

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.12.2009
COM (2009) 661 final

REPORT FROM THE COMMISSION

State Aid Scoreboard

Report on State aid granted by the EU Member States

- Autumn 2009 Update -

{SEC(2009) 1638}

TABLE OF CONTENTS

Introduction	3
State aid in the context of the economic crisis	3
1. State aid in 2008.....	4
2. Trends and patterns of state aid expenditure in the Member States.....	4
2.1. Trend of levels of State aid to industry and services	6
2.2. State aid earmarked for horizontal objectives of common interest.....	7
3. State aid in the context of the financial and economic crisis	7
3.1. The Commission's guidance in crisis cases.....	7
3.2. The Commission's intervention in crisis cases.....	8
3.3. Measures approved and take-up rate.....	9
3.4. State aid granted during 2008	10
4. Simplification of the State aid rules	11
4.1. A new architecture for State aid control	11
4.2. Assessment of individual cases focused on a small number of large, potentially distortive aid.....	12
4.3. Almost 19% of aid to industry and services is block exempted	12
5. Enforcing the State aid rules	12

INTRODUCTION

This autumn 2009 update of the State Aid Scoreboard (hereinafter "the Scoreboard") focuses on the State aid situation in the twenty-seven Member States for the year 2008. It provides an overview over aid levels and the objectives pursued by aid granted by Member States. The report includes a specific section on State aid granted to financial institutions in response to the financial and economic crisis.

Furthermore, the Scoreboard reports on progress towards delivering a comprehensive and coherent reform package for State aid that began with the State Aid Action Plan (hereinafter "SAAP") in 2005. Finally, it provides achievements in the enforcement of State aid rules.

This autumn's Scoreboard consists of two parts: This summary report on State aid granted by the EU Member States focuses on key facts, conclusions, trends and patterns with regard to State aid granted by Member States as well as key policy developments in the context of State aid control. Its annex, "Facts and figures on State aid in the EU Member States", provides additional factual background.

The EFTA Surveillance Authority (ESA) publishes an annual scoreboard¹ on the volume of State aid granted in Iceland, Liechtenstein and Norway.

State aid in the context of the economic crisis

Over the past decade, the EU experienced steady economic growth (on average 1.5% of GDP) per annum. Between 2002 and 2007, the level of State aid to industry and services decreased annually on average by 2% and stood at € 65 billion or less than 0.5% of GDP in 2007. In parallel, budget deficits came down to an average of 0.8% of GDP in 2007 – the best result for thirty years². Unemployment fell during this period and stood at a long-time low of 7% EU-wide in 2008.

The financial crisis abruptly ended GDP growth, low levels of State aid and decreasing budget deficits. The overall level of State aid almost quintupled in 2008 compared to 2007 and increased to 2.2% of GDP, almost exclusively as a result of crisis aid to the financial sector. Crisis aid to the real economy through the Temporary Framework³ started to be implemented by Member States only in 2009. It is therefore not covered by this report. Economic activity contracted and is expected to stabilise only in 2010. While early indicators show first signs of economic recovery, government deficits in the EU are forecast to average 6% of GDP in 2009 and around 7% in 2010. Budget deficits have increased substantially, returning to levels known in 2000. Unemployment is expected to rise up to 10% or possibly higher and will be one of the key challenges in the years to come.

When inter-bank lending has dried up in September 2008, Member States started to inject large amounts of aid to the banking sector in order to prevent a financial meltdown. Guarantee umbrellas, followed by recapitalisation measures and risk shields for financial institutions were put in place by Member States to ensure that lending to the economy can continue. In a next step, guided by the Temporary Framework, Member States started to provide additional

¹ <http://www.eftasurv.int/information/sascoreboard/>

² Communication from the Commission to the European Parliament and the Council, Long-term sustainability of public finances for a recovering economy, COM (2009) 545 of 14/10/2009 (http://ec.europa.eu/economy_finance/thematic_articles/article15994_en.htm)

³ Temporary framework for State aid measures to support access to finance in the current financial and economic crisis; consolidated version [OJ C83 of 07.04.2009](#); as further amended by OJ C 261, 31.10.2009, p. 2.

incentives for the real economy to continue or resume investment. The European Commission's State aid policy was one of the key factors ensuring that this – overall successful – rescue process has been achieved in a coordinated way. It allowed swift implementation of unprecedented support measures and ensured at the same time that the Single Market was kept intact.

1. STATE AID IN 2008

Total State aid⁴ granted by the Member States amounted to € 279.6 billion in 2008, or in relative terms, to 2.2% of EU-27⁵ GDP. Crisis measures reported by Member States in 2008 amounted to € 212.2 billion or 1.7% of GDP. In 2008, thirteen Member States implemented crisis aid in favour of the financial sector (Belgium, Denmark, Germany, Ireland, Spain, France, Latvia, Luxembourg, Netherlands, Portugal, Finland, Sweden and United Kingdom). By end October 2009, all EU-15⁶ Member States and Hungary, Latvia and Slovenia have financial crisis measures approved by the Commission.

When excluding the crisis measures, total State aid amounted to around € 67.4 billion in 2008 or 0.54% of EU-27 GDP. Aid to industry and services represents 78% of total State aid. It amounted to € 52.9 billion or 0.42% of EU-27 GDP. Aid to the coal industry is allocated to industry and services. It amounted to € 2.7 billion or 4.1% of total aid. The remainder of aid is shared between agriculture (€ 11.8 billion or 17.5% of total aid), fisheries (€ 0.2 billion or 0.4% of total aid), and transport⁷ (€ 2.4 billion or 3.6% of total aid).

Aid to railways – which is for lack of comparable data not included in any of the above totals – is reported by Member States with € 46 billion or 0.4% of EU GDP⁸.

The five largest grantors account for € 40.5 billion or 60% of total aid⁹. Germany accounted for € 15.7 billion or 23% of total aid, followed by France (€ 10.3 billion; 15%), Italy (€ 5.5 billion; 8%), Spain (€ 5.2 billion; 8%) and United Kingdom (€ 3.8 billion; 6%). A completely different picture emerges when looking at aid in percentage of GDP. Hungary granted aid representing 2.4% of GDP, followed by Malta (2%), Bulgaria (1.3%), Finland (1.1%) and Ireland (1.1%).

2. TRENDS AND PATTERNS OF STATE AID EXPENDITURE IN THE MEMBER STATES

The Lisbon European Council of March 2000 called on the Commission, the Council and Member States to *"further their efforts to ... reduce the general level of State aid, shifting the emphasis from supporting individual companies or sectors towards tackling horizontal objectives of Community interest, such as employment, regional development, environment and training or research"*. Successive European Councils have since repeated the call for "less and better targeted aid". These goals were underlined by the Commission

⁴ The total covers aid to manufacturing, services, coal, agriculture, fisheries and part of the transport sector but excludes aid to the railway sector, aid for compensation for services of general economic interest due to the lack of comparable data. Aid amounts refer to the aid element contained in a State aid measure unless stated otherwise (see methodological remarks in the companion Commission Staff Working Document).

⁵ EU-27 means all Member States of the EU.

⁶ EU-15 comprises Member States that joined the EU before 2004.

⁷ Excluding railways

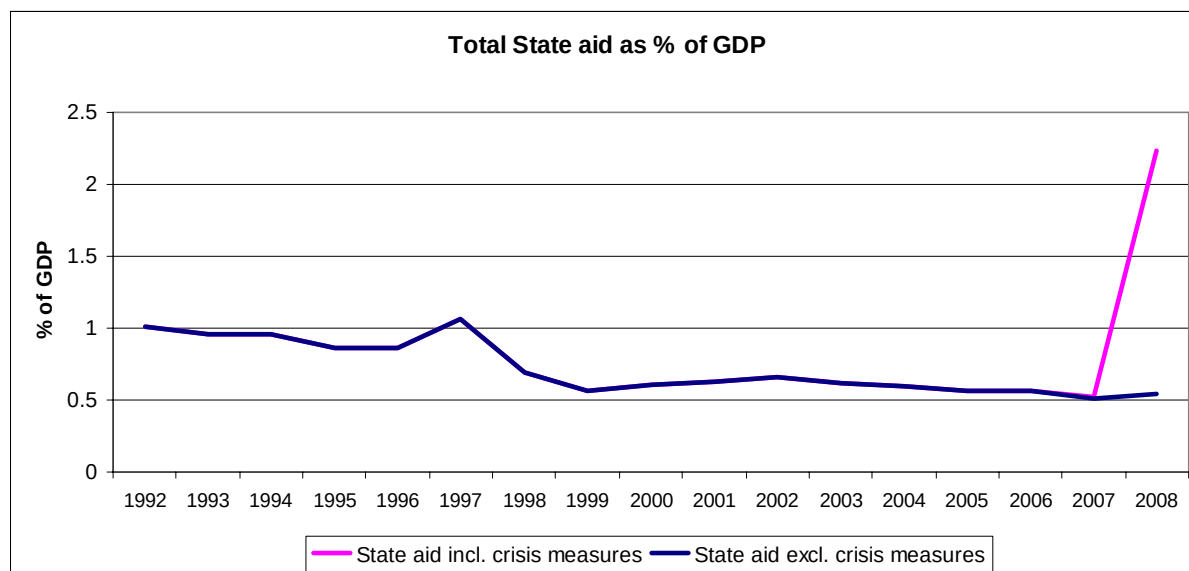
⁸ See also paragraph 2.3.5 of Commission's staff working document "Facts and figures on State aid in the EU Member States"

⁹ Crisis measures excluded

Recommendation on the Broad Economic Policy Guidelines for 2005-2008. Furthermore, less and better-targeted aid was identified as one of the four guiding principles underpinning the Commission's State aid reform programme launched in 2005, the SAAP.

Looking at the trend from a long-term perspective, the overall level of State aid in the 1980s was in the region of 2% of GDP, fell to just below 1% in the 1990s and came down to around 0.5% - 0.6% of GDP in the years 2003 – 2007. Due to the exceptional crisis measures, the overall EU-27 aid level in 2008 went up to more than 2% of GDP.

Figure 1¹⁰: Total aid as % of GDP (EU-27; data as of 1992



The decline in State aid expenditure during this decade and until 2007 can be attributed to three main factors: first, due to a period of economic growth since 2000, Member States granted considerably less rescue and restructuring aid for ailing firms. Second, State aid to the coal sector showed a continued downward trend, primarily observed in Poland, France, Germany and Spain. Third, pre-accession commitments and continued efforts after accession both contributed to the downward trend since the EU-12¹¹ Member States continued to adjust their State aid policies and practices to the requirements under EU State aid law and policies.

These efforts can be seen as the result of a general recognition that a high volume of State aid not only hindered an efficient allocation of resources but also rendered the economy as a whole less competitive. Work in this regard began already in the mid 1980s to make effective State aid control a key component of the Single Market Programme. State aid discipline was then widened and strengthened in the 1990s in the context of EMU and then given new impetus by the Lisbon Council in 2000 and the SAAP in 2005. The resulting reform package for State aid focuses largely on a better targeting of aid while ensuring that distortions are kept to a minimum in order to maintain the functioning of the single market.

Disregarding the exceptional crisis measures, overall aid stands at 0.54% of GDP (€ 67.4 billion), still within the average of the past years. This seems to indicate that, first, Member States continued to observe an overall state aid discipline when abstraction is made of the outbreak of the financial and economic crisis in 2008. Second, the strict State aid discipline in the years before the crisis can be seen as an important contribution that made

¹⁰ Source: DG Competition; GDP figures: Eurostat

¹¹ EU-12 includes Member States which entered the EU in 2004 or thereafter.

swift, substantial and targeted response to the crisis possible without undermining the overall consensus that state aid should be used in a cautious, considered way where it is necessary to achieve a commonly accepted objective and proportionate in relation to the problem to be addressed.

Due to the particularities associated with aid to agriculture, fisheries and transport, the following sections on levels and orientation of aid (2.1 and 2.2) look at aid to industry and services only.

2.1. Trend of levels of State aid to industry and services

In order to analyse the mid-term trend for state aid to industry and services, crisis measures are not taken into account here and will be separately discussed in chapter 3.

For the EU as a whole, the trend on the level of aid granted to industry and services in the EU has been slightly downward when comparing the two consecutive three-year periods 2006-2008 and 2003-2005. On average, aid expenditure amounted to € 52 billion or 0.42% of GDP in 2006-2008, whereas during 2003-2005 the average amounted to € 54 billion or 0.46% of GDP. This shows that, leaving the specific response to the financial and economic crisis aside, the majority of Member States has continued to contribute positively to the Council's call to reduce overall aid levels.

A majority of Member States (15) were able to keep or even reduce their aid levels in the period 2006-2008 as compared with 2003-2005. Many of the EU-12 countries achieved significant reduction by 1% of GDP or even more. As a result, the average EU-12 expenditure reduced by almost half, i.e. from more than 1% of GDP in 2003-2005 to slightly above 0.5% in 2006-2008. Some EU-15 countries were also able to reduce aid levels, now down at approximately 0.4% of GDP in the period 2006-2008¹², i.e. almost equal to the EU-27 average.

Despite the positive downward trend, some Member States increased aid expenditure in 2006-2008¹³ compared to 2003-2005. Any increase can largely be attributed to aid in favour of horizontal objectives, mainly for regional development, environmental protection, research and development and employment. However, the increase has not caused yet a reverse of the overall long-term downward trend for the EU as a whole.

The short-term evolution from 2007 to 2008 shows a moderate upward move in 2008. State aid expenditure for industry and services rose by approximately 0.04% of GDP. For instance, Germany increased regional investment aid in particular for the new Länder¹⁴ and Spain spent some more aid for environmental protection¹⁵. Poland substantially increased employment aid and introduced new block exempted measures representing several € 100 million of expenditure¹⁶. This short-term upward evolution shows that the current State aid control system allows Member States to react quickly to changing economic needs without further proceedings with the Commission. The main tools for Member States in this respect are block exempted measures and approved notified aid schemes under which individual aid can be granted to a large number of enterprises (for further details see chapter 4).

¹² United Kingdom by € 0.2 billion, Germany by € 0.9 billion and Italy by € 0.4 billion

¹³ Sweden by € 0.6 billion, Belgium by € 0.4 billion, France by € 0.3 billion

¹⁴ In particular through the *Investitionszulagengesetz 2007* (N357a/2006 and XR 6/2007)

¹⁵ A large part can be attributed to NN 61/2004 *Tax exemption on bio fuels*.

¹⁶ For instance XE 11/2004 *Compensation des coûts liés à l'insertion des personnes handicapées dans les PME*, N 575/2007 *Secteur du charbon 2008-2015*

2.2. State aid earmarked for horizontal objectives of common interest

State aid for horizontal objectives, i.e. aid that is not granted to specific sectors, is usually considered as being better suited to address market failures and thus less distortive than sectoral and ad hoc aid. Research and Development and Innovation (hereinafter "R&D&I"), safeguarding the environment, support to Small and Medium-Sized Enterprises (hereinafter "SME"), employment creation, the promotion of training and aid for regional economic development are the most prominent horizontal objectives pursued with State aid.

In order to look at the underlying trend regarding the effort by Member States to re-orient 'non-crisis' aid to horizontal objectives of common interest, crisis cases are not taken into account for this analysis¹⁷.

On this basis, aid earmarked for horizontal objectives amounted in 2008 to € 46.3 billion and accounted for roughly 88% of the total aid to industry and services. This is to be compared with a share of 80% in 2007, 74% in 2004 and around 50% in the mid-Nineties. The three main objectives pursued by Member States in 2008 were regional aid (26%), aid assessed under the environmental aid guidelines (24%)¹⁸ and aid for R&D&I (16%). The underlying trend confirms the upward move on aid oriented to horizontal objectives. During the period 2003-2005 on average 74% of aid were earmarked for horizontal objectives while during 2006-2008 it increased to 85%. A similar picture emerges when looking at the number of Member States directing 90% or more of their aid to industry and services to horizontal objectives of common interest. In 2008, this was the case for 17 Member States compared to 17 in 2007¹⁹ and 16 in 2006²⁰. There is no single overriding reason or pattern for this development.

For the EU as a whole, aid for sectoral development including rescue and restructuring aid in 2008 was lower compared to 2007 and stood at € 6.5 billion or 12% of total aid to industry and services²¹. Outside the context of the economic and financial crisis, rescue and restructuring aid amounted in 2008 to just € 557 million, compared to an annual average of € 3.5 billion in the period 2003-2005 and of € 872 million in the period 2006-2008.

Overall, the long-term trend shows that Member States continue to direct a high level of aid towards horizontal objectives. In particular, all EU-12 Member States are progressively redirecting aid towards horizontal objectives.

3. STATE AID IN THE CONTEXT OF THE FINANCIAL AND ECONOMIC CRISIS

3.1. The Commission's guidance in crisis cases

Following the deepening of the financial crisis in the autumn of 2008, the Commission provided guidance in the form of Communications on the design and implementation of State

¹⁷ If one were to include crisis measures, the share of horizontal aid would drop to 17.5%.

¹⁸ Two distinct groups of cases fall in the category environmental aid and energy saving: The first group of cases pursues a direct benefit to environment. The second group comprises reductions or exemption from environmental taxes. For this second group of cases, aid expenditure cannot be taken as a proxy for measuring the environmental benefit as this benefit is pursued by the tax but not by the exemptions thereof. For further details, see Spring 2008 Scoreboard, COM (2008) 304 of 21 May 2008.

¹⁹ See Autumn 2008 Scoreboard, COM (2008) 751 of 17 November 2008, p. 30

²⁰ See Autumn 2007 Scoreboard, COM (2007) 791 of 13 December 2007, p. 22

²¹ These percentages exclude those measures with a horizontal objective that are nevertheless earmarked for the manufacturing and services sectors.

aid in favour of banks²². In these Communications, the Commission recognised that the severity of the crisis justified the grant of aid on the basis of Article 87(3)(b) EC and set out a coherent framework for the provision by Member States of public guarantees, recapitalisation measures and impaired asset relief, whether to individual banks or as part of a national scheme. The primary rationale of the guidance in these Communications is to ensure that emergency measures for reasons of financial stability guarantee a level playing-field between banks located in different Member States as well as between banks who receive public support and those who do not. State aid control by the Commission aims to minimise negative spill-over of public interventions between Member States, between beneficiaries of aid with different risk profiles, and between aid beneficiaries and banks that do not benefit from State aid, while facilitating the achievement of the objectives of the schemes.

The European Council²³ has reaffirmed its commitment to restoring confidence and the proper functioning of the financial market and stressed that policy measures at EU level must be consistent with single-market principles, ensure a level playing field and take into account a credible exit strategy. This process implies, on one hand, major restructuring of basically distressed banks and, on the other hand, the return path to normal market conditions of fundamentally sound banks. Similarly, the underlying principles apply to companies operating in the "real" economy facing structural problems which will need to undertake restructuring measures in order to restore the long-term viability.

The Commission provided a comprehensive overview on its action regarding State aid in the context of the financial and economic crisis in a special scoreboard edition published this spring²⁴. This included detailed summaries of the Banking Communication, the Recapitalisation Communication, the Temporary Framework for the real economy, the Impaired Assets Communication²⁵ and their application so far. On 23 July 2009, the Commission adopted *guidelines on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules*²⁶, which explain the criteria that the Commission will apply to restructuring aid for banks in the current period.

3.2. The Commission's intervention in crisis cases

The Commission has been and will continue playing a key role in coordinating Member States' action with a view to maintaining a level playing field, preserving the integrity of the common market and fighting harmful protectionism. The Commission will continue to monitor closely the situation in the market and review Member States' support measures in order to ensure that they are designed in a way to limit as much as possible competition

²² See Communication from the Commission – The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis, OJ C 270, 25.10.2008, p. 8 ("the Banking Communication"); Communication from the Commission – The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition, OJ C 10, 15.01.2009, p. 2 ("the Recapitalisation Communication"); Communication from the Commission on the Treatment of Impaired assets in the Community Banking Sector, OJ 72, 26.03.2009 ("the Impaired Assets Communication"); Commission Communication "The return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules", OJ C 195, 19.8.2009, p. 9

²³ See point II of the [Presidency's Conclusions of the Brussels European Council 18/19 June 2009](#)

²⁴ Spring 2009 Scoreboard (http://ec.europa.eu/competition/state_aid/studies_reports/studies_reports.html)

²⁵ A short presentation of these Communications provides chapter 3 of the Facts and Figures on State aid in the EU Member States in Annex.

²⁶ Commission Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules [OJ C 195/2009](#) of 19/8/2009.

distortions and to maintain the functioning of the single market. In addition, the Commission has particularly emphasised that support measures must be designed considering the medium-to-long term perspective, in particular in the effort of swiftly returning to a competitive environment. Finally, the Commission will support restructuring processes in the context of State aid monitoring.

For example, the Irish announcement to cover only six Irish banks by a state guarantee scheme presented a serious risk of a large outflow of capital from non-eligible competitors. Upon the Commission's insistence the Irish Government confirmed within days that the guarantee scheme would be available to all banks with subsidiaries or branches in Ireland with a significant presence in the domestic economy²⁷.

Similarly, when France announced its planned aid to the automotive sector which originally raised concerns concerning State aid and single market rules, the Commission stated without ambiguity that any aid granted under additional non commercial conditions concerning the location of investments (and/or the geographic distribution of restructuring measures in another case) could not be regarded as compatible. After intensive discussion between the Commission and the French authorities, France gave undertakings to avoid any conditions contrary to the single market rules²⁸. This line has been maintained in all other cases, in particular with regard to the German plans in relation to Opel²⁹.

In Bradford&Bingley³⁰, the Commission ensured that the beneficiaries of the aid will be the retail depositors of the bank. The State intervention allowed continuing the retail business of the bank through selling of the retail branch whereas the distressed part of the bank was allowed to discontinue.

The effectiveness of bank support schemes as well as the overall situation regarding the stability and functioning of financial markets has recently been assessed by the Council³¹, concluding that public measures taken since the third quarter of 2008 have contributed to the stabilisation of the extremely tense financial market conditions. However, the operating environment for banks is likely to remain challenging, in particular in respect of credit losses linked to their loan portfolios.

3.3. Measures approved and take-up rate

In the period between October 2008 and end October 2009, the Commission approved 73 crisis measures. When broken down by type of measures, it results in 32 schemes (guarantee schemes, recapitalisation schemes, liquidity interventions, asset relief interventions) and 41 individual cases.

The total maximum volume of crisis measures approved by the Commission between October 2008 and October 2009 amounted to around € 3,632 billion, corresponding to 29% of the EU-27 GDP³². In regard of guarantee schemes, the maximum volume amounted to € 2,738 billion, which corresponds to 22% of the EU-27 GDP. Recapitalisation measures

²⁷ See NN 48/2008 *Guarantee scheme for banks in Ireland*

²⁸ See [press release \(Memo/09/90\)](#).

²⁹ See press releases ([Memo/09/460](#) and [Memo/09/411](#))

³⁰ NN 41/2008 *Rescue aid to Bradford & Bingley*

³¹ Annex to the Council (Ecofin) Report to the 18-19 June European Council on the effectiveness of financial support schemes: [Report of the Task Force on reviewing the effectiveness of financial support measures](#).

³² This figure represents the overall maximum amount of guarantee umbrellas, rescue and restructuring packages and other measures set up by Member States.

amounted to € 231 billion³³ corresponding to 2% of the EU-27 GDP. General liquidity measures and asset relief interventions amounted to € 76 billion and represent 0.6% of the EU GDP. In addition, the Commission took decisions in several *ad hoc* interventions in favour of individual financial institutions amounting to a total volume of € 587 billion.

Most of the general schemes were authorised by the Commission in autumn 2008 following the publication of the Banking and Recapitalisation Communications³⁴. The measures approved in 2008, schemes and *ad hoc* aid taken together, amounted to € 3,361 billion. In 2009, Member States saw only limited need to set up new additional support measures. From January to March 2009, further rescue and stabilisation measures amounting to € 96 billion were approved by them Commission. Since April 2009, Member States have only adopted additional measures with an overall maximum volume amounting to € 175 billion³⁵.

The take-up rate by banks is defined as the actual use of the measure relative to the notified approved amounts. It serves as a preliminary indicator for the functioning of the schemes³⁶. The maximum total aid volume as indicated above has not been actually implemented. The take-up rate on the crisis measures, as reported by the Commission³⁷, amounts to roughly 33% with respect to guarantees and for recapitalisation it is roughly 55%.

3.4. State aid granted during 2008

Total State aid related to crisis measures³⁸ granted by the Member States amounted to approximately € 212.2 billion in 2008, representing 1.7% of EU-27 GDP

The maximum volume of Commission approved measures set up by Member States in 2008 to stabilise the financial markets amounted to € 3361 billion. According to the annual reports submitted by Member States, Member States implemented measures amounting to a nominal value of € 958 billion. This corresponds to a take-up rate of 29%. According to first estimates, the aid element of the support measures put in place in 2008 – as proxy for the benefits passed by the State to the benefitting financial institutions – amounted to € 212.2 billion, which represents 1.7% of EU-27 GDP. The Commission approved in 2008 crisis measures notified by seventeen Member States. Only thirteen Member States reported that these measures were already implemented in 2008.

In 2008, *ad-hoc* crisis measures³⁹ represented 37 of total crisis aid and aid granted under schemes representing 63%.

³³ It includes recapitalisation schemes and schemes combining recapitalisation with other measures. Discrepancies with the amounts published in the spring 2009 Scoreboard are due to the different classification of the schemes. The present edition considers liquidity interventions as a separate category.

³⁴ The [spring 2009 Scoreboard](#) was focused on State aid interventions in the current financial and economic crisis and an overview on measures reviewed by the Commission until 31 March 2009.

³⁵ *Inter alia* six schemes based on the Banking Communication, one on the Impaired Assets Communication and one specific other scheme.

³⁶ A high take-up rate in a given Member State is not necessarily an indication of whether the measure is adequate or not. Low guarantee take-up rates in certain Member States are partly due to the fact that the amounts announced under the schemes are higher than actual need. Moreover, in some Member States banks were able to access the funds easily on the market, often at a lower price.

³⁷ For more detail, see DG Competition's review of guarantee and recapitalisation schemes in the financial sector in the current crisis, 7 August 2009.

(http://ec.europa.eu/competition/state_aid/legislation/review_of_schemes_en.pdf)

³⁸ It covers some individual early cases during the first phase of the crisis adopted under the R&R guidelines and measures approved under the Banking and Recapitalisation Communications implemented in 2008. Measures related to the real economic crisis approved under the Temporary Framework are not covered in this Section since they were adopted and implemented in 2009.

For an overview on crisis measures authorised, see chapter 3 of Facts and Figures on State aid in the EU Member States in Annex.

4. SIMPLIFICATION OF THE STATE AID RULES

4.1. A new architecture for State aid control

The SAAP announced in June 2005 the Commission's intention to further the use of State aid policy as an effective policy tool for growth and jobs. The plan launched a review of almost all the State aid rules and procedures⁴⁰. Four guiding principles underpinned the reform programme:

- less and better targeted State aid;
- a refined economic approach;
- more effective procedures, better enforcement, higher predictability and enhanced transparency;
- a shared responsibility between the Commission and Member States.

The Commission has the exclusive competence to evaluate the compatibility of state aid measures with the EC Treaty. Accordingly, Member States are obliged to notify all measures prior to their implementation⁴¹ to the Commission, unless they are covered by the "*de minimis*" Regulation⁴² or a block exemption Regulation, in particular the General Block Exemption Regulation (hereinafter "GBER")⁴³. The rationale behind this change is that such measures are unlikely to have a significant negative impact on competition at the Community level while contributing to the achievement of an objective of common interest and may thus be granted without prior notification to the Commission provided they fulfil the criteria of the respective legal instruments. For State aid measures that remain subject to Commission scrutiny prior to their implementation, Member States can notify aid schemes. After a scheme has been approved, a Member State may generally grant individual awards of aid without further notice to the Commission. Only large individual applications of aid schemes exceeding certain thresholds and individual aid (also known as '*ad hoc*' aid) awarded outside a scheme need to be notified individually.

The "3-Stream system: block exemption, standard and detailed assessment

In order to make procedures and decision-making faster and more efficient, the Commission introduced substantial changes to the architecture of its State aid control. This was achieved by subjecting the various aid measures to a level of control which reflects their respective potential effects on competition and trade. The new architecture is based on a "3-stream system": block exemption (and *de minimis*), standard assessment and detailed assessment. While the number of block exempted measures increases, the majority of still notifiable individual cases or schemes are subject to a standard assessment ensuring smooth assessment.

³⁹ Reported or estimated aid volumes

⁴⁰ See table 2 in Annex of Facts and figures on State aid in the EU Member States

⁴¹ Article 88 EC Treaty; detailed provisions in Council Regulation No 659/1999 of 22 March 1999, OJ L83/1, 27.03.1999, p. 1-9

⁴² Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid, OJ L 379, 28.12.2006, p. 5

⁴³ Commission Regulation (EC) No 800/2008 of 6 August 2008 [declaring certain categories of aid compatible with the common market in application of Article 87 and 88 of the Treaty \(General block exemption Regulation\)](#); OJ L 214, 9.8.2008, p. 3

A detailed assessment was carried out only in 25 out of 177 of R&D&I cases and in 10 out of 49 of risk capital cases between 2007 until mid 2009. No detailed assessment was made in cases falling under any of the other horizontal objectives.

The new simplified procedure

In order to make the notification process for a priori compatible cases even smoother, the Commission introduced in September 2009 a simplified procedure⁴⁴. With this new procedure, the Commission aims to ensure that clearly compatible aid is approved within an accelerated time period of one month, based on a complete notification from the Member State.

4.2. Assessment of individual cases focused on a small number of large, potentially distortive aid

Member States increasingly use the possibilities for block exempted aid and continue to use schemes on the basis of which aid to individual enterprises can be granted without further notice to the Commission. In 2008, 648 or 66% of newly introduced measures fell under block exempted aid, while the 248 schemes that were subject to a Commission decision in 2008, accounted for 25% and 92 individual aid measures accounted for 9%. In terms of reported aid volumes (crisis measures excluded), individual aid accounted for only 5% of total aid to industry and services (€ 2.5 billion), while aid granted under schemes amounted to 76% (€ 40 billion) and block exempted aid to 19% (€ 10 billion). This means that 95% of aid to industry and services, while being subject to state aid discipline, was granted by Member States without requiring an individual assessment by the Commission at the level of the beneficiary.

4.3. Almost 19% of aid to industry and services is block exempted

In terms of expenditure, block exempted aid saw a significant increase to € 10 billion or 19% of total aid to industry and services in 2008 compared to 2007 (€ 6.3 billion or 13%) and 2006 (€ 3 billion or 6% of total aid). The main increase can be attributed to regional aid under the block exemption possibility introduced in 2007. Also the other already existing objectives for block exempted aid, i.e. aid to SME, training and employment are increasingly used. The potential of the newly introduced objectives under the GBER will have to be explored in future as the new Regulation only entered into force end August 2008.

5. ENFORCING THE STATE AID RULES

Unlawful aid

Article 88(3) of the EC Treaty obliges Member States to not only notify state aid measures to the Commission before their implementation but also to await the outcome of the Commission's investigation before implementing notified measures. When either of these obligations is not respected, the state aid measure is considered to be unlawful.

In the period 2000-2008, the Commission took 811 decisions on unlawful aid. In about 23% of unlawful aid cases (187 cases) the Commission intervened by taking a negative decision on an incompatible aid measure. This negative decision normally requests the Member State concerned to recover the illegally awarded aid. In further 2% of unlawful aid cases (15 cases), the Commission took a conditional decision. This intervention rate of about 25% for unlawful

⁴⁴ Commission Notice on a Simplified procedure for the treatment of certain types of State aid; OJ C136, 16.06.2009, p. 3-12

aid is approximately ten times higher than the rate of negative and conditional decisions on duly notified cases. More than half of the interventions were made in the sector of industry and services, around one quarter in agriculture and the remainder in transport, coal and fisheries.

Recovery of aid

In the first half of 2009, further progress has been made towards the execution of pending recovery decisions. The total number of pending recovery cases has further decreased to 43 (compared to 50 cases in mid-2007 and 94 cases at the end of 2004). The amount of illegal and incompatible aid recovered since 2000 has further increased from € 2.3 billion in December 2004 to € 9.4 billion at 30 June 2009. That means that the percentage of illegal and incompatible aid still to be recovered has fallen from 75% at the end of 2004 to around 9% at 30 June 2009.

In addition, the Commission has taken some recovery decisions in the areas of agriculture, fisheries and transport.

Enforcement of State aid Law: Cooperation with national courts

The Commission has recently adopted a new Notice on the Enforcement of State Aid Law by National Courts⁴⁵. The Notice has two main objectives:

- The new Notice seeks to give clear guidance to national courts and to potential claimants on the different issues which can arise in the context of domestic State aid litigation.
- In addition, the Commission seeks, through the new Notice, to intensify its co-operation with national courts in individual cases.

Following the adoption of the New Notice the Commission plans to intensify its advocacy efforts in the area of private State aid enforcement.

Ex-post monitoring

With the entry into force of the GBER an increasing number of aid measures are no longer subject to the notification obligation. Article 10 of that regulation constitutes the basis for realising ex post monitoring on a sample basis. The analysis of the results of the first three exercises shows that, overall, the part of the existing state aid architecture allowing for the approval of aid schemes and allowing Member States to implement aid measures under (G)BERs functions in a satisfactory manner.

⁴⁵ Commission Notice on the enforcement of State aid law by national courts, OJ C 85, 9.4.2009, p. 1

ANNEX

Commission Staff Working Document "Facts and figures on State aid in the EU Member States"