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<sup>(1)</sup> Text with EEA relevance

## I

(Resolutions, recommendations and opinions)

## OPINIONS

## COUNCIL

## COUNCIL OPINION

**on the updated convergence programme of Estonia, 2009-2013**

(2010/C 140/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies <sup>(1)</sup>, and in particular Article 9(3) thereof,

Having regard to the recommendation of the Commission,

After consulting the Economic and Financial Committee,

HAS DELIVERED THIS OPINION:

(1) On 26 April 2010 the Council examined the updated convergence programme of Estonia, which covers the period 2009 to 2013.

(2) The Estonian economy is currently emerging from a severe recession. Whilst the recession has led to marked pressures on public finances, the reversal of unsustainable domestic demand and bursting of a real estate boom has resulted in a rapid unwinding of previously high internal and external imbalances. Taking into account the substantial macro-economic imbalances prior to the downturn, the wide-ranging and decisive action by the government to contain the negative impact of the economic downturn on public finances was a prudent response in line with the European Economic Recovery Plan. It helped to contain economic, budgetary and financial system risks

and contributed to restoring competitiveness through price and wage adjustment in the economy. Maintaining robust monetary buffers to support exchange rate stability and prudent financial sector policies, including enhanced cross-border co-operation, helped to avoid adverse developments. High debt levels accumulated by the private sector are now being gradually reduced but will nevertheless weigh on the recovery, holding back consumption and investment. Key policy challenges ahead include raising the productivity of the economy to further improve competitiveness and progress towards long-lasting convergence and containing the risk of skill losses through long-term unemployment. More broadly, the economic challenge is to restore positive and sustainable growth while avoiding any relapse into significant internal and external imbalances. A major adjustment of public finances to the expected lower growth in the coming years has already been made, but further progress remains to be achieved in the medium term.

(3) Although much of the observed decline in actual GDP in the context of the crisis is cyclical, the level of potential output has also been negatively affected. In addition, the crisis may also affect potential growth in the medium term through lower investment, constraints in credit availability and increasing structural unemployment. Moreover, the impact of the economic crisis compounds the negative effects of demographic ageing on potential output and the sustainability of public finances. Against this background it will be essential to accelerate the pace of structural reforms with the aim of supporting potential growth. Adjusting the economy towards a more sustainable growth composition where exports play a more prominent role, is a prerequisite to this. In particular given the significant increase in unemployment in Estonia, it is important to step up implementation of active labour market policies, make education and training systems more responsive to labour market needs and invest in life-long learning.

<sup>(1)</sup> OJ L 209, 2.8.1997, p. 1. The documents referred to in this text can be found at the following website: [http://ec.europa.eu/economy\\_finance/sgp/index\\_en.htm](http://ec.europa.eu/economy_finance/sgp/index_en.htm)

- (4) The programme's macroeconomic scenario envisages that real GDP, following an estimated plunge of 14,5 % in 2009, will be flat (- 0,1 %) on a whole year basis in 2010, recovering to an average growth rate of 3,7 % over the rest of the programme period.

Cyclical conditions are projected to begin a gradual improvement during the course of 2010. Domestic demand is expected to continue acting as a drag on the recovery in 2010, with growth coming primarily from increased external demand and a turn in the inventory cycle. Domestic sources of growth are projected to gain traction from 2011. Assessed against currently available information<sup>(1)</sup>, this scenario appears to be based on plausible growth assumptions, while uncertainties related to economic developments remain high. The programme's projections for inflation appear realistic and monetary and exchange rate assumptions are consistent with the rest of the macroeconomic scenario. Nominal declines in domestic prices and wages are well underway and these are expected to continue in 2010 according to both the programme and the Commission services' autumn 2009 forecast, albeit with some differences. Given the collapse of imports as a result of the recession, the previously high external deficit has turned into surplus, which is expected to be maintained in the medium term at a higher level than in the Commission services' autumn forecast, due to the programme's more cautious expectations regarding the evolution of domestic demand. The programme projects a further increase in unemployment in 2010 and a decline in the participation rate over the programme period.

- (5) The authorities' overall economic and budgetary strategy reflects their strongly-held belief in sound public finances. The programme estimates the general government deficit in 2009 at 2,6 % of GDP, very close to the 2008 level (2,7 %). This reflects comprehensive and wide-ranging budgetary consolidation implemented in the course of 2009 against a significant deterioration of the economic situation. The consolidation implemented resulted in a modest increase in nominal revenue, mainly due to higher non-tax revenue and an increase in several tax rates, despite a considerable fall in nominal GDP. As a result of significant cuts in government consumption, expenditure has also been maintained at a comparable level to that of 2008. At the same time, an increased absorption of EU structural funds provided a counter-cyclical support to the economy.

The improvement in the structural balance, i.e. the cyclically-adjusted balance net of one-off and temporary measures calculated according to the commonly agreed methodology, amounted to 3,5 % of GDP according to the programme, implying a severely restrictive fiscal

stance. At the same time, the overall amount of discretionary measures implemented in 2009 points to an even higher consolidation effort, amounting to over 9 % of GDP. The difference can be attributed, firstly, to the fact that the consolidation strategy relied extensively on reversing previously set expenditure growth in government consumption and social benefits; secondly, to negative composition effects on tax revenue, particularly due to a pronounced fall in private consumption and wage bill; thirdly, due to uncertainties that relate to the calculation of cyclically adjusted balances, given the extent and characteristics of the downturn. According to the programme, the general government headline deficit will start gradually declining in 2010, reaching a surplus position by the end of the programme period.

- (6) The programme projects a headline deficit of 2,2 % of GDP in 2010. The improvement in the headline balance compared to the previous year is mainly attributable to a full-year impact of consolidation measures implemented from the second half of 2009 both on revenue and expenditure side. In addition, further excise tax increases were implemented in 2010, resulting in a projected increase in tax revenue, despite a shrinkage in nominal GDP of around 1,25 %. Nominal expenditure is projected to remain broadly at the level of 2009, with some increase in general government investment being offset by a further decline in general government consumption; the expenditure ratio thus rises slightly. Overall, additional measures to improve the fiscal position amount to 0,7 % of GDP in 2010, on top of the full-year impact of consolidation decisions taken in the second half of 2009 that amount to 2,5 % of GDP. Nevertheless, the planned fiscal stance measured by a change in structural balance, is broadly neutral. The discrepancy between two approaches is partly explained by an increased reliance on one-off and temporary measures in the programme, against still-weak cyclical conditions, and partly attributable to the above-mentioned uncertainties that relate to the calculation of cyclically adjusted balances.

- (7) The main goal of the programme's medium term budgetary strategy is to achieve the MTO, defined in the programme as a structural balance, by the end of the programme period in 2013, when the headline and primary balance are projected to reach a surplus position. Given the most recent projections and debt level, the MTO more than adequately reflects the objectives of the Stability and Growth Pact. The structural balance calculated according to the commonly agreed methodology will improve according to the programme by 0,5-1 % of GDP annually over the period 2011-2013. The improvement is projected to come mainly on account of the expenditure-to-GDP ratio declining more rapidly than the revenue-to-GDP ratio, with an expected nominal reduction in most primary expenditure categories in the outer years of the programme, particularly compensation of employees and social payments. However, the programme does not provide detailed information on the broad measures to support this consolidation. Reliance on one-off measures to meet the budgetary targets will decline in 2011 and

<sup>(1)</sup> The assessment notably takes into account the Commission services' Autumn 2009 forecast, but also other information that has become available since then.

disappear in outer years of the programme. As a reflection of this trend, as well as a running-down of financing available under the 2007-2013 financial perspective, the share of non-tax revenue is projected to decline to its 2008 level by the end of the programme period.

- (8) The budgetary outcomes could turn out worse than projected in the programme in the short and medium term. As noted above, uncertainties attached to the macro-economic environment are wide, and these carry obvious budgetary risks, although there seems no reason to assume that these latter risks are biased to the upside or downside. Additional uncertainties for 2010 stem from the reliance on volatile items. In particular, planned sales of non-financial assets totalling 0,5 % of GDP may not be fully realised, while subtracting dividends and profit shares from State-owned companies is subject to administrative decisions and therefore some implementation risks. Furthermore, the better than expected tax revenue in 2009 is partly attributable to a widespread stocking of goods subject to excise taxes prior to January 2010 tax rate increases, and may result in an offsetting negative revenue impact in 2010.

While reliance on one-off and temporary measures declines in the outer years of the programme, insufficient information is provided regarding structural measures to replace these, implying risks to the targets. However, the solid budgetary track record of the Estonian authorities partly mitigates these.

- (9) Government gross debt ratio at 7,8 % of GDP in 2009 is well below the Treaty reference value. The debt ratio is projected to increase to 14,3 % of GDP by the end of the programme period, driven by government deficits. The general government is expected to maintain its net asset position over the programme period.
- (10) Medium-term debt projections that assume GDP growth rates to gradually recover to the values projected before the crisis, tax ratios to return to pre-crisis levels and that include the projected increase in age-related expenditures show that the budgetary strategy envisaged in the programme, taken at face value and with no further policy change, would be more than sufficient to stabilise the debt-to-GDP ratio by 2020.
- (11) The long-term budgetary impact of ageing is significantly lower than the EU average. The current level of gross debt is very low in Estonia and maintaining sound government finances, in line with the budgetary plans over the programme period, would contribute to limiting the risks

to the sustainability of public finances which were assessed in the Commission 2009 Sustainability Report <sup>(1)</sup> as low.

- (12) The budgetary framework is based on a nominal balance rule for the general government budgetary position. The rule has been a long-term anchor of economic policy, contributing to a solid budgetary track record and accumulation of financial assets.

In recent years implementation of the rule has evolved by better aligning it with the cycle, accepting some characteristics of a structural balance approach such that a surplus was targeted at the peak of the cycle and deficits have been accepted during the recession. However, the absence of separate expenditure and/or revenue rules may have contributed to partial spending of windfall revenue during cyclical upturns and peaks. In addition, there are some shortcomings in the medium-term budgetary framework that weaken continuity between annual updates; it remains the case that updated convergence programmes are not discussed prior to their adoption by Parliament. The programme contains plans, which are already in the process of implementation, to strengthen the budgetary process by improving the strategic and annual planning, thus addressing some of the shortcomings described above.

- (13) Tax changes implemented in 2009-2010 continue the strategy of shifting taxation towards consumption and the use of natural resources, while reliance on labour taxes has also increased. In addition, the programme refers to an ongoing analysis of the effectiveness of existing exemptions and preferential tax rates, to securing greater flexibility in the budgetary process by reducing the number of earmarked revenue, to ongoing efforts in countering tax avoidance and further simplifying and streamlining the tax administration. These measures, and further shifts in taxation from labour towards less cyclically-sensitive sources, could contribute to improving the quality of public finances, as well as to mitigating risks to the budgetary outlook.
- (14) The strategy ensuring a smooth participation in ERM II, reinforced by a number of policy commitments undertaken at the time ERM II entry, aims at securing exchange rate stability by maintaining large monetary buffers, financial and fiscal stability and preserving flexibility of labour and product markets.

<sup>(1)</sup> In the Council conclusions from 10 November 2009 on sustainability of public finances 'the Council calls on Member States to focus attention to sustainability-oriented strategies in their upcoming stability and convergence programmes' and further 'invites the Commission, together with the Economic Policy Committee and the Economic and Financial Committee, to further develop methodologies for assessing the long-term sustainability of public finances in time for the next Sustainability report', which is foreseen in 2012.

While Estonia entered the crisis from a comparatively strong position with large fiscal reserves, a broadly healthy banking sector and a comparatively high degree of wage and price flexibility earlier policies have not prevented the emergence of significant macroeconomic imbalances, as evidenced by very high rates of credit growth, significant inflation pressures, large current account deficits and an unsustainable real estate boom. To contain the deterioration of public finances in the crisis, the authorities adopted in 2009 several sizeable consolidation packages. This consolidation will have a positive impact beyond 2009, while, in particular, the reduction of the public sector wage bill contributes positively to the unwinding of imbalances in the economy. The banking sector has remained well-capitalised and has sufficient liquidity. Progress has also been made on structural policy. The recently adopted labour law has enhanced labour market flexibility, facilitating the adjustment of the economy from the previous domestic demand-led pattern to more sustainable growth. As regards product markets, policy measures aim at strengthening competition. Competitiveness of the tradable sector which started benefiting in 2009 from the ongoing reduction in wage costs, as well as from targeted State programmes, including through an effective use of EU structural funds, is being strengthened. The challenge going ahead is to avoid any relapse into significant internal and external imbalances once the recovery becomes established.

- (15) Taking into account the risks to the budgetary targets mentioned above, the programme's budgetary strategy can be regarded as broadly in line with the requirements of the Pact. In particular, the planned achieving of the MTO by the end of the programme period, against a backdrop of the recent severe contraction in economic activity, is an example of an appropriately ambitious target that corresponds to the requirements of the Stability and Growth Pact and is consistent with a smooth participation in ERM II. However, some risks remain in the short term given the uncertainties related to the macroeconomic environment and reliance on volatile items. It is also possible that the MTO will not be achieved as foreseen in the programme, if the targeted consolidation is not underpinned by further measures in the medium term.

- (16) As regards the data requirements specified in the code of conduct for stability and convergence programmes, the programme has some gaps in the required and optional data <sup>(1)</sup>.

The overall conclusion is that Estonia implemented a decisive consolidation of public finances in 2009 against a significant deterioration of the economic situation, contributing to the ongoing adjustment in the economy and aimed at supporting a smooth participation in ERM II, while striving to avoid an excessive deficit situation. The economy is currently emerging from a severe recession, while average growth is projected to remain considerably lower over the medium term than in the upswing and peak years of the recent cycle. The consolidation implemented in 2009 already constitutes a major adjustment of public finances to the expected lower growth in the medium term. However, achieving stricter expenditure control and improving the medium-term budgetary framework remain work-in-progress. The programme targets a gradual decline in the general government headline deficit from 2010, reaching a surplus position in line with the MTO by the end of the programme period, although these budgetary outcomes are subject to downside risks in the short and medium term.

In view of the above assessment and also given the need to ensure sustainable convergence and a smooth participation in ERM II, Estonia is invited to:

- (i) ensure that the general government deficit remains below 3 % of GDP and take the necessary measures to underpin the targeted return to the MTO in the medium term;
- (ii) strengthen the medium-term budgetary framework, particularly by improving expenditure planning, and further strengthen the system of monitoring the strategic targets and reporting on them.

#### Comparison of key macro economic and budgetary projections

		2008	2009	2010	2011	2012	2013
Real GDP (% change)	<b>CP Jan 2010</b>	<b>- 3,6</b>	<b>- 14,5</b>	<b>- 0,1</b>	<b>3,3</b>	<b>3,7</b>	<b>4,0</b>
	COM Nov 2009	- 3,6	- 13,7	- 0,1	4,2	n.a.	n.a.
	CP Dec 2008	- 2,2	- 3,5	2,6	4,8	5,0	n.a.

<sup>(1)</sup> In particular, nominal effective exchange rate assumptions are missing.



		2008	2009	2010	2011	2012	2013
HICP inflation (%)	<b>CP Jan 2010</b>	<b>10,6</b>	<b>0,2</b>	<b>0,4</b>	<b>1,9</b>	<b>2,3</b>	<b>2,7</b>
	COM Nov 2009	10,6	0,2	0,5	2,1	n.a.	n.a.
	CP Dec 2008	10,6	4,2	2,8	3,0	3,2	n.a.
Output gap <sup>(1)</sup> (% of potential GDP)	<b>CP Jan 2010</b>	<b>6,2</b>	<b>- 8,8</b>	<b>- 8,4</b>	<b>- 5,7</b>	<b>- 3,1</b>	<b>- 0,5</b>
	COM Nov 2009 <sup>(2)</sup>	4,7	- 9,4	- 9,1	- 5,4	n.a.	n.a.
	CP Dec 2008	0,9	- 5,7	- 5,9	- 3,9	-1,7	n.a.
Net lending/borrowing vis-à-vis the rest of the world (% of GDP)	<b>CP Jan 2010</b>	<b>- 8,4</b>	<b>6,9</b>	<b>8,5</b>	<b>6,3</b>	<b>2,9</b>	<b>- 1,0</b>
	COM Nov 2009	- 8,2	6,3	3,7	2,4	n.a.	n.a.
	CP Dec 2008	- 10,5	- 5,1	- 5,0	- 4,7	- 4,7	n.a.
General government revenue (% of GDP)	<b>CP Jan 2010</b>	<b>37,1</b>	<b>45,0</b>	<b>45,7</b>	<b>44,0</b>	<b>41,5</b>	<b>39,2</b>
	COM Nov 2009	37,1	41,9	43,5	42,4	n.a.	n.a.
	CP Dec 2008	36,2	38,9	37,8	36,5	35,2	n.a.
General government expenditure (% of GDP)	<b>CP Jan 2010</b>	<b>39,9</b>	<b>47,6</b>	<b>47,9</b>	<b>46,0</b>	<b>42,5</b>	<b>39,0</b>
	COM Nov 2009	39,9	44,8	46,7	45,4	n.a.	n.a.
	CP Dec 2008	38,2	40,6	38,8	36,4	35,0	n.a.
General government balance <sup>(3)</sup> (% of GDP)	<b>CP Jan 2010</b>	<b>- 2,8</b>	<b>- 2,6</b>	<b>- 2,2</b>	<b>- 2,0</b>	<b>- 1,0</b>	<b>0,2</b>
	COM Nov 2009	- 2,7	- 3,0	- 3,2	- 3,0	n.a.	n.a.
	CP Dec 2008	- 1,9	- 1,7	- 1,0	0,1	0,2	n.a.
Primary balance (% of GDP)	<b>CP Jan 2010</b>	<b>- 2,5</b>	<b>- 2,3</b>	<b>- 2,0</b>	<b>- 1,7</b>	<b>- 0,6</b>	<b>0,7</b>
	COM Nov 2009	- 2,5	- 2,6	- 2,6	- 2,3	n.a.	n.a.
	CP Dec 2008	- 1,8	- 1,5	- 0,8	0,3	0,4	n.a.
Cyclically-adjusted balance <sup>(1)</sup> (% of GDP)	<b>CP Jan 2010</b>	<b>- 4,7</b>	<b>0,1</b>	<b>0,4</b>	<b>- 0,3</b>	<b>- 0,1</b>	<b>0,4</b>
	COM Nov 2009	- 4,2	- 0,1	- 0,4	- 1,3	n.a.	n.a.
	CP Dec 2008	- 2,2	0,0	0,8	1,3	0,7	n.a.
Structural balance <sup>(4)</sup> (% of GDP)	<b>CP Jan 2010</b>	<b>- 4,7</b>	<b>- 1,1</b>	<b>- 1,5</b>	<b>- 0,9</b>	<b>- 0,1</b>	<b>0,4</b>
	COM Nov 2009	- 4,4	- 2,5	- 2,4	- 1,9	n.a.	n.a.
	CP Dec 2008	- 2,4	- 0,1	0,4	1,2	0,7	n.a.
Government gross debt (% of GDP)	<b>CP Jan 2010</b>	<b>4,6</b>	<b>7,8</b>	<b>10,1</b>	<b>13,0</b>	<b>14,2</b>	<b>14,3</b>
	COM Nov 2009	4,6	7,4	10,9	13,2	n.a.	n.a.
	CP Dec 2008	3,7	3,7	3,5	3,0	2,8	n.a.

## Notes:

<sup>(1)</sup> Output gaps and cyclically-adjusted balances from the programmes as recalculated by Commission services on the basis of the information in the programmes.

<sup>(2)</sup> Based on estimated potential growth of 2,3 %, - 0,2 %, - 0,4 % and 0,2 % respectively in the period 2008-2011.

<sup>(3)</sup> Convergence Programme: ESA95 definition; Commission services: EDP definition.

<sup>(4)</sup> Cyclically-adjusted balance excluding one-off and other temporary measures. One-off and other temporary measures amount to 1,2 % of GDP in 2009, 1,9 % of GDP in 2010 and 0,6 % of GDP in 2011, overall deficit-reducing, according to the most recent programme and 0,2 % of GDP in 2008, 2,4 % of GDP in 2009, 2,0 % of GDP in 2010 and 0,6 % of GDP in 2011, overall deficit-reducing, according to the Commission services' autumn 2009 forecast.

## Source:

Convergence programme (CP); Commission services' autumn 2009 forecasts (COM); Commission services' calculations.

## COUNCIL OPINION

## on the updated stability programme of France, 2009-2013

(2010/C 140/02)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies <sup>(1)</sup>, and in particular Article 5(3) thereof,

Having regard to the recommendation of the Commission,

After consulting the Economic and Financial Committee,

HAS DELIVERED THIS OPINION:

- (1) On 26 April 2010 the Council examined the updated stability programme of France, which covers the period 2009 to 2013.
- (2) Economic activity in France lost its dynamism in the course of 2008 and declined sharply in the fourth quarter and in the first quarter of 2009. From the second quarter of 2009, it picked up again, supported by stimulus measures in France and in neighbouring countries. One prominent challenge for economic policy is the situation of public finances. Specifically, since 2002 the deficit in France has been either above or close to the 3 % of GDP threshold, mainly a reflection of insufficient consolidation efforts. In this context, France was under an excessive deficit procedure between 2002 and 2007, and received a policy advice from the Commission in May 2008. Following the notification of a deficit above the 3 % of GDP threshold in 2008, a new excessive deficit procedure was launched in February 2009, which foresees the correction of the excessive deficit by 2013. Other challenges include addressing the supply-side weaknesses which lead to insufficient external competitiveness, as well as increasing labour utilisation.

- (3) Although much of the observed decline in actual GDP in the context of the crisis is cyclical, the level of potential output has also been negatively affected. In addition, the crisis may also affect potential growth in the medium-term through lower investment, constraints in credit availability and increasing structural unemployment. Moreover, the impact of the economic crisis compounds the negative effects of demographic ageing on potential output and the sustainability of public finances. Against this background it will be essential to accelerate the pace of structural reforms with the aim of supporting potential growth. In particular, for France it is important to undertake reforms in the areas of the labour market and the overall competition framework.

- (4) The macroeconomic scenario underlying the programme envisages that after a contraction by 2,2 % in 2009 real GDP will grow again by 1,4 % in 2010 before recovering to an average rate of 2,5 % over the rest of the programme period. Assessed against currently available information <sup>(2)</sup>, this scenario appears to be based on slightly favourable growth assumptions for 2010 broadly in line with the Commission services' forecast and the composition of growth in the programme's projections is richer in taxes than in the Commission services' forecast. From 2011 growth assumptions are markedly favourable and 0,75 pp. above potential on average from 2011 to 2013 (as recalculated by the Commission services' based on the information in the programme following the commonly agreed methodology). This translates into a rapidly closing output gap. The growth rates rely mainly on domestic demand, and notably households' consumption, throughout the programme period. The programme's projections for inflation appear in line with the Commission services' forecasts, as well as those for employment growth, which stays negative in 2010 before recovering, reflecting the traditional lag with activity.

- (5) The programme estimates the general government deficit in 2009 at 7,9 % of GDP. The significant deterioration from a deficit of 3,4 % of GDP in 2008 reflects to a large extent the impact of the crisis on government finances (notably corporate tax receipts and VAT), but was also brought about by stimulus measures amounting to 1,1 % of GDP which the government adopted in line with the European Economic Recovery Plan (EERP). According to the programme, fiscal policy is planned to be neutral in 2010 and is turning restrictive in the outer years with a view to correcting the excessive deficit by 2013 under the assumed growth scenario. This consolidation is in line with the exit strategy advocated by the Council.

<sup>(1)</sup> OJ L 209, 2.8.1997, p. 1. The documents referred to in this text can be found at the following website: [http://ec.europa.eu/economy\\_finance/sgp/index\\_en.htm](http://ec.europa.eu/economy_finance/sgp/index_en.htm)

<sup>(2)</sup> The assessment notably takes into account the Commission services' Autumn 2009 forecast and the February 2010 interim forecast, but also other information that has become available since then.



(6) The February 2010 stability programme expects the general government deficit in 2010 to further deteriorate by 0,3 % of GDP and reach 8,2 % of GDP in 2010. France has implemented the deficit-reducing measures in 2010 as planned in the government proposal for the budget law for 2010 while largely avoiding a further deterioration of public finances, with the exception of the decision on a public loan 'to invest in the future' that will have a negative budgetary impact of around 0,1 % of GDP in 2010 (and thereafter), which appears to be broadly in line with the latest recommendations under Article 126(7) TFEU addressed to France. The deficit projection for 2010 is 0,3 % of GDP better than the one in the draft budget for 2010, on account of a better deficit outcome anticipated for 2009 (0,2 % of GDP) and a revision of growth projections (0,3 % of GDP), partly offset by the suspension of the environmental tax by the French Constitutional Court as well as the introduction of measures stemming from the previously mentioned public loan, which would together deteriorate the deficit by around 0,2 % of GDP. The latter elements changed the balance of discretionary measures from around + 0,25 % of GDP at the time of the Council recommendation to broadly neutral in the programme. Stimulus measures in the context of the EERP of 1,1 % of GDP are partially phased out and reduced to 0,4 % of GDP in 2010, and there are some further consolidation measures of 0,1 % of GDP (notably the increase in taxes included in the social security budget), bringing total consolidation measures to 0,8 % of GDP. However, these measures are offset by new deficit-increasing measures with mostly short term costs included in the original budget for 2010 amounting to 0,7 % of GDP, notably the reform of the local business tax (around 0,6 % of GDP) and the decrease in VAT for the catering sector (0,1 % of GDP), as well as by the previously mentioned measures related to the public loan (around 0,1 % of GDP). In 2010, the structural deficit, i.e. the cyclically-adjusted deficit net of one-off and other temporary measures calculated by the Commission's services on the basis of the programme figures according to the commonly agreed methodology, would deteriorate by 0,25 pp. and reach 6,75 % of GDP. When taking into account the transitory impact of anticipated reimbursements for firms of 0,4 % of GDP in the context of the implementation of the reform of the local business tax, a one-off measure but not considered as such in the programme, the structural deficit would slightly improve by 0,1 pp. in 2010 to 6,5 % of GDP.

(7) The main goal of the programme's budgetary strategy is to bring the general government balance to the 3 % of GDP reference value by 2013, the deadline set in the Council recommendation of 2 December 2009. The programme projects the nominal budget deficit to decrease to 6 % of GDP in 2011 and to further decline to 4,6 % in 2012 before it eventually reaches 3 % in 2013. The primary balance is expected to follow a somewhat similar path and would reach - 0,1 % of GDP at the end of the programme period, from - 5,5 % of GDP in 2010. The structural deficit calculated according to the commonly agreed methodology would continue to improve after

2010, to reach around 5 % of GDP in 2011, 4 % in 2012 and 2,75 % in 2013. The average annual fiscal effort would come out at 0,9 % of GDP over the period 2010-2013, which is somewhat below the average effort of above 1 % of GDP per year recommended by the Council. The consolidation strategy outlined in the programme would rely on measures aimed at curbing expenditure growth at all government levels, on top of the complete phasing out in 2011 of the measures in line with the EERP. The French authorities intend to further reduce the budgetary impact of existing tax exemptions by around 0,1 % of GDP each year starting in 2011. The measures supporting the consolidation strategy are not yet specified but should be unveiled in the forthcoming months. The programme considers that the medium-term objective (MTO) is a balanced budget in structural terms. Given the most recent projections and debt level, the MTO more than adequately reflects the objectives of the Pact. The updated stability programme does not envisage achieving the medium-term budgetary objective within the programme period.

(8) While in 2010 the deficit target appears to be rather plausible and even leaves some room for a better performance in case the environmental tax is eventually implemented in an amended form, the budgetary projections could turn out worse than projected in the programme from 2011 on. In particular, the macro-economic scenario over 2011-2013 is markedly favourable. Specifically, the deficit projections are highly sensitive to growth: according to the sensitivity analysis in the programme, should GDP growth be lower by 0,25 pp. over this period, the general government deficit would only fall to 4 % of GDP in 2013.

A cumulative loss of 0,75 % of GDP would therefore translate into 2013 in a deficit increase of 1 % of GDP. Additionally, the deficit targets could be negatively affected by possible expenditure slippages, as the correction of public expenditure trends at all sub-government levels compared to their past trends is not backed by sufficiently specified measures. The rather optimistic projected evolution of revenue is based on the hypothesis of a catch-up phenomenon after the negative overshooting during the crisis, as the tax-to-GDP elasticity is foreseen to reach 1,2 on average from 2011 to 2013. The reduction in tax exemptions by around 0,1 % of GDP each year as from 2011 is also not yet specified. Overall, the track record indicates that expenditure overruns cannot be ruled out. The assessment based on the information presented in the programme suggests that there are substantial risks that the deficit outcomes for the 2011-2013 period may be worse than targeted in the programme.

- (9) The government gross debt ratio was above the Treaty reference value in 2009 and is according to the programme on an increasing trend until 2012. Government gross debt is estimated at 77,4 % of GDP in 2009, up from 67,4 % in 2008. Apart from the increase in the deficit and the decline in GDP growth, a significant stock-flow adjustment, reflecting notably financial operations for the banking and the automobile sectors, contributed to the rise in the debt ratio. A further increase by a 9,2 pps. is projected over the programme period, reaching the level of about 87 % of GDP, mainly driven by continued high government deficits. In view of the substantial risks to the budgetary targets, the evolution of the debt ratio is likely to be less favourable than projected in the programme, especially after 2011.
- (10) Medium-term debt projections that assume GDP growth rates to gradually recover to the values projected before the crisis, tax ratios to return to pre-crisis levels and include the projected increase in age-related expenditure show that the budgetary strategy envisaged in the programme, taken at face value and with no further policy change, would not be sufficient to stabilise the debt-to-GDP ratio by 2020.
- (11) The long-term budgetary impact of ageing is clearly lower than the EU average, with pension expenditure showing a more limited increase, as a result of the pension reforms already enacted. The budgetary position in 2009, as estimated in the programme, compounds the budgetary impact of population ageing on the sustainability gap. Ensuring primary surpluses over the medium-term would contribute to reducing the risks to the sustainability of public finances which were assessed in the Commission 2009 Sustainability Report <sup>(1)</sup> as medium.
- (12) Reforms have recently been introduced to further improve the overall budgetary framework. On 9 February 2009, the first multi-year public finance planning act was adopted by Parliament, setting out expenditure targets at all general government sub-sectors. It also notably lays down the principle of budgetary neutrality for the creation of new tax exemptions, whose aggregate cost must be fully offset. This principle is compulsory and has almost been met in

2009 assessed on a multi-year basis. The annual budgetary framework in France notably comprises expenditure norms set for general government sub-levels. A first rule, the so-called 'zero volume increase expenditure rule', is set at the central government level. Although in the past changes in the perimeter of the rule may have helped to respect it, recently the perimeter was broadened with the aim of achieving a better control of central government expenditure and it has been adhered to.

The national health insurance spending objective (*Objectif National des Dépenses d'Assurance Maladie*) introduced in 1997 has helped control healthcare spending even if the expenditure targets have been often missed. Finally, local authorities' expenditures are limited by a 'golden rule' with a legal basis, which prevents authorities from raising debt to finance operational expenditures and by a rule stipulating that the increase of funds transferred by the central government cannot exceed the rate of inflation. However, the objectives set in the stability programmes have rarely been reached. The government intends to further reform the fiscal framework. A conference on public finances was organised on 28 January 2010 with the aim of addressing the deterioration of French public finances and on how to implement budgetary consolidation. Several working groups were set up to propose new reforms to be unveiled in April and notably aiming at further curbing the evolution of healthcare spending, or at better controlling local expenditures. A working group on balanced budget rules was also set up. The programme indicates as well that new measures aimed at reducing central government spending will be presented in April. The consolidation strategy presented in the programme also relies on an improvement of the budgetary framework that would follow the proposals made by these working groups.

- (13) At 52,7 % in 2008, France's expenditure-to-GDP ratio is the highest in the euro area. The rise in public expenditure over the past decades has contributed to high deficits and debt levels, which have affected the long-term sustainability of French public finances. The French authorities launched in 2007 the General Review of Public Policies (*Revue Générale des Politiques Publiques*, or RGPP) with the aim of identifying ways of making government expenditure more efficient. More than 300 measures have been identified so far (with the aim to achieve savings of around 0,3 % of GDP which has been rather modest compared to the global amount of public expenditure, exceeding 50 % of GDP). About 0,75 have been implemented and for example made possible the non-replacement of one out of two retiring civil servants in the central government sub-sector. The government announced in the budget law for 2010 that the RGPP would be extended to other central bodies and further reforms are expected to be announced in autumn. Finally, regarding the pension system, as previously mentioned, the programme refers to a reform expected in 2010. No measures have been announced yet.

<sup>(1)</sup> In the Council conclusions from 10 November 2009 on sustainability of public finances 'the Council calls on Member States to focus attention to sustainability-oriented strategies in their upcoming stability and convergence programmes' and further 'invites the Commission, together with the Economic Policy Committee and the Economic and Financial Committee, to further develop methodologies for assessing the long-term sustainability of public finances in time for the next Sustainability report', which is foreseen in 2012.

(14) Overall, in 2010 the budgetary strategy set out in the programme is broadly consistent with the Council recommendations under Article 126(7). However, from 2011 on, taking into account the risks, the budgetary strategy would not seem to be consistent with the Council Recommendation under Article 126(7). According to the programme, the average annual fiscal effort, based on the evolution of the (recalculated) structural balance would reach 0,9 % of GDP. This is somewhat below what was requested in the Council's recommendations under Article 126(7) ('above 1 % of GDP') and is moreover subject to the risks mentioned above. The programme nevertheless anticipates the nominal budget deficit to eventually reach 3 % of GDP, which is notably due to a markedly favourable macroeconomic scenario in the outer years of the programme, as well as rather optimistic assumptions regarding elasticity of fiscal revenue to GDP. Overall, taking into account the risks on current policies the deficit outcomes for the 2011-2013 period may turn out to be worse than targeted in the programme and may have to be strengthened considerably to achieve a correction of the excessive deficit by 2013, as recommended by the Council. Using revenue from a new version of the suspended environmental tax as mentioned in the programme would help achieve somewhat better budgetary targets already from 2010. Finally, the budgetary strategy may also not be sufficient to bring debt back on a downward path.

(15) As regards the data requirements specified in the code of conduct for stability and convergence programmes, the programme provides all required and most of the optional data<sup>(1)</sup>. In its recommendation under Article 104/126(7) of 2 December 2009 with a view to bringing the excessive deficit situation to an end, the Council also invited France to report on progress made in the implementation on the Council's recommendations in a separate chapter in the updates of the stability programme. France complied with this recommendation.

The overall conclusion is that after a significant deterioration of public finances in 2009 triggered by the economic downturn and measures taken in the context of the EERP, the general government deficit for 2010 is expected to further increase to 8,2 % of GDP. Consolidation measures and the partial phasing out of measures in line with the EERP would be compensated by further deficit-increasing measures with mostly short term costs, including public investment stemming from a public loan. The budget balance would improve thereafter. The debt ratio is also expected to increase substantially over the programme horizon. The adjustment path presented in the programme leads to a deficit of 3 % of GDP in 2013 without a safety margin and is based on a markedly favourable macroeconomic scenario from 2011 to 2013 combined with an average annual

structural adjustment that is somewhat below the adjustment recommended by the Council of above 1 % of GDP. It foresees measures, mostly on the expenditure side, supporting the consolidation strategy, although they are not specified in the programme and will be identified in the forthcoming months. The budgetary projections are therefore subject to substantial downside risks and the fiscal consolidation may need to be strengthened accordingly to ensure a correction of the excessive deficit by 2013. Ensuring higher primary surpluses over the medium-term would contribute to reducing risks to the sustainability of public finances. The programme indicates that a reform of the pension system will be presented in 2010.

In view of the above assessment and also in the light of the recommendation under Article 126 TFEU of 2 December 2009, France is invited to:

- (i) use, throughout the programme period, windfalls related to an improvement of the macro-economic and fiscal outlook, as well as the implementation of all envisaged tax measures to accelerate the deficit reduction and the decline of the gross debt ratio back towards the 60 % of GDP reference value;
- (ii) stand ready to adopt further consolidation measures, in case risks related to the fact that the macroeconomic scenario of the programme is more favourable than the scenario underpinning the Article 126(7) Recommendation materialise, and further specify the measures necessary to ensure an average annual fiscal effort of above 1 % of GDP over the period 2010-2013 and to achieve a correction of the excessive deficit by 2013;
- (iii) ensure that the budgetary framework is reinforced, in particular on the expenditure side, and effectively supports the achievement of the outlined medium-term fiscal plans at all sub-government levels, as planned by the French government.

France is also invited to provide more information on the broad measures underpinning the envisaged consolidation in the outer years of the programme, at the latest in the EDP chapters of the forthcoming stability programme updates.

<sup>(1)</sup> Assumptions on short and long-term interest rates are not provided.

## Comparison of key macro-economic and budgetary projection

		2008	2009	2010	2011	2012	2013
Real GDP (% change)	<b>SP Feb 2010</b>	<b>0,4</b>	<b>- 2,25</b>	<b>1,4</b>	<b>2,5</b>	<b>2,5</b>	<b>2,5</b>
	COM Nov 2009	0,4	- 2,2	1,2	1,5	n.a.	n.a.
	SP Dec 2008	1,0	0,2-0,5	2,0	2,5	2,5	n.a.
HICP inflation (%)	<b>SP Feb 2010</b>	<b>3,2</b>	<b>0,1</b>	<b>1,3</b>	<b>1,6</b>	<b>1,75</b>	<b>1,75</b>
	COM Nov 2009	3,2	0,1	1,1	1,4	n.a.	n.a.
	SP Dec 2008	3,3	1,5	1,75	1,75	1,75	n.a.
Output gap <sup>(1)</sup> (% of potential GDP)	<b>SP Feb 2010</b>	<b>0,8</b>	<b>- 2,9</b>	<b>- 2,9</b>	<b>- 2,1</b>	<b>- 1,2</b>	<b>- 0,4</b>
	COM Nov 2009 <sup>(2)</sup>	0,8	- 2,5	- 2,5	- 2,4	n.a.	n.a.
	SP Dec 2008	- 0,6	- 1,8	- 1,6	- 1,1	- 0,4	n.a.
Net lending/borrowing vis-à-vis the rest of the world (% of GDP)	<b>SP Feb 2010</b>	<b>- 3,3</b>	<b>- 2,5</b>	<b>- 2,8</b>	<b>- 2,8</b>	<b>- 2,7</b>	<b>- 2,7</b>
	COM Nov 2009	- 3,3	- 2,3	- 2,3	- 2,3	n.a.	n.a.
	SP Dec 2008	- 3,4	- 2,6	- 2,5	- 2,4	- 2,4	n.a.
General government revenue (% of GDP)	<b>SP Feb 2010</b>	<b>49,3</b>	<b>47,7</b>	<b>47,6</b>	<b>48,6</b>	<b>49,1</b>	<b>49,8</b>
	COM Nov 2009	49,3	47,0	46,8	47,1	n.a.	n.a.
	SP Dec 2008	49,8	49,6	50,0	50,0	50,2	n.a.
General government expenditure (% of GDP)	<b>SP Feb 2010</b>	<b>52,7</b>	<b>55,6</b>	<b>55,8</b>	<b>54,6</b>	<b>53,7</b>	<b>52,8</b>
	COM Nov 2009	52,7	55,2	55,1	54,8	n.a.	n.a.
	SP Dec 2008	52,7	53,5	52,7	52,0	51,3	n.a.
General government balance (% of GDP)	<b>SP Feb 2010</b>	<b>- 3,4</b>	<b>- 7,9</b>	<b>- 8,2</b>	<b>- 6,0</b>	<b>- 4,6</b>	<b>- 3,0</b>
	COM Nov 2009	- 3,4	- 8,3	- 8,2	- 7,7	n.a.	n.a.
	SP Dec 2008	- 2,9	- 3,9	- 2,7	- 1,9	- 1,1	n.a.
Primary balance (% of GDP)	<b>SP Feb 2010</b>	<b>- 0,6</b>	<b>- 5,4</b>	<b>- 5,5</b>	<b>- 3,2</b>	<b>- 1,7</b>	<b>- 0,1</b>
	COM Nov 2009	- 0,6	- 5,5	- 5,4	- 4,7	n.a.	n.a.
	SP Dec 2008	0,0	- 1,1	0,1	0,9	1,7	n.a.
Cyclically-adjusted balance <sup>(1)</sup> (% of GDP)	<b>SP Feb 2010</b>	<b>- 3,8</b>	<b>- 6,5</b>	<b>- 6,8</b>	<b>- 4,9</b>	<b>- 4,0</b>	<b>- 2,8</b>
	COM Nov 2009	- 3,8	- 7,0	- 7,0	- 6,5	n.a.	n.a.
	SP Dec 2008	- 2,6	- 3,0	- 1,9	- 1,4	- 0,9	n.a.
Structural balance <sup>(3)</sup> (% of GDP)	<b>SP Feb 2010</b>	<b>- 3,8</b>	<b>- 6,5</b>	<b>- 6,8</b>	<b>- 4,9</b>	<b>- 4,0</b>	<b>- 2,8</b>
	COM Nov 2009	- 3,9	- 7,0	- 6,6	- 6,5	n.a.	n.a.
	SP Dec 2008	- 2,6	- 3	- 1,9	- 1,4	- 0,9	n.a.

		2008	2009	2010	2011	2012	2013
Government gross debt (% of GDP)	<b>SP Feb 2010</b>	<b>67,4</b>	<b>77,4</b>	<b>83,2</b>	<b>86,1</b>	<b>87,1</b>	<b>86,6</b>
	COM Nov 2009	67,4	76,1	82,5	87,6	n.a.	n.a.
	SP Dec 2008	66,7	69,1	69,4	68,5	66,8	n.a.

## Notes:

(<sup>1</sup>) Output gaps and cyclically-adjusted balances from the programmes as recalculated by Commission services on the basis of the information in the programmes.

(<sup>2</sup>) Based on estimated potential growth of 1,5 %, 1,2 %, 1,2 % and 1,4 % respectively in the period 2008-2011.

(<sup>3</sup>) Cyclically-adjusted balance excluding one-off and other temporary measures. One-off and other temporary measures are 0 all over the period covered (2008-2013) according to the most recent programme and 0,1 % of GDP in 2008 deficit-reducing and 0,4 % of GDP in 2010 deficit-increasing according to the Commission services' November 2009 forecast.

## Source:

Stability programme (SP); Commission services' autumn 2009 forecasts (COM); Commission services' calculations.



**COUNCIL OPINION**  
**on the updated stability programme of Germany, 2009-2013**

(2010/C 140/03)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies <sup>(1)</sup>, and in particular Article 5(3) thereof,

Having regard to the recommendation of the Commission,

After consulting the Economic and Financial Committee,

HAS DELIVERED THIS OPINION:

(1) On 26 April 2010 the Council examined the updated stability programme of Germany, which covers the period 2009 to 2013.

(2) After a sharp, export-driven contraction at the turn of 2008/09, real GDP rebounded strongly in mid-2009, thanks to expansionary policies and a revival of foreign demand. However, a renewed loss of momentum towards the end of 2009 underscored the fragility of the current economic recovery. While the labour market has remained resilient so far, reflecting partly State-funded short-time working arrangements, the banking sector suffered considerable losses and write-downs from investments in structured assets.

Due to sizeable fiscal stimulus measures (in 2009 and 2010) adopted in line with the European Economic Recovery Plan (EERP) as well as crisis-related revenue shortfalls and higher expenditure, the general government budget shifted from a balanced position in 2008 to a

deficit of above 3 % of GDP in 2009. These developments have led to the opening of the excessive deficit procedure for Germany on 2 December 2009 with the Council setting a deadline of 2013 for the correction of the excessive deficit. While in the medium-term the recovery should be supported by past structural reforms, notably in the labour market, sound corporate and household balance sheets and a strong competitive position, a key challenge will be to raise potential growth, in particular by strengthening domestic sources of growth. Combining the necessary fiscal consolidation with the stabilisation of the banking sector, ensuring access to finance by the non-financial sector and further enhancing the adjustment capacity of the labour market will be pivotal elements to support the economic recovery.

(3) Although much of the observed decline in actual GDP in the context of the crisis is cyclical, the level of potential output has also been negatively affected. In addition, the crisis may also affect potential growth in the medium-term through lower investment, constraints in credit availability and increasing structural unemployment. Moreover, the impact of the economic crisis compounds the negative effects of demographic ageing on potential output and the sustainability of public finances. Against this background it will be essential to accelerate the pace of structural reforms with the aim of supporting potential growth. In particular, for Germany it is important to undertake reforms in the areas of competition in services, labour market integration and education and training.

(4) The macroeconomic scenario underlying the programme envisages that after a slump of 5 % in 2009, real GDP growth will be restored, moving from 1,4 % in 2010 to an average rate of 2 % over the rest of the programme period. Assessed against currently available information <sup>(2)</sup>, this scenario appears to be based on somewhat favourable growth assumptions. Real GDP growth projections for both 2010 and 2011 are slightly above the Commission services' autumn 2009 forecast. Moreover, the programme envisages a slightly stronger expansion of private consumption in 2011, supported by a more favourable outlook for employment, unemployment and wage growth. The programme's projections for inflation could turn out to be on the high side in 2011, but appear realistic for the rest of the programme period.

<sup>(1)</sup> OJ L 209, 2.8.1997, p. 1. The documents referred to in this text can be found at the following website: [http://ec.europa.eu/economy\\_finance/sgp/index\\_en.htm](http://ec.europa.eu/economy_finance/sgp/index_en.htm)

<sup>(2)</sup> The assessment notably takes into account the Commission services' autumn 2009 forecast, but also other information that has become available since then, including the Commission services' February 2010 interim forecast.



- (5) The programme estimates the general government deficit for 2009 at 3,2 % of GDP. The significant deterioration from a balanced budgetary position in 2008 reflects to a large extent the impact of automatic stabilisers, but was also brought about by stimulus measures amounting to around 1,75 % of GDP which the government adopted in line with the EERP. The widening of the deficit was mainly expenditure-based due to increased social transfers, higher public investment and subsidies to support short-time work. According to the programme, fiscal policy is planned to remain supportive in 2010 before turning restrictive in the outer years of the programme. In view of Germany's relatively favourable budgetary and economic situation the continued fiscal expansion in 2010 is appropriate and in line with the EERP. In line with the exit strategy advocated by the Council and with a view to correcting the excessive deficit by 2013 and returning to a sustainable public finance position, the expansionary fiscal stance in 2009 and 2010 is followed by a significant fiscal tightening from 2011 on.
- (6) According to the programme, the nominal general government deficit will increase from 3,2 % of GDP in 2009 to 5,5 % in 2010, which is in line with the Council Recommendation under Article 126(7) of 2 December 2009. The further widening of the deficit in 2010 is mainly fuelled by fiscal stimulus measures and the impact of automatic stabilisers. General government revenue is projected to shrink by almost 2 % of GDP on the back of household relief measures (such as tax deductibility of health-care and long-term-care contributions, reduced contribution rate to health-care insurance, increased child allowance and higher basic personal allowance) as well as weaker domestic demand. The projected increase in general government expenditure by around 0,5 % of GDP can be mainly attributed to the worsening situation on the labour market and continued investment in public infrastructure undertaken as a part of the fiscal stimulus (around 0,25 % of GDP according to the Commission services' estimation). The course of fiscal policy in 2010 will remain strongly expansionary, as reflected by a 2,5 % of GDP increase in the structural deficit (cyclically-adjusted net of one-off and other temporary measures, as recalculated by the Commission services on the basis of the information in the programme according to the commonly agreed methodology). The strong deterioration in the structural balance can be mainly accounted for by the new stimulus measures introduced in 2010 and lagged effects of some of the stimulus measures adopted in 2009 (e.g. the reduced contribution rate to health-care insurance, additional infrastructure investment). The change in the structural deficit calculated according to the commonly agreed methodology (top-down approach) amounting to -2,5 % of GDP differs from the change explained by the information on the discretionary measures undertaken in 2010 (bottom-up approach) estimated by the Commission's services at around -1,75 % of GDP. This discrepancy can be associated with the negative composition effects on tax revenue, particularly due to weak private consumption and wage growth, and likely revenue losses from profit-related taxes.
- (7) The main goal of the medium-term budgetary strategy is to correct the excessive deficit by 2013 with an average annual fiscal effort of almost 0,75 % of GDP in 2011-2013, which is in line with the Council Recommendation under Article 126(7) of 2 December 2009.
- The programme projects the general government balance to improve from 2011 onwards. In nominal terms, the consolidation is expected to take place in equal steps in 2011 and 2012 — around 1 percentage point each — followed by a smaller adjustment of around 0,5 percentage point in 2013. The envisaged adjustment path is based on the technical assumption of expenditure-driven consolidation at the federal level (with restraint spread equally across all categories of expenditure except for interest payments and transfers to other government levels and abroad). This technical assumption is related to the consolidation requirements implied by the new national budgetary rule. The expected consolidation is projected to be borne mainly by the Federal government (around 2 % of GDP over the period 2011 and 2013) and to a lesser extent by the Länder (around 0,5 % of GDP). In structural terms (recalculated in accordance with the commonly agreed methodology), the deficit is projected to improve by around 0,5 % of GDP in 2011, around 1 % of GDP in 2012 and around 0,75 % of GDP in 2013. Given rising debt and interest payments increasing towards the programme horizon, the primary balance needs to improve faster than the headline deficit. Germany's goal over the medium-term is to achieve a general government budget close-to-balance in structural terms. According to the programme, this implies a medium-term objective (MTO) of -0,5 % of GDP. Given the most recent projections and debt level, the MTO reflects the objectives of the Pact. However, the updated stability programme does not envisage achieving the MTO within the programme period.
- (8) The budgetary outcomes could turn out worse than projected in the programme, in particular in the year 2011 and beyond. This is related to the lack of specific consolidation measures beyond 2010, the need to effectively implement the new national budgetary rule at the central and sub-federal level of the government without postponing consolidation requirements to later years, the uncertainty about the possible introduction of further tax cuts envisaged in the Coalition agreement and their reconciliation with the necessary budgetary retrenchment as well as to the somewhat favourable growth assumptions. Additional financial market stabilisation measures could further burden the budget, although some of the costs of the government support could be recouped in the future.

- (9) Government gross debt is estimated at 72,5 % of GDP in 2009, up from 65,9 % in the year before. Apart from the increase in the deficit and the decline in GDP growth, a significant stock-flow adjustment (around 1 % of GDP) reflecting primarily bank rescue operations contributed to the rise in the debt ratio. The debt ratio is projected to increase by a further 9,5 pps. over the programme period up to 82 % of GDP, mainly driven by continued government deficits and to a lesser extent by unspecified debt-increasing stock-flow adjustments of around 0,5 % of GDP p.a. between 2011 and 2013. The debt projection included in the programme relies on the assumption that the level of debt will not be affected by the establishment of 'bad banks'. In addition to the risks attached to the deficit path, the evolution of the debt ratio is subject to risks related to possible further burdens related to financial market stabilisation. The government gross debt ratio is above the Treaty reference value and is on an increasing trend over the whole programme period.
- (10) Medium-term debt projections that assume GDP growth rates to only gradually recover to the values projected before the crisis, and tax ratios to return to pre-crisis levels and that include the projected increase in age-related expenditures show that the budgetary strategy envisaged in the programme, taken at face value and with no further policy change, would not be sufficient to stabilise the debt-to-GDP ratio by 2020.
- (11) The long-term budgetary impact of ageing is slightly above the EU average. The budgetary position in 2009 as estimated in the programme compounds the budgetary impact of population ageing on the sustainability gap. Achieving primary surpluses in the medium-term would contribute to reducing the risks to the sustainability of public finances which were assessed in the Commission 2009 Sustainability Report <sup>(1)</sup> as medium.
- (12) Germany's fiscal framework has been considerably strengthened by the new budgetary rule anchored in the Constitution in August 2009. Following the structure of the preventive arm of the SGP, the new rule is a close-to-balance rule setting the ceiling for the federal structural deficit at 0,35 % of GDP from 2016 onwards, with a transition period starting in 2011. The regional budgets
- of the *Länder* must be structurally balanced as of 2020, but their respective consolidation paths are still unclear. Missing retrenchment plans at the sub-federal level and uncertainties related to future financing needs of the social security funds constitute a potential risk for the consolidation of the general government budget. Nevertheless, the new rule enhances fiscal credibility and reduces considerably the discretionary leeway compared with the former budget rule which could not prevent debt accumulation in the past decades. The newly created Stability Council (*Stabilitätsrat*), composed of the finance ministers of the *Bund* and the *Länder*, will regularly monitor federal and regional budgets, including the implementation of consolidation measures in the framework of the SGP. However, its recommendations are not binding and it is not entitled to impose any sanctions. The new framework is planned to be further enhanced by changeover from a bottom-up to a top-down approach of budgetary planning, improving the expenditure control by the Ministry of Finance and thus supporting the compliance with the consolidation predetermined by the budgetary rule. Furthermore, the government plans a gradual overhaul of the federal budgeting and accounting system with stronger focus on a performance-based assessment of revenues and expenditures.
- (13) Despite Germany's overall good quality of public finances, there is still room for improvement. On the revenue side, corporate and income tax codes remain complex, and the tax system offers numerous concessions. Despite further plans to increase spending on education and R&D, the relatively low ratio of investment to public consumption points to the potential for a more growth-oriented composition of expenditures.

While the programme recognises the importance of a comprehensive review of public subsidies, it does not outline any concrete plans in this regard. Additional efficiency gains could be realised by improving the budgetary coordination between the federal and the regional governments and through further re-organisation of public administration (e.g. wider use of quality management, outsourcing, e-government, reduction of public sector employment etc.) <sup>(2)</sup>. The need for fiscal consolidation limits the scope for subsidies to the public pension system from the general budget. Recent ad-hoc modifications of the pension adjustment formula undermine the credibility of the undertaken pension reforms, as the envisaged correction in later years might prove difficult. Regarding statutory health-care insurance, the government established a special committee at ministerial level to reconsider the financing of the health-care system, in particular to examine the options for

<sup>(1)</sup> In the Council conclusions from 10 November 2009 on sustainability of public finances 'the Council calls on Member States to focus attention to sustainability-oriented strategies in their upcoming stability and convergence programmes' and further 'invites the Commission, together with the Economic Policy Committee and the Economic and Financial Committee, to further develop methodologies for assessing the long-term sustainability of public finances in time for the next Sustainability report', which is foreseen in 2012.

<sup>(2)</sup> See *Bundesrechnungshof* (2009), 'Chancen zur Entlastung und Modernisierung des Bundeshaushalts'.

decoupling the health-care insurance contributions from wage income with a view to reducing non-wage labour costs. First results are expected in July 2010.

- (14) Overall, in 2010 the budgetary strategy set out in the programme is consistent with the Council Recommendation under Article 126(7) of 2 December 2009. However, from 2011 on, taking into account the risks, the budgetary strategy may not be consistent with the Council Recommendation under Article 126(7) of 2 December 2009. In particular, the consolidation path from 2011 onwards is not backed up by any concrete measures and no information is provided regarding the possible implementation of the expansionary measures proposed in the new government's coalition agreement and their reconciliation with the necessary budgetary retrenchment. The national budgetary rule — a focal point of the consolidation plans — remains to be implemented at all levels of governments. Moreover, economic recovery proving more sluggish than currently expected could undermine the budgetary objectives.

In view of the risks, the average annual fiscal effort may fall short of the adjustment recommended by the Council under Article 126(7). Given debt projections presented in the programme and the risk of possible further financial market stabilisation measures, the budgetary strategy is not sufficient to bring the debt-to-GDP ratio back on a downward path. The envisaged expenditure-driven consolidation as well as planned increases in education and R&D spending would be consistent with the aim of supporting the recovery of potential growth. However, the projected decline in the overall investment ratio below its 2009 level is a source of concern.

- (15) As regards the data requirements specified in the code of conduct for stability and convergence programmes, the programme has some gaps in the required and optional data <sup>(1)</sup>. In its recommendations under Article 126(7) of 2 December 2009 with a view to bring the excessive deficit situation to an end, the Council also invited Germany to report on progress made in the implementation of the Council's recommendations in a separate chapter in the updates of the stability programmes. The respective section of the programme update provides only very limited information on how the German government plans to progress in the implementation of the Council's recommendation.

The overall conclusion is that in the wake of the financial and economic crisis, Germany's public finances have deteriorated substantially on the back of automatic stabilisers and a wide ranging response in line with the EERP to counter the crisis. The envisaged expenditure-based consolidation from 2011 onwards

<sup>(1)</sup> In particular, the data is missing on property income, implicit interest rate on debt, detailed categories of stock-flow adjustment and cyclical developments, while categories 'Compensation of employees and intermediate consumption' and 'Social payments' are displayed in a different aggregation. This has the effect of making the assessment objectively more difficult.

would lead to a correction of the excessive deficit by 2013. However, taking into account the risks, the budgetary strategy from 2011 on may not be consistent with the Council Recommendation under Article 126(7) of 2 December 2009. This is linked to the lack of specific measures underpinning the proposed retrenchment path after 2010, uncertainty as to the implementation of further tax cuts envisaged in the new government's coalition agreement and their reconciliation with the necessary consolidation, risks related to the strength of the economic recovery and the possible need of further financial market stabilisation measures.

Hence, full implementation of the enhanced medium-term budgetary framework and the strong commitment at all levels of the government to adhere to it will be crucial to achieve fiscal consolidation as envisaged. Considering the need to reconcile the necessary fiscal consolidation with the strengthening of the economy's long-term growth potential, the envisaged expenditure-based consolidation seems appropriate, as would the planned increase in education and R&D spending. Given increasing public debt and repeated ad hoc changes to the pension adjustment formula as well as uncertainties surrounding the financing of the statutory health-care insurance, renewed attention should be given to measures aimed to improve long-term sustainability of public finance.

In view of the above assessment and also in the light of the recommendation under Article 126(7) TFEU of 2 December 2009, Germany is invited to:

- (i) specify the measures necessary to underpin the envisaged consolidation; implement the budgetary strategy for 2011-2013 as outlined in the programme to correct the excessive deficit by 2013; seize, as prescribed in the EDP recommendation, any opportunity beyond the fiscal efforts, including from better economic conditions, to accelerate the reduction of the gross debt ratio back towards the 60 % of GDP reference value;
- (ii) ensure full implementation of the new constitutional budgetary rule at all levels of government, and reverse the deviation from the pension adjustment formula in 2008 as envisaged.

Germany is also invited to submit in time for the assessment of the effective action under the excessive deficit procedure an addendum to the programme to report on progress made in the implementation of the Council Recommendation under Article 126(7) of 2 December 2009 and to outline in some detail the consolidation strategy that will be necessary to progress towards the correction of the excessive deficit.

Germany is also invited to improve compliance with the data requirements of the code of conduct.

## Comparison of key macro-economic and budgetary projections

		2008	2009	2010	2011	2012	2013
Real GDP (% change)	<b>SP Jan 2010</b>	<b>1,3</b>	<b>- 5,0</b>	<b>1,4</b>	<b>2</b>	<b>2</b>	<b>2</b>
	COM Nov 2009	1,3	- 5,0	1,2	1,7	n.a.	n.a.
	SP Jan 2009	1,3	- 2,3	1,25	1,25	1,25	n.a.
HICP inflation (%)	<b>SP Jan 2010</b>	<b>n.a.</b>	<b>n.a.</b>	<b>n.a.</b>	<b>n.a.</b>	<b>n.a.</b>	<b>n.a.</b>
	COM Nov 2009	2,8	0,3	0,8	1,0	n.a.	n.a.
	SP Jan 2009	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Output gap <sup>(1)</sup> (% of potential GDP)	<b>SP Jan 2010</b>	<b>3,2</b>	<b>- 2,6</b>	<b>- 2,1</b>	<b>- 1,3</b>	<b>- 1,1</b>	<b>- 0,9</b>
	COM Nov 2009 <sup>(2)</sup>	3,0	- 2,9	- 2,6	- 2,2	n.a.	n.a.
	SP Jan 2009	2,2	- 0,9	- 0,7	- 0,7	- 1,0	n.a.
Net lending/borrowing vis-à-vis the rest of the world (% of GDP)	<b>SP Jan 2010</b>	<b>6,6</b>	<b>4,5</b>	<b>4,9</b>	<b>5</b>	<b>5,5</b>	<b>5,5</b>
	COM Nov 2009	6,6	4,0	3,8	3,7	n.a.	n.a.
	SP Jan 2009	7,1	7,0	7	7	7	n.a.
General government revenue (% of GDP)	<b>SP Jan 2010</b>	<b>43,7</b>	<b>44,4</b>	<b>42,5</b>	<b>42</b>	<b>42</b>	<b>42</b>
	COM Nov 2009	43,7	44,6	43,3	42,9	n.a.	n.a.
	SP Jan 2009	44	43,5	42,5	42,5	43	n.a.
General government expenditure (% of GDP)	<b>SP Jan 2010</b>	<b>43,7</b>	<b>47,6</b>	<b>48</b>	<b>47</b>	<b>46</b>	<b>45</b>
	COM Nov 2009	43,7	48,0	48,3	47,5	n.a.	n.a.
	SP Jan 2009	44	46,5	46,5	45,5	45,5	n.a.
General government balance (% of GDP)	<b>SP Jan 2010</b>	<b>0,0</b>	<b>- 3,2</b>	<b>- 5,5</b>	<b>- 4,5</b>	<b>- 3,5</b>	<b>- 3</b>
	COM Nov 2009	0,0	- 3,4	- 5,0	- 4,6	n.a.	n.a.
	SP Jan 2009	0	- 3	- 4	- 3	- 2,5	n.a.
Primary balance (% of GDP)	<b>SP Jan 2010</b>	<b>2,7</b>	<b>- 0,6</b>	<b>- 3</b>	<b>- 2</b>	<b>- 0,5</b>	<b>0,5</b>
	COM Nov 2009	2,7	- 0,6	- 2,2	- 1,7	n.a.	n.a.
	SP Jan 2009	2,5	0	- 1	0	0,5	n.a.
Cyclically-adjusted balance <sup>(1)</sup> (% of GDP)	<b>SP Jan 2010</b>	<b>- 1,6</b>	<b>- 1,9</b>	<b>- 4,4</b>	<b>- 4,1</b>	<b>- 3,1</b>	<b>- 2,3</b>
	COM Nov 2009	- 1,5	- 1,9	- 3,6	- 3,5	n.a.	n.a.
	SP Jan 2009	- 1,2	- 2,4	- 3,5	- 2,4	- 2,1	n.a.
Structural balance <sup>(3)</sup> (% of GDP)	<b>SP Jan 2010</b>	<b>- 1,2</b>	<b>- 1,8</b>	<b>- 4,4</b>	<b>- 3,9</b>	<b>- 3,0</b>	<b>- 2,3</b>
	COM Nov 2009	- 1,1	- 1,9	- 3,6	- 3,5	n.a.	n.a.
	SP Jan 2009	- 0,8	- 2,5	- 3,4	- 2,4	- 2,1	n.a.

		2008	2009	2010	2011	2012	2013
Government gross debt (% of GDP)	<b>SP Jan 2010</b>	<b>65,9</b>	<b>72,5</b>	<b>76,5</b>	<b>79,5</b>	<b>81</b>	<b>82</b>
	COM Nov 2009	65,9	73,1	76,7	79,7	n.a.	n.a.
	SP Jan 2009	65,5	68,5	70,5	71,5	72,5	n.a.

## Notes:

- (1) Output gaps and cyclically-adjusted balances from the programmes as recalculated by Commission services on the basis of the information in the programmes.
- (2) Based on estimated potential growth of 1,0 %, 0,7 %, 0,9 % and 1,2 % respectively in the period 2008-2011.
- (3) Cyclically-adjusted balance excluding one-off and other temporary measures. One-off and other temporary measures are 0,4 % of GDP in 2008 and 0,1 % of GDP in 2009 deficit-increasing according to the most recent programme and 0,3 % of GDP in 2008 deficit-increasing according to Commission services' November 2009 forecast. There are no one-offs and other temporary measures for years 2010-2013 according to the most recent programme and for years 2009-2011 according to Commission services' autumn 2009 forecast.

## Source:

Stability programme (SP); Commission services' autumn 2009 forecasts (COM); Commission services' calculations.

## II

*(Information)*INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES  
AND AGENCIES

## EUROPEAN COMMISSION

**Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty****Cases where the Commission raises no objections****(Text with EEA relevance)**

(2010/C 140/04)

Date of adoption of the decision	12.1.2009
Reference number of State Aid	N 626/08
Member State	Spain
Region	País Vasco
Title (and/or name of the beneficiary)	Ayudas a actividades culturales de carácter supramunicipal
Legal basis	Orden 3 de Diciembre de 2008, de la Consejería de Cultura, por la que se regula el régimen de concesión de subvenciones para la realización, durante el ejercicio 2009, de programas o actividades culturales particulares de ámbito supramunicipal
Type of measure	Aid scheme
Objective	Culture
Form of aid	Direct grant
Budget	Annual budget: EUR 0,75 million Overall budget: EUR 0,75 million
Intensity	70 %
Duration (period)	1.1.2009-31.12.2009
Economic sectors	Recreational, cultural sporting activities
Name and address of the granting authority	Departamento de Cultura del Gobierno Vasco C/ Donostia, 1 01010 Vitoria-Gasteiz Álava — País Vasco ESPAÑA
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

[http://ec.europa.eu/community\\_law/state\\_aids/state\\_aids\\_texts\\_en.htm](http://ec.europa.eu/community_law/state_aids/state_aids_texts_en.htm)



Date of adoption of the decision	20.11.2009
Reference number of State Aid	N 378/09
Member State	Netherlands
Region	Noord-Brabant
Title (and/or name of the beneficiary)	Verruiming van de Monumentenregeling in Noord-Brabant
Legal basis	Titel 4.2 Algemene wet bestuursrecht Algemene Subsidie Verordening Noord-Brabant Monumenten
Type of measure	Aid scheme
Objective	Heritage conservation, Culture
Form of aid	Direct grant
Budget	Overall budget: EUR 25 million
Intensity	100 %
Duration (period)	until 31.12.2013
Economic sectors	Construction, Recreational, cultural sporting activities
Name and address of the granting authority	Stimulus Programmamangement Postbus 585 5600 AN Eindhoven NEDERLAND
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

[http://ec.europa.eu/community\\_law/state\\_aids/state\\_aids\\_texts\\_en.htm](http://ec.europa.eu/community_law/state_aids/state_aids_texts_en.htm)

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**Authorisation for State aid pursuant to Articles 107 and 108 TFEU****Cases where the Commission raises no objections**

(Text with EEA relevance)

(2010/C 140/05)

Date of adoption of the decision	21.4.2010
Reference number of State Aid	N 1/10
Member State	Spain
Region	País Vasco
Title (and/or name of the beneficiary)	Régimen de ayudas a los museos del País Vasco
Legal basis	Orden de 10 de diciembre de 2009 de la Consejera de Cultura, por la que se regula el régimen de concesión de subvenciones destinadas a la promoción museística y al desarrollo de actividades museísticas relacionadas con el patrimonio y la difusión cultural
Type of measure	Aid scheme
Objective	Culture
Form of aid	Direct grant
Budget	Annual budget: EUR 0,62 million; Overall budget: EUR 0,62 million
Intensity	75 %
Duration (period)	4.2010-31.12.2010
Economic sectors	Recreational, cultural sporting activities
Name and address of the granting authority	Consejería de Cultura C/ Donostia, 1 01010 Vitoria-Gasteiz Álava — País Vasco ESPAÑA
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

[http://ec.europa.eu/community\\_law/state\\_aids/state\\_aids\\_texts\\_en.htm](http://ec.europa.eu/community_law/state_aids/state_aids_texts_en.htm)

**Non-opposition to a notified concentration****(Case COMP/M.5843 — Eli Lilly/Certain Animal Health Assets of Pfizer)****(Text with EEA relevance)**

(2010/C 140/06)

On 21 May 2010, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in English language and will be made public after it is cleared of any business secrets it may contain. It will be available:

- in the merger section of the Competition website of the Commission (<http://ec.europa.eu/competition/mergers/cases/>). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
  - in electronic form on the EUR-Lex website (<http://eur-lex.europa.eu/en/index.htm>) under document number 32010M5843. EUR-Lex is the on-line access to the European law.
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## IV

(Notices)

## NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

## COUNCIL

**Council conclusions of 25 May 2010 on the future revision of the Trade Mark system in the European Union**

(2010/C 140/07)

THE COUNCIL OF THE EUROPEAN UNION,

1. RECALLS that in May 2007 it adopted conclusions regarding the financial perspectives of the Office for Harmonization in the Internal Market (Trademarks and Designs) (hereinafter referred to as 'OHIM') and the further development of the Community trade mark system <sup>(1)</sup>;
2. ACKNOWLEDGES the agreement reached on 18/19 September 2008 at the joint meeting of the Administrative Board and the Budget Committee of the OHIM on a package of budgetary measures aiming at better balancing OHIM's budget in the future, this package consisting of three major elements: (i) the reduction of fees for obtaining Community trade mark protection, (ii) the creation of a Cooperation Fund and (iii) the future distribution of 50 % of renewal fees to Member States' national trade mark offices (hereinafter referred to as 'National Offices');
3. AGREES that these budgetary measures not only constitute appropriate and useful instruments to guarantee a balanced budget for OHIM in the future, but also contribute to modernising, streamlining, harmonising and strengthening the trade mark system in Europe as a whole within the framework of enhanced cooperation between the OHIM and the National Offices;
4. WELCOMES the fact that further to the September 2008 agreement, the fees for obtaining a Community trade mark registration were substantially reduced by Commission Regulation (EC) No 355/2009 with effect from 1 May 2009;
5. WELCOMES the significant progress made by the OHIM towards setting up a Cooperation Fund and ENCOURAGES the OHIM to finalise this work as a priority, in order to have the Fund fully operational as a matter of urgency and with the active participation of the National Offices;
6. RECALLS the Commission Communication of 16 July 2008 on an Industrial Property Rights Strategy for Europe <sup>(2)</sup>;
7. WELCOMES the launch by the Commission of the study on the overall functioning of the trade mark system in Europe and SUPPORTS its objectives as specified in the terms of reference;
8. TAKES NOTE of the interim results of the study presented to the Council Working Party on Intellectual Property on 25 March 2010;
9. ENCOURAGES the Commission to finalise the study with the aim of building a solid foundation for its subsequent legislative initiatives;
10. ACKNOWLEDGES the fact that most associations of users of the Community trade mark system are satisfied with this system, as well as with the principle of coexistence between Community and national trade marks, and see the need to fine tune it through a future revision, taking into account the need for a balanced relationship between the Community and national trade mark systems;

<sup>(1)</sup> Council document 9427/07.<sup>(2)</sup> Council document 12267/08.

11. RECOGNIZES that national trade marks continue to meet the needs of large numbers of applicants, and that, therefore, national trade mark protection should be maintained as an option for these applicants;
12. RECALLS the Commission Communication of 11 September 2009 on enhancing the enforcement of intellectual property rights in the internal market <sup>(1)</sup>;
13. RECALLS its Resolution of 1 March 2010 on the enforcement of intellectual property rights in the internal market <sup>(2)</sup>;
14. CALLS ON the Commission to present proposals for the revision of Council Regulation (EC) No 207/2009 on the Community trade mark and Directive 2008/95/EC approximating the laws of the Member States relating to trade marks.

The revision should include in particular:

- the introduction of a specific provision to define the framework for cooperation between the OHIM and the National Offices,
- making explicit that harmonization of practice and tools is an aim which all trade mark offices in the EU should pursue and that efforts in this area should be supported and facilitated by the OHIM with the active involvement of its Administrative Board,
- the establishment of a clear legal basis for the involvement of the OHIM in enforcement-related activities, including the fight against counterfeiting, in particular through fostering its cooperation with the National Offices, in accordance with their national competences, and the European Observatory on Counterfeiting and Piracy <sup>(3)</sup>,
- the creation of a legal basis for distributing an amount equivalent to 50 % of OHIM's renewal fees to the National Offices in accordance with fair, equitable and relevant distribution criteria, to be defined in a way which would guarantee, inter alia, a minimum amount for each Member State, as well as the introduction of appropriate mechanisms which have due regard to the financial arrangements applicable to individual National Offices, to ensure that these funds will be available to the National Offices and will be used for purposes closely related to the protection, promotion and/or enforcement of trade marks, including combating counterfeiting,
- amendments and other measures, where appropriate, aimed at supporting the complementary relationship between the Community and national trade mark systems,
- measures to make Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (codified version) <sup>(4)</sup> more consistent with Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version) <sup>(5)</sup> and thus to further contribute to reducing areas of divergence within the trade mark system in Europe as a whole.

<sup>(1)</sup> Council document 13286/09.

<sup>(2)</sup> OJ C 56, 6.3.2010, p. 1.

<sup>(3)</sup> With special regard to points 24 and 38 of the Council Resolution of 1 March 2010 on the enforcement of intellectual property rights in the internal market.

<sup>(4)</sup> OJ L 299, 8.11.2008, p. 25.

<sup>(5)</sup> OJ L 78, 24.3.2009, p. 1.

# EUROPEAN COMMISSION

## Euro exchange rates <sup>(1)</sup>

28 May 2010

(2010/C 140/08)

**1 euro =**

Currency		Exchange rate	Currency		Exchange rate
USD	US dollar	1,2384	AUD	Australian dollar	1,4534
JPY	Japanese yen	113,06	CAD	Canadian dollar	1,2954
DKK	Danish krone	7,4411	HKD	Hong Kong dollar	9,6470
GBP	Pound sterling	0,84995	NZD	New Zealand dollar	1,8165
SEK	Swedish krona	9,6580	SGD	Singapore dollar	1,7312
CHF	Swiss franc	1,4258	KRW	South Korean won	1 479,69
ISK	Iceland króna		ZAR	South African rand	9,4046
NOK	Norwegian krone	7,9615	CNY	Chinese yuan renminbi	8,4599
BGN	Bulgarian lev	1,9558	HRK	Croatian kuna	7,2665
CZK	Czech koruna	25,780	IDR	Indonesian rupiah	11 387,55
EEK	Estonian kroon	15,6466	MYR	Malaysian ringgit	4,0781
HUF	Hungarian forint	273,93	PHP	Philippine peso	57,118
LTL	Lithuanian litas	3,4528	RUB	Russian rouble	37,9200
LVL	Latvian lats	0,7080	THB	Thai baht	40,328
PLN	Polish zloty	4,0615	BRL	Brazilian real	2,2492
RON	Romanian leu	4,1646	MXN	Mexican peso	15,8205
TRY	Turkish lira	1,9299	INR	Indian rupee	57,4347

<sup>(1)</sup> Source: reference exchange rate published by the ECB.



## V

*(Announcements)*PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION  
POLICY

## EUROPEAN COMMISSION

## STATE AID — SPAIN

## State aid C 10/10 (ex N 562/09) — Restructuring aid to A NOVO Comlink SL

## Invitation to submit comments pursuant to Article 108(2) TFEU

*(Text with EEA relevance)*

(2010/C 140/09)

By means of the letter dated of 24 March 2010 reproduced in the authentic language on the pages following this summary, the Commission notified the Kingdom of Spain of its decision to initiate the procedure laid down in Article 108(2) TFEU concerning the abovementioned aid measure.

Interested parties may submit their comments on the measures in respect of which the Commission is initiating the procedure within one month of the date of publication of this summary and the following letter, to:

European Commission  
Directorate-General for Competition  
State Aid Greffe  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË  
Fax +32 22961242

These comments will be communicated to Spain. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

## TEXT OF SUMMARY

**PROCEDURE**

On 16 October 2009 Spain notified a restructuring aid for A NOVO Comlink SL. On 12 November 2009 the Commission requested additional information. On 25 January 2010 Spain submitted further information.

**DESCRIPTION OF THE BENEFICIARY AND THE RESTRUCTURING**

The aid planned by the region of Andalusia is based on the *Orden de 5 de noviembre de 2008 por la que se establecen las bases reguladoras del programa de ayudas a empresas viables con dificultades coyunturales en Andalucía an aid scheme for SME which requires notification for large enterprises*. A NOVO Comlink SL (hereafter A NOVO) is a large company active in the area of after sale activities for computers, mobile telephones and other electronic

devices. It is a 100 % subsidiary of the French company A NOVO SA. Originally, A NOVO produced telephones. Between 2004 and 2006 A NOVO ceased the production activities and concentrated on after sale services. A NOVO is now in financial difficulty. The notified restructuring plan was drafted in November 2008. This plan proposes to continue the current activities of A NOVO and expects growth in all areas of activity. The notified aid consists in a guarantee for a EUR 4 375 million loan, an interest subsidy for that loan, and a loan of EUR 2 million given by the region of Andalusia. In May 2009, A NOVO furthermore received a rescue aid in form of a loan guarantee, which was not notified to the Commission.

**ASSESSMENT**

The Commission considers these measures to constitute State aid within the meaning of Article 107(1) TFEU.

Following an analysis of these State aid measures in light of Article 107(3)c TFEU and the Community guidelines on State aid for rescuing and restructuring firms in difficulty<sup>(1)</sup>, the Commission has decided to open the procedure under Article 108(2) TFEU, because it has doubts whether the conditions for approving the restructuring aid are fulfilled.

The Commission has doubts whether A NOVO is eligible for restructuring aid according to points 10 and 11 of these guidelines, as it is part of a large group. Regarding the restructuring plan, the Commission has doubts that it will lead to long term viability, as required by points 35 and 36 of the guidelines. It is lacking compensatory measures, like a capacity reduction (points 38 and 39 of the guidelines), and an own contribution of the beneficiary as requested under point 43 of the guidelines. It is also not clear whether the aid amount is limited to the minimum necessary (point 45 of the guidelines).

Therefore, it is doubtful that the restructuring aid can be found compatible with the rescue and restructuring aid guidelines. The Commission also doesn't have sufficient information to assess the compatibility of the non-notified rescue aid. Finally, it is unlikely that the measures could be compatible under the temporary framework for State aid measures to support access to finance in the current financial and economic crises<sup>(2)</sup>.

#### TEXT OF LETTER

Por la presente, la Comisión informa al Reino de España de que, tras examinar la información suministrada por sus autoridades sobre las medidas mencionadas anteriormente y notificadas de conformidad con el artículo 108, apartado 3, del Tratado de Funcionamiento de la Unión Europea (denominado en lo sucesivo "TFUE")<sup>(3)</sup>, ha decidido iniciar el procedimiento del artículo 108, apartado 2, de dicho Tratado.

#### 1. PROCEDIMIENTO

- (1) El 16 de octubre de 2009, España notificó una ayuda de reestructuración planteada por la región de Andalucía en

favor de A NOVO Comlink SL. El 12 de noviembre de 2009, la Comisión pidió información adicional. El 25 de enero de 2010, España presentó la información solicitada.

#### 2. DESCRIPCIÓN

##### 2.1. Beneficiario

- (2) A NOVO Comlink SL es una gran empresa activa en el sector de las actividades postventa para ordenadores, teléfonos móviles y otros equipos electrónicos. Es una filial al 100 % de la empresa francesa A NOVO SA. A NOVO Comlink SL (en lo sucesivo A NOVO) posee el 100 % de A NOVO Arce SL y de Cedro Soluciones SL. Originalmente, A NOVO fabricaba teléfonos. Entre 2004 y 2006, A NOVO cesó las actividades de producción y se concentró en los servicios postventa. A NOVO está situada en Málaga, en la región de Andalucía, un área que puede beneficiarse de ayuda regional con arreglo a la excepción del artículo 107, apartado 3, letra a), del TFUE.

- (3) La plantilla de A NOVO creció de 263 personas en 2006 a 402 en 2008. En 2008, A NOVO tenía un volumen de negocios de 15,3 millones. Las ventas de servicios postventa en 2008 ascendieron a 14 889 millones EUR; eran de 8 672 millones EUR en 2006 y de 12 984 millones EUR en 2007 (estimación para 2009: 16 118 millones EUR). A NOVO no padece un exceso de capacidad de mano de obra o de equipos. Prevé un crecimiento del volumen de negocios cercano al 10 % para 2009 y del 6 % para el siguiente. Las actuales cuotas de mercado en el sector de los servicios postventa en España son de aproximadamente el 40 % para los ordenadores, el 30 % para los teléfonos móviles y el 10 % para los decodificadores de televisión.

##### 2.2. Dificultades financieras

- (4) Según las autoridades españolas, A NOVO cumple las condiciones de insolvencia. Afirman que del capital inicial suscrito en 2001, que ascendía a 15 millones EUR, han desaparecido más de 10 millones EUR, y que solo en 2008 se ha perdido más de una cuarta parte.

	2001	2004	2005	2006	2007	2008
Capital	15 000 000	14 684 923	6 167 668	6 167 668	8 967 667	4 056 802

<sup>(1)</sup> OJ C 244, 1.10.2004, p. 2.

<sup>(2)</sup> OJ C 83, 7.4.2009, p. 1.

<sup>(3)</sup> Con efecto a partir del 1 de diciembre de 2009, los artículos 87 y 88 del Tratado CE han pasado a ser los artículos 107 y 108, respectivamente, del TFUE. Las dos series de disposiciones son en sustancia idénticas. A efectos de la presente Decisión, las referencias a los artículos 101 y 102 del TFUE se entenderán hechas, cuando proceda, a los artículos 81 y 82 del Tratado CE.

Las autoridades españolas también subrayan las deudas y pérdidas crecientes y la disminución del volumen de negocios:

	Eur		
	2006	2007	2008
Incremento de pérdidas	- 2 603 000	- 4 549 000	- 3 923 000
Disminución del volumen de negocios	22 090 000	21 853 000	15 305 000
Crecimiento de la deuda	4 281 000	5 836 000	6 997 000

Sin embargo, el descenso del volumen de negocios hasta 2008 se debió principalmente a la reducción progresiva de las actividades de producción. Para las actividades del servicio postventa, que eran la única actividad restante en 2008, la cifra para 2006 es de 8 672 millones EUR, y para 2007 de 12 984 millones EUR. Es decir, el volumen de negocios de las únicas actividades pertinentes desde 2008 se ha incrementado a partir de 2006.

- (5) En julio de 2005, se inició una reestructuración de A NOVO con vistas a cambiar su actividad pasando de la producción de teléfonos a la prestación de servicios postventa. Con este motivo, se elaboró un plan de reestructuración que contemplaba reducciones salariales y un sistema de jubilación anticipada para el personal de producción. A NOVO aportó a este plan 14,7 millones EUR procedentes de una operación de venta y posterior arrendamiento financiero de sus bienes inmuebles. Debido al sistema de reducción de plantilla, de 2005 a 2008 A NOVO acumuló unas pérdidas de 12,3 millones EUR. El plan de 2005 también preveía que la región de Andalucía efectuara pagos directos a determinados trabajadores hasta la incorporación de éstos a un régimen de jubilación parcial a los sesenta años. En la actualidad A NOVO, según España, tiene dificultades para conseguir dinero en los mercados de capitales.

### 2.3. El plan de reestructuración notificado

- (6) El plan de reestructuración notificado no describe las razones que llevaron a las dificultades actuales. Hace referencia al plan de reestructuración de 2005 y a las medidas estructurales y los contratos financieros de aquel entonces, pero no indica si las dificultades fueron causadas por cálculos incorrectos contenidos en el plan de 2005 o por acontecimientos inesperados.
- (7) El plan de reestructuración de noviembre de 2008, notificado en octubre de 2009, abarca el período de 2009 a 2013. Ha sido elaborado por el propio beneficiario, al parecer sin un control externo independiente. Prevé una ayuda de reestructuración para A NOVO basada en la *Orden de 5 de noviembre de 2008 por la que se establecen las bases reguladoras del programa de ayudas a empresas viables con dificultades coyunturales en Andalucía*, de la región de Andalucía. Esta Orden fue aprobada por la Comisión en mayo de 2009, como régimen de ayuda de salvamento y de reestructuración para PYME que requiere la notificación de las concesiones individuales de tal ayuda

a grandes empresas (asunto N 608/08). El único objetivo del plan es una reestructuración financiera en forma de inyección de nuevo capital.

- (8) La ayuda prevista por la región de Andalucía consiste en

- una garantía del 80 % para un préstamo de 4 375 000 EUR con una duración de 10 años. El tipo de interés es el Euribor más 1,25 %, la comisión de garantía es del 1,50 % anual. El préstamo está contragarantizado por el único accionista de A NOVO, A NOVO SA Francia,
- una bonificación del tipo de interés de un 0,89 %, lo que equivale al 50 % del tipo de base del 1,77 % publicado por la Comisión para determinar los tipos de referencia para septiembre de 2009 <sup>(1)</sup>. Esto equivale, según la notificación, a una ayuda de 357 136 EUR,
- un préstamo público de 2 000 000 EUR durante 10 años, concedido por la Agencia de Innovación y Desarrollo de Andalucía (IDEA). El tipo de interés será el tipo del mercado interbancario en la fecha de la celebración del acuerdo de préstamo en septiembre de 2009 (1,77 %). Al parecer, no se añade ningún margen a este índice de base. Este préstamo tiene la garantía del único accionista de A NOVO, A NOVO SA Francia.

- (9) La región de Andalucía supeditó la concesión de la ayuda a que A NOVO contratase a treinta y siete trabajadores de la empresa Servivation a partir de septiembre de 2009. Servivation emplea al personal despedido tras el cierre de un fabricante de teléfonos móviles.

- (10) Por lo que se refiere a la cantidad de efectivo necesaria, España afirma que las deudas pendientes actuales consisten en:

- deudas con proveedores de 2,7 millones EUR,
- deudas de 650 000 EUR con el Estado,

<sup>(1)</sup> [http://ec.europa.eu/competition/state\\_aid/legislation/reference\\_rates.html](http://ec.europa.eu/competition/state_aid/legislation/reference_rates.html)

- deudas de 1,6 millones EUR con otras empresas del grupo A NOVO,
- otras necesidades resultantes de la expansión de las actividades.

Todo ello asciende a una necesidad de efectivo de alrededor de 5 millones EUR.

- (11) Aparte de la inyección de nuevo capital descrita anteriormente, el plan de reestructuración no prevé ninguna reestructuración de las actividades de la empresa ni de su organización y gestión ni de la plantilla. Por el contrario, insiste en proseguir sin cambio en sus operaciones, con la esperanza de salir de las dificultades financieras sin alterar el funcionamiento y la estructura del beneficiario. En lo que respecta a la estructura de la empresa, el plan se refiere a las medidas del plan de reestructuración de 2005, que se ejecutaron entre 2004 y 2007, consistentes en el cese gradual de la producción para dedicarse a prestar servicios postventa para otros fabricantes. El plan describe los diversos ámbitos actuales de actividad y sus posibilidades de expansión e indica la expectativa de crecimiento en volumen de cada área con los clientes actuales y con la captación de nuevos clientes —con la ayuda de la inyección de nuevo capital. De hecho, el plan sólo afirma que A NOVO quiere proseguir según lo previsto en el plan de reestructuración de 2005. Como no se prevé ninguna medida de reestructuración, no contiene ningún calendario para la ejecución de medida alguna.
- (12) El plan no hace referencia a ninguna contribución propia del beneficiario o de su empresa matriz. En lo que respecta a las medidas compensatorias, el plan no prevé ninguna reducción de capacidad o venta de activos. Al contrario, se propone aumentar la mano de obra para incrementar sus ventas.
- (13) Por lo que se refiere a las perspectivas, la única hipótesis presentada relativa al desarrollo de la demanda de los servicios de la empresa es moderadamente optimista, pues espera un crecimiento en todos los sectores de actividad del beneficiario. No se establece ninguna distinción entre las hipótesis optimista, intermedia y pesimista.

#### 2.4. Medidas no notificadas a la Comisión

- (14) Durante la evaluación del plan de reestructuración, se tuvo conocimiento de que en mayo de 2009 se había concedido a A NOVO una ayuda de salvamento en forma de garantía del 80 % sobre un préstamo de 1 825 000 EUR durante 6 meses, con una comisión anual del 1,5 % y un tipo de interés del 2,86 %. España no notificó esta garantía. El plan de reestructuración presentado con la notificación en octubre de 2009 se elaboró en noviembre de 2008, antes de la concesión de la ayuda de salvamento.
- (15) Además, la Comisión observa que el plan de reestructuración de 2005 preveía, según una referencia que figuraba en plan de reestructuración de 2008, que la región de Andalucía efectuara pagos directos a determinados

trabajadores hasta la incorporación de éstos a un régimen de jubilación parcial a los sesenta años.

### 3. EVALUACIÓN

#### 3.1. Ayuda estatal con arreglo al artículo 107, apartado 1, del TFUE

- (16) El artículo 107, apartado 1, del TFUE declara incompatibles con el mercado común, en la medida en que afecten a los intercambios comerciales entre Estados miembros, las ayudas otorgadas por los Estados o mediante fondos estatales, bajo cualquier forma, que falseen o amenacen falsear la competencia, favoreciendo a determinadas empresas o producciones.
- (17) Las medidas que nos ocupan, las garantías, la subvención de intereses, el préstamo de la región de Andalucía y los pagos directos a los trabajadores de A NOVO, implican recursos del Estado. Son concedidas por la región de Andalucía y son imputables al Estado.
- (18) Para ser consideradas ayuda estatal, las medidas deben conferir una ventaja al beneficiario que éste no podría obtener en condiciones normales de mercado. La subvención de intereses por un valor de 357 136 EUR cumple esta condición. En cuanto a las dos garantías del Estado, se debe considerar que una garantía constituye ayuda si el prestatario se encuentra en una situación financiera difícil [punto 3.2, letra a) de la Comunicación de la Comisión relativa a la aplicación de los artículos 87 y 88 del Tratado CE a las ayudas estatales otorgadas en forma de garantía] <sup>(1)</sup>. En este caso, la Comisión considera que las garantías confieren una ventaja al prestatario. Por lo que respecta a la determinación del importe de la ayuda, la Comisión no puede en la fase actual determinar el equivalente en subvención de las garantías, pues carece de información sobre el grado de solvencia de A NOVO. Finalmente, el préstamo de la región de Andalucía confiere una ventaja a A NOVO. El tipo de interés se determina según el tipo anual del mercado interbancario de dinero. No se añade ningún margen a este índice de base. Sin embargo, incluso suponiendo una elevada colateralización de la garantía dada por A NOVO SA, Francia, para un préstamo a una empresa en una situación financiera difícil, habría que añadir de 220 a 400 puntos básicos al tipo de base <sup>(2)</sup>. Por lo tanto, el préstamo también constituye ayuda. Para determinar el equivalente en subvención del préstamo se necesitaría más información sobre el índice de solvencia de A NOVO.
- (19) Por consiguiente, las cuatro medidas favorecen al beneficiario individualmente y le confieren una ventaja en el contexto de su reestructuración que, tal como afirman las autoridades españolas en su presentación, no podría haber obtenido en el mercado financiero. Como consecuencia, la posición de la empresa beneficiaria se refuerza en comparación con la de sus competidores. Por lo tanto, las medidas son selectivas y es probable que falseen la competencia.

<sup>(1)</sup> DO C 54 de 4.3.2006, p. 13.

<sup>(2)</sup> Comunicación de la Comisión relativa a la revisión del método de fijación de los tipos de referencia y de actualización, DO C 14 de 19.1.2008, p. 6.



(20) En lo referente a los pagos directos de la región de Andalucía a determinados trabajadores hasta la incorporación de éstos a un régimen de jubilación parcial a los sesenta años, España no ha presentado información que permita a la Comisión evaluar si constituye o no ayuda. Si los pagos se efectuaron al amparo de un régimen general de la seguridad social, no se considerarán ayuda estatal. Si los pagos tuvieran que correr normalmente por cuenta de la propia empresa —en virtud del Derecho laboral o de un convenio colectivo—, los pagos formarían parte de los costes normales de la empresa. Si el Estado se hace cargo de estos pagos, deben contabilizarse como ayuda <sup>(1)</sup>.

(21) Por lo que respecta al efecto sobre los intercambios, las autoridades españolas alegan que los servicios postventa, en los que opera el beneficiario, se prestan a nivel local y se limitan al territorio de España. No obstante, el Tribunal ha confirmado que dicho efecto no depende del carácter local o regional de los servicios prestados ni de la importancia del ámbito de actividad de que se trate <sup>(2)</sup>. Además, estos servicios se intercambian libremente en la Unión. Por último, los propietarios de las empresas que prestan estos servicios están radicados en más de un Estado miembro. Esto es particularmente cierto en el caso del presente beneficiario, que forma parte del grupo francés A NOVO, un operador importante en los servicios postventa en Europa. Por lo tanto, se cumple la condición de afectar al comercio entre los Estados miembros.

(22) Por todo ello, las dos garantías, la subvención de intereses y el préstamo descritos constituyen ayuda estatal en el sentido del artículo 107, apartado 1, TFUE. La Comisión carece de la información necesaria que le permita determinar si también constituyen ayuda los pagos directos a los trabajadores prometidos en 2005 por la región de Andalucía.

### 3.2. Compatibilidad de la ayuda con el mercado interior a tenor de las Directrices sobre ayudas estatales de salvamento y de reestructuración de empresas en crisis

#### 3.2.1. La ayuda de salvamento no notificada

(23) Las autoridades españolas no han notificado la ayuda de salvamento de mayo de 2009 ni han presentado la información necesaria para evaluar la compatibilidad de esta ayuda con el mercado interior, especialmente por lo que se refiere al punto 25 de las Directrices comunitarias sobre ayudas estatales de salvamento y de reestructuración de empresas en crisis <sup>(3)</sup> (denominadas en lo sucesivo “las Directrices”) y su función en el plan de reestructuración de 2008, que se adoptó antes de la concesión de esta ayuda. Por consiguiente, en la fase actual la Comisión tiene dudas sobre la compatibilidad de esta medida de ayuda con el mercado interior.

<sup>(1)</sup> Véanse también los apartados 61 y 63 de las Directrices comunitarias sobre ayudas estatales de salvamento y de reestructuración de empresas en crisis, DO C 244 de 1.10.2004, p. 2.

<sup>(2)</sup> Asunto C-280/00, Altmark Trans, Rec. 2003, p. I-7747, apartado 82; asunto C-172/03, Heiser/Finanzamt Innsbruck, Rec. 2005, p. I-1627, apartado 33.

<sup>(3)</sup> DO C 244 de 1.10.2004, p. 2.

#### 3.2.2. La ayuda de reestructuración notificada

(24) Según la notificación, el objetivo de la ayuda es la reestructuración de una empresa en crisis. Según el artículo 107, apartado 3, letra c), TFUE, la ayuda destinada a facilitar el desarrollo de determinadas actividades o de determinadas regiones económicas puede autorizarse siempre que no altere las condiciones de los intercambios en forma contraria al interés común. La ayuda de salvamento o de reestructuración de empresas en crisis puede considerarse compatible con el mercado interior en virtud de esta disposición si se respetan las condiciones fijadas en las Directrices.

#### Derecho del beneficiario a la ayuda como empresa en crisis

(25) En primer lugar es necesario poder considerar que la empresa beneficiaria es una empresa en crisis. Según las Directrices, se considera que una empresa está en crisis si es incapaz de recuperarse mediante sus recursos propios o consiguiendo los fondos necesarios de los accionistas o en el mercado, y sin la intervención de los poderes públicos. Las Directrices también enumeran algunas características habituales de tales empresas, tales como el endeudamiento creciente y el debilitamiento de su activo neto.

(26) Según los datos mencionados anteriormente en el apartado 4, cabe concluir en principio que A NOVO es una empresa en crisis en el sentido de las Directrices, debido a la desaparición de más de la mitad de su capital suscrito y a que se ha perdido más de una cuarta parte del mismo en los últimos 12 meses [punto 10, letra a) de las Directrices]. Según España, la empresa cumple además los criterios establecidos en la legislación española para someterse a un procedimiento de quiebra [punto 10, letra c) de las Directrices]. En todo caso, registraba unas pérdidas cada vez mayores y una disminución global del volumen de negocios, en el sentido contemplado en el punto 11 de las Directrices. Sin embargo, según lo descrito en el apartado 4, el volumen de negocios pertinente para la actividad actual y futura de A NOVO, a saber, los servicios postventa, ha registrado un crecimiento considerable.

(27) No se conoce con precisión a partir de qué fecha se debe considerar que la empresa está en crisis. Según los datos presentados (véase el apartado 4), se puede concluir que esta situación ya se daba en 2008.

(28) La dificultad de la empresa para obtener crédito también puede deberse a que ya no es propietaria de los inmuebles que utiliza, tras la operación de venta y posterior arrendamiento financiero mencionada en el apartado 5. Sin embargo, este aspecto debe examinarse e investigarse con mayor detenimiento.

(29) Además, A NOVO es una filial al 100 % de la empresa francesa A NOVO SA, cuyo volumen de negocios en 2009 fue de alrededor de 350 millones EUR y con un beneficio neto de 12 millones EUR. Según el punto 11 de las Directrices, una empresa en crisis solo podrá beneficiarse de

las ayudas cuando no pueda recuperarse con los fondos obtenidos de sus propietarios. Además, el punto 13 de las Directrices exige, cuando la empresa pertenezca a un grupo de empresas mayor, que el Estado miembro demuestre que las dificultades de la empresa son intrínsecas a la misma y demasiado complejas para ser resueltas por el propio grupo. Las autoridades españolas no han presentado información que permita determinar si se cumplen estas condiciones.

- (30) Por lo tanto, la Comisión tiene dudas de que la empresa pueda obtener ayuda de reestructuración.

Restablecimiento de la viabilidad a largo plazo

- (31) Según el punto 34 de las Directrices, la concesión de la ayuda debe estar supeditada a la ejecución del plan de reestructuración que, para todas las ayudas individuales a grandes empresas, habrá sido autorizado por la Comisión.
- (32) Según el punto 35 de las Directrices, el plan de reestructuración ha de restablecer la viabilidad a largo plazo de la empresa en un plazo razonable, partiendo de hipótesis realistas por lo que se refiere a las condiciones futuras de explotación. Según el punto 36 de las Directrices, el plan debe contener hipótesis optimistas, pesimistas e intermedias sobre las perspectivas futuras.
- (33) El plan de reestructuración no contiene una descripción de las medidas internas destinadas a mejorar la viabilidad y estructura de la empresa. No describe las razones que han dado lugar a las dificultades. Hace referencia a un plan de reestructuración de 2005 y a las medidas estructurales y a los contratos financieros de ese momento, pero no indica si la empresa está actualmente en crisis a causa de las hipótesis incorrectas del plan anterior o de circunstancias inesperadas. El plan no contiene hipótesis optimistas, pesimistas e intermedias sobre las perspectivas futuras ni un análisis de los puntos fuertes y débiles de la empresa. Eventualmente, el plan prevé restablecer la viabilidad a largo plazo de la empresa sólo a través de la reducción de deudas.
- (34) Por lo que se refiere a las perspectivas de la empresa, se prevé que las ventas se sitúen en 16 118 millones EUR en 2009, 17 658 millones EUR en 2010, 18 630 millones EUR en 2011, 18 923 millones EUR en 2012 y 19 721 millones EUR en 2013. Se espera que la empresa registre unas pérdidas de 254 000 EUR en 2009 y unos resultados positivos de 414 000 EUR en 2010, 835 000 EUR en 2011, 1 261 millones EUR en 2012, y 1 863 millones EUR en 2013.
- (35) Estas previsiones de ventas se basan en la consulta a los principales clientes de A NOVO. Las autoridades españolas solo han presentado una hipótesis. Como además no está claro por qué A NOVO está ahora en crisis, a pesar de la aplicación del plan de reestructuración de 2005 según lo previsto, no es evidente que la prevista medida de reestructuración simplemente financiera vaya a atajar la causa de las dificultades de la empresa.

- (36) Por lo tanto, la Comisión tiene dudas de que la aplicación del plan notificado restablezca la viabilidad a largo plazo de la empresa.

Evitar falseamientos indebidos de la competencia

- (37) De conformidad con los puntos 38 a 42 de las Directrices, se han de adoptar medidas para reducir en la medida de lo posible los efectos negativos de la ayuda sobre los competidores. La ayuda no debe falsear indebidamente la competencia. Por lo general esto significa limitar la presencia que la empresa pueda disfrutar en sus mercados al término del período de reestructuración. La limitación o reducción obligatoria de la presencia de la empresa en el mercado de referencia constituye una compensación para sus competidores.
- (38) El plan no contiene ninguna medida compensatoria como la desinversión de activos o las reducciones de capacidad o de presencia en el mercado. Al contrario, prevé una expansión del negocio y la contratación de más trabajadores. Aunque no hay nada que sugiera que el mercado de la reparación de aparatos electrónicos registre un exceso de capacidad, la inclusión de esta expectativa de expansión en una medida de ayuda pública a una empresa en crisis no se ajusta a lo establecido en los puntos 38 y 39 de las Directrices.
- (39) Por lo tanto, la Comisión tiene dudas fundadas de que se cumplan estas condiciones importantes para la compatibilidad de la ayuda de reestructuración.

Ayuda circunscrita al mínimo

- (40) De conformidad con el punto 43 de las Directrices, el importe y la intensidad de la ayuda deberán limitarse a los costes de reestructuración estrictamente necesarios para permitir la reestructuración, teniendo en cuenta las disponibilidades financieras de la empresa. Los beneficiarios de la ayuda deberán contribuir de forma importante al plan de reestructuración con cargo a sus propios recursos, por ejemplo, mediante la venta de activos que no sean indispensables para la supervivencia de la empresa o mediante financiación externa obtenida en condiciones de mercado.
- (41) El plan carece de cualquier elemento que suponga una contribución propia del beneficiario, por ejemplo en forma de financiación externa en condiciones de mercado. El préstamo del Estado de 2 millones EUR y la garantía para el préstamo de 4 375 000 EUR no cumplen las condiciones de mercado (véase el apartado 17). El plan de reestructuración tampoco contiene ningún plan de venta de activos.
- (42) La Comisión observa que la sociedad matriz A NOVO SA, Francia, que está obteniendo beneficios, no garantiza por sí misma los nuevos préstamos, sino que se limita a ofrecer una contragarantía a pesar de la perspectiva optimista presentada (véase el apartado 32).



(43) Además, según el punto 45 de las Directrices, conviene evitar que la ayuda lleve a la empresa a disponer de una liquidez excedentaria. Cabe albergar dudas sobre la necesidad del importe de los préstamos garantizados y concedidos, que ascienden en conjunto a 6 375 millones EUR (sin contabilizar la medida de salvamento en forma de garantía para un préstamo de 1,825 millones EUR). Según las autoridades españolas, el beneficiario debe cubrir deudas externas por un importe de alrededor de 3,4 millones EUR (o de 5 millones EUR, si se suman las deudas de 1,6 millones EUR con otras empresas del grupo A NOVO) (véase el apartado 10). No se prevé ninguna otra inversión más allá del restablecimiento de la liquidez. La Comisión también tendría que evaluar si las deudas internas del grupo pueden constituir una razón legítima para considerar que una empresa está en crisis.

(44) A NOVO está situada en una zona asistida en el sentido del artículo 107, apartado 3, letra a), del TFUE. Sin embargo, hasta la fecha las autoridades españolas no han indicado ninguna necesidad concreta de desarrollo regional que justifique una aplicación menos estricta de los criterios de las Directrices.

(45) Por lo tanto, la Comisión tiene dudas fundadas de que se cumplan las condiciones para circunscribir la ayuda al mínimo.

#### Principio de “ayuda única”

(46) Por lo que se refiere a los pagos directos de la región de Andalucía a determinados trabajadores hasta la incorporación de éstos a un régimen de jubilación parcial a los sesenta años, es posible que constituyan ayuda tal como se indica en el apartado 20. Si se considera que estos pagos constituyen ayuda, A NOVO habría recibido ya ayuda de reestructuración en el pasado. No obstante, la ayuda de reestructuración solo se debe conceder una vez (punto 72 de las Directrices). Si han transcurrido menos de 10 años desde el anterior período de reestructuración, la Comisión no puede aprobar una nueva ayuda de reestructuración según el punto 73 de las Directrices.

(47) Por consiguiente, la Comisión también duda de que se haya respetado el principio de “ayuda única”.

#### 3.3. Compatibilidad con arreglo al Marco temporal

(48) Es dudoso que la ayuda de salvamento en forma de garantía de un préstamo de 1 825 000 EUR pueda acogerse al Marco temporal aplicable a las medidas de ayuda estatal para facilitar el acceso a la financiación en el actual contexto de crisis económica y financiera<sup>(1)</sup> (en lo sucesivo denominado “el Marco temporal”). Se puede conceder una ayuda de un equivalente en subvención bruta de hasta 500 000 EUR siempre que se conceda con arreglo a un régimen [punto 4.2.2, letras a) y b), del Marco temporal]. Sin embargo, el único régimen general español de ayuda temporal de concesión de

cantidades limitadas de ayuda compatible (N 307/09 de 8 de junio de 2009) aún no estaba en vigor cuando se concedió la citada ayuda. Además, el régimen se limita a las ayudas de hasta 500 000 EUR en forma de subvenciones directas. Así pues, seguiría siendo obligatorio notificar las garantías. Asimismo, la empresa parecía estar en crisis ya antes del 1 de julio de 2008, lo que excluiría la aplicación del Marco temporal [véase el punto 4.3.2, letra i)].

(49) También es dudoso que la medida de reestructuración notificada por España entre en el ámbito de aplicación del Marco temporal. En primer lugar, no está claro cuando A NOVO empezó a estar en crisis. En segundo lugar, por lo que se refiere a la subvención de los intereses, porque su efecto no se limita hasta finales de 2012 [véase el punto 4.4.2, letra a) del Marco]. Además, porque la Comisión carece de información para evaluar si se cumplen las condiciones para que la comisión de la garantía sea compatible [en particular con el punto 4.3.2, letra b) del Marco temporal]. Finalmente, el préstamo concedido por la región de Andalucía no cumple las condiciones del régimen español de ayuda temporal mencionado en el apartado anterior, que España ha limitado a las formas transparentes de ayuda, según lo definido en el artículo 2, apartado 6, del Reglamento general de exención por categorías<sup>(2)</sup>, es decir, a las ayudas en las que es posible calcular previamente con exactitud el equivalente en subvención bruta (ESB) sin necesidad de efectuar una evaluación del riesgo. Sin embargo, dicha evaluación del riesgo es necesaria cuando se trata de un préstamo a una empresa en crisis.

#### 4. CONCLUSIÓN

(50) Así pues, la Comisión ha decidido iniciar el procedimiento de investigación formal previsto en el artículo 108, apartado 2, TFUE en relación con las medidas descritas por las siguientes razones:

- por lo que se refiere a la ayuda de reestructuración notificada, la Comisión tiene dudas de que cumpla las Directrices pertinentes, en especial en lo que respecta a la posibilidad de que A NOVO se beneficie de ayuda de reestructuración, al restablecimiento de su viabilidad a largo plazo, a la necesidad del importe de ayuda, a la ausencia de medidas compensatorias y de una contribución propia del beneficiario y del respeto del principio de “ayuda única” de reestructuración. Además la Comisión carece de la información necesaria para determinar el equivalente en subvención del préstamo y de la garantía del préstamo para A NOVO y la fecha de inicio de la crisis de A NOVO,
- la Comisión tiene dudas por lo que se refiere a la compatibilidad de la ayuda de salvamento no notificada concedida en mayo de 2009.

<sup>(1)</sup> DO C 83 de 7.4.2009, p. 1.

<sup>(2)</sup> Reglamento (CE) n° 800/2008 de la Comisión, de 6 de agosto de 2008, por el que se declaran determinadas categorías de ayuda compatibles con el mercado común en aplicación de los artículos 87 y 88 del Tratado (Reglamento general de exención por categorías), DO L 214 de 9.8.2008, p. 3.

## 5. DECISIÓN

- (51) Habida cuenta de las consideraciones anteriores, la Comisión, actuando conforme al procedimiento establecido en el artículo 108, apartado 2, del Tratado de Funcionamiento de la Unión Europea, insta al Reino de España a presentar sus observaciones y a facilitar toda la información que pueda ayudar a evaluar la ayuda en el plazo de un mes a partir de la fecha de recepción de la presente carta. La Comisión insta a sus autoridades a que transmitan inmediatamente una copia de la presente carta al beneficiario potencial de la ayuda.
- (52) La Comisión desea recordar que el artículo 108, apartado 3, del Tratado de Funcionamiento de la Unión Europea tiene efecto suspensivo y llama su atención sobre el artículo 14 del Reglamento (CE) n° 659/1999 del Consejo, que prevé que toda ayuda concedida ilegalmente pueda recuperarse de su beneficiario.
- (53) Por la presente, la Comisión comunica al Reino de España que informará a los interesados mediante la publicación de la presente carta y de un resumen en el *Diario Oficial de la Unión Europea*. Asimismo, informará a los interesados de los Estados miembros de la AELC signatarios del Acuerdo EEE mediante la publicación de una comunicación en el suplemento EEE del citado Diario Oficial, y al Órgano de Vigilancia de la AELC mediante copia de la presente. Se invitará a todos los interesados mencionados a presentar sus observaciones en el plazo de un mes a partir de la fecha de publicación de la presente'.
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**Prior notification of a concentration****(Case COMP/M.5870 — Foxconn/Sony LCD TV Manufacturing Company in Slovakia)****(Text with EEA relevance)**

(2010/C 140/10)

1. On 21 May 2010, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 <sup>(1)</sup> by which Hon Hai Precision Industry Co., Ltd ('Hon Hai group', Taiwan), the parent company of Foxconn group ('Foxconn', Taiwan), acquires sole control over Sony Slovakia spol. s r.o. (the 'Slovakian Target', Slovakia) by way of purchase of shares. On 1 January 2010, prior to reaching an agreement to acquire the Slovakian Target, Foxconn had acquired sole control of Sony Baja California, SA de CV (the 'Mexican Target', Mexico) by way of purchase of shares and purchase of assets.

2. The business activities of the undertakings concerned are:

- for Hon Hai group and Foxconn: provision of electronic manufacturing services to original equipment manufacturers,
- for the Slovakian Target and the Mexican Target: provision of production and assembly of LCD televisions.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope the EC Merger Regulation. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by e-mail to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number COMP/M.5870 — Foxconn/Sony LCD TV Manufacturing Company in Slovakia, to the following address:

European Commission  
Directorate-General for Competition  
Merger Registry  
J-70  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË

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<sup>(1)</sup> OJ L 24, 29.1.2004, p. 1 (the 'EC Merger Regulation').











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