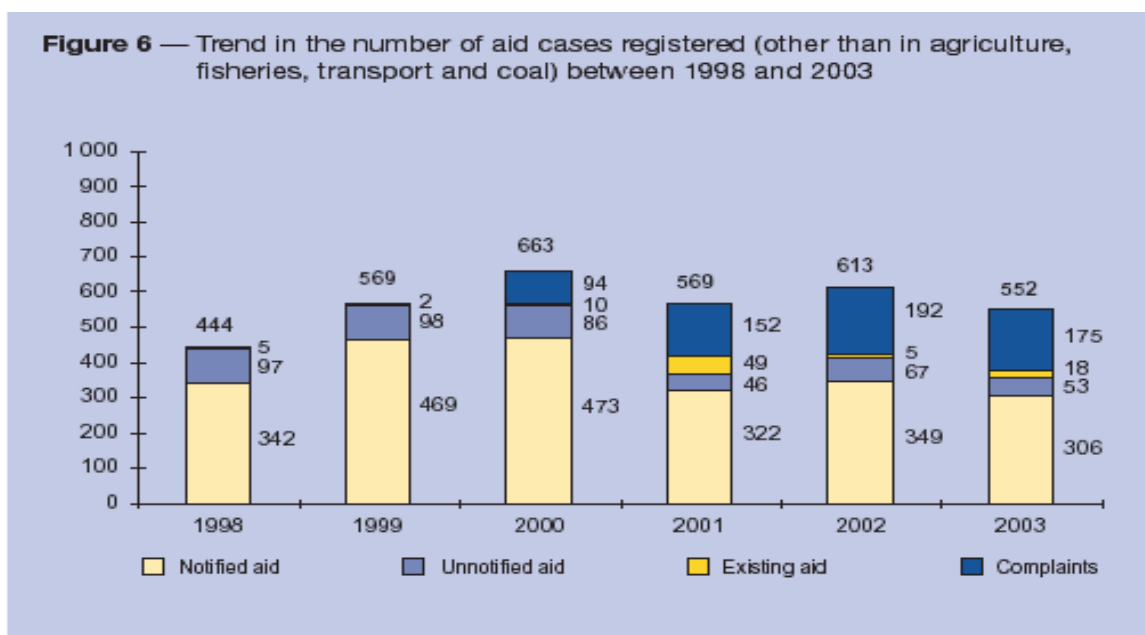
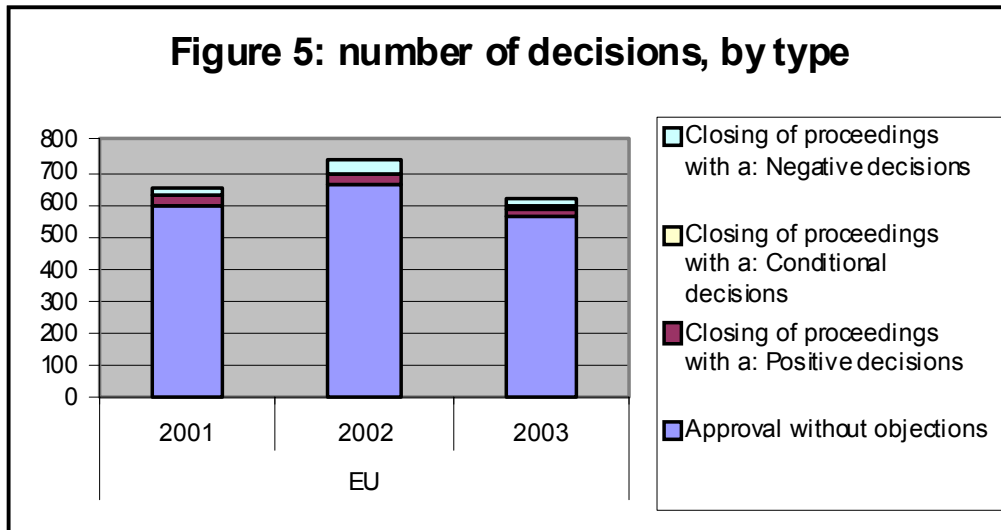
14. Second, there has been criticism that the current rules are out of touch with economic realities and that they are not sufficiently based on economic analysis. Under the current rules, the Commission has little possibility to give priority to those cases which do seriously threaten to distort competition, since it must thoroughly examine all cases no matter how insignificant their effect might be. The academic literature on state aid has also underlined this issue<sup>1</sup>.
15. The design and administration of aid schemes which have only a very limited effect on competition between Member States is subject to the same constraints that were conceived for aid with greater distortive effects. Figure 3 shows disparities in the types of instruments used by Member States, which should lead to differentiated assessments.

<sup>1</sup> See e.g. Besley and Seabright (1998); Nikolaidis (2002)



16. Figures 4, 5 and 6 give indications of the important workload for the Commission related to notifications. The historical trend shows that the block exemption regulations, introduced in 2001 have had a positive effect on the notification numbers, even though the trend is further upward, in the EU-15.





17. A second range of challenges come from **enlargement**. The enlargement in 2004 was unprecedented in size and has led to changes in the income distribution in the Union. This requires adaptations for state aid policy and strengthening of the tools of economic analysis necessary for carrying impact assessment studies. It also reinforces the need for better governance to ensure an effective control in twenty-five Member States. This new dimension will need to be duly taken in consideration when revising the existing state aid rules and procedures, and will be integrated in the Commission's analytical reporting in the context of the State Aid Scoreboard.
18. A third range of problems relate to the **inefficiency** within the Commission and Member States of the administration and enforcement of state aid. For instance, the duration for the Commission's decision-making process has not always been satisfactory, due to the requirements of the procedure and to the difficulty in conducting investigations and to collaborate with Member States. There is also a need to increase the task of Member States concerning the enforcement of State aid

rules, in order to enable the Commission to focus its actions on the most distortive aid. Recovery of illegal aid is not satisfactory either.

19. Of the € 9.7 billion of aid to be recovered under decisions adopted since 2000, some € 3.1 billion (including interest) had been effectively recovered by 31/12/2004. This represents 25% of the total amount to be recovered:

**Figure 7: Recovery of illegal aid**

	Date of the Decision					
	2000	2001	2002	2003	2004	Total
Nr of decisions for which the aid amount is known	15	12	17	8	17	69
Total aid to be recovered (million €)	361.6	1827.5	1577	1115.3	4822.2	9703.6
Aid already recovered (million €)	17.1	797.8	921.9	1227.4	144.5	3108.7
Of which:						
(a) Principal reimbursed/in blocked account	17.1	797.8	586.4	892.4	84.3	2378.0
(b) Aid lost in bankruptcy			1.2			1.2
(c) Recovery interest paid			335.5	335	60.2	731.7
Amount outstanding	344.5	1029.7	989.4	222.9	4737.9	7324.4
% still pending to be recovered	95.3%	56.3%	62.7%	20.0%	98.3%	75.5%

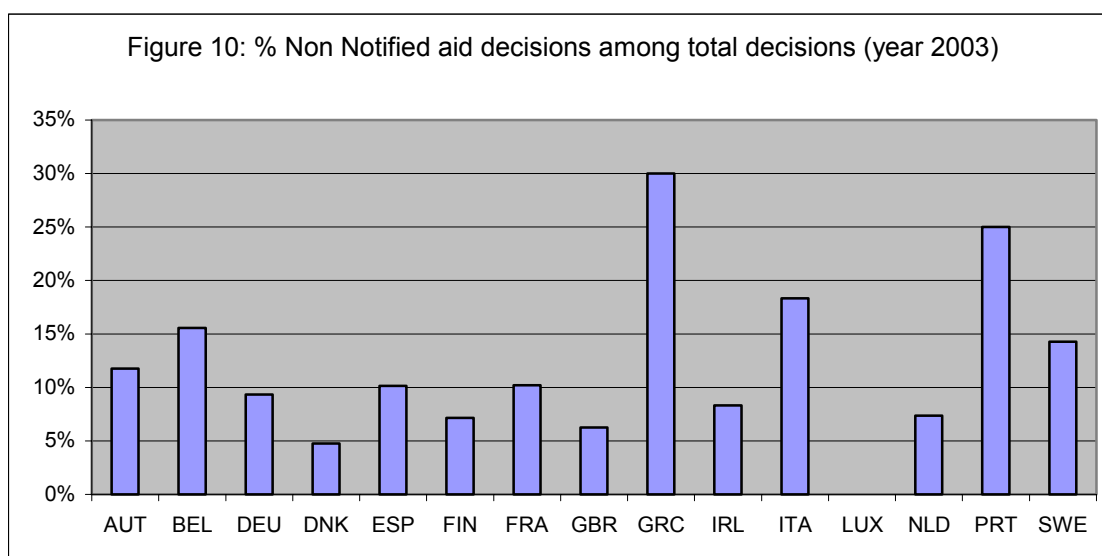
20. Besides, **the increasing complexity and number of documents** progressively adopted by the Commission over time have created a need to streamline state aid policy and to make it more predictable and user-friendly, thereby minimising legal uncertainty and the administrative burden both for the Commission and for Member States. The following table shows the rapid development of many texts over the years:

**Figure 8: increasing complexity in the state aid rules**

1999	Procedural regulation 659/1999; rescue & restructuring guidelines
2000	Guarantee notice
2001	De minimis; training BER; SME BER; amendment export-credit insurance; environmental guidelines; risk capital; stranded costs; broadcasting
2002	MSF; employment BER; Rescue and restructuring aid and closure aid for the steel sector
2003	Cinematographic & audiovisual; complaints form; professional secrecy; shipbuilding framework
2004	Implementing regulation; rescue & restructuring guidelines; R&D BER



21. Finally, the **general knowledge and expertise** about state aid as well as **transparency and proper enforcement are insufficient**. Notification of state aid is not sufficiently systematic, in part due to a lack of publicity, knowledge and transparency of the state aid rules, notably at national and local levels. Figure 9 illustrates that the Commission routinely identifies state aid cases that have not been notified and represent more than 10% of the total decisions. The actual number may therefore be sensibly higher, given the limited ability of the Commission to scrutinise in detail all public accounts to identify non-notified aid. In addition, the risks involved with not notifying State aids are limited. The Courts have consistently held that the infringement by the Member States of the obligation provided for in Article 88(3) of Treaty to notify the Commission of projected aid and not to implement any such aid prior to the Commission's final decision does not have the effect of rendering those measures automatically incompatible with the common market. The possible incompatibility of aid measures with the common market may be established therefore only after completion of the examination procedure provided for in Article 88, which is for the Commission to implement, and cannot be an automatic consequence of the omission by the Member State concerned to notify the measure in question. Only national judges can infer the necessary consequences from the non-respect of the standstill obligation. There is thus a need to increase transparency and advocacy about state aid policy to allow undertakings, the academic world, judges, competition specialists as well as the broader public to get involved and act against incompatible aid, in particular before national judges.



## B. Risks inherent to the initial situation

22. There is a risk that Member States will find it increasingly difficult to understand state aid policy which can lead to illegal aid and a failure to contribute to the Lisbon Strategy by not providing the instruments needed. The mid-term review of the Lisbon Strategy makes it clear that
23. There is also a risk that Member States and more generally European citizens will become reluctant to adhere to the community state aid policy, if they perceive it as being out of touch with reality and as slowing down growth and job creation.

24. Finally, there is a risk that the Commission fails in fulfilling its mission of controlling state aid in a satisfactory manner, by being unable to focus its work and by being consequently incapable of managing a great number of cases with limited resources.

### **C. Stakeholders affected**

25. State aid policy affects a number of stakeholders; however this Action Plan will have no immediate effect. In the longer term the reform will affect **Member States** and any government authority granting state aid to firms, **firms receiving aid**, their **competitors** and **employees**. Furthermore, special consideration is taken of the **size of the beneficiary** (e.g. SMEs) and firms in **assisted regions**.
26. Consumers may be affected, in general through the benefits of preserved competition in generating new products and services at lower prices and through the specific benefits related to culture and heritage, more environmentally-friendly production processes, more innovative products and the preservation of economic activity in deprived regions, as well as services of general economic interest.
27. Finally, **citizens** may be affected through the promotion of sustainable growth, employment and environmental protection and as tax-payers.

## **II. WHAT MAIN OBJECTIVE IS THE POLICY/PROPOSAL EXPECTED TO REACH?**

### **A. The underlying needs**

28. Ensuring undistorted competition and a well functioning internal market are key factors which contribute to **competitiveness** and growth in the European Union. In the light of the Stockholm and Barcelona European Councils which called on Member States to continue to reduce State aid as a percentage of GDP while redirecting it towards more horizontal objectives of common interest. This lies also in the line of the Lisbon conclusions aiming at increasing the competitiveness of the European economy.
29. In addition, in the enlarged European Union, the Commission needs to be equipped with the best possible instruments to assure State aid discipline and avoidance of distortion in a Community with 25 Member States.
30. Better governance is a general aim of the Commission's work and state aid policy should be improved as much as possible in that respect.
31. Finally, state aid rules must be updated periodically to take into account various economic and legal developments.

### **B. What is the overall policy objective in terms of expected impacts?**

32. The overall objective is to modernise state aid policy by designing new rules and practice responding to the shortcomings identified above and which:
- a. make it possible to contribute to the Lisbon Strategy, through a policy of less and better targeted state aid;

- b. are based on more economic analysis;
  - c. make it possible for the Commission to focus its resources on the cases that really matter at Community level;
  - d. take into account enlargement;
  - e. simplify the rules and reduces the administrative burden for Member States and the Commission;
  - f. call for more involvement of Member States in enforcing the rules effectively.
33. In this context, as also confirmed by the Court in the Matra-decision (C-225/91), also other Community objectives laid down in the Treaty must in principle be taken into account. Reference can be made in particular to the principles and activities laid down in Articles 2 and 3 EC.

### **III. WHAT ARE THE MAIN POLICY OPTIONS AVAILABLE TO REACH THE OBJECTIVE?**

#### **A. WHAT IS THE BASIC APPROACH TO REACH THE OBJECTIVE?**

34. The basic approach retained in the Action Plan is to consider the entirety of state aid policy and to try to review the instruments on the basis of clear principles, grounded in economics and good governance. This includes not only substance but also procedures and practice. The action plan is a comprehensive and systematic analysis and review of the existing rules and practice over a five year period, so that the various documents fit together, are consistent with the objectives aimed for and can accommodate a satisfactory consultation process.
35. Initially, the following options have been considered:
- Option a: maintain the existing legal documents and only have limited adjustments
  - Option b: modify the existing legal documents when each one reaches its end of validity date
  - Option c: systematically review the existing legal documents over a five-year period, and have a global approach to update all rules with consistent principles

#### **B. Which policy instruments, designs and stringency levels have been considered?**

36. **Innovation and R&D:** in 2005, the Commission envisages adopting a Communication on state aid and innovation which will analyse the need and the potential to adapt existing rules in order to achieve a more innovation-friendly system. In addition, the Commission will modify the Community Framework for Research and Development.
37. **Creating a better business climate:** the Commission will review the Communication on risk capital. The aim of the review will be to further stimulate

investment in the form of risk capital, in particular in favour of start-ups and young, innovative SMEs, where this can properly address identified market failures.

38. Services of General Economic Interest (SGEI): the Commission will adopt a package of four texts to provide more guidance on this principle of proper compensation. The first text will be a document explaining under which conditions public service compensation may constitute state aid within the meaning of Article 87.1 of the treaty. Two other texts will consist in a Decision on the basis of Article 86.3, and in guidelines, in which the Commission will specify under which conditions public service compensations which constitute state aid are compatible with the Treaty. The Commission Decision would grant an exemption of notification for small scale compensations. Special conditions should also apply to hospitals and social housing companies. Finally, the Commission will modify the transparency directive.
39. Simplification **and consolidation**: To ensure better governance and facilitate the granting of aid, which is clearly compatible with the Treaty, the Commission will issue a general block exemption regulation to exempt certain categories of aid from the obligation to notify to the Commission.
40. Focused cohesion **policy through new regional guidelines**: Cohesion policy, notably due to enlargement, has to be overhauled and the Commission will accordingly also review the Community guidelines on regional aid (or 'RAG') and integrate the Multisectoral Framework on regional aid for large investment projects in the guidelines.
41. Environmentally **sustainable future**: The Commission guidelines on state aid for environmental protection are applicable until 2007. In 2005, the Commission will start reflecting on ways and means to better address the challenges and opportunities that sustainable development creates, as potential of sustainable development set out in the Lisbon and Sustainable Development Strategy, especially with the aim of ensuring a full internalisation of environmental costs.
42. Obviously, the above are orientations only which may still be adjusted in the light of the normal consultation procedures during the adoption process.

### **C. What are the trade-offs associated with the proposed broad option?**

43. The proposed option is a more systematic and comprehensive reform plan than the other possible options. Trade-offs associated with the proposed option relate to receiving much opposition, to the amount of work needed and to the need to have a complete overview of the process.
44. By addressing the entirety of state aid policy, it may raise more issues and opposition than if each instrument was revised separately. However, the reform is staged in three steps and offers the possibility to better design the various building blocks of state aid policy in a concerted and coherent manner. It is better to have a process of consultation on the whole reform, in order to really improve the rules, rather than having a piecemeal approach, in order to create a momentum among stakeholders in favour of less and better targeted aid. In any case, starting a consultation process does not mean making the proposals compulsory: if some of the proposals appear inappropriate or undesirable, the Commission will have possibilities not to make any

change or to make things differently at the level of individual instruments. Finally, it is actually a better negotiation position towards Member States to present a global package and having possibilities to trade-off positive and negative consequences of changes at the level of individual rules.

45. The additional work implied by the proposed option (notably important revisions in the first period) will be more than recouped later in the process, because the new rules will lead to extend the scope of block exemptions, clarify the conditions for compatibility, improve the enforcement by Member States and speed up the management of cases. The proposed option will lead to better targeting of state aid towards the objectives of the Lisbon Strategy and will reduce the administrative burden.
46. Finally, the need to follow the totality of the instruments is a permanent requirement, not only in times of reform, but at any time. The fact that the reform will be conducted in a precise time frame makes it to the contrary possible to have a clear picture of the process and to keep contacts tightly with the stakeholders involved. In addition, since the same underlying principles ought to apply all through the process, it should be possible to achieve coherence from within the rules too.

**D. Which options have been discarded at an early stage?**

47. Option a and b have been discarded because they fail to respond to the current challenges for state aid policy.
48. Option a ('do nothing') goes against the expressed willingness of the Commission to act now and decisively in favour of the Lisbon Strategy. Among other things, it fails to solve the current shortcomings with the lack of prioritization of state aid policy, all the more after enlargement.
49. State aid policy is currently faced with a number of new challenges while its current rules have significant shortcomings, as has been shown above. If nothing is done to simplify the rules, to increase their consistency and the economic underpinnings of state aid analysis, it will not be possible for the Commission to satisfactorily fulfil its obligations in front of the Treaty and to deliver expected results for the European economy.
50. As shown above (figure 6), the number of aid cases (notifications, existing aid cases, non notified cases and complaints), despite the implementation of block exemptions, remains very high and will increase as a direct consequence of enlargement<sup>2</sup>. In front of increased workload, without new resources and with the legal obligations to investigate cases no matter their economic significance, there is a risk that the Commission will be unable to deliver rapid state aid decision-making, thus slowing down the efficacy of state aid measures. This present shortcoming has been identified already. A solution to develop a new horizontal instrument (cf. Significant Impact Test) to remedy the problem has however not been adopted by the Commission. Not doing anything will maintain the problem.

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<sup>2</sup> On the basis of the number of aid cases the additional a trend is about +20%

51. In addition, not trying to improve the existing rules of state aid will fail to make a necessary contribution to the Lisbon Strategy. As shown above (figures 1 and 2), there is some scope for improvement in the Union to reduce and better target aid. Other instruments than state aid can in some cases remedy market failures better, without distorting competition and thus lead to less and better targeted aid. The current rules ought to be improved to facilitate the state aid measures that contribute to these objectives and to reduce the administrative burden on Member States in that respect. Too often, guidelines and exemptions are perceived as cumbersome and as overlapping. Increased simplification and flexibility is needed. New state aid rules could contribute to more flexibility in favour of measures contributing to sustainable growth, employment and environmental protection; they could also improve the administrative process. The option of not changing the rules will not respond to these needs.
52. Option b ('change when necessary') would not allow for a global approach for state aid policy. As explained above, state aid rules must be adapted to economic, legal and institutional developments and have for that reason a limited validity over time. The option of only changing the rules when they lapse would make it difficult to have a global approach, since the individual changes would be more self-referential and since the timing of the change would not be under control. Looking at changes from the perspective of individual instruments make it more difficult to relate instruments between them and to have an overview of the links between the changes proposed. The risk is that one change that may be totally adequate from the point of view of one specific rule actually has negative consequences for other instruments. Typically, this may result in inconsistencies, conflicting rules and excessive complexity – problems that have been actually identified in the current rules.
53. This issue of ensuring coherence and maintaining a consistent global approach is very important when looking more specifically at the expected content of the changes to come. This can be illustrated in the case of regional aid, which in agreement with the principles of the Third Cohesion Report, should aim at targeting better the regions that can receive regional aid. Consequently, the suggestion was made that for instance regional aid in terms of investment aid to large companies could mainly be centred on the least developed regions.
54. If only the regional aid guidelines were revised, without a global approach, it would be difficult to convey positively the political intentions of the Commission. Only through a global message of less and better targeted state aid can it become clear that restrictions under one aid instrument can be compensated through additional flexibility in other instruments. In this case of regional aid, the global approach shows that Member States will be able – even if through other instruments than regional aid - to discriminate the allocation of state aid in their territories in favour of some areas, and therefore that they will keep their ability to pursue regional aims at a national level. For regional aid guidelines, just like for other rules and procedures, not presenting a global policy approach could stop progress in improving state aid instruments. It could blur the political case in favour of a policy, which is together more focused and more flexible to better target the objectives of the Lisbon Strategy.
55. In addition, a global approach offers the possibility to argue the political case in an informed manner, and to provide useful economic analysis to explain the proposals. This would be much more difficult with a piecemeal approach that looks at one

instrument after the other, without trying to convey the political meaning of state aid policy and without trying to justify it through economic analysis. A global approach offers the possibility to put forward the general principles that guide state aid policy and to consult stakeholders on this.

56. Finally, changing the rules when they lapse does not improve the workload of the reform process substantially, since the revision has to take place anyway. It is not either much better in terms of workload, since a number of legal documents expire anyway before end 2006 (see annex I). In fact, not having a global approach on documents to be revised around the same period only makes it more difficult to coordinate and increases the risks of perpetuating the problems associated with excessive complexity, lack of coherence and insufficient economic analysis.

**E. How are subsidiarity and proportionality taken into account?**

57. Subsidiarity does nearly not play in the field of State aid control. State aid does per definition affect trade between Member States and pursuant to the Treaty, nearly exclusive competence for State aid control rests with the Commission.

58. However, that does not prevent Member States from having an important role. Member States are responsible for deciding how and why to grant aid and to whom. They remain largely responsible for the application of the block exemptions and notification requirements and for the correct enforcement of state aid rules. Indeed, the application and monitoring of block exempted aid could be considered as a form of subsidiarity. Therefore, the Action Plan clearly indicates that the improvement of state aid policy requires goodwill from Member States.

59. As regards proportionality, the whole of State aid discipline hinges on finding the right balance between distortion of competition, positive effects brought about by the aid and the introduction of necessary control measures without overburdening Member States and businesses. The piecemeal approach in reforming State aid, with extensive consultation processes, in particular through multilateral meetings or discussions in advisory committees, should contribute in achieving this aim.

**IV. WHAT ARE THE IMPACTS – POSITIVE AND NEGATIVE – EXPECTED FROM THE DIFFERENT OPTIONS IDENTIFIED?**

**A. Expected impacts of the options selected**

60. 1. Expected impacts from the reform of state aid policy are that this policy better contribute to competitiveness, sustainable development and employment and that it is administered better, more efficiently and with increased transparency and advocacy among stakeholders.

**B. Expected impacts on specific groups**

61. 1. The State Aid Action Plan is only a consultation document, so it will not have a direct impact as such. However, the improvement of the state aid rules and practice envisaged by the Action Plan should have positive impacts on specific groups.

62. Member States should benefit from greater clarity and reduced administrative burden. They should also have additional responsibility in terms of transparency and due enforcement. National judges may be implicated more than today, e.g. if more stakeholders become aware of their rights in front of national courts as regards illegal aid.
63. Firms receiving aid, their competitors and employees, as well as regions will benefit from the increased transparency of the rules and of the principles requiring to clearly establishing what market failures and/or cohesion objectives are targeted by the aid measure. This will mean greater discipline in general and more focus towards measures that support sustainable growth and employment.
64. Consumers may be affected, in general through the benefits of preserved competition in generating new products and services at lower prices and through the specific benefits related to culture and heritage, more environmentally-friendly production processes, more innovative products and the preservation of economic activity in deprived regions, as well as services of general economic interest. Finally, citizens may be affected through the promotion of sustainable growth and employment and as tax-payers.

### **C. Impact over time**

65. To the extent that the Action Plan will contribute to better functioning markets and stronger competition the long term potential growth will increase. Furthermore, the growth will be sustainable, since the production is expected to become more efficient. This will improve the structure of the economy as market failures will be corrected in a better way.

## **V. HOW TO MONITOR AND EVALUATE THE RESULTS AND IMPACTS OF THE PROPOSAL AFTER IMPLEMENTATION?**

### **A. How will the policy be implemented and monitored?**

66. The State Aid Action Plan outlines the possible changes that will take place in the next years in the field of state aid policy. It does not lead to any direct change in the rules and practice of state aid. The proposals put forward in the document will be submitted to consultation before each individual initiative is implemented.
67. The scoreboard and annual reports on competition policy try to analyse on a regular basis the main trends in the fields of state aid on the basis of past experience. The action plan foresees a period of evaluation on the results of the reform after 2009. The same indicators will be used as currently applied for the preparation of the scoreboard (see [http://europa.eu.int/comm/competition/state\\_aid/scoreboard/](http://europa.eu.int/comm/competition/state_aid/scoreboard/) for a detailed explanation).

## **VI. STAKEHOLDER CONSULTATION**

68. The State Aid Action Plan is the result of a broad reflection within DG Competition and of previous unsuccessful attempts to improve the rules and practice of state aid.



The very purpose of the Action Plan is however the consultation of the stakeholders concerned.

69. The shortcomings of state aid policy have been identified some time ago. For instance, Mr Schaub, then General Director of the Competition DG, decided already in 2001 to establish a working group to formulate initial proposals on the modernisation and simplification of State aid. A report was produced in 2002 in that respect and a few proposals were then put into practice (e.g. in the implementing regulation or in the creation of an enforcement unit in DG COMP).
70. In 2003, DG COMP put forward some proposals in order to improve the prioritisation of state aid policy, through a *significant impact test*. DG Competition has consulted other services and Member States and comments have been taken into account to the largest possible extent. More specifically, on 17 October 2003 (ref D/56595) an inter service consultation on two Communications, LASA and LET was launched and at the “réunion bimensuelle des chefs de cabinet” on 20 November 2003, a summary was circulated and the drafts were presented to the other Cabinets. On 4 February 2004 the Commission services had a multilateral meeting with experts of the Member States about the LASA/LET Communications. Subsequently, the two Communications were merged and a second inter service consultation was launched on 12 May 2004 and a discussion was held in the “réunion bimensuelle des chefs de cabinet” on 1 July 2004. Other stakeholders also communicated their views on these texts, and notably the industry.
71. While there was a generally positive reaction in favour of an instrument allowing Member States more flexibility to design and implement aid measures, which do not pose significant risks to trade and competition, it appeared that the proposals under LASA/LET were not a viable option for the Commission, notably due to legal uncertainty in their implementation.
72. The result of this general consultation process was nevertheless that state aid policy ought to be reformed and modernised, even though this should be done through another policy avenue than LASA/LET.
73. In addition, it is worth underlining that the review of each individual instrument will be based on specific studies/preparatory work, and consultations.

## **VII. COMMISSION DRAFT PROPOSAL AND JUSTIFICATION**

### **A. What is the final policy choice and why?**

74. Option c (systematically review the existing legal documents over a five-year period, and have a global approach to update all rules with consistent principles) is the final policy choice, because it is the best suited to deliver the desired objective of modernising state aid policy.

### **B. Why was a more/less ambitious option not chosen?**

75. See under point 3.4

76. Option a ('do nothing') goes against the expressed willingness of the Commission to act now and decisively in favour of the Lisbon Strategy. Among other things, it fails to solve the current shortcomings with the lack of prioritization of state aid policy, all the more after enlargement. Option b ('change when necessary') would not allow for a global approach for state aid policy and would risk perpetuating the problems associated with excessive complexity, lack of coherence and insufficient economic analysis. It is not either much better in terms of workload.

**C. Which are the trade-offs associated to the chosen option?**

77. See under point 3.3

**D. If current data or knowledge are of poor quality, why should a decision be taken now rather than be put off until better information is available?**

78. The reform is based on years of experience within the field of state aid and more in depth analysis will be made before the individual proposals on legal instruments will be launched. Since, the legal validity of state aid rules is limited in time, it is necessary to actively take decisions on whether rules shall elapse, be prolonged or changed. In addition, the timing for a State Aid Action Plan is opportune, at the beginning of the Commission's mandate and at the time of the mid-term review of the Lisbon Strategy. Therefore, in the current context to put off a comprehensive review does not appear to be a realistic option.

**E. Have any accompanying measures to maximize positive impacts and minimize negative impacts been taken?**

79. Not applicable: The State Aid Action Plan is a consultation document.

## ANNEX I: OVERVIEW OF THE APPLICABLE RULES AND LEGAL VALIDITY

Applicable rules	Legal validity
<b>GENERAL PROCEDURAL RULES</b>	
Council Regulation 659/1999 (2 additional texts)	
Commission Regulation 794/2004 implementing Council Regulation (EC) No 659/1999	Review before 20 May 2008
<b>DE MINIMIS, ENABLING AND BLOCK EXEMPTION</b>	
Regulation 69/2001 “de minimis aid” Regulation 68/2001 “training aid” (+ regulation 363/2004) Regulation 70/2001 “SME’s” (+ regulation 364/2004 extension to R & D) Regulation 2204/2002 “employment” (+ corrigendum)	Texts remaining in force until 31 December 2006
Regulation 994/98 “horizontal State aid”	
<b>HORIZONTAL RULES</b>	
<u>Community framework “Research and Development”</u> (+ 4 texts prolonging the validity)	Valid until 31 December 2005
Environmental guidelines	Text remaining in force until 31 December 2007
Risk capital communication	Text applicable until 20 August 2006
Restructuring guidelines (+ 2 texts)	Application until 9 October 2009
Communication SIEG	
Guidelines on national regional aid (5 texts)	Review before end of 2006
Multisectoral framework on regional aid for large investment projects (2 texts)	- Applicable until the end of 2009 - Adoption of list of sectors having structural difficulties before 31 March 2006, if considered necessary - Application of transitional rules for synthetic fibres until 31 December 2006
<b>SECTOR SPECIFIC TEXTS</b>	
Notice “postal services”	Global evaluation of the sector in due time

Communication “public service broadcasting”	
Communications “cinematographic and other audiovisual production” (2 texts)	Compatibility criteria for aid to cinema and TV programme production valid until 30 June 2007
Stranded costs communication	
Framework on shipbuilding	Applicable until 31 December 2006
Shipbuilding regulation No 1177/2002	Valid until 31 March 2005
Communication for the steel sector	Application until 31 December 2009
<b>COMMUNICATIONS/NOTICES ON CALCULATION, FORM OF AID etc...</b>	
Reference/discount rates and recovery interest rates (6 texts)	
Assessment of unlawful State aid	
Professional secrecy in State aid decisions	
Cooperation between national courts and the Commission	
Government Capital Injections	
Transparency texts: 4 texts + communication “public undertakings in the manufacturing sector”	Review of the application of the communication after 13.11.1998
Guarantees Notice	
Communication “land sales by public authorities”	
Communication “short-term export- credit insurance” (2 texts)	In force until 1 <sup>st</sup> January 2005
Direct business taxation notice	Review of application of the notice : 9 December 2000
<b>TEXTS ON AGRICULTURE</b>	
Regulation 1/2004 “SME active in agriculture”	Applicable until 31/2006
Community guidelines for state aid in the agriculture sector – to be applied during ongoing programming period (ending 2006)	