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[1] Text with EEA relevance

(Continued overleaf)

**Note to the reader** (see page 3 of the cover)

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([1]) Text with EEA relevance

I

*(Resolutions, recommendations and opinions)*

OPINIONS

# EUROPEAN DATA PROTECTION SUPERVISOR

## Opinion of the European Data Protection Supervisor on the Commission Decision of 12 December 2007 concerning the implementation of the Internal Market Information System (IMI) as regards the protection of personal data (2008/49/EC)

(2008/C 270/01)

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty establishing the European Community, and in particular its Article 286,

Having regard to the Charter of Fundamental Rights of the European Union, and in particular its Article 8,

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and

Having regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, and in particular its Article 41,

HAS ADOPTED THE FOLLOWING OPINION:

### 1. INTRODUCTION

#### The Internal Market Information System

1. The Internal Market Information System ('IMI') is an information technology tool that allows competent authorities in Member States to exchange information with each other in the implementation of the Internal Market legislation. IMI is funded under the 'IDABC' programme (Interoperable Delivery of European eGovernment Services to public administrations, businesses and citizens) ([1]).

2. IMI is designed as a general system to support multiple areas of internal market legislation and it is envisaged that its use will be expanded to support a number of legislative areas in the future. Initially, IMI will be used to support the mutual assistance provisions of Directive 2005/36/EC ('Professional Qualifications Directive') ([2]). From December 2009, IMI will also be used to support the administrative cooperation provisions of Directive 2006/123/EC ('Services Directive') ([3]).

#### The Opinion of the Article 29 Data Protection Working Party and the involvement of the EDPS

3. During the spring of 2007, the European Commission requested the Opinion of the Article 29 Data Protection Working Party ('WP29') to review the data protection implications of IMI. The WP29 issued its Opinion on the data protection aspects of IMI on 20 September 2007 ([4]). The Opinion of the WP29 supported the Commission's plans to adopt a decision regulating the data protection aspects of IMI, and give a more specific legal basis to the exchange of data within IMI.

4. The EDPS welcomes that the Commission sought the Opinion of the WP29 prior to drafting the IMI Decision. The EDPS actively participated in the work of the subgroup

([1]) See point 12 of this Opinion.

([2]) Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

([3]) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

([4]) WP29 Opinion No 7/2007 on data protection issues related to the Internal Market Information System (IMI), WP140.

dealing with IMI and supports the conclusions of the Opinion of the WP29. He also welcomes that the Commission informally consulted the EDPS prior to the adoption of the IMI Decision. This gave the opportunity to already provide for suggestions prior to the adoption, which was particularly needed since the procedure concerned a decision by the Commission itself, not a Proposal by the Commission followed by a legislative procedure involving the Council and the European Parliament.

### Commission Decision 2008/49/EC

5. On 12 December 2007, the Commission adopted its Decision 2008/49/EC concerning the implementation of the Internal Market Information System (IMI) as regards the protection of personal data ('IMI Decision'). The Decision took into account some of the recommendations made by the EDPS and the WP29. It furthermore specified the legal basis.

### Overall views of the EDPS on IMI

6. The overall views of the EDPS on IMI are positive. The EDPS supports the aims of the Commission in establishing an electronic system for the exchange of information and regulating its data protection aspects. Such a streamlined system may not only enhance efficiency of cooperation, but may also help to ensure compliance with applicable data protection laws. It may do so by providing a clear framework on what information can be exchanged, with whom, and under what conditions.

7. Nevertheless, establishment of the centralized electronic system also creates certain risks. These include, most importantly, that more data might be shared and more broadly than strictly necessary for the purposes of efficient cooperation, and that data, including potentially outdated and inaccurate data, might remain in the electronic system longer than necessary. The security of a database accessible in 27 Member States is also a sensitive issue, as the system is only as safe as the weakest link in the network permits it to be.

8. Therefore, it is very important that data protection concerns should be addressed in a legally binding Community act, as fully and unambiguously as possible.

### Clear demarcation of the scope of IMI

9. The EDPS welcomes that the Commission clearly defines and delimitates the scope of IMI, with an annex listing the relevant Community acts on the basis of which information can be exchanged. These currently include only the Professional Qualifications Directive and the Services Directive; however, the scope of IMI is expected to be extended in the future. When new legislation is adopted which provides for information exchange using IMI, the annex will be updated simultaneously. The EDPS welcomes this technique as it (i) clearly delimits the scope of IMI; and (ii) ensures transparency, while at the same time; (iii) allowing flexibility for the case if IMI will be used for additional information exchanges in the future. It also ensures that no information exchange can be carried out through IMI without (i) having an appropriate legal basis in specific internal market legislation allowing or mandating information exchange; and (ii) including a reference to that legal basis in the annex to the IMI Decision.

### Main concerns regarding the IMI Decision

10. The EDPS, however, is not satisfied with (i) the choice of the legal basis of the IMI Decision which means that the IMI Decision is now based on uncertain legal grounds (see Section 2 of this Opinion); and (ii) the fact that a number of necessary provisions regulating in detail the data protection aspects of IMI are not incorporated into the document (see Section 3 of the Opinion).

11. Regrettably, in practice, the solution adopted by the Commission means that contrary to the expectations of the EDPS and the WP29, the IMI Decision does not now comprehensively regulate all major data protection aspects of IMI, including, importantly, the manner in which the joint controllers share responsibility regarding notice provision and provide rights of access to data subjects, or the specific, practical issues of proportionality. The EDPS also regrets that there is no specific requirement for the Commission to publish the predefined questions and data fields on its website, which would increase transparency and legal certainty.

## 2. LEGAL BASIS OF THE IMI DECISION

### The IDABC-Decision

12. The legal basis of the IMI Decision, as laid down in the decision itself, is Decision 2004/387/EC of the European Parliament and of the Council of 21 April 2004 on the interoperable delivery of pan-European eGovernment services to public administrations, businesses and citizens ('IDABC-Decision') ([1]), and in particular Article 4 thereof.

13. The IDABC-Decision itself is an instrument in the framework of Title XV of the Treaty Establishing the European Community ('EC Treaty'): Trans-European networks. Article 154 of the EC Treaty provides that the Community shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures. Such action shall aim at promoting the interconnection and interoperability of national networks as well as access to such networks. Article 155 lists the measures the Community can adopt in this framework. These are (i) guidelines; (ii) any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation; (iii) as well as the support of projects. The IDABC-Decision is based on Article 156(1), dealing with the procedure of adoption.

([1]) OJ L 144, 30.4.2004, as corrected by OJ L 181, 18.5.2004, p. 25.

14. Article 4 of the IDABC-Decision states *inter alia* that the Community shall implement projects of common interest. Those projects must be included in a rolling work programme and the implementation must be in accordance with the principles of Article 6 and 7 of the IDABC-Decision. Those principles mainly encourage a wide participation, foresee a solid and impartial procedure and provide for a technical standardisation. They also aim at ensuring the economic reliability and feasibility of projects.

**The Services Directive and the Professional Qualifications Directive**

15. As explained earlier, in the initial period, the Internal Market Information System shall be used for the exchange of personal data in the context of two directives:

— the Services Directive, and

— the Professional Qualifications Directive.

16. Article 34(1) of the Services Directive provides for a specific legal basis for the establishment of an electronic system for the exchange of information between Member States, as an accompanying measure for the purposes of the Directive. Article 34(1) reads: 'The Commission, in cooperation with Member States, shall establish an electronic system for the exchange of information between Member States, taking into account existing information systems'.

17. The Professional Qualifications Directive does not foresee a specific electronic system for the exchange of information but clearly requires information to be exchanged under several of its provisions. Relevant provisions mandating information exchange include Article 56 of the Directive, requiring the competent authorities of the Member States to work in close cooperation and to provide mutual assistance in order to facilitate application of the Directive. The second paragraph of Article 56 provides that certain sensitive information is processed while respecting data protection legislation. Further, Article 8 also specifically provides that competent authorities of the host Member State may ask competent authorities of the Member State of establishment to provide any information relevant to the legality of the service provider's establishment and his good conduct, as well as the absence of any disciplinary or criminal sanctions of a professional nature. Finally, Article 51(2) provides that in the event of justified doubts, the host Member State may require from the competent authorities of a Member State confirmation of the authenticity of the attestations and evidence of formal qualifications and training.

**The need for a proper legal basis for the provisions on data protection**

18. The protection of personal data is recognised as a fundamental right in Article 8 of the Charter of Fundamental Rights of the Union and in the case law on the basis of Article 8 of the European Convention on Human Rights ('ECHR').

19. According to its Article 1, the IMI Decision specifies the functions, rights and obligations of IMI actors and IMI users in relation to data protection requirements. The EDPS understands from Recital 7 that the IMI Decision is meant as a specification of the general Community framework of data protection under Directive 95/46/EC and Regulation (EC) No 45/2001. It specifically deals with the definition of controllers and their responsibilities, data retention periods and the rights of data subjects. The IMI Decision, thus, deals with limitations/specifications of fundamental rights and it aims at specifying subjective rights of citizens.

20. Based on the case-law under the ECHR, there should be no doubt about the legal status of provisions restricting fundamental rights. Those provisions must be laid down in a legal instrument, on the basis of the EC Treaty, which can be invoked before a judge. If not, the result would be legal uncertainty for the data subject since he cannot rely on the fact that he can invoke the rules before a Court.

21. The issue of legal certainty is even more eminent since under the system of the EC Treaty it will be primarily the national judges who will have discretion to decide which value they attach to the IMI Decision. This might lead to different outcomes in different Member states and even within one Member State. This legal uncertainty is not acceptable.

22. The absence of (security about) a legal remedy would be in any event contrary to Article 6 of the ECHR which provides for the right of a fair trial, and the case law on this Article. In such a situation, the Community would not fulfil its obligations under Article 6 of the Treaty on the European Union ('TEU'), which requires the Union to respect fundamental rights, as guaranteed by the ECHR.

**Imperfections of the legal basis chosen**

23. The EDPS is deeply concerned that by choosing Article 4 of the IDABC-Decision as the legal basis of the decision, the drafters of the Commission Decision may not have met the test of legal certainty outlined above. The EDPS lists below the following elements, which may raise doubts about the adequacy of the choice of the legal basis of the IMI Decision:

— the framework of Title XV of the EC Treaty, Trans-European Networks. Under this framework the European Community can contribute to establishing these networks, in order to make the European citizen profit from better, safer and cheaper transport, telecommunications and energy ([1]). It is uncertain whether this framework is also meant for networks between public authorities, needed for the implementation of legislative acts as is the case of IMI,

— the measures foreseen in Title XV of the EC Treaty (Article 155). As said before, these consist of (i) guidelines; (ii) any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation; (iii) as well as the support of projects. Although the Article is not entirely clear — 'any measures' can mean anything —

([1]) See Commission White Paper on Growth, Competitiveness and Employment (COM(93) 700 final).

this list of possible measures suggests that the objectives of Title XV will be achieved primarily by non legislative measures. The EDPS emphasises that in this context the term 'any measures' refers in particular to technical standardisation,

— Article 4 of the IDABC-Decision aims to implement projects of common interest specified in the rolling work programme. On the basis of this Work Programme, the IMI-system was set up and financed. However, the EDPS is not convinced that Article 4 can be used as a legal basis for rules on data protection, binding on the IMI actors and providing for subjective rights to citizens,

— Article 6 and 7 of the IDABC-Decision — referred to in Article 4 — set out principles for the implementation of projects of common interest. These principles deal with participation, the procedure and technical standardisation, as well as the economic reliability and feasibility of projects. They have nothing to do with principles of data protection, nor with other comparable principles of public law,

— the procedure of the IDABC-Decision: According to the 30th Recital of the decision implementing measures should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ([1]). This requires involvement of a 'comitology'-committee with representatives of the Member States. The Recitals of the IMI-Decision do not refer to any involvement of such a committee. To our knowledge, such a committee has not been involved,

— another specific point is that the IMI Decision is addressed to the Member States. For this reason and despite the references in the IMI Decision to Regulation (EC) No 45/2001 and the mentioning of the Commission in Article 6 as an IMI actor, the IMI Decision cannot relate to the processing of personal data by the Commission itself.

**Possible solutions to remedy the imperfections of the legal basis chosen**

24. The IMI Decision needs a solid legal basis, for the reasons mentioned above. There are serious doubts whether the legal basis of the IMI Decision fulfils the requirement of legal certainty. The EDPS recommends that the Commission reconsiders this legal basis and seeks solutions to remedy the imperfections of the legal basis chosen, with a possible consequence of replacing the IMI Decision by a legal instrument that fulfils the requirement of legal certainty.

25. In this context, the most appropriate solution might be the possibility of adopting a separate legal instrument for the IMI-system, by the Council and the European Parliament, similar to the Schengen Information System, the Visa Information System and other large-scale IT databases.

26. The EDPS suggests analysing this option. This separate legal instrument could then deal with the functions, rights and obligations of IMI-actors and IMI-users in relation to data protection requirements (the subject matter defined in the IMI Decision) and also with other requirements relating to the establishment and functioning of the IMI-system.

27. A second option could be finding a legal basis in the different internal market instruments. As far as the IMI Decision applies to the exchange of personal data in the context of the Services Directive, it should further be analysed whether this directive itself — in particular, Article 34 — could provide for the necessary legal basis. As far as the IMI Decision applies to the exchange of personal data in the context of the Professional Qualifications Directive, a similar approach could work as well: a specific and clear legal basis may also be created, by amending the Directive itself.

28. As for further internal market legislation that may, in the future, require information exchanges among competent authorities in Member States, a specific legal basis may at each time be adopted in such specific new legislation.

## 3. OBSERVATIONS ON THE CONTENT OF THE IMI-DECISION

29. In this Section of the Opinion, the EDPS discusses the provisions regulating the data protection aspects of IMI, as they are included in the IMI-Decision. The suggestions of the EDPS could be included in a new legal instrument replacing the IMI-decision as proposed above. However, in the absence of such a new instrument the suggestions could be included in the IMI-Decision itself, after amending this decision.

30. In addition, some of the suggestions can already now be applied in practice by the IMI-actors, without amending the decision. The EDPS expects the Commission to take the recommendations provided in this Opinion on board at least on the operational level, as far as they relate to activities of the Commission as IMI-actor, and thus subject to the supervision of the EDPS.

**Article 2 — Pre-defined data fields: transparency and proportionality**

31. The EDPS welcomes that the Commission published on the IMI website the first set of pre-defined questions and other data fields. These relate to information exchanges under the Professional Qualifications Directive.

32. To make this good practice a clear obligation on the Commission, and thus ensure and further improve transparency, the EDPS recommends that a legal instrument for IMI provides for an obligation for the Commission to publish the pre-defined questions and other data fields on the IMI website.

([1]) OJ L 184, 29.12.2006, p. 23.

33. As regards proportionality, a legal instrument for IMI should specify that the pre-defined questions and other data fields must be adequate, relevant, and not excessive. In addition, the EDPS has two specific recommendations regarding proportionality:

— a clear specification that IMI is not intended to be routinely used to do background checks on migrant professionals and service providers but only in case applicable legislation allows it and where there are reasonable doubts (i) as to the authenticity of the information provided by the migrant service provider to the Competent Authority in the host Member State or (ii) as to his/her eligibility to establishment or exercise of his/her profession in the host Member State,

— in order to minimize unnecessary transmission of sensitive but not always relevant data, a provision laying down that whenever no actual criminal record information is strictly necessary to be transferred, pre-defined questions and answers in the IMI interface should not include a request for criminal records and should be phrased differently, in such a way to minimize sharing sensitive data. For example, a host country's Competent Authority may be satisfied with knowing that a migrant lawyer is legally registered and in good standing with his home bar association, and does not need to know whether he has a road traffic offence on his criminal record, if that does not prevent him from working as a lawyer in his home country.

**Article 3 — Joint control and allocation of responsibilities**

34. The allocation of responsibilities in Article 3 of the IMI Decision is unclear and ambiguous. The EDPS acknowledges that it may not be feasible to specifically designate in the IMI Decision every single processing operation and allocate responsibility for each to the Commission or to a particular Competent Authority in a particular Member State. However, at least with respect to the most important data protection obligations of a controller, some guidance should have been given in the IMI Decision.

35. In particular, the EDPS recommends that a legal instrument for IMI specifies that:

— each Competent Authority and IMI coordinator is a controller with respect to its own data processing activities as a user of the system,

— the Commission is not a user, but the operator of the system, and it is responsible, first and foremost, for the technical operation, maintenance, and ensuring the overall security of the system, and that

— the IMI actors share responsibilities with respect to notice provision, and provision of right of access, objections, and rectifications in the manner outlined in the (newly inserted) paragraphs, as discussed under the headings below.

**Notice to data subjects**

36. The EDPS recommends that a new paragraph should be inserted into a legal instrument for IMI to allocate responsibilities for notice provision among the joint controllers following a 'layered' approach. In particular, the text should specify the following:

— first, the Commission, on its webpage dedicated to IMI, should provide a comprehensive privacy notice including all items required under Articles 10 and 11 of Regulation (EC) No 45/2001 in a clear and simple language. The EDPS recommends that the notice should not only cover the limited processing operations of the Commission with respect to data it has access to (personal data of IMI users) but also provide a general notice with regard to the information exchanges between Competent Authorities in the different Member States, which is the purpose of the database,

— second, and in addition, each Competent Authority should provide a privacy notice on its webpage. The privacy notice should include reference and link to the Commission's privacy notice and further details specific to that particular authority or Member State. Any country-specific limitations on the rights of access or information must, for example, be set forth on these notices. Notice provision may be coordinated by the single liaison office among the Competent Authorities within a specific country,

— third, and finally, at the latest at the time of uploading personal data, and unless a restriction may be applied, notice should also be given to data subjects directly, by means other than the privacy notice on the website. A recommended approach may be to include a brief reference to the IMI and a link to the relevant privacy notices on the Internet in any correspondence that Competent Authorities exchange with the data subject (usually the migrant service provider or professional).

**Rights of access, objection, and rectification**

37. The EDPS also recommends that a new paragraph should be inserted, in order to:

— specify to whom data subjects should address their access request, objection, or request for rectification,

— specify which Competent Authority will be competent to decide about those requests, and

— set forth a procedure in case the data subject submits his/her request to an IMI actor which is not competent in deciding about those requests.

38. Furthermore, it should be specified that the Commission can only provide access to data to which the Commission itself has legitimate access. Therefore, the Commission will not be under an obligation to provide access to exchange of information between Competent Authorities. If a data subject nevertheless turns to the Commission with such a request, the Commission needs to direct the data subjects, without undue delay, to the authorities which have access to the information and advise the data subject accordingly.

**Article 4 — Retention of personal data of data subjects of the information exchanges**

39. Article 4(1) of the IMI Decision provides for a data storage period of six months as of the 'formal closure' of an information exchange.

40. The EDPS understands that Competent Authorities may need some flexibility in retaining data due to the fact that beyond the initial question and answer, there may be follow-up questions regarding the same case between Competent Authorities. Indeed, during the preparation of the Opinion of the WP29, the Commission explained that the administrative procedures in the framework of which information exchanges may be necessary are usually completed within a couple of months and the six months retention period was designed to allow flexibility for any unexpected delays.

41. With that said, and based on the explanations of the Commission, the EDPS doubts whether there is a legitimate reason to keep the data in IMI for another six months after the formal closure of an information exchange. Therefore, the EDPS recommends that the six months deadline for automatic deletion should start as of the date when the requesting authority first contacts its counterpart in any specific information exchange. Indeed, a better approach would be to set the automatic deletion date according to the different types of information exchanges (always counting the deadlines from the start of the exchange). For example, whereas a six months retention period may be appropriate for information exchanges under the Professional Qualifications Directive, it may not necessarily be adequate for other information exchanges in future internal market legislation.

42. The EDPS also adds that should his recommendations not be taken into account, at the very least, it should be clarified what is meant by 'formal closure' of an information exchange. In particular, it must be ensured that no data could remain in the database longer than necessary simply due to the fact of a competent authority failing to 'close the case'.

43. Further, the EDPS recommends that in the second paragraph of Article 4, the logic of deletion-retention should be reversed. The Commission should honour deletion requests within 10 working days in any event whether or not the other Competent Authority in the information exchange would like to keep the information on IMI. However, there should be an automated mechanism to notify this other Competent Authority, so that it would not loose the data and could, if it wished so, download or print the information and store it for its own purposes outside IMI and subject to its own data protection rules. A ten day notice period appears reasonable both as a minimum and as a maximum timeline set. The Commission should only be able to delete information before this ten day deadline if both authorities confirm their wish for deletion.

**Security measures**

44. The EDPS also recommends specifying that security measures, whether taken by the Commission or by the Competent Authorities, should be taken in accordance with best practices in Member States.

**Joint supervision**

45. As the information exchanges under the IMI are subject to multiple national data protection laws and the supervision of multiple national data protection authorities (in addition to the applicability of Regulation (EC) No 45/2001 and the supervisory authority of the EDPS to certain aspects of the processing operations), the EDPS recommends that a legal instrument for IMI should also provide clear provisions facilitating joint supervision of IMI by the various data protection authorities involved. The joint supervision could be modelled in the same way as has been done in the legal instruments on the establishment, operation and use of the second generation Schengen Information System (SIS II) ([1]).

## 4. CONCLUSIONS

46. The EDPS supports the aims of the Commission in establishing an electronic system for the exchange of information and regulating its data protection aspects.

47. The IMI Decision needs a solid legal basis, for the reasons mentioned above. The EDPS recommends that the Commission reconsiders its choice of legal basis and seeks solutions to remedy the imperfections of the legal basis chosen, with the possible consequence of replacing the IMI Decision by a legal instrument that fulfils the requirement of legal certainty.

48. As an ultimately most sound solution, the EDPS suggests analysing the possibility of adopting a separate legal instrument for the IMI-system, at the level of the Council and the European Parliament, similar to the Schengen Information System, Visa Information System and other large-scale IT databases.

([1]) See Articles 44-46 of Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4) and Articles 60-62 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007, p. 63).

49. Alternatively, it could be analysed whether Article 34 of the Services Directive and similar provisions yet to be adopted with respect to other internal market legislation could provide for the necessary legal basis.

50. Additionally, the Opinion provides for a number of suggestions on the provisions regulating the data protection aspects of IMI, to be included in a new legal instrument replacing the IMI Decision as proposed above or, in the absence of such a new instrument to be included in the IMI Decision itself, after amending this decision.

51. Many of the suggestions can already now be applied in practice by the IMI-actors, without amending the Decision. The EDPS expects the Commission to take the recommendations provided in this Opinion on board to the extent possible, at least on the operational level, as far as they relate to activities of the Commission as IMI-actor.

52. These recommendations relate to transparency and proportionality, joint control and allocation of responsibilities, notice to data subjects, rights of access, objection, and rectification, data retention, security measures and joint supervision.

Done at Brussels, 22 February 2008.

Peter HUSTINX

*European Data Protection Supervisor*

II

*(Information)*

# INFORMATION FROM EUROPEAN UNION INSTITUTIONS AND BODIES

# COMMISSION

## Communication from the Commission — The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis

(2008/C 270/02)

### 1. INTRODUCTION

1. The global financial crisis has intensified markedly and has now impacted heavily on the EU banking sector. Over and above specific problems related in particular to the US mortgage market and mortgage-backed assets or linked to losses stemming from excessively risky strategies of individual banks, there has been a general erosion of confidence in the past weeks within the banking sector. The pervasive uncertainty about the credit risk of individual financial institutions has dried up the market of interbank lending and has consequently made access to liquidity progressively more difficult for financial institutions across the board.

2. The current situation threatens the existence of individual financial institutions with problems that are a result of their particular business model or business practices whose weaknesses are exposed and exacerbated by the crisis in the financial markets. If such institutions are to be returned to long-term viability rather than liquidated, a far reaching restructuring of their operations will be required. Under the prevailing circumstances, the crisis equally affects financial institutions that are fundamentally sound and whose difficulties stem exclusively from the general market conditions which have severely restricted access to liquidity. Long-term viability of these institutions may require less substantial restructuring. In any case however, measures taken by a Member State to support (certain) institutions operating within its national financial market may favour these institutions to the detriment of others operating within that Member State or in other Member States.

3. The ECOFIN Council on 7 October 2008 adopted Conclusions committing to take all necessary measures to enhance the soundness and stability of the banking system in order to restore confidence and the proper functioning of the financial sector. The recapitalisation of vulnerable systemically relevant financial institutions was recognized as one means, among others, of appropriately protecting the depositors' interests and the stability of the system. It was further agreed that public intervention has to be decided on at national level but within a coordinated framework and on the basis of a number of EU common principles ([1]). On the same occasion the Commission offered to shortly issue guidance as to the broad framework within which the State aid compatibility of recapitalisation and guarantee schemes, and cases of application of such schemes, could be rapidly assessed.

4. Given the scale of the crisis, now also endangering fundamentally sound banks, the high degree of integration and interdependence of European financial markets, and the drastic repercussions of the potential failure of a systemically relevant financial institution further exacerbating the crisis, the Commission recognises that Member States may consider it necessary to adopt appropriate measures to safeguard the stability of the financial system. Due to the particular nature of the current problems in the financial

([1]) The ECOFIN Council conclusions enumerate the following principles:
— interventions should be timely and the support should in principle be temporary,
— Member States will be watchful regarding the interests of taxpayers,
— existing shareholders should bear the due consequences of the intervention,
— Member States should be in a position to bring about a change of management,
— the management should not retain undue benefits — governments may have *inter alia* the power to intervene in remuneration,
— legitimate interest of competitors must be protected, in particular through the State aid rules,
— negative spill-over effects should be avoided.

sector such measures may have to extend beyond the stabilisation of individual financial institutions and include general schemes.

5. While the exceptional circumstances prevailing at the moment have to be duly taken into account when applying the State aid rules to measures addressing the crisis in the financial markets the Commission has to ensure that such measures do not generate unnecessary distortions of competitions between financial institutions operating in the market or negative spillover effects on other Member States. It is the purpose of this Communication to provide guidance on the criteria relevant for the compatibility with the Treaty of general schemes as well as individual cases of application of such schemes and *ad hoc* cases of systemic relevance. In applying these criteria to measures taken by Member States, the Commission will proceed with the swiftness that is necessary to ensure legal certainty and to restore confidence in financial markets.

## 2. **GENERAL PRINCIPLES**

6. State aid to individual undertakings in difficulties is normally assessed under Article 87(3)(c) of the Treaty and the Community Guidelines on State aid for rescuing and restructuring firms in difficulty ([1]) (hereinafter 'R&R guidelines') which articulate the Commission's understanding of Article 87(3)(c) of the Treaty for this type of aid. The R&R guidelines are of general application, while foreseeing certain specific criteria for the financial sector.

7. In addition, under Article 87(3)(b) of the Treaty the Commission may allow State aid 'to remedy a serious disturbance in the economy of a Member State'.

8. The Commission reaffirms that, in line with the case law and its decision making practice ([2]), Article 87(3)(b) of the Treaty necessitates a restrictive interpretation of what can be considered a serious disturbance of a Member State's economy.

9. In the light of the level of seriousness that the current crisis in the financial markets has reached and of its possible impact on the overall economy of Member States, the Commission considers that Article 87(3)(b) is, in the present circumstances, available as a legal basis for aid measures undertaken to address this systemic crisis. This applies, in particular, to aid that is granted by way of a general scheme available to several or all financial institutions in a Member State. Should the Member State's authorities responsible for financial stability declare to the Commission that there is a risk of such a serious disturbance, this shall be of particular relevance for the Commission's assessment.

10. *Ad hoc* interventions by Member States are not excluded in circumstances fulfilling the criteria of Article 87(3)(b). In the case of both schemes and *ad hoc* interventions, while the assessment of the aid should follow the general principles laid down in the R&R guidelines adopted pursuant to Article 87(3)(c) of the Treaty, the current circumstances may allow the approval of exceptional measures such as structural emergency interventions, protection of rights of third parties such as creditors, and rescue measures potentially going beyond 6 months.

11. It needs to be emphasised, however, that the above considerations imply that the use of Article 87(3)(b) cannot be envisaged as a matter of principle in crisis situations in other individual sectors in the absence of a comparable risk that they have an immediate impact on the economy of a Member State as a whole. As regards the financial sector, invoking this provision is possible only in genuinely exceptional circumstances where the entire functioning of financial markets is jeopardised.

12. Where there is a serious disturbance of a Member State's economy along the lines set out above, recourse to Article 87(3)(b) is possible not on an open-ended basis but only as long as the crisis situation justifies its application.

13. This entails the need for all general schemes set up on this basis, e.g. in the form of a guarantee or recapitalization scheme, to be reviewed on a regular basis and terminated as soon as the economic situation of the Member State in question so permits. While acknowledging that it is currently impossible to predict the duration of the current extraordinary problems in the financial markets and that it may be indispensable in order to restore confidence to signal that a measure will be extended as long as the crisis continues, the Commission considers it a necessary element for the compatibility of any general scheme that the Member State carries out a review at least every six months and reports back to the Commission on the result of such review.

14. Furthermore, the Commission considers that the treatment of illiquid but otherwise fundamentally sound financial institutions in the absence of the current exceptional circumstances should be distinguished from the treatment of financial institutions characterized by endogenous problems. In the first case, viability problems are

([1]) OJ C 244, 1.10.2004, p. 2.

([2]) Cf. in principle case Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and Volkswagen AG v Commission* [1999] ECR II-3663, paragraph 167. Confirmed in Commission Decision 98/490/EC in Case C 47/96 *Crédit Lyonnais* (OJ L 221, 8.8.1998, p. 28), point 10.1, Commission Decision 2005/345/EC in Case C 28/02 *Bankgesellschaft Berlin* (OJ L 116, 4.5.2005, p. 1), points 153 *et seq.* and Commission Decision 2008/263/EC in Case C 50/06 *BAWAG* (OJ L 83, 26.3.2008, p. 7), point 166. See Commission Decision in Case NN 70/07 *Northern Rock* (OJ C 43, 16.2.2008, p. 1), Commission Decision in Case NN 25/08 *Rescue aid to WestLB* (OJ C 189, 26.7.2008, p. 3), Commission Decision of 4 June 2008 in Case C 9/08 *SachsenLB*, not yet published.

inherently exogenous and have to do with the present extreme situation in the financial market rather than with inefficiency or excessive risk-taking. As a result distortions of competition resulting from schemes supporting the viability of such institutions will normally be more limited and require less substantial restructuring. By contrast, other financial institutions, likely to be particularly affected by losses stemming for instance from inefficiencies, poor asset-liability management or risky strategies, would fit with the normal framework of rescue aid, and in particular need a far-reaching restructuring, as well as compensatory measures to limit distortions of competition ([1]). In all cases, however, in the absence of appropriate safeguards, distortions of competition may be substantial from the implementation of guarantee and recapitalization schemes, as they could unduly favour the beneficiaries to the detriment of their competitors or may aggravate the liquidity problems for financial institutions located in other Member States.

15. Moreover, in line with the general principles underlying the State aid rules of the Treaty, which require that the aid granted does not exceed what is strictly necessary to achieve its legitimate purpose and that distortions of competition are avoided or minimized as far as possible, and taking due account of the current circumstances, all general support measures have to be:

— well-targeted in order to be able to achieve effectively the objective of remedying a serious disturbance in the economy,

— proportionate to the challenge faced, not going beyond what is required to attain this effect, and

— designed in such a way as to minimize negative spill-over effects on competitors, other sectors and other Member States.

16. The observance of these criteria in compliance with the State aid rules and the fundamental freedoms enshrined in the Treaty, including the principle of non-discrimination, is necessary for the preservation of the proper functioning of the internal market. In its assessment, the Commission will take into account the following criteria to decide upon the compatibility of the State aid measures enumerated below.

## 3. GUARANTEES COVERING THE LIABILITIES OF FINANCIAL INSTITUTIONS

17. The principles set out above translate into the following considerations as regards guarantee schemes protecting liabilities established by way of a declaration, legislation or contractual regime, it being understood that these considerations are of a general nature and need to be adapted to the particular circumstances of every individual case.

([1]) It being understood that the exact nature and timing of the restructuring to be carried out may be affected by the present turmoil in the financial markets.

### Eligibility for a guarantee scheme

18. A significant distortion of competition may arise if some market players are excluded from the benefit of the guarantee. The eligibility criteria of financial institutions for coverage by such a guarantee must be objective, taking due account of their role in the relevant banking system and the overall economy, and non-discriminatory so as to avoid undue distortive effects on neighbouring markets and the internal market as a whole. In application of the principle of non discrimination on the grounds of nationality, all institutions incorporated in the Member State concerned, including subsidiaries, and with significant activities in that Member State should be covered by the scheme.

### Material scope of a guarantee — types of liabilities covered

19. In the present exceptional circumstances, it may be necessary to reassure depositors with financial institutions that they will not suffer losses, so as to limit the possibility of bank runs and undue negative spillover effects on healthy banks. In principle, therefore, in the context of a systemic crisis, general guarantees protecting retail deposits (and debt held by retail clients) can be a legitimate component of the public policy response.

20. As regards guarantees going beyond retail deposits, the selection of the types of debt and liabilities covered must be targeted, to the extent practicable, to the specific source of difficulties and restricted to what can be considered necessary to confront the relevant aspects of the current financial crisis, as they could otherwise delay the necessary adjustment process and generate harmful moral hazard ([2]).

21. In the application of this principle, the drying-up of interbank lending due to an erosion of confidence between financial institutions may also justify guaranteeing certain types of wholesale deposits and even short and medium-term debt instruments, to the extent such liabilities are not already adequately protected by existing investor arrangements or other means ([3]).

22. The extension of the coverage of any guarantee to further types of debt beyond this relatively broad scope would require a closer scrutiny as to its justification.

23. Such guarantees should not, in principle, include subordinated debt (tier 2 capital) or an indiscriminate coverage of all liabilities, as it would merely tend to safeguard the interests of shareholders and other risk capital investors. If such debt is covered, thereby allowing expansion of capital and thus of lending activity, specific restrictions may be necessary.

([2]) The limitation of the amount of the guarantee available, possibly in relation to the balance sheet size of the beneficiary may also be an element safeguarding the proportionality of the scheme in this respect.

([3]) Such as, for example, covered bonds and debt and deposits with collateral in government bonds or covered bonds.

**Temporal scope of the guarantee scheme**

24. The duration and scope of any guarantee scheme going beyond retail deposit guarantee schemes must be limited to the minimum necessary. In line with the general principles set out above, taking into account the currently unpredictable duration of the fundamental shortcomings in the functioning of financial markets, the Commission considers it a necessary element for the compatibility of any general scheme for the Member State to carry out a review every six months, covering the justification for the continued application of the scheme and the potential for adjustments to deal with evolution in the situation of financial markets. The results of this review will have to be submitted to the Commission. Provided that such regular review is ensured, the approval of the scheme may cover a period longer than six months and up to two years in principle. It may be further extended, upon Commission approval, as long as the crisis in the financial markets so requires. Should the scheme permit guarantees to continue to cover the relevant debt until a maturity date later than the expiry of the issuance period under the scheme, additional safeguards would be necessary in order to prevent excessive distortion of competition. Such safeguards may include a shorter issuance period than that allowed in principle under the present communication, deterrent pricing conditions and appropriate quantitative limits on the debt covered.

**Aid limited to the minimum — private sector contribution**

25. In application of the general State aid principle that the amount and intensity of the aid must be limited to the strict minimum, Member States have to take appropriate steps to ensure a significant contribution from the beneficiaries and/or the sector to the cost of the guarantee and, where the need arises, the cost of State intervention if the guarantee has to be drawn upon.

26. The exact calculation and composition of such contribution depends on the particular circumstances. The Commission considers that an adequate combination of some or all of the following elements ([1]) would satisfy the requirement of aid being kept to the minimum:

— the guarantee scheme must be based on an adequate remuneration by the beneficiary financial institutions individually and/or the financial sector at large ([2]). Bearing in mind the difficulty of determining a market rate for guarantees of this nature and dimension in the absence of a comparable benchmark, and taking into account the potential difficulties in the current circumstances for beneficiaries to bear the amounts that might properly be charged, the fees charged for the provision of the scheme should come as close as possible to what could be considered a market price. Appropriate pricing mechanisms reflecting the varying degree of risks and the beneficiaries' different credit profiles and needs, will be important contributions to the proportionality of the measure,

— if the guarantee has to be activated, a further significant private sector contribution could consist in the coverage of at least a considerable part of the outstanding liabilities incurred by the beneficiary undertaking (if it continues to exist) or by the sector, the Member State's intervention being limited to amounts exceeding this contribution,

— the Commission recognizes that beneficiaries may not immediately be able to pay an appropriate remuneration in its entirety. Therefore, in order to complement or partially substitute the preceding elements, Member States could consider a clawback/better fortunes clause that would require beneficiaries to pay either an additional remuneration for the provision of the guarantee as such (in case it does not have to be activated) or to reimburse at least a part of any amounts paid by the Member State under the guarantee (in case it needs to be drawn upon) as soon as they are in a position to do so.

**Avoidance of undue distortions of competition**

27. Given the inherent risks that any guarantee scheme will entail negative effects on non-beneficiary banks, including those in other Member States, the system must include appropriate mechanisms to minimize such distortions and the potential abuse of the preferential situations of beneficiaries brought about by a State guarantee. Such safeguards, which are also important to avoid moral hazard, should include an adequate combination of some or all of the following elements ([3]):

— behavioural constraints ensuring that beneficiary financial institutions do not engage in aggressive expansion against the background of the guarantee to the detriment of competitors not covered by such protection. This can be done, for example by:

— restrictions on commercial conduct, such as advertising invoking the guaranteed status of the beneficiary bank, pricing or on business expansion, e.g. through the introduction of a market share ceiling ([4]),

— limitations to the size of the balance-sheet of the beneficiary institutions in relation to an appropriate benchmark (e.g. gross domestic product or money market growth ([5])),

([1]) This is a non-exhaustive list of tools contributing to the objective of keeping the aid to the minimum.

([2]) E.g. through an association of private banks.

([3]) This is a non-exhaustive list of tools contributing to the objective of avoiding undue distortions of competition.

([4]) The retention of profits in order to ensure adequate recapitalization could also be an element to be considered in this context.

([5]) While safeguarding the availability of credit to the economy notably in case of recession.

— the prohibition of conduct that would be irreconcilable with the purpose of the guarantee such as, for example, share repurchases by beneficiary financial institutions or the issuance of new stock options for management,

— appropriate provisions that enable the Member State concerned to enforce these behavioural constraints including the sanction of removing the guarantee protection from a beneficiary financial institution in case of non-compliance.

**Follow-up by adjustment measures**

28. The Commission considers that, in order to avoid distortions of competition to the maximum extent possible, a general guarantee scheme needs to be seen as a temporary emergency measure to address the acute symptoms of the current crisis in financial markets. Such measures cannot, by definition, represent a fully-fledged response to the root causes of this crisis linked to structural shortcomings in the functioning of the organization of financial markets or to specific problems of individual financial institutions or to a combination of both.

29. Therefore, a guarantee scheme needs to be accompanied, in due course, by necessary adjustment measures for the sector as a whole and/or by the restructuring or liquidation of individual beneficiaries, in particular for those for which the guarantee has to be drawn upon.

**Application of the scheme to individual cases**

30. Where the guarantee scheme has to be called upon for the benefit of individual financial institutions it is indispensable that this emergency rescue measure aimed to keep the insolvent institution afloat, which gives rise to an additional distortion of competition over and above that resulting from the general introduction of the scheme, is followed up as soon as the situation of the financial markets so permits, by adequate steps leading to a restructuring or liquidation of the beneficiary. This triggers the requirement of the notification of a restructuring or liquidation plan for recipients of payments under the guarantee which will be separately assessed by the Commission as to its compliance with the State aid rules ([1]).

31. In the assessment of a restructuring plan, the Commission will be guided by the requirements:

— to ensure the restoration of long-term viability of the financial institution in question,

— to ensure that aid is kept to the minimum and that there is substantial private participation to the costs of the restructuring,

— to safeguard that there is no undue distortion of competition and no unjustified benefits deriving from the activation of the guarantee.

32. In this assessment, the Commission can build on the experience gathered in the application of State aid rules to financial institutions in the past, having regard to the particular features of a crisis that has reached a dimension to qualify as a serious disturbance of the economy of Member States.

33. The Commission will also take into account the distinction between aid measures necessitated exclusively by the current bottleneck in access to liquidity in relation to an otherwise fundamentally sound financial institution, as opposed to assistance provided to beneficiaries that are additionally suffering from structural solvency problems linked for instance to their particular business model or investment strategy. In principle, assistance to the latter category of beneficiaries is likely to raise greater concerns.

## 4. RECAPITALISATION OF FINANCIAL INSTITUTIONS

34. A second systemic measure in response to the ongoing financial crisis would be the establishment of a recapitalisation scheme which would be used to support financial institutions that are fundamentally sound but may experience distress because of extreme conditions in financial markets. The objective would be to provide public funds so as to strengthen the capital base of the financial institutions directly or to facilitate the injection of private capital by other means, so as to prevent negative systemic spillovers.

35. In principle, the above considerations in relation to general guarantee schemes apply, *mutatis mutandis*, also to recapitalisation schemes. This holds true for:

— objective and non-discriminatory criteria for eligibility,

— the temporal scope of the scheme,

— limitation of the aid to the strict necessary,

— the need for safeguards against possible abuses and undue distortions of competition, bearing in mind that the irreversible nature of capital injections entails the need for provisions in the scheme which allow the Member State to monitor and enforce the observance of these safeguards and to take steps avoiding undue distortions of competition, where appropriate, at a later stage ([2]), and

([1]) As a matter of principle, the Commission considers that in the event of payments having to be made to beneficiary financial institution, the payment has to be followed within six months by a restructuring plan or a liquidation plan, as the case may be. In order to facilitate the work of the Member States and the Commission, the Commission will be prepared to examine grouped notifications of similar restructuring/liquidation cases. The Commission may consider that there is no need to submit a plan for the pure liquidation of an institution, or where the size of the institution is negligible.

([2]) According to the principles of the R&R guidelines.

— the requirement for recapitalisation as an emergency measure to support the financial institution through the crisis to be followed up by a restructuring plan for the beneficiary to be separately examined by the Commission, taking into account both the distinction between fundamentally sound financial institutions solely affected by the current restrictions on access to liquidity and beneficiaries that are additionally suffering from more structural solvency problems linked for instance to their particular business model or investment strategy and the impact of that distinction on the extent of the need for restructuring.

36. The particular nature of a recapitalisation measure gives rise to the following considerations.

37. Eligibility should be based on objective criteria, such as the need to ensure a sufficient level of capitalisation with respect to the solvency requirements that do not lead to unjustified discriminatory treatment. Evaluation of the need for support by the financial supervisory authorities would be a positive element.

38. The capital injection must be limited to the minimum necessary and should not allow the beneficiary to engage in aggressive commercial strategies or expansion of its activities or other purposes that would imply undue distortions of competition. In that context the maintenance of enhanced minimum solvency requirement levels, and/or limitation to the total size of the balance sheet of the financial institution will be evaluated positively. The beneficiaries should contribute as much as possible in the light of the current crisis through their own means including private participation ([1]).

39. Capital interventions in financial institutions must be done on terms that minimise the amount of the aid. According to the instrument chosen (e.g. shares, warrants, subordinated capital, …) the Member State concerned should, in principle, receive rights, the value of which corresponds to their contribution to the recapitalisation. The issue price of new shares must be fixed on the basis of a market-oriented valuation. In order to ensure that the public support is only given in return for an appropriate counterpart, instruments such as preferred shares with adequate remuneration, will be regarded positively. Alternatively the introduction of claw-back mechanisms or better fortunes clauses will have to be considered.

40. Similar considerations will apply to other measures and schemes aimed at tackling the problem from the financial institutions' asset side, that would contribute to the strengthening of the institutions' capital requirements. In particular, where a Member State buys or swaps assets this will have to be done at a valuation which reflects their underlying risks, with no undue discrimination as to the sellers.

([1]) The upfront provision of a certain contribution may need to be supplemented by provisions allowing the imposition of additional contributions at a later stage.

41. The approval of the aid scheme does not exempt Member States from submitting a report to the Commission on the use of the scheme every six months and individual plans for the beneficiary undertakings within 6 months from the date of the intervention ([2]).

42. As in the case of guarantee schemes but having regard to the inherently irreversible nature of recapitalisation measures, the Commission will carry out its assessment of such plans in such a way as to ensure the coherence of the overall results of recapitalisation under the scheme with those of a recapitalisation measure taken outside such a scheme according to the principles of the R&R guidelines, taking into consideration the particular features of a systemic crisis in the financial markets.

## 5. CONTROLLED WINDING-UP OF FINANCIAL INSTITUTIONS

43. In the context of the current financial crisis a Member State may also wish to carry out a controlled winding-up of certain financial institutions in its jurisdiction. Such a controlled liquidation, possibly carried out in conjunction with a contribution of public funds, may be applied in individual cases, either as a second step, after rescue aid to an individual financial institution when it becomes clear that the latter cannot be restructured successfully, or in one single action. Controlled winding-up may also constitute an element of a general guarantee scheme, e.g. where a Member State undertakes to initiate liquidation of the financial institutions for which the guarantee needs to be activated.

44. Again, the assessment of such a scheme and of individual liquidation measures taken under such a scheme follows the same lines, *mutatis mutandis*, as set out above for guarantee schemes.

45. The particular nature of a liquidation measure gives rise to the following considerations.

46. In the context of liquidation, particular care has to be taken to minimise moral hazard, notably by excluding shareholders and possibly certain types of creditors from receiving the benefit of any aid in the context of the controlled winding-up procedure.

47. To avoid undue distortions of competition, the liquidation phase should be limited to the period strictly necessary for the orderly winding-up. As long as the beneficiary financial institution continues to operate it should not pursue any new activities, but merely continue the ongoing ones. The banking licence should be withdrawn as soon as possible.

([2]) In order to facilitate the work of the Member States and the Commission, the Commission will be prepared to examine grouped notifications of similar restructuring cases. The Commission may also consider that there is no need to submit a plan relating to a pure liquidation of the institution, or where the size of the residual economic activity is negligible.

48. In ensuring that the aid amount is kept to the minimum necessary in view of the objective pursued, it needs to be taken into account that the protection of financial stability within the current financial turmoil may imply the necessity to reimburse certain creditors of the liquidated bank through aid measures. The choice of criteria for the selection of the types of liabilities for this purpose should follow the same rules as in relation to the liabilities covered by a guarantee scheme.

49. In order to ensure that no aid is granted to the buyers of the financial institution or parts of it or to the entities sold, it is important that certain sales conditions are respected. The following criteria will be taken into account by the Commission when determining the potential existence of aid:

— the sales process should be open and non-discriminatory,

— the sale should take place on market terms,

— the financial institution or the government, depending on the structure chosen, should maximise the sales price for the assets and liabilities involved,

— in case it is necessary to grant an aid to the economic activity to be sold, this will lead to an individual examination according to the principles of the R&R guidelines.

50. Where the application of these criteria leads to the finding of aid to buyers or to sold entities, the compatibility of that aid will have to be assessed separately.

### 6. **PROVISION OF OTHER FORMS OF LIQUIDITY ASSISTANCE**

51. In dealing with acute liquidity problems of some financial institutions, Member States may wish to accompany guarantees or recapitalisation schemes with complementary forms of liquidity support, with the provisions of public funds (including funds from the central bank). The Commission has already clarified that where a Member State/central bank reacts to a banking crisis not with selective measures in favour of individual banks, but with general measures open to all comparable market players in the market (e.g. lending to the whole market on equal terms), such general measures are often outside the scope of the State aid rules and do not need to be notified to the Commission. The Commission considers for instance that activities of central banks related to monetary policy, such as open market operations and standing facilities, are not caught by the State aid rules. Dedicated support to a specific financial institution may also be found not to constitute aid in specific circumstances. The Commission considers [1] that the provision of central banks' funds to the financial institution in such a case may be found not to constitute aid when a number of conditions are met, such as:

— the financial institution is solvent at the moment of the liquidity provision and the latter is not part of a larger aid package,

— the facility is fully secured by collateral to which haircuts are applied, in function of its quality and market value,

— the central bank charges a penal interest rate to the beneficiary,

— the measure is taken at the central bank's own initiative, and in particular is not backed by any counter-guarantee of the State.

52. The Commission considers that in the current exceptional circumstances a scheme of liquidity support from public sources (including the central bank) where it constitutes aid, can be found compatible, according to the principles of the R&R guidelines. Provided that the regular review of such a liquidity scheme every six months is ensured [2], the approval of the scheme may cover a period longer than six months and up to two years, in principle. It may be further extended, upon Commission approval, in the event that the crisis in the financial markets so requires.

### 7. **RAPID TREATMENT OF STATE AID INVESTIGATIONS**

53. When applying the State aid rules to the measures dealt with in this Communication in a manner that takes account of prevailing financial market conditions, the Commission, in co-operation with the Member States, should ensure both that they achieve their objective and that the related distortions of competition both within and between Member States are kept to a minimum. In order to facilitate this cooperation and to provide both Member States and third parties with the necessary legal certainty on the compliance of the measures undertaken with the Treaty (which is a significant component of restoring confidence to the markets), it is of paramount importance that Member States inform the Commission of their intentions and notify plans to introduce such measures as early and comprehensively as possible and in any event before the measure is implemented. The Commission has taken appropriate steps to ensure the swift adoption of decisions upon complete notification, if necessary within 24 hours and over a weekend.

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[1] See for instance *Northern Rock* (OJ C 43, 16.2.2008, p. 1).

[2] The principles set out above in point 24 would apply to this review.

## Non-opposition to a notified concentration

## (Case COMP/M.5154 — CASC JV)

**(Text with EEA relevance)**

(2008/C 270/03)

On 14 August 2008, 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 and will be made public after it is cleared of any business secrets it may contain. It will be available:

— from the Europa competition website (http://ec.europa.eu/comm/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 under document number 32008M5154. EUR-Lex is the on-line access to European law (http://eur-lex.europa.eu).

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## Non-opposition to a notified concentration

## (Case COMP/M.5169 — Galp Energia España/Agip España)

**(Text with EEA relevance)**

(2008/C 270/04)

On 9 September 2008, 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 and will be made public after it is cleared of any business secrets it may contain. It will be available:

— from the Europa competition website (http://ec.europa.eu/comm/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 under document number 32008M5169. EUR-Lex is the on-line access to European law (http://eur-lex.europa.eu).

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## Non-opposition to a notified concentration

## (Case COMP/M.5201 — Total Produce/Haluco/JV)

**(Text with EEA relevance)**

(2008/C 270/05)

On 11 August 2008, 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 and will be made public after it is cleared of any business secrets it may contain. It will be available:

— from the Europa competition website (http://ec.europa.eu/comm/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 under document number 32008M5201. EUR-Lex is the on-line access to European law (http://eur-lex.europa.eu).

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## Non-opposition to a notified concentration

## (Case COMP/M.5321 — LAHC/Barclays Life)

**(Text with EEA relevance)**

(2008/C 270/06)

On 15 October 2008, 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 and will be made public after it is cleared of any business secrets it may contain. It will be available:

— from the Europa competition website (http://ec.europa.eu/comm/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 under document number 32008M5321. EUR-Lex is the on-line access to European law (http://eur-lex.europa.eu).

IV

*(Notices)*

# NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

# COMMISSION

**Euro exchange rates** ([1])

**24 October 2008**

(2008/C 270/07)

**1 euro =**

| | Currency | Exchange rate | | Currency | Exchange rate |
|---|---|---|---|---|---|
| USD | US dollar | 1,2596 | TRY | Turkish lira | 2,1434 |
| JPY | Japanese yen | 117,4 | AUD | Australian dollar | 2,0506 |
| DKK | Danish krone | 7,4565 | CAD | Canadian dollar | 1,5994 |
| GBP | Pound sterling | 0,8061 | HKD | Hong Kong dollar | 9,7632 |
| SEK | Swedish krona | 9,9815 | NZD | New Zealand dollar | 2,2829 |
| CHF | Swiss franc | 1,4566 | SGD | Singapore dollar | 1,9011 |
| ISK | Iceland króna | 305 | KRW | South Korean won | 1 833,98 |
| NOK | Norwegian krone | 8,8 | ZAR | South African rand | 14,01 |
| BGN | Bulgarian lev | 1,9558 | CNY | Chinese yuan renminbi | 8,6198 |
| CZK | Czech koruna | 24,995 | HRK | Croatian kuna | 7,2377 |
| EEK | Estonian kroon | 15,6466 | IDR | Indonesian rupiah | 12 864,29 |
| HUF | Hungarian forint | 277 | MYR | Malaysian ringgit | 4,5106 |
| LTL | Lithuanian litas | 3,4528 | PHP | Philippine peso | 61,49 |
| LVL | Latvian lats | 0,7097 | RUB | Russian rouble | 34,3035 |
| PLN | Polish zloty | 3,8675 | THB | Thai baht | 43,702 |
| RON | Romanian leu | 3,675 | BRL | Brazilian real | 2,9916 |
| SKK | Slovak koruna | 30,505 | MXN | Mexican peso | 17,4455 |

([1]) *Source:* reference exchange rate published by the ECB.

# NOTICES FROM MEMBER STATES

## Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises

**(Text with EEA relevance)**

(2008/C 270/08)

| | |
|---|---|
| Aid No | XS 198/08 |
| Member State | Germany |
| Region | — |
| Title of aid scheme or name of company receiving individual aid | Unternehmerkapital — KfW Kapital für Arbeit und Investitionen (KMU-Fenster der Fremdkapitaltranche) |
| Legal basis | KfW-Gesetz, Merkblatt zum KfW-Unternehmerkapital- KfW Kapital für Arbeit und Investitionen (Anlage 1) |
| Type of measure | Aid scheme |
| Budget | Annual budget: EUR 162 million |
| Maximum aid intensity | In conformity with Articles 4(2)-(6) and 5 of the Regulation |
| Date of implementation | 1.7.2008 |
| Duration | Unlimited |
| Objective | Small and medium-sized enterprises |
| Economic sectors | All sectors eligible for aid to SMEs |
| Name and address of the granting authority | KfW-Bankengruppe<br>Palmengartenstraße 5-9<br>D-60325 Frankfurt |

| | |
|---|---|
| Aid No | XS 227/08 |
| Member State | Spain |
| Region | La Rioja |
| Title of aid scheme or name of company receiving individual aid | Bases Reguladoras de la concesión de subvenciones destinadas a la bonificación de intereses de préstamos y contratos de arrendamiento financiero para financiar inversiones empresariales realizadas por pequeñas y medianas empresas |
| Legal basis | Orden 13/2008, de 3 de junio de 2008 de la Consejería de Industria, Innovación y Empleo, por la que se aprueban las bases reguladoras de la concesión de subvenciones por la Agencia de Desarrollo Económico de La Rioja destinadas a la bonificación de intereses de préstamos y contratos de arrendamiento financiero para financiar inversiones empresariales realizadas por pequeñas y medianas empresas, en régimen de concurrencia competitiva. (B.O.R. nº 75/2008, de 7 de junio) |

| | |
|---|---|
| Type of measure | Aid scheme |
| Budget | Annual budget: EUR 0,8 million |
| Maximum aid intensity | In conformity with Articles 4(2)-(6) and 5 of the Regulation |
| Date of implementation | 7.6.2008 |
| Duration | 31.12.2013 |
| Objective | Small and medium-sized enterprises |
| Economic sectors | All sectors eligible for aid to SMEs |
| Name and address of the granting authority | Agencia de Desarrollo Económico de La Rioja<br>C/Muro de la Mata 13-14<br>E-26071 Logroño (La Rioja)<br>Dirección Internet publicación régimen de ayuda:<br>http://www.larioja.org/npRioja/default/defaultpage.jsp?idtab=449883 |

# Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises

**(Text with EEA relevance)**

(2008/C 270/09)

| | |
|---|---|
| Aid No | XS 111/08 |
| Member State | Austria |
| Region | — |
| Title of aid scheme or name of company receiving individual aid | proVISION_Vorsorge für Natur und Gesellschaft: zweite Ausschreibung |
| Legal basis | Forschungsprogramm proVISION_Vorsorge für Natur und Gesellschaft: zweite Ausschreibung |
| Type of measure | Aid scheme |
| Budget | Annual budget: EUR 2,7 million |
| Maximum aid intensity | In conformity with Articles 4(2)-(6) and 5 of the Regulation |
| Date of implementation | 5.2008 |
| Duration | 30.6.2008 |
| Objective | Small and medium-sized enterprises |
| Economic sectors | Other services |
| Name and address of the granting authority | Bundesministerium für Wissenschaft und Forschung<br>Minoritenplatz 5<br>A-1014 Wien |

| | |
|---|---|
| Aid No | XS 184/08 |
| Member State | Italy |
| Region | Lazio |
| Title of aid scheme or name of company receiving individual aid | Aiuti alle piccole e medie imprese per la ricerca industriale e lo sviluppo precompetitivo nell'ambito del Distretto Tecnologico delle Bioscienze |
| Legal basis | Delibera CIPE 27.5.2005, n. 35<br>— Deliberazione Giunta Regionale 21.3.2008, n. 193 «Approvazione dello schema del II Accordo integrativo dell'Accordo di Programma Quadro Ricerca, Innovazione tecnologica, Reti Telematiche — Stralcio APQ6 Costituzione di un Distretto Tecnologico delle Bioscienze …»<br>— Determinazione del Direttore del Dipartimento Economico e Occupazionale, n. 1101 del 20 maggio 2008, pubblicata sul BURL del 28.5.2008 |
| Type of measure | Aid scheme |
| Budget | Annual budget: EUR 10 million |
| Maximum aid intensity | In conformity with Articles 4(2)-(6) and 5 of the Regulation |
| Date of implementation | 25.5.2008 |
| Duration | 31.12.2008 |

| | |
|---|---|
| Objective | Small and medium-sized enterprises |
| Economic sectors | Research and experimental development on biotechnology |
| Name and address of the granting authority | Regione Lazio — Direzione Regionale Sviluppo economico, Ricerca, Innovazione e Turismo<br>Via Rosa Raimondi Garibaldi, 7<br>I-00145 Roma |

| | |
|---|---|
| Aid No | XS 200/08 |
| Member State | Austria |
| Region | Vorarlberg |
| Title of aid scheme or name of company receiving individual aid | Interreg IV Alpenrhein-Bodensee-Hochrhein<br>Aktionsfeld 1.1: Regionale Wettbewerbsfähigkeit und Innovation<br>Aktionsfeld 1.2: Förderung von Innovation und Wissenstransfer<br>Aktionsfeld 3: Förderung des Humankapitals und der Grenzüberschreitenden Mobilität<br>Aktionsfeld 2.1: Förderung der Standortattraktiviät |
| Legal basis | Interreg IV Programm Alpenrhein-Bodensee-Hochrhein |
| Type of measure | Aid scheme |
| Budget | Annual budget: EUR 2 million |
| Maximum aid intensity | In conformity with Articles 4(2)-(6) and 5 of the Regulation |
| Date of implementation | 1.7.2008 |
| Duration | 31.12.2008 |
| Objective | Small and medium-sized enterprises |
| Economic sectors | All sectors eligible for aid to SMEs |
| Name and address of the granting authority | Land Vorarlberg im Auftrag der Programmpartner<br>Landhaus/Römerstr. 15<br>A-6900 Bregenz |

# Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 2204/2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment

**(Text with EEA relevance)**

(2008/C 270/10)

| | |
|---|---|
| Aid No | XE 25/08 |
| Member State | Latvia |
| Region | — |
| Title of aid scheme | Atbalstītās nodarbinātības pasākumi mērķgrupu bezdarbniekiem |
| Legal basis | Latvijas Republikas Ministru kabineta 2008. gada 8. aprīļa noteikumi Nr. 258 "Noteikumi par darbības programmas "Cilvēkresursi un nodarbinātība" papildinājuma apakšaktivitāti "Atbalstītās nodarbinātības pasākumi mērķgrupu bezdarbniekiem"" |
| Budget | Annual budget: LVL 0,54 million |
| Maximum aid intensity | In conformity with Articles 4(2)-(5), 5 and 6 of the Regulation |
| Date of implementation | 1.8.2008 |
| Duration | 30.12.2013 |
| Objective | Employment |
| Economic sectors | All Community sectors (1) eligible for employment aid |
| Name and address of the granting authority | Nodarbinātības valsts aģentūra<br>K. Valdemāra iela 38k-1<br>LV-1010 Rīga |

(1) With the exception of the shipbuilding sector and other sectors subject to special rules in regulations and directives governing all State aid within the sector.

| | |
|---|---|
| Aid No | XE 34/08 |
| Member State | Austria |
| Region | Vorarlberg |
| Title of aid scheme | Interreg IV Programm Alpenrhein-Bodensee-Hochrhein; Interreg IV Alpenrhein-Bodensee-HochrheinAktionsfeld 1.1: Regionale Wettbewerbsfähigkeit und Innovation<br>Aktionsfeld 1.2: Förderung von Innovation und Wissenstransfer<br>Aktionsfeld 1.3: Förderung des Humankapitals und der Grenzüberschreitenden Mobilität<br>Aktionsfeld 2.1: Förderung der Standortattraktiviät |
| Legal basis | Interreg IV Programm Alpenrhein-Bodensee-Hochrhein |
| Budget | Annual budget: EUR 2 million |
| Maximum aid intensity | In conformity with Articles 4(2)-(5), 5 and 6 of the Regulation |
| Date of implementation | 1.7.2008 |

| | |
|---|---|
| Duration | 31.12.2008 |
| Objective | Art. 4: Creation of employment; Art. 5: Recruitment of disadvantaged and disabled workers |
| Economic sectors | All Community sectors (1) eligible for employment aid |
| Name and address of the granting authority | Land Vorarlberg im Auftrag der Programmpartner<br>Landhaus/Römerstraße 15<br>A-6900 Bregenz |

(1) With the exception of the shipbuilding sector and other sectors subject to special rules in regulations and directives governing all State aid within the sector.

# Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 1628/2006 on the application of Articles 87 and 88 of the EC Treaty to national regional investment aid

**(Text with EEA relevance)**

(2008/C 270/11)

| | |
|---|---|
| Aid No | XR 78/08 |
| Member State | Italy |
| Region | Sardegna |
| Title of aid scheme or the name of the undertaking receiving *ad hoc* aid supplement | Contratto di investimento per le PMI operanti nei settori dell'industria, dell'artigianato e dei servizi |
| Legal basis | Legge regionale n. 7/2005 «Disposizioni per la formazione del bilancio annuale e pluriennale della Regione», articolo 11 e s.m.i.;<br>Direttive di attuazione approvate con Deliberazione della Giunta Regionale n. 20/16 del 1.4.2008 «Strumenti di incentivazione ai sensi dell'articolo 11 della L. R. n. 7/2005» e s.m.i., articoli 6-9 |
| Type of measure | Aid scheme |
| Annual budget | EUR 17,5 million |
| Maximum aid intensity | 25 % |
| | In conformity with Article 4 of the Regulation |
| Date of implementation | 1.4.2008 |
| Duration | 31.12.2013 |
| Economic sectors | All sectors eligible for regional investment aid |
| Name and address of the granting authority | Regione Autonoma della Sardegna<br>Assessorato alla Programmazione, Bilancio, Credito e Assetto del territorio<br>Centro Regionale di Programmazione<br>Viale Mameli 88<br>I-09100 Cagliari |
| Internet address of the publication of the aid scheme | http://www.regione.sardegna.it<br>http://www.regione.sardegna.it/j/v/66?v=9&c=27&c1=&n=10&s=1&mese=200804&p=10 |
| Other information | — |

| | |
|---|---|
| Aid No | XR 100/08 |
| Member State | Italy |
| Region | Campania |
| Title of aid scheme or the name of the undertaking receiving *ad hoc* aid supplement | Contratto di programma regionale |
| Legal basis | Legge regionale 12/07, regolamento n. 4/2007, Disciplinare articoli 11 e 12, Delibera Giunta Regionale n. 514 del 21 marzo 2008, Decreto dirigenziale n. 217 del 17 aprile 2008 |
| Type of measure | Aid scheme |

| | |
|---|---|
| Annual budget | EUR 49,3 million |
| Maximum aid intensity | 30 % |
| | In conformity with Article 4 of the Regulation |
| Date of implementation | 19.6.2008 |
| Duration | 31.12.2013 |
| Economic sectors | Limited to specific sectors |
| | NACE: D, G, H, I 63.3, K74 |
| Name and address of the granting authority | Regione Campania<br>AGC 12 Sviluppo Economico<br>1) Settore Programmazione delle Politiche per lo Sviluppo Economico<br>2) Settore Aiuti alle imprese e sviluppo insediamenti produttivi<br>3) Settore Regolazione dei Mercati<br>AGC 13 Turismo e Beni Culturali<br>4) Settore Strutture Ricettive ed Infrastrutture Turistiche<br>Centro Direzionale Isola A/6<br>I-80143 Napoli |
| Internet address of the publication of the aid scheme | http://www.economiacampania.net/index001.php?part=articolo&ida=345 |
| Other information | — |

V

*(Announcements)*

# PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

# COMMISSION

## Notice of initiation of an expiry review of the antidumping measures applicable to imports of ethanolamines originating in the United States of America

(2008/C 270/12)

Following the publication of a notice of impending expiry ([1]) of the anti-dumping measures in force on imports of ethanolamines originating in the United States of America ('country concerned'), the Commission has received a request for review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ([2]) ('the basic Regulation').

### 1. **Request for review**

The request was lodged on 25 July 2008 by the following Community producers BASF SE/AG, INEOS Oxide Ltd, Sasol Germany GmbH, Akzo Nobel Functional Chemicals AB ('the applicants') representing a major proportion, in this case more than 50 % of the total Community production of ethanolamines.

### 2. **Product**

The product under review is ethanolamines originating in United States of America ('the product concerned'), currently classifiable within CN codes ex 2922 11 00, ex 2922 12 00 and 2922 13 10. These CN codes are given only for information.

### 3. **Existing measures**

The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 1583/2006 ([3]).

### 4. **Grounds for the review**

The request is based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.

The allegation of continuation of dumping is based on a comparison of normal value, established on the basis of domestic prices, with the export prices of the product concerned to the Community.

On this basis, the dumping margin calculated is significant.

The applicant further alleges the likelihood of further injurious dumping. In this respect the applicant presents evidence to the effect that, should measures be allowed to lapse, the current import level of the product concerned is likely to increase due to the recent investments in production capacity in the country concerned.

It is also alleged that the flow of imports of the product concerned is likely to rise due to the measures in force in traditional markets other than the EU (i.e. Asia, South America). All this could lead to a redirection of exports from other third countries to the Community.

In addition, the applicant alleges that the improved situation with regard to injury is mainly due to the existence of measures and that any recurrence of substantial imports at dumped prices from the country concerned would likely lead to a recurrence of injury of the Community industry should measures be allowed to lapse.

### 5. **Procedure**

Having determined, after consulting the Advisory Committee, that sufficient evidence exists to justify the initiation of an expiry review, the Commission hereby initiates a review in accordance with Article 11(2) of the basic Regulation.

([1]) OJ C 71, 18.3.2008, p. 13.
([2]) OJ L 56, 6.3.1996, p. 1.
([3]) OJ L 294, 25.10.2006, p. 2.

5.1. ***Procedure for the determination of likelihood of dumping and injury***

The investigation will determine whether the expiry of the measures would be likely, or unlikely, to lead to a continuation or recurrence of dumping and injury.

(a) *Questionnaires*

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the Community industry and to any association of producers in the Community, to the exporters/producers in United States of America to any association of exporters/producers, to the importers, to any known association of importers, and to the authorities of the exporting country concerned.

(b) *Collection of information and holding of hearings*

All interested parties are hereby invited to make their views known, submit information other than questionnaire replies and to provide supporting evidence. This information and supporting evidence must reach the Commission within the time limit set in point 6(b).

Furthermore, the Commission may hear interested parties, provided that they make a request showing that there are particular reasons why they should be heard. This request must be made within the time limit set in point 6(c).

5.2. ***Procedure for the assessment of Community interest***

In accordance with Article 21 of the basic Regulation and in the event that the likelihood of a continuation or recurrence of dumping and injury is confirmed, a determination will be made as to whether maintaining the anti-dumping measures would not be against the Community interest. For this reason the Commission may send questionnaires to the known Community industry, importers, their representative associations, representative users and representative consumer organizations. Such parties, including those not known to the Commission, provided that they prove that there is an objective link between their activity and the product concerned, may, within the time limits set in point 6(b), make themselves known and provide the Commission with information. The parties which have acted in conformity with the preceding sentence may request a hearing, setting out the particular reasons why they should be heard, within the time limit set in point 6(c). It should be noted that any information submitted pursuant to Article 21 of the basic Regulation will only be taken into account if supported by factual evidence at the time of submission.

6. **Time limits**

(a) *For parties to request a questionnaire or other claim forms*

All interested parties who did not co-operate in the investigation leading to the measures subject to the present review should request a questionnaire or other claim forms as soon as possible, but not later than 15 days after the publication of this notice in the *Official Journal of the European Union*.

(b) *For parties to make themselves known, to submit questionnaire replies and any other information*

All interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views and submit questionnaire replies or any other information within 40 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the aforementioned period.

(c) *Hearings*

All interested parties may also apply to be heard by the Commission within the same 40-day time limit.

7. **Written submissions, questionnaire replies and correspondence**

All submissions and requests made by interested parties must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. All written submissions, including the information requested in this notice, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as '*Limited*' [1] and, in accordance with Article 19(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled '*For inspection by interested parties*'.

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate H
Office: N 105 4/92
B-1049 Brussels
Fax (32-2) 295 65 05

8. **Non-co-operation**

In cases in which any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made, in accordance with Article 18 of the basic Regulation, of the facts available. If an interested party does not cooperate or cooperates only partially, and use of facts available is made, the result may be less favourable to that party than if it had cooperated.

[1] This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 19 of the basic Regulation and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement).

9. **Schedule of the investigation**

The investigation will be concluded, according to Article 11(5) of the basic Regulation within 15 months of the date of the publication of this notice in the *Official Journal of the European Union*.

10. **Possibility to request a review under Article 11(3) of the basic Regulation**

As this expiry review is initiated in accordance with the provisions of Article 11(2) of the basic Regulation, the findings thereof will not lead to the level of the existing measures being amended but will lead to those measures being repealed or maintained in accordance with Article 11(6) of the basic Regulation.

If any party to the proceeding considers that a review of the level of the measures is warranted so as to allow for the possibility to amend (i.e. increase or decrease) the level of the measures, that party may request a review in accordance with Article 11(3) of the basic Regulation.

Parties wishing to request such a review, which would be carried out independently of the expiry review mentioned in this notice, may contact the Commission at the address given above.

11. **Processing of personal data**

It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ([1]).

12. **Hearing Officer**

It is also noted that if interested parties consider that they are encountering difficulties in the exercise of their rights of defence, they may request the intervention of the Hearing Officer of DG Trade. He acts as an interface between the interested parties and the Commission services, offering, where necessary, mediation on procedural matters affecting the protection of their interests in this proceeding, in particular with regard to issues concerning access to file, confidentiality, extension of time limits and the treatment of written and/or oral submission of views. For further information and contact details interested parties may consult the Hearing Officer's web pages of the website of DG Trade (http://ec.europa.eu/trade).

([1]) OJ L 8, 12.1.2001, p. 1.

# PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION POLICY

# COMMISSION

## STATE AID — ROMANIA

## State aid C 39/08 (ex N 148/08) — Training aid for Ford Craiova

## Invitation to submit comments pursuant to Article 88(2) of the EC Treaty

**(Text with EEA relevance)**

(2008/C 270/13)

By means of the letter dated 10 September 2008 reproduced in the authentic language on the pages following this summary, the Commission notified Romania of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the training aid linked with the above-mentioned aid.

Interested parties may submit their comments on the training aid 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
Rue de la Loi/Wetstraat 200
B-1049 Brussels
Fax (32-2) 296 12 42

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

SUMMARY

**PROCEDURE**

The planned aid to Ford in Craiova, Romania was notified to the Commission on 1 April 2008.

**DESCRIPTION**

Beneficiary of the aid would be Romanian vehicles manufacturer Ford Craiova that took over the production facilities and the business formerly operated by SC Automobile Craiova SA and SC Daewoo Automobile SA Romania.

The Romanian authorities propose to grant EUR 57 million training aid for a training project totalling EUR 141 million of eligible costs. The training plan is intended to apply from 2008 to 2012 and to cover both present and future employees, an estimated total of 9 000 persons. The plan can be broken down into the following four themes: (i) Health & Safety Training; (ii) Core Skills (in particular literacy, numeracy, IT, English, communication, management issues, etc.); (iii) Business Fundamentals (i.e. this theme intendeds to bring staff in management or team-leading positions on European and global business level and includes courses on management, negotiation, quality control); and (iv) Industrial Skills (covering industrial and technical skills relevant to the production at the Craiova facility.

The training programme includes mostly *general* training measures and some *specific* training measures.

According to the information provided, the Craiova workforce at present only has a limited know-how to produce vehicles and engines so that the level of skills is inadequate to operate the state-of-the-art facility that Ford is building. In this regard, Romania claims that the workforce (both present workers and, given the recognised skills shortage in the area, also new hires) will require extensive training.

Further, Romania argues that the aid is necessary because without the governmental commitment to grant training aid, Ford would have not bought the car plant but instead it would have invested in a different location.

**ASSESSMENT**

At this stage, the Commission has serious doubts that the envisaged aid can be found compatible with the Common Market under Article 87(3)(c) of the EC Treaty.

The Commission has reasons to assume that the beneficiary would need to provide the training also in the absence of aid. Following the investments made in the car plant in Craiova, Romania, Ford must train the existent workforce in order to start operating. Also, it seems rather difficult to find already fully trained and skilled employees for vehicles manufacturing on the local market.

**CONCLUSION**

In view of the doubts mentioned above, the Commission has decided to initiate the procedure laid down in Article 88(2) of the EC Treaty.

TEXT OF LETTER

'Comisia dorește să informeze România că, în urma examinării informațiilor furnizate de autoritățile dumneavoastră privind măsura menționată anterior, a decis să inițieze procedura prevăzută la articolul 88 alineatul (2) din Tratatul CE.

1. **PROCEDURA**

1. Printr-o notificare trimisă la data de 1 aprilie 2008, România a notificat ajutorul în cauză.

2. Printr-o scrisoare din 18 aprilie 2008, Comisia a solicitat informații complementare, care îi erau necesare pentru evaluarea ajutorului notificat. România a furnizat aceste informații printr-o scrisoare înregistrată de Comisie la data de 25 iunie 2008. La 18 iulie 2008, Comisia s-a întâlnit cu autoritățile române și cu reprezentanții beneficiarului. S-a convenit, de asemenea, că termenul de 2 luni în care Comisia are obligația să finalizeze evaluarea notificării și să adopte o decizie, conform dispozițiilor articolului 4 alineatul (5) din Regulamentul (CE) nr. 659/1999, va începe la 18 iulie 2008.

2. **DESCRIEREA PROIECTULUI**

2.1. **Beneficiarul**

3. Beneficiarul ajutorului va fi societatea română producătoare de automobile Ford Craiova, care a preluat la 12 septembrie 2007 instalațiile de producție și activitatea economică gestionate anterior de SC Automobile Craiova SA (denumită în continuare ACSA) și SC Daewoo Automobile SA România (denumită în continuare DWAR), în urma privatizării acestora de către agenția română de privatizare AVAS.

4. Prin decizia din 27 februarie 2008, Comisia a constatat că privatizarea ACSA și DWAR a condus la acordarea de ajutoare incompatibile ca urmare a condițiilor atașate vânzării ([1]). Comisia a dispus recuperarea a 27 milioane EUR.

5. Uzina de automobile Ford Craiova are în prezent 3 900 de angajați. Până la sfârșitul anului 2012, societatea intenționează să angajeze peste 7 000 de oameni și posibil, pe termen lung, chiar 9 000. Instalațiile sale sunt potrivite atât pentru producerea de automobile, cât și pentru fabricarea de motoare și cutii de viteză. Cu toate acestea, producția de automobile a încetat în ianuarie 2008. Producția de motoare și cutii de viteze va continua în 2008 și va fi furnizată General Motors în baza unui contract de furnizare încheiat în trecut de DWAR, urmând să se diminueze progresiv până la încetarea completă a activității în cursul anului 2009.

6. Prin decizia din 30 aprilie 2008, Comisia a aprobat un ajutor regional pentru investiții în valoare de 143 milioane EUR pentru un proiect de investiții de 675 milioane EUR la uzina Craiova ([2]). Ajutorul regional a atins intensitățile maxime permise. Conform acestui proiect regional pentru investiții, producția de automobile va începe în 2009, iar cea de motoare în 2011. Data prevăzută pentru finalizarea proiectului și atingerea capacității maxime de producție este 2012.

7. Uzina de automobile este situată într-o regiune care poate beneficia de ajutor în temeiul articolului 87 alineatul (3) litera (a) din Tratatul CE.

2.2. **Proiectul de formare**

8. Se intenționează ca proiectul de formare să fie realizat în perioada 2008-2012 și să îi vizeze atât pe angajații actuali, cât și pe cei viitori, în total 9 000 de oameni, conform estimărilor.

9. Costurile eligibile pentru proiectul de formare în favoarea Ford Craiova reprezintă 141 milioane EUR, dintre care 139,7 milioane urmează să fie cheltuite pentru formare generală, iar 1,7 milioane pentru formare specifică. România aplică o intensitate a ajutorului de 50 % pentru măsurile de formare generală, respectiv un ajutor de 69,9 milioane EUR, și 25 % pentru măsurile de formare specifică, respectiv un ajutor de 0,4 milioane EUR.

10. Cu toate că ajutorul pentru formare ar putea atinge o valoare de 70 milioane EUR pentru costurile eligibile totale ale proiectului, România intenționează să acorde și, prin urmare, să notifice un ajutor de 57 milioane EUR. Ajutorul va fi acordat progresiv, pe măsură ce se derulează cursurile, până la atingerea plafonului de 57 milioane EUR.

11. Proiectul poate fi împărțit în următoarele patru «tematici»:

(a) *Formare privind sănătatea și securitatea*

12. Această temă de formare cuprinde în total 79 de cursuri, menite să instruiască personalul privind comportamentele sigure la locul de muncă, și acoperă 15 domenii: cerințe legale, precum drepturi și obligații adresate tuturor angajaților; instrucțiuni în caz de urgență, de incendiu și

([1]) Decizia Comisiei din 27 februarie 2008 prind Ajutorul de Stat C 46/07, Privatizarea societății Automobile Craiova, România, nepublicată încă.

([2]) Decizia Comisiei din 30 aprilie 2008 prind Ajutorul de Stat N 767/07, Ajutor regional pentru investiții în favoarea Ford Craiova, nepublicată încă.

privind evacuarea; prevenirea incendiilor și utilizarea stingătoarelor; asigurarea curățeniei — păstrarea unui spațiu de lucru curat; mediu — standarde în domeniul mediului, de ex. ISO 14001; manipularea materialelor/ergonomie; echipament individual de protecție; utilizarea în condiții de siguranță a echipamentelor; utilizarea în condiții de siguranță a uneltelor manuale și electrice; utilizarea scărilor/lucrul la înălțime; spații închise; protecția pielii; securitatea la birou; lucrul cu materiale periculoase și semnalizarea de securitate.

13. Formarea va cuprinde, pentru toate cele 15 domenii, o introducere privind principiile de bază, respectiv reglementările și responsabilitățile legale ale angajaților și angajatorilor, operarea în condiții de siguranță, principii de mentenanță și reparare, sisteme de gestionare a securității, întocmirea de rapoarte, identificarea riscurilor, controlul și prevenirea accidentelor, însă și elemente de comportament, precum sensibilizarea cu privire la pericolele, riscurile și accidentele care pot surveni într-un mediu de lucru industrial, rolurile și responsabilitățile în cadrul gestionării aspectelor de securitate la locul de muncă și impactul comportamentului individual și de grup asupra gestionării securității la locul de muncă, dezvoltarea unei atitudini receptive față de aspectele de securitate și felul în care acest lucru poate îmbunătăți nivelul de garantare a securității.

14. România susține că orice formare consacrată acestei tematici depășește ceea ce angajatorul are obligația să asigure în temeiul legii. De asemenea, România consideră că, deși normele și practicile de securitate de la uzina Craiova sunt considerabil inferioare celor din alte unități industriale din Europa, angajații existenți au un nivel suficient de cunoștințe în domeniul securității; cu toate acestea, formarea are în vedere ca aceștia să «se dezvețe» de comportamentele și practicile trecute. În opinia României, formarea de noi angajați la Craiova va presupune investirea unor eforturi semnificativ mai importante decât formarea de angajați în Europa de vest.

15. Majoritatea cursurilor (respectiv 65) reprezintă, în opinia României, formare generală. Numai trei cursuri («lucrul cu produse biodestructive», «principii privind siguranța pietonilor» și «folosirea și amplasarea sistemelor suplimentare de reținere») sunt specifice ([3]). În ceea ce privește restul cursurilor, România susține că, din moment ce sunt fie obligatorii prin lege (de ex. «Evaluatorii de risc»), fie specifice întreprinderii Ford (de ex. «Formare privind intrarea în siguranță în stația de lucru — Stadiul 2 ECPL pentru mentenanță», «Sistemul mecanic antifurt (MATS) și gestionarea datelor privind materialele periculoase»), acestea vor fi asigurate în orice eventualitate, chiar și în absența ajutorului. Prin urmare, nu se solicită ajutor pentru aceste cursuri.

16. Formarea în cadrul acestei tematici acoperă, în opinia României, costuri eligibile în valoare de 16,26 milioane EUR, pentru care se solicită un ajutor de formare de 7,79 milioane EUR.

([3]) Termenii «formare generală» și «formare specifică» sunt folosiți conform definiției de la articolul 38 din Regulamentul (CE) nr. 800/2008 al Comisiei din 6 august 2008 de declarare a anumitor categorii de ajutoare compatibile cu piața comună în aplicarea articolelor 87 și 88 din tratat (Regulamentul general de exceptare pe categorii de ajutoare) (JO L 214, 9.8.2008, p. 3).

(b) *Competențe fundamentale*

17. Această formare cuprinde în total 58 de cursuri, care urmăresc atingerea unui nivel de cunoștințe comparabil cu cel înregistrat în alte state membre. Aceste cursuri de formare vor pune la dispoziția angajaților diferite competențe cu valoare generală la locul de muncă: capacitatea de a comunica în limba engleză, capacitatea de a utiliza o gamă largă de instrumente electronice, competențe lingvistice și numerice, comunicare, lucrul în echipă, capacitatea de a conduce, precum și capacitatea de a lucra într-un mediu axat pe atingerea obiectivelor și obținerea de rezultate.

18. Toate cele 58 de cursuri reprezintă formare generală. Numai jumătate din durata de desfășurare a trei cursuri («Formare privind fișele de sarcini (*Task cards*)», «Noțiuni introductive privind tablourile de bord (*Score cards*)» și «Strategii, obiective și indicatori cheie ai performanței») este considerată ca fiind formare care ar fi acordată și în absența ajutorului. Prin urmare, nu se solicită niciun ajutor pentru această secțiune.

19. Costurile eligibile totale pentru cursurile din cadrul acestei tematici sunt în valoare de 84,3 milioane EUR, dintre care 42,1 milioane sunt solicitate ca ajutor pentru formare. Dintre aceste costuri eligibile, 44,5 milioane EUR urmează să fie cheltuite pentru transmiterea de competențe lingvistice și numerice unui număr de aproximativ 5 000 de angajați […] (*). A doua sumă ca valoare din cadrul acestei tematici, reprezentând 14,2 milioane EUR, urmează să fie cheltuită pentru predarea limbii engleză unui număr de 3 000 de angajați […].

(c) *Baze în afaceri*

20. România explică faptul că nivelul de înțelegere a practicilor economice europene și internaționale la uzina Craiova este limitat. Multor angajați le lipsește cunoașterea și înțelegerea practicilor economice. Vor fi, prin urmare, necesare cursuri avansate de formare pentru a transmite acestor angajați un nivel de cunoștințe comparabil cu cel al omologilor lor vest-europeni. Cu toate acestea, România subliniază faptul că angajații dețin competențele de bază necesare pentru a asigura funcționarea societății.

21. 75 de cursuri din cadrul acestei tematici sunt menite să asigure alinierea forței de muncă respective la practicile economice europene și globale. Formarea îi va viza pe membrii personalului aflați în poziții de conducere sau pe șefii de echipă și va acoperi competențe precum înțelegerea mediului de control intern și de reglementare din cadrul UE și la nivel global, înțelegerea conexiunilor dintre funcțiile de exploatare, suport și cele centralizate în cadrul unei organizații globale, managementul de proiect, negociere etc.

22. Formarea are un caracter general în cazul a 52 de cursuri și este specifică în cazul a patru dintre ele. 17 cursuri sunt clasificate ca neeligibile din cauza faptului că sunt considerate necesare pentru exploatarea uzinei și ar fi acordate chiar și în absența ajutorului.

(*) Informații confidențiale.

23. Costurile eligibile totale pentru cursurile din cadrul acestei tematici sunt în valoare de 7,5 milioane EUR, dintre care 3,7 milioane sunt solicitate ca ajutor pentru formare.

(d) *Competențe industriale*

24. Această tematică va viza competențele industriale și tehnice relevante pentru linia de producție a uzinei Craiova. România explică faptul că, având în vedere nivelul investițiilor în această unitate de producție, inclusiv achiziționarea de noi echipamente, instalații și sisteme mai avansate din punct de vedere tehnologic, va exista o nevoie presantă de a dezvolta competențele industriale și tehnice ale angajaților. În plus, nivelul existent de informații privind cursurile de formare profesională disponibile, care acoperă competențele industriale în domenii precum mecanică, electronică, sudură, electricitate și hidraulică, ar putea indica faptul că nivelul competențelor în aceste domenii este cu mult în urma celui din alte state membre. Exploatarea, întreținerea și repararea acestor echipamente presupun deținerea unui set comun de competențe de bază, prealabile asigurării unei formări specifice privind noile echipamente. Cu toate acestea, competențele deținute în prezent permit funcționarea imediată a uzinei Craiova. Prin urmare, în opinia României, măsurile prevăzute depășesc ca domeniu de aplicare formarea necesară pentru exploatarea uzinei.

25. Formarea din cadrul acestei tematici cuprinde 58 de cursuri, dintre care 55 sunt considerate a fi formare generală (de ex. Competențe electrice și electronice de bază, Hidraulică, Metrologie, Motoare electrice, Tehnologia și asamblarea motoarelor, Mașini electrice, Puncte de control programabile etc.). Un curs — MODAPTS (Studierea timpilor in operațiunile de mișcare — *Motion Determine Operator Time Study*) — constituie formare specifică. Două cursuri, respectiv Asamblarea motoarelor și formarea cu privire la simularea procesului de fabricație, sunt considerate a fi neeligibile din cauza faptului că acestea ar fi asigurate de Ford chiar în absența ajutorului.

26. Măsurile de formare din cadrul acestei tematici au drept scop perfecționarea forței de lucru existente cu privire la principiile tehnice fundamentale de mecanică, de fabricare a instrumentelor de lucru, finisare a metalelor, vopsire prin pulverizare, electricitate, electronică, hidraulică, sudură, la pregătirea de bază ca vânzător, conducerea automobilului, întreținerea preventivă totală, competențe medicale, de ex. formarea privind acordarea primului ajutor, perfecționarea doctorilor și a asistentelor medicale care lucrează în cadrul uzinei, competențe privind securitatea și igiena alimentară și menajeră.

27. Costurile eligibile totale pentru cursurile din cadrul acestei tematici sunt în valoare de 33,4 milioane EUR, dintre care 16,6 milioane sunt solicitate ca ajutor pentru formare.

28. În concluzie, următoarele tabele prezintă costurile eligibile totale pentru fiecare tematică individuală de formare și cuantumul maxim al ajutorului pentru formare solicitat:

*Tabelul 1*

**Formare generală**

| Tematici | Costuri eligibile | Compensații salariale | Costuri eligibile totale | Ajutoare pentru formare (intensitatea ajutorului 50 %) |
|---|---|---|---|---|
| Securitate | […] | […] | 14 908 254 EUR | 7 454 127 EUR |
| Competențe fundamentale | […] | […] | 84 304 782 EUR | 42 152 391 EUR |
| Baze în afaceri | […] | […] | 7 361 239 EUR | 3 680 619 EUR |
| Competențe industriale | […] | […] | 33 233 111EUR | 16 611 556 EUR |
| **Total general** | **103 501 229 EUR** | **36 296 157 EUR** | **139 797 386 EUR** | **69 898 693 EUR** |

**Formare specifică**

| Tematici | Costuri eligibile | Compensații salariale | Costuri eligibile totale | Ajutoare pentru formare (intensitatea ajutorului 25 %) |
|---|---|---|---|---|
| Securitate | […] | […] | 1 357 081 EUR | 339 270 EUR |
| Competențe fundamentale | […] | […] | 0 EUR | 0 EUR |
| Baze în afaceri | […] | […] | 147 115 EUR | 36 779 EUR |
| Competențe industriale | […] | […] | 232 594 EUR | 58 148 EUR |
| **Total formare specifică** | **1 432 486 EUR** | **304 304 EUR** | **1 736 790 EUR** | **434 197 EUR** |
| **Total** | **104 933 715 EUR** | **36 600 462 EUR** | **141 534 176 EUR** | **70 332 891 EUR** |

*Efect stimulativ*

29. România explică faptul că un factor hotărâtor care a stat la baza deciziei Ford de a achiziționa și a investi în uzina de automobile Craiova l-a constituit angajamentul ferm al guvernului de a acorda Ford ajutor regional pentru investiții și formare. Într-adevăr, Guvernul României a publicat la 7 septembrie 2007 o scrisoare conținând un angajament ferm de a acorda ajutoare pentru formare în valoare de 57 milioane EUR. În absența acestui angajament, Ford ar fi luat în considerare posibilitatea de a realiza proiectul de investiții în altă locație, chiar în afara Uniunii Europene. Conform Ford, în comparație cu investiția de la Craiova, o locație într-o zonă neconstruită ar fi oferit anumite avantaje din punctul de vedere al personalului: posibilitatea de a selecta angajați calificați și absența obligației de a angaja personal pentru o perioadă neproductivă lungă ([4]).

30. În absența ajutorului, România susține că Ford ar asigura numai cursurile de formare specifice Ford, în valoare de 29,7 milioane EUR, formare necesară pentru ca uzina să poată să înceapă să funcționeze și pe care Ford ar trebui să o acorde oricum. Prin urmare, această formare nu poate beneficia de ajutor.

## 3. EVALUAREA AJUTORULUI

### Existența ajutorului

31. Comisia consideră că măsura constituie ajutor de stat în sensul articolului 87 alineatul (1) din Tratatul CE: acesta ia forma unei subvenții acordate din resurse de stat. Măsura este selectivă prin aceea că se limitează la Ford Craiova. Subvenția selectivă ar putea denatura concurența, oferind Ford un avantaj asupra societăților concurente care nu beneficiază de ajutor, ca urmare a faptului că scutește Ford de costuri care altfel ar fi fost în sarcina sa. În cele din urmă, piețele pentru producția de automobile și motoare sunt caracterizate de schimburi comerciale extinse între statele membre, iar Ford este unul dintre actorii importanți pe această piață.

### Temeiul juridic al evaluării

32. România a notificat ajutorul în baza Regulamentului (CE) nr. 68/2001 al Comisiei din 12 ianuarie 2001 privind aplicarea articolelor 87 și 88 din Tratatul CE la ajutoarele pentru formare ([5]), astfel cum a fost modificat prin Regulamentul (CE) nr. 363/2004 al Comisiei din 25 februarie 2004 ([6]) și prin Regulamentul (CE) nr. 1976/2006 al Comisiei din 20 decembrie 2006 ([7]).

33. Conform articolului 5 din Regulamentul (CE) nr. 68/2001, atunci când valoarea ajutorului acordat unei întreprinderi pentru un singur proiect de formare depășește 1 milion EUR, ajutorul nu este exceptat de la obligația notificării prevăzută la articolul 88 alineatul (3) din Tratatul CE. Comisia observă că, în acest caz, ajutorul propus este de 57 milioane EUR, că această sumă trebuie plătită unei singure întreprinderi și că proiectul de formare constituie un singur proiect. Prin urmare, Comisia consideră că obligația notificării, prevăzută în Regulamentul (CE) nr. 68/2001, s-a aplicat ajutorului propus și că aceasta a fost respectată de România.

34. Cu toate acestea, Regulamentul (CE) nr. 68/2001 a încetat să se aplice la 30 iunie 2008, respectiv după notificarea ajutorului, iar dispozițiile comunitare relevante privind ajutorul pentru formare pot fi găsite în prezent în Regulamentul (CE) nr. 800/2008 ([8]) («Regulamentul general de exceptare pe categorii de ajutoare»), care a intrat de curând în vigoare. Prin urmare, Comisia își va întemeia evaluarea compatibilității ajutorului cu piața comună pe dispozițiile Regulamentului general de exceptare pe categorii de ajutoare. În această privință, Comisia observă inițial că Regulamentul general de exceptare pe categorii de ajutoare prevede că anumite forme de ajutor de stat sunt compatibile cu piața comună în sensul articolul 87 alineatul (3) din tratat și sunt exceptate de la obligația notificării în baza articolului 88 alineatul (3) din tratat. Cu toate acestea, această exceptare este însoțită de unele condiții. În primul rând, Regulamentul general de exceptare pe categorii de ajutoare nu se aplică ajutorului *ad hoc* acordat întreprinderilor mari ([9]), cum este cazul ajutorului notificat de România. În al doilea rând și în orice condiții, conform articolului 6 din regulamentul general de exceptare pe categorii de ajutoare, atunci când cuantumul ajutorului acordat unei întreprinderi pentru un singur proiect de formare depășește 2 milioane EUR, ajutorul nu este exceptat de la obligația notificării prevăzută la articolul 88 alineatul (3) din Tratatul CE. Prin urmare, Comisia constată că ajutorul face în continuare obiectul obligației de notificare și în conformitate cu dispozițiile Regulamentului general de exceptare pe categorii de ajutoare și că România a respectat această obligație.

35. Atunci când evaluează un ajutor individual pentru formare care nu îndeplinește condițiile pentru acordarea exceptării prevăzută în Regulamentul general de exceptare pe categorii de ajutoare, Comisia trebuie să realizeze o evaluare individuală în baza articolului 87 alineatul (3) litera (c) din Tratatul CE înainte de a autoriza punerea în aplicare a ajutorului. În ceea ce privește ajutoarele pentru formare, această evaluare se va face ținând cont în special de condițiile relevante stabilite în Regulamentul general de exceptare pe categorii (a se vedea considerentul 7 din regulamentul respectiv). Acest lucru este, de asemenea, consecvent cu practica Comisiei cu privire la cazurile de ajutor pentru formare în temeiul Regulamentului (CE) nr. 68/2001, care rămâne relevant în această privință ([10]). Acest lucru presupune în special o verificare a

([4]) În cadrul privatizării ACSA și DWAR, agenția română de privatizare AVAS a impus cumpărătorului obligația de a păstra forța de muncă de 3 900 de salariați pentru o perioada de patru ani după achiziționare. Această obligație a fost inclusă în contractul ulterior de cumpărare a acțiunilor, anexa 1 la notificare.

([5]) JO L 10, 13.1.2001, p. 20.

([6]) JO L 63, 28.2.2004, p. 20.

([7]) JO L 368, 23.12.2006, p. 85.

([8]) A se vedea nota de subsol 3.

([9]) A se vedea articolele 1 alineatul (5) și 2 alineatul (3) din Regulamentul general de exceptare pe categorii de ajutoare.

([10]) A se vedea Decizia Comisiei din 4 iulie 2006 privind Ajutorul de Stat C 40/05, Ford Genk (JO L 366, 21.12.2006, p. 32); Decizia Comisiei din 4 aprilie 2007 privind Ajutorul de Stat C 14/06, General Motors Belgium (JO L 243, 18.9.2007, p. 71); Decizia Comisiei din 12 septembrie 2007 privind Ajutorul de Stat C 35/07, Volvo Cars Gent (JO C 265, 7.11.2007, p. 21).

conformității cu criteriile specifice de exceptare referitoare la ajutoarele pentru formare prevăzute în secțiunea 8 din Regulamentul general de exceptare pe categorii de ajutoare, în plus față de examinarea măsurii în care ajutorul îndeplinește condiția generală de a avea un efect stimulativ, astfel cum se prevede la articolul 8 din Regulamentul general de exceptare pe categorii de ajutoare ([11]).

**Compatibilitatea cu piața comună**

36. Comisia a evaluat *prima facie* conformitatea proiectului notificat cu criteriile formale de exceptare prevăzute în secțiunea 8 din Regulamentul general de exceptare pe categorii de ajutoare.

37. În primul rând, intensitatea ajutorului pare să fie limitată la plafoanele indicate la articolul 39 alineatul (2) din regulamentul general de exceptare pe categorii de ajutoare: 25 % pentru formare specifică și 60 % pentru formare generală. Cu toate că ar fi putut în principiu să mărească plafoanele cu 10 puncte de bază, având în vedere faptul că proiectul este situat într-o zonă asistată în temeiul articolului 87 alineatul (3) litera (a) din Tratatul CE, România nu a făcut acest lucru.

38. În al doilea rând, costurile eligibile ale măsurii notificate indicate în tabelul 1 sunt conforme la prima vedere cu dispozițiile articolului 39 alineatul (4) din regulamentul general de exceptare pe categorii de ajutoare. În special, costurile de personal legate de angajarea stagiarilor (respectiv compensațiile salariale) care sunt acoperite de ajutor sunt limitate la suma echivalentă cu totalul celorlalte costuri eligibile.

**Necesitatea ajutorului**

39. Comisia observă că o măsură de ajutor pentru formare poate fi considerată compatibilă cu piața comună în temeiul articolului 87 alineatul (3) litera (c) din Tratatul CE numai atunci când aceasta nu este imediat necesară pentru desfășurarea activităților beneficiarului ([12]). Atunci când ajutorul nu determină derularea unor activități suplimentare față de cele care ar fi realizate ținând cont exclusiv de forțele pieței, ajutorul nu poate fi considerat ca având efecte pozitive în măsură să compenseze denaturarea comerțului și, prin urmare, nu poate fi autorizat. Astfel, nu se poate considera că ajutorul pentru formare «*facilitează*» dezvoltarea economică, în sensul articolului 87 alineatul (3) litera (c) din Tratatul CE, și corectează imperfecțiunea pieței care determină societățile în general să investească insuficient în formarea lucrătorilor lor, astfel cum se precizează la considerentul 62 din Regulamentul general de exceptare pe categorii de ajutoare, în cazul în care societatea ar fi realizat oricum activitățile care beneficiază de ajutor, chiar și în absența acestuia ([13]). În cazul unui ajutor *ad hoc* în favoarea unor întreprinderi mari, ajutor care nu cade sub incidența regulamentului general de exceptare pe categorii de ajutoare, Comisia va evalua efectul stimulativ în contextul notificării ajutorului pe baza instrumentelor comunitare aplicabile (considerentul 32 din Regulamentul general de exceptare pe categorii de ajutoare).

40. În cazul de față, Comisia are motive să considere că beneficiarul ar trebui să asigure angajaților săi, cel puțin într-o anumită măsură, formarea care face obiectul evaluării, chiar și în absența ajutorului. Cu toate acestea, acest lucru nu exclude posibilitatea ca anumite măsuri de formare să depășească ceea ce este necesar pentru începerea activității și, în această măsură, pot fi eligibile pentru acordarea de ajutor pentru formare.

41. Autoritățile române susțin că necesitatea ajutorului decurge din mai multe aspecte. În primul rând, Guvernul României s-a angajat, înainte ca Ford să cumpere uzina de automobile, să acorde ajutor pentru formare și ajutor regional Ford. Dacă nu ar fi existat acest angajament, Ford nu ar fi cumpărat societatea și, astfel, nu ar fi asigurat niciun curs de formare. În schimb, ar fi construit o nouă uzină de automobile într-o zonă neconstruită și ar fi angajat personal deja pregătit și calificat.

42. În al doilea rând, autoritățile române afirmă că ajutorul pentru formare este necesar pentru a compensa nivelul mai scăzut de competențe al forței de muncă locale în comparație cu media din UE. România subliniază că forța de muncă de la Craiova are în prezent capacitatea de a produce automobile și motoare la nivelul mediu al economiei românești de dinainte de aderare, astfel încât pentru a schimba această situație, Ford trebuie să prevadă măsuri de formare aprofundată generală și specifică pentru educarea angajaților. Astfel, ajutorul va fi în beneficiul angajaților slab calificați și va genera efecte externe pozitive pentru întreaga regiune, care se confruntă cu un nivel ridicat al șomajului.

43. În ultimul rând, autoritățile române argumentează că formarea prevăzută a fi acordată nu este necesară pentru funcționarea uzinei. Prin urmare, în absența ajutorului, Ford nu ar organiza în aceeași măsură cursurile de formare care fac obiectul evaluării, ci ar asigura doar o formare minimă specifică Ford, necesară pentru ca uzină să poată începe să funcționeze. Costurile pentru aceste cursuri de formare specifice Ford se ridică la 29,7 milioane EUR, reprezentând aproximativ 20 % în comparație cu costurile eligibile notificate.

44. Comisia are îndoieli în acest stadiu cu privire la argumentele prezentate de România, din mai multe motive.

([11]) Cerința privind existența unui efect stimulativ este explicată la considerentul 28 din regulamentul general de exceptare pe categorii de ajutoare:«Pentru a se asigura că ajutorul este necesar și are un efect stimulativ cu privire la dezvoltarea de noi activități sau proiecte, prezentul regulament nu ar trebui să se aplice ajutorului destinat unor activități pe care beneficiarul ar putea să le desfășoare deja și în condițiile pieței …».

([12]) A se vedea Decizia Comisiei din 2 iulie 2008 privind Ajutorul de Stat C 18/07, DHL Leipzig-Halle, nepublicată încă; Deciziile Comisiei General Motors Belgium și Ford Genk.

([13]) În contextul ajutoarelor pentru formare, considerentul 62 din Regulamentul general de exceptare pe categorii de ajutoare precizează că «Formarea are, de obicei, efecte externe pozitive pentru societate în ansamblul său, ca urmare a faptului că mărește rezerva de lucrători calificați din rândul cărora pot face recrutări alte societăți, îmbunătățește competitivitatea economiei comunitare și joacă un rol important în cadrul strategiei comunitare de ocupare a forței de muncă … Având în vedere faptul că întreprinderile din cadrul Comunității investesc în general insuficient în formarea lucrătorilor lor, în special atunci când formarea respectivă are un caracter general și nu prezintă avantaje imediate și concrete pentru întreprinderea în cauză, ajutorul de stat poate contribui la remedierea acestei disfuncționalități a pieței. Prin urmare, aceste ajutoare ar trebui exceptate, în anumite condiții, de la obligația notificării prealabile.».

45. În primul rând, necesitatea și efectul stimulativ al ajutorului pentru formare în cazul de față trebuie evaluate în contextul cumpărării recente de către Ford a uzinei Craiova, precum și al planurilor sale de a transforma uzina într-o unitate de producție modernă, la cel mai înalt nivel tehnologic. Ford înființează o unitate de producție cu totul nouă, care va avea în comun cu uzina inițială doar locația. Proiectul de investiții vizează extinderea, modernizarea și modificarea fundamentală a uzinei existente, inclusiv crearea de noi capacități, în vederea asigurării producției de noi automobile și noi motoare de înaltă tehnologie.

46. Comisia observă faptul că (re)localizarea întreprinderilor reprezintă o practică obișnuită în Uniunea Europeană, prin care întreprinderile încearcă să reducă nivelul costurilor, să își mărească rentabilitatea și să rămână competitive pe piață. Întreprinderile care iau în considerare o posibilă relocalizare a producției lor compară deseori mai multe locații potențiale din diferite state membre. Decizia privind locația este influențată în cele din urmă nu numai de previziunile privind costurile de exploatare (inclusiv costurile de formare a angajaților ale căror competențe sunt sub nivelul mediu european) și alte avantaje sau dezavantaje economice (respectiv existența unor instalații de producție, existența de forță de muncă etc.), ci și, într-o anumită măsură, de o posibilă asistență din partea guvernului (ajutor regional). Comisia constată că beneficiarul a primit cuantumul maxim permis pentru ajutorul regional pentru investiții, respectiv 143 milioane EUR, pentru proiectul său de investiții la Craiova.

47. Cu toate acestea, formarea în vederea desfășurării activităților într-o nouă locație — spre deosebire de ajutorul regional pentru investiții ([14]) — nu poate fi justificată prin considerații privind situarea regională, din moment ce obiectivul ajutorului pentru formare nu este să atragă investiții într-o anumită regiune, ci să corecteze nivelul insuficient al investițiilor în formare la nivelul Comunității ([15]). Ajutorul pentru formare urmărește să mărească numărul lucrătorilor calificați în Uniunea Europeană, ceea ce în cele din urmă va îmbunătăți competitivitatea economiei comunitare și va avea un efect pozitiv asupra strategiei de ocupare a forței de muncă și asupra societății în ansamblul său.

48. În al doilea rând, Comisia nu este convinsă în acest stadiu de afirmațiile României conform cărora necesitatea ajutorului pentru formare decurge din necesitatea de a compensa nivelul mai scăzut de competențe în regiunile asistate prin intermediul ajutorului pentru formare. Aceste niveluri mai scăzute de competențe țin, în principiu, de handicapul regional care trebuie depășit prin ajutorul regional pentru investiții. Obiectivul ajutorului regional este nu numai de a mări numărul locurilor de muncă create în mod direct sau indirect, ci și de a avea un impact pozitiv asupra calității locurilor de muncă create și a nivelului de competențe cerut.

49. În cazul de față, Comisia are motive să creadă că Ford a luat decizia de a investi în Craiova fiind pe deplin conștientă de situația tehnică a uzinei și de nivelul slab de calificare al forței de muncă. Pentru a depăși aceste handicapuri, Comisia a aprobat cuantumul maxim permis pentru ajutorul regional pentru investiții conform Orientărilor privind ajutorul regional. O asistență suplimentară din partea guvernului sub forma ajutorului pentru formare pentru a compensa aceste handicapuri regionale ar constitui de fapt o completare a ajutorului prin care s-ar evita aplicarea plafoanelor prevăzute pentru ajutorul regional.

50. Într-adevăr, se pare că societatea are la dispoziție două opțiuni: fie să recruteze personal deja calificat în limita termenilor contractului de cumpărare a acțiunilor, fie să apeleze la forța de muncă existentă, care, în ciuda unui nivel mai scăzut de competențe decât în alte locații din Europa, are totuși experiență în ceea ce privește producția de automobile. Întrucât contractul de cumpărare a acțiunilor cere companiei Ford să mențină forța de muncă originară pentru o perioadă de patru ani, Ford poate avea stimulente solide de a folosi forța de muncă existentă, care ar cere companiei Ford să ofere cel puțin o parte din formarea planificată. De asemenea, în cadrul proiectului regional de investiții pentru care a primit ajutor regional pentru investiții, Ford s-a angajat să crească substanțial numărul personalului angajat direct până la peste 7 000 de oameni, eventual până la 9 000 pe termen lung. În acest stadiu, România nu a prezentat informații conform cărora Ford ar putea recruta de pe piața locală mai multe mii de angajați deja calificați pentru a-și respecta angajamentele. În plus, având în vedere nivelul general tehnic și de competențe mai scăzut al forței de muncă din România, Comisia se întreabă dacă Ford nu va trebui să prevadă oricum anumite măsuri de formare chiar și pentru angajații nou recrutați.

51. În al treilea rând, conform informațiilor furnizate de România, Ford are intenția să creeze la Craiova o unitate de producție la cel mai înalt nivel tehnologic. În acest scop, societatea are în vedere construirea de noi linii de producție, inclusiv a unui sistem de producție modern și flexibil, specific Ford, o modernizare substanțială a unei părți funcționale a uzinei și dezvoltarea capacităților existente, în vederea integrării pe deplin a unității de producție Craiova în cadrul operațiilor sale de producție din Europa. Având în vedere nivelul scăzut de cunoștințe și competențe al forței de muncă de la Craiova, astfel cum rezultă din argumentele prezentate de România, este foarte puțin probabil ca Ford să poată să nu asigure cursurile de formare prevăzute fără a periclita investițiile tehnologice și funcționarea fără probleme a uzinei de automobile. În plus, Comisia are îndoieli cu privire la capacitatea Ford de a găsi angajați deja calificați pe piața locală și de a evita în acest fel să asigure cursurile de formare prevăzute. În orice caz, Comisia nu a primit informații mai precise în această privință.

([14]) A se vedea considerentele 2 și 3 din Orientările privind ajutorul regional pentru perioada 2007-2013:

«2. *Pentru că are în vedere depășirea handicapurilor regiunilor defavorizate, ajutoarele de stat regionale promovează coeziunea economică, socială și teritorială a statelor membre și a Uniunii Europene în ansamblul său. Această caracteristică geografică deosebește ajutoarele regionale de alte forme de ajutoare orizontale, cum ar fi ajutoarele pentru cercetare, dezvoltare și inovare, ocuparea forței de muncă, formare sau protecție a mediului, care urmăresc alte obiective de interes comun în conformitate cu articolul 87 alineatul (3) din tratat, chiar dacă uneori nivelurile acestora sunt mai mari în zonele defavorizate datorită dificultăților specifice cu care se confruntă.*

3. *Ajutoarele de stat regionale pentru investiții sunt destinate susținerii dezvoltării celor mai defavorizate regiuni prin sprijinirea investițiilor și a creării de noi locuri de muncă. Acestea favorizează extinderea și diversificarea activităților economice ale întreprinderilor situate în regiunile cele mai puțin favorizate, în special prin încurajarea întreprinderilor să înființeze noi sedii secundare în aceste regiuni.».*

([15]) A se vedea decizia Comisiei DHL Leipzig-Halle.

52. În al patrulea rând, Comisia se întreabă dacă o parte din formare nu este obligatorie conform legislației naționale și europene privind siguranța și securitatea la locul de muncă sau conform standardelor interne de calitate ale Ford. România susține faptul că uzina de automobile Craiova funcționează în conformitate cu normele legale în vigoare și că, prin urmare, formarea ar depăși ceea ce este cerut prin lege sau ceea ce Ford Craiova ar trebui oricum să întreprindă pentru a respecta standardele interne ale grupului. Cu toate acestea, România afirmă de asemenea că forța de muncă locală are un nivel de competențe și informare mai scăzut decât cel din alte unități de producție din Europa de Vest sau din alte uzine Ford. Comisia ar dori să aibă acces la mai multe informații detaliate cu privire la această situație pentru a putea fi în măsură să verifice dacă formarea depășește într-adevăr ceea ce Ford Craiova ar trebui să asigure oricum în virtutea obligațiilor legale sau pentru a-și putea desfășura operațiunile și dacă ajutorul notificat are un efect stimulativ.

53. În cele din urmă, România a notificat un ajutor în valoare de 57 milioane EUR pentru un proiect de formare pentru care teoretic ar fi putut fi acordat un ajutor de 70 milioane EUR, susținând că ajutorul aprobat va fi acordat progresiv, pe măsură ce se derulează cursurile respective, până la atingerea plafonului de 57 milioane EUR. În plus, România a afirmat că, în cazul în care Comisia ar considera că anumite cursuri nu pot beneficia de ajutor pentru formare, reducerea cuantumului ajutorului s-ar face mai degrabă din suma totală «teoretică» de 70 milioane EUR decât din cea plafonată. Cu toate acestea, România nu a indicat nici ordinea în care ar trebui să fie asigurate cursurile, nici criteriile pe baza cărora beneficiarul va stabili prioritatea acestora. De asemenea, România nu a prezentat argumente dacă beneficiarul va asigura numai formarea pentru care va fi aprobat ajutorul sau dacă acesta va lua în considerare posibilitatea de a asigura de asemenea, în lipsa ajutorului de stat, cursurile care ar fi considerate de Comisie ca putând beneficia de ajutor pentru formare, dar pentru care nu se va asigura finanțare în cadrul subvenției de 57 milioane EUR, ceea ce va însemna că o parte din cursurile de formare, pentru care se afirmă că ar exista un efect stimulativ al ajutorului, ar fi de asemenea asigurate în absența ajutorului. În aceste condiții, Comisia are motive să se îndoiască de efectul stimulativ al ajutorului notificat.

54. În consecință, Comisia se întreabă dacă o parte considerabilă din cursurile de formare sau chiar toate vor trebui să fie asigurate de Ford oricum, chiar și în absența ajutorului, pentru ca Ford să poată să înceapă exploatarea uzinei și dacă handicapul reprezentat de nivelul în general mai scăzut de competențe al forței de muncă nu trebuie considerat ca fiind deja compensat prin ajutorul regional pentru investiții.

**Principiul Deggendorf**

55. De asemenea, Comisia ia notă de faptul că, prin decizia mai sus menționată din 27 februarie 2008 în cazul de Ajutor de Stat C 46/07, a declarat ajutorul acordat în cadrul procesului de privatizare a companiei Automobile Craiova ilegal și incompatibil și a solicitat recuperarea acestui ajutor. Comisia consideră că așa-numita jurisprudență *Deggendorf* ([16]) se aplică în cazul de față. Conform principiilor relevate în această jurisprudență, un nou ajutor de stat nu poate fi plătit până când ajutorul incompatibil acordat anterior nu este recuperat în întregime.

56. La acest stadiu, informațiile transmise de România nu au permis Comisiei să concluzioneze că obligația de recuperare prevăzută în decizia din 27 februarie 2008 a fost respectată. De asemenea, România nici nu a și-a asumat obligația de a nu plăti ajutorul pentru formare până când această recuperare nu are loc. În aceste circumstanțe, Comisia consideră că ajutorul notificat poate fi incompatibil cu așa-numitul principiu Deggendorf.

4. **DECIZIE**

În lumina considerațiilor anterioare, Comisia a hotărât să inițieze procedura prevăzută la articolul 88 alineatul (2) din Tratatul CE și cere României să furnizeze, în termen de o lună de la primirea prezentei scrisori, toate documentele, informațiile și datele necesare pentru evaluarea compatibilității ajutorului, în special:

— informații detaliate privind măsurile de formare care sunt necesare pentru ca societatea să poată să înceapă să funcționeze conform standardelor Ford și care, prin urmare, ar trebui să fie asigurate de beneficiar oricum, chiar și în absența ajutorului,

— informații privind ordinea în care se vor desfășura cursurile de formare,

— informații privind costurile legate de atragerea angajaților deja calificați,

— informații privind piața forței de muncă pentru producția de automobile la nivel național și european, în special privind disponibilitatea lucrătorilor calificați,

— informații privind normele interne de siguranță și securitate la nivel național, european și în cadrul Ford.

Se solicită României să transmită, fără întârziere, o copie a prezentei scrisori potențialului beneficiar al ajutorului.

Comisia dorește să reamintească României că articolul 88 alineatul (3) din Tratatul CE are efect de suspendare și vă atrage atenția asupra articolului 14 din Regulamentul (CE) nr. 659/1999 al Consiliului, care prevede că orice ajutor ilegal poate fi recuperat de la beneficiar.

Comisia avertizează România că va informa părțile interesate prin publicarea prezentei scrisori, precum și a unui rezumat relevant al ei în *Jurnalul Oficial al Uniunii Europene*. Comisia va informa, de asemenea, Autoritatea AELS de Supraveghere trimițându-i o copie a acestei scrisori. Toate părțile interesate vor fi invitate să-și prezinte observațiile în termen de o lună de la data acestei publicări.'

([16]) Tribunalul de prima instanță, 13 septembrie 1995, TWD/Comisie, T-244/93 și T-486/93, REC., I-2265; Curtea de justiție, 15 mai 1997, TWD/Comisie, C-355/95, Rec. I-2549.

**NOTE TO THE READER**

The institutions have decided no longer to quote in their texts the last amendment to cited acts.

Unless otherwise indicated, references to acts in the texts published here are to the version of those acts currently in force.