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## **REPORT**

on the 2001 scoreboard for State aid (spring 2002 update)  
(2002/2196(INI))

Committee on Economic and Monetary Affairs

Rapporteur: Philippe A.R. Herzog



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## PROCEDURAL PAGE

At the sitting of 10 October 2002 the President of Parliament announced that the Committee on Economic and Monetary Affairs has been authorised to draw up an own-initiative report, pursuant to Rule 163 of the Rules of Procedure, on the 2001 scoreboard for State aid (spring 2002 update) and the Committee on Industry, External Trade, Research and Energy to table an opinion.

The Committee on Economic and Monetary Affairs had appointed Philippe A.R. Herzog rapporteur at its meeting of 21 November 2001.

The committee considered the draft report at its meetings of 10 July 2002, 26 August 2002, 7 October and 8 October 2002.

At the latter meeting it adopted the motion for a resolution by 20 votes to 10, with 1 abstention.

The following were present for the vote: Christa Randzio-Plath, chairwoman; José Manuel García-Margallo y Marfil, vice-chairman; Philippe A.R. Herzog, vice-chairman and rapporteur; Luis Berenguer Fuster (for Fernando Pérez Royo), Hans Blokland, Armonia Bordes, Hans Udo Bullmann, Richard Corbett (for Peter William Skinner), Den Dover (for Theresa Villiers (pursuant to Rule 153(2))), Carles-Alfred Gasòliba i Böhm, Robert Goebbels, Mary Honeyball, Christopher Huhne, Othmar Karas, Giorgos Katiforis, Werner Langen (for Christoph Werner Konrad), Alain Lipietz, Astrid Lulling, Ioannis Marinos, Helmuth Markov (for Ioannis Patakis), David W. Martin, Miquel Mayol i Raynal, Barbara O'Toole (for a full member to be nominated), Paolo Pastorelli (for Generoso Andria, pursuant to Rule 153(2)), Bernhard Rapkay, Amalia Sartori (for Jonathan Evans, pursuant to Rule 153(2)), Olle Schmidt, Helena Torres Marques, Bruno Trentin, Jaime Valdivielso de Cué (for Mónica Ridruejo) and Ieke van den Burg (for Pervenche Berès).

The opinion of the Committee on Industry, External Trade, Research and Energy is attached.

The report was tabled on 10 October 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## MOTION FOR A RESOLUTION

### European Parliament resolution on the 2001 scoreboard for State aid (spring 2002 update) (2002/2196(INI))

*The European Parliament,*

- having regard to the 2001 scoreboard for State aid (as updated in spring 2002) (COM(2002) 242),
- having regard to the report from the Commission on the application of the Community rules for state aid to the coal industry in 2001 (COM(2002) 176),
- having regard to the report from the Commission on the implementation in 2001 of Commission Decision no 2496/96/ECSC establishing Community rules for State aid to the steel industry (Steel Aid Code) (COM(2002) 145),
- having regard to the report from the Commission on the status of work on the guidelines for state aid and services of general economic interest (COM(2002) 280),
- having regard to the 2001 scoreboard for State aid (as updated in autumn 2001) (COM(2002) 782),
- having regard to the Commission's 31<sup>st</sup> report on competition policy 2001 (SEC(2002) 462),
- having regard to its resolution of 11 April 2002 on the Communication from the Commission to the Council and Parliament on the implementation of the action plan on investment capital<sup>1</sup>,
- having regard to its resolution of 4 September 2002 on the proposal for a Commission regulation on the application of Articles 87 and 88 of the EC Treaty to State aid to employment<sup>2</sup>,
- having regard to its resolution of 6 February 2002 on the Commission's 9<sup>th</sup> report on State aid in the European Union<sup>3</sup>,
- having regard to its resolution of 13 November 2001 on the communication from the Commission on services of general interest in Europe<sup>4</sup>,
- having regard to the conclusions of the Barcelona European Council of 15 and 16 March 2002,
- having regard to the communication from the Commission to the Council and the European Parliament 'Productivity: the Key to Competitiveness of European Economies and Enterprises' (COM(2002) 262)<sup>5</sup>,

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<sup>1</sup> P5\_TA(2002)0181.

<sup>2</sup> P5\_TA(2002)0401.

<sup>3</sup> P5\_TA(2002)0045.

<sup>4</sup> OJ C 140E, 13.06.2002, p. 153.

<sup>5</sup> OJ not yet published.

- having regard to Articles 16, 86, 87, 88 and 89 of the EC Treaty,
  - having regard to Rule 163 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Industry, External Trade, Research and Energy (A5-0353/2002),
- A. whereas State aid policy is based on Articles 87-89 of the Treaties, the Council regulations of 1998 and 1999, the Commission's guidelines and case law,
  - B. whereas the Stockholm and Barcelona Councils undertook to reduce aid and refocus it on horizontal objectives of common interest,
  - C. whereas the half-yearly publication of the Scoreboard since 2001 is a precious tool with a view to transparency and debate,
  - D. whereas the key data in the May 2002 Scoreboard are as follows: major disparities between States (ranging from 0.46% of GDP in the United Kingdom to 1.44% in Finland), a general fall of 21% between 1996-1998 and 1998-2000, which is however unequal (11 countries out of 15), with tax exemptions representing 25% of the total, a decline in regional aid, and an average rise from 25% to 38% in 'horizontal' aid,
1. Observes that State aid policy forms part of competition policy but must also comply with other objectives of the EU, particularly competitiveness, growth and employment in the Lisbon strategy and cohesion;
  2. Supports the objectives of reducing aid granted by states or from state funds, in any form whatsoever, which distorts or threatens to distort competition, by favouring particular companies or products;
  3. Continues to support the EU aid-law objective of guaranteeing fair competition within the European Union, and consequently rejects outright any form of subsidies free-for-all;
  4. Appreciates the fact that the Scoreboard provides for detailed analysis of national situations, but considers it desirable to include those data necessary to enable comparisons to be made between the behaviour of different countries;
  5. Regrets the lack of evaluation of the effectiveness of aid in the light of the objectives;
  6. Considers that the figures and analyses provided in the state aids Scoreboard drawn up by the Commission are not sufficient to make an assessment of the results produced by state aids. Accordingly, calls on the Commission to draw up an analysis of the development of state aids that will make it possible to assess the results obtained;
  7. Calls on States to undertake such an evaluation and to improve the quality and comparability of the data and publish the reports they have submitted to the Commission, and calls for good practices to be identified;
  8. Hopes that cooperation between the Commission and States will be stepped up, in order for aid to employment to be compared and evaluated in the context of coordination of national

employment policies;

9. Notes that States differ considerably in their definition and use of regional aid, and calls for statistical work to be carried out which will make it possible to present total amounts of national and Community aid per inhabitant in the various regions, enabling these figures to be compared and cohesion sought;
10. Considers that, following the call made by the Barcelona European Council asking Member States to redirect state aid towards horizontal objectives of Community interest, it is vital to refine the concept of Community interest in accordance with criteria based not solely on the proportion of 'horizontal aid', as it is necessary to evaluate the actual impact of this, but also on certain sectoral aid;
11. Agrees with the Commission that the horizontal priorities are R&D, the environment, SMEs, training and employment;
12. Is concerned about the seriously flagging amounts of aid being provided for R&D, a fact which is of particular concern given that the European Union is lagging further and further behind Japan and the United States in this field; is also concerned about the flagging amounts of aid provided for venture capital; considers that the Commission services ought to step up their cooperation in order to define criteria for effectiveness, devoting special attention to SMEs and the production stage;
13. Welcomes the increase in aid for the environment, which should continue, and calls for a background debate on criteria for effectiveness;
14. Considers that the exemptions for smaller aid allocations, in particular under the so-called 'de minimis' rule, should be reviewed, and calls for a doubling of the thresholds applied to the 'de minimis' rule hitherto;
15. Stresses that the overall decline in aid must not be to the detriment of strategic sectors or the competitiveness of European industry;
16. Welcomes the Council's agreement to extend aid to the coal industry until 2010;
17. Observes that the restructuring and modernisation of the steel industry in Poland and the Czech Republic requires substantial financing, for which neither national aid nor private finance currently suffice; considers the Steel Aid Code singularly unsuitable and calls for a five-year derogation; calls for a report from the Commission as a basis for the policy to be pursued by the EU in the current OECD negotiations and in response to the restructuring in the CEECs; considers that this must not delay accession;
18. Considers that, in general, aid to restructuring must not add to overcapacity but promote innovation, conversion and the initiation of new operations; supports the principle proposed by the Gyllenhamar Mission that they be linked to commitments on the part of enterprises for employability;
19. Calls for the introduction of comparative data on the aid granted in the major regions of the world, in sectors where competition takes place worldwide, and in particular on export aid of which the WTO is notified;

20. Welcomes the Commission's report for the Seville Council on services of general interest; calls on it to uphold the principle propounded in the Ferring judgment and maintained by the EP, which, as witness its resolution of 13 November 2001<sup>1</sup>, considers that, 'if the public authorities in the Member States impose service obligations on enterprises and grant financial compensation from public funds for imposing these obligations, this does not constitute aid' and therefore is not subject to the notification requirement; considers, however, that an interpretation needs to be recorded in writing in the interests of legal certainty on the market and also free choice of management by the public authorities (Paragraph 25); hopes on the other hand that the Scoreboard will include data on the financing of services of general interest, whether notified or not;
21. Considers, in relation to the provision of services of general interest, that clarification is required of the admissibility of state provision whereby only additional costs are to be offset, and calls for it to be stipulated that aid rules shall not be applied to 'non-economic activities';
22. Supports the efforts of the Commission to ascertain whether the tax rules described by the Primarolo Group as giving rise to unfair competition ought to be classified as State aid, and calls for a report to be presented to the EP on this subject;
23. Welcomes the fact that the applicant countries are already publishing reports on State aid and setting up independent monitoring bodies; calls for their specific territorially based tax exemption systems to be treated equitably, taking account of the need to create viable enterprises, and for a formula to be arrived at similar to that provided for by Article 87(2)(c) for regions in major difficulties;
24. Hopes that the revision of the procedural regulations<sup>2</sup> will improve legal certainty regarding existing aid and sunken costs, on the basis of inventory and transparency obligations;
25. Calls for the legislative power of the EP and codecision to be established for regulations governing State aid, and for consultation to apply where difficult problems of application arise;
26. Considers, notwithstanding the aid-monitoring competence of the European institutions pursuant to Articles 87 to 89 of the EU Treaty, that a sufficient margin of manoeuvre must be left open to Member States and regions in pursuing a supplementary regional policy; calls, consequently, for the concept of aid to be so defined as to ensure that aid shall be deemed to be unauthorised only where competition and trade in the EU can be shown to be adversely affected;
27. Notes that the Consultative Committee of Member States is not a means of ensuring transparency, and calls for the information about State aid to be communicated to organisations representing civil society at regional, national and Community level, and for opinions to be received from them;
28. Instructs its President to forward this resolution to the Council and Commission.

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<sup>1</sup> § 23 of the resolution on the Commission communication on 'Services of General Interest in Europe' (OJ C 140E, 13.06.2002, p. 72).

<sup>2</sup> Council Regulation (EC) No 994/98 of 7 May 1998 (OJ L 142, 14.5.1998) and Council Regulation (EC) No 659/99 of 22 March 1999 (OJ L 83, 27.3.1999).



## EXPLANATORY STATEMENT

Policy on monitoring of State aid is an essential component of the European Union's competition policy. It possesses unusual characteristics on account of the public character of those to whom it applies, namely not businesses but nation states.

The legitimacy of monitoring by the Commission, which was provided for first by the ECSC Treaty and then by the EEC Treaty, arises from the need to avoid 'distorting competition' in a common market. It has been further emphasised by the single market and EMU. Nowadays, such monitoring has to take account of the objectives of competitiveness of the European economy in the context of globalisation.

Member States notify the Commission of State aid as defined in Article 87. The Commission decides whether it is compatible with the Treaty or not, on the basis of its assumed impact on the market rather than the grounds adduced by States. Aid within the meaning of Article 87 possesses four characteristics: it has been granted directly or indirectly from State funds, it distorts or is liable to distort competition, it discriminates in favour of a business or certain types of production, and it affects trade between Member States.

Since 1999, the Council has included recommendations on State aid in its Broad Economic Policy Guidelines. At Stockholm in June 2001, it adopted the objective of reducing 'the overall level of State aid as a percentage of GDP by 2003', particularly ad hoc and sectoral aid. The Barcelona European Council (March 2002) confirmed this intention, calling on Member States to 'redirect such aid towards horizontal objectives of common interest, including economic and social cohesion, and target it to identified market failures.'

The Treaties vest sole competence in the Union, and the Commission is responsible for exercising it. The Court of Justice of the EC is responsible for judicial review, and its case law must be taken into account. The Council has legislative powers and may also act unanimously in exceptional circumstances (Article 88(2)). In 1998, for the first time, it adopted a regulation (995/98) based on Article 89 of the Treaty, the purpose of which was to permit regulations exempting Member States from the requirement to give notification of horizontal aid. In 1999 it adopted another procedural regulation (659/99). The first exemption regulations concerned aid to SMEs, training and 'de minimis' cases; others are in the process of being approved (aid to employment). On the other hand, the Commission continues to use the traditional method of communications (aid to venture capital).

Between 1988 and 2001, the Commission published annual reports on State aid policy. In order to promote transparency and debate, it then introduced two new instruments: the Register of State Aid and the Scoreboard. The latter was first published in March 2001 and has now replaced the annual reports. It makes it possible to analyse the practices of States more systematically.

Thanks to this effort to improve openness, it is possible for the debate to take better account of the two major objectives: competition on the single market and the Lisbon objectives (the EU's worldwide competitiveness, sustainable development and economic and social cohesion).

The spring 2002 update of the Scoreboard<sup>1</sup> which is considered here updates the data from the year 2000. It covers national State aid as defined in Article 87 of the Treaty, which is the only type examined by the Commission, and CAP and transport aid, which are governed by special arrangements.

This report also considers the Commission reports on State aid to the coal industry<sup>2</sup> and the steel industry<sup>3</sup>.

The Scoreboard presents the data in four parts: the general situation; monitoring of compliance with commitments regarding horizontal objectives; assessment of respect for procedures; examination of a particular sector (R&D in December 2001 and SMEs in spring 2002).

The main findings are as follows:

- The overall level of aid (including CAP and transport) is falling. It was € 82 bn in 2000, which represented an average of only 0.99% of the EU's GDP. Disparities between States were narrowing, although they remained substantial (0.46% of GDP in the UK, 1.44% in Finland).
- In terms of sectoral distribution, the lion's share of aid is going to transport (39% - nearly all of it to the railways), followed by manufacturing (29%), agriculture and fisheries (17%) and coal (9%). Sectoral distribution varies considerably between Member States.
- Aid (excluding the CAP and transport) has been redirected to horizontal objectives (SMEs, environment, R&D, employment and training). This 'horizontal' aid has increased considerably since 1996, reaching 47% of the total in 2000, with major differences between Member States.
- Regional aid is falling rapidly in most countries, particularly reunification aid in Germany. Altogether, it totalled 22% in 2000. The four cohesion countries' regional aid share rose from 5% in 1996 to 12% in 2000, but this is not significant, as it is explained by the inclusion of data on the Irish corporation tax scheme since 1998.

The Commission registered more than 1000 cases, of which 830 were notified to it, in 2001; there was an increase of 100 in cases in agriculture due to the BSE crisis. 7% of final decisions were negative. Aid to be recovered (€ 3.26 bn) was mainly confined to two countries (Germany and Italy).

#### Limitations and prospects

The Scoreboard is a valuable tool for increasing transparency and stepping up checks; it could serve as a basis for benchmarking. But as it is based on reports submitted by States, whose objectives and statistical methods differ, it does not yet permit effective comparisons to be made.

In order for that to be possible, it would be necessary to go beyond the Scoreboard, which only

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<sup>1</sup> COM(2002) 242 - State Aid Scoreboard – spring 2002 update

<sup>2</sup> COM (2002) 176 - Report from the Commission on the application of the Community rules for state aid to the coal industry in 2001

<sup>3</sup> COM (2002) 145 - Report from the Commission on the implementation in 2001 of Commission Decision no 2496/96/ECSC establishing Community rules for State aid to the steel industry (Steel Aid Code)

summarises notified aid. Aid to employment, for example, is very often granted in the form of general, non-notifiable aid. The concept of regional aid conceals much horizontal and sectoral aid. Countries with little general financing capacity cannot provide massive aid to their regions. It would be desirable to have data which are needed to use the criterion 'aid granted per capita', as the Commission's first cohesion report suggested. The Scoreboard should indicate the Community funds paid to the regions, so as to check whether or not they compensate for the small amounts of national aid granted, and should include regional aid for the CAP, fisheries and transport.

The Scoreboard does not yet make it possible to assess the effectiveness of aid in relation to common objectives. Efforts to do so, which the Commission advocates, ought to begin within each Member State. The aim of redirecting sectoral aid to 'horizontal' aid (R&D, the environment, SMEs, employment and training) is intended to prevent specific support for enterprises and to enable the external impact on the economy to be studied more effectively, but it is not sufficient as a basis for establishing the quality and effectiveness of aid. The concept of common interest needs to be refined a good deal more, and the actual impact of both horizontal and sectoral aid evaluated.

As regards aid to R&D, for example, quality indicators are non-existent. In the case of the environment, aid is generous and will increase further: it is time to make a thorough study of the problem of effectiveness criteria in order to work towards 'clean and sustainable' procedures in the context of market conditions.

Guaranteeing the functioning and quality of services of general interest is a priority for the public and for cohesion. Aid to such services ought to be analysed, whether or not it is classified as 'State aid' pursuant to Article 87. In accordance with the Court of Justice's judgment in the Ferring case and the EP's resolution (report A5-0361/2001), financial compensation for general-interest service objectives does not constitute 'aid' as defined in Article 87 and there is no need to give notification of it, therefore; but a written interpretation is needed in the interests of legal certainty on the market and to ensure that local authorities enjoy freedom of choice in their management.

Most aid is granted in the form of subsidies, except in two countries where tax relief is the main instrument (Ireland and France). After many efforts by the Commission and Parliament, Member States have eventually admitted that tax rules exist which entail unfair competition. The Commission has studied 20 of the 66 arrangements identified by the Primarolo Group and concluded that at least three of them constitute aid. The rapporteur considers that the Commission should be encouraged to continue with this; he calls on the Commission to carry out a systematic study and to publish a report.

We would draw the Commission's attention to the efforts already made and the results achieved by the applicant countries and to the need for fair treatment. In the case of the least favoured regions which have recourse to special tax arrangements, it is important to take due account of the fact that the States concerned do not have sufficient resources to aid them. We also consider that the Steel Aid Code is fundamentally at odds with the need to deal with the difficult problems of restructuring, particularly in Poland and the Czech Republic, that a genuine policy is called for in this regard, and that this should not under any circumstances hamper enlargement.

Finally, we have a number of proposals to make for improving procedures and legal certainty. State aid policy is not subject to any framework of democratic legitimacy, except in the case of

the common transport policy, where codecision applies. Whether one considers the general architecture or the interpretation of the compatibility of aid, regulations have obvious political implications, which the Commission recognises. The rapporteur therefore proposes that codecision be extended to these regulations.

7 October 2002

## **OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY**

for the Committee on Economic and Monetary Affairs

on the State Aid Scoreboard (spring 2002 update)  
(COM(2002) 242 – 2002/2196 (INI))

Draftsman: Werner Langen

### **PROCEDURE**

The Committee on Industry, External Trade, Research and Energy appointed Werner Langen draftsman at its meeting of 9 July 2002.

It considered the draft opinion at its meetings of 10 September and 7 October 2002.

At the last meeting it adopted the following conclusions by 24 votes to 2, with 3 abstentions.

The following were present for the vote: Carlos Westendorp y Cabeza, chairman; Werner Langen, draftsman; Niall Andrews (for Seán Ó Neachtain, pursuant to Rule 153(2)), María del Pilar Ayuso González (for Concepció Ferrer), Luis Berenguer Fuster, Gérard Caudron, Nicholas Clegg, Dorette Corbey (for Norbert Glante), Harlem Désir, Michel Hansenne, Hans Karlsson, Peter Liese (for Paul Rübig), Rolf Linkohr, Caroline Lucas, Hans-Peter Martin (for Erika Mann), Eryl Margaret McNally, Elizabeth Montfort, Bill Newton Dunn (for Colette Flesch), Angelika Niebler, Reino Paasilinna, John Purvis, Imelda Mary Read, Mechtild Rothe, Christian Foldberg Rovsing, Esko Olavi Seppänen, Roseline Vachetta, W.G. van Velzen, Myrsini Zorba and Olga Zrihen Zaari.

## CONCLUSIONS

The Committee on Industry, External Trade, Research and Energy calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. Welcomes the submission of the May 2002 State Aid Scoreboard, together with the supplementing documents on services of general interest, the coal industry and the iron and steel industry, as helping to improve the transparency and comparability of state aid in the Member States; expects that the scoreboard will provide an overview of state aid in the European Union; points out that an assessment of the effectiveness of aid cannot, however, be derived from the scoreboard;
2. Firmly supports the objective of continuously reducing aid and focusing more sharply on horizontal objectives of general interest; considers that horizontal priorities of general interest should continue to be research and development, the environment, training and employment and efforts to promote small and medium-sized enterprises;
3. Calls on the Commission to include subsidies in the accession states in the next Aid Scoreboard, and to assess them in relation to a European perspective on aid;
4. Considers that the exemptions for smaller aid allocations, in particular under the so-called 'de minimis' rule, should be reviewed, and calls for a doubling of the thresholds applied to the 'de minimis' rule hitherto;
5. Considers that special tax arrangements applicable in relation to state aid must be subjected to more intensive scrutiny under the next Aid Scoreboard;
6. Urges that regulations applicable to state aid should in future be subject to codecision procedure;
7. Considers, notwithstanding the aid-monitoring competence of the European institutions pursuant to Articles 87 to 89 of the EU Treaty, that a sufficient margin of manoeuvre must be left open to Member States and regions in pursuing a supplementary regional policy; calls, consequently, for the concept of aid to be so defined as to ensure that aid shall be deemed to be unauthorised only where competition and trade in the EU can be shown to be adversely affected;
8. Points out that the responsibility for defining services of general interest lies with the Member States, and that funding allocated by them for providing such services is subject to EU supervision only for the purpose of monitoring for abuses;
9. Considers, in relation to the provision of services of general interest, that clarification is required of the admissibility of state provision whereby only additional costs are to be offset, and calls for it to be stipulated that aid rules shall not be applied to 'non-economic activities';
10. Continues to support the EU aid-law objective of guaranteeing fair competition within the

European Union, and consequently rejects outright any form of subsidies free-for-all.