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STATE AID ACTION PLAN

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

(Consultation document)

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INTRODUCTION

1. Specific challenges call for a **comprehensive reform of state aid policy at this moment**. Time has come to build a momentum within the Commission and in partnership with Member States and stakeholders, so that state aid rules better contribute to sustainable growth, competitiveness, social and regional cohesion and environmental protection.
2. This Action Plan is a **consultation document** presenting an indicative roadmap for state aid reform during the period 2005/2009, which the Commission will conduct in close cooperation with Member States and stakeholders.
3. **The services of the Commission would welcome any comments on this Action Plan before 15 September 2005**. Moreover, stakeholders will also be involved in the elaboration of each concrete proposal.
4. Comments should be sent to the European Commission with the reference *State aid reform* by email to STATEAIDGREFFE@CEC.EU.INT or by post to:
DG Competition
State Aid Register
SPA 3, office 6/5
B-1049 Brussels
Belgium.

I A MODERNISED STATE AID POLICY IN THE CONTEXT OF THE LISBON STRATEGY FOR GROWTH AND JOBS

I.1 Rationale for state aid policy: why does the EU need a state aid policy?

5. Ever since the signing of the Treaty of Rome in 1957, state aid policy has been an integral part of competition policy and the European Commission has been in charge of preventing that aid granted by Member States unduly distorts competition.
6. **Competition policy** rests upon the idea that a market-based economy provides the best guarantee for raising living conditions in the EU to the benefit of citizens, one of the primary objectives of the EU Treaty. Functioning markets are an essential element in providing consumers with the products they wish to obtain, at low prices. Competition is furthermore essential to enhance the competitiveness of the European economy, as it creates an environment in which efficient and innovative companies are rewarded properly.
7. State aid control comes from the need to **maintain a level playing field** for all undertakings active in the Single European Market, no matter in which Member State they are established. There is a particular need to be concerned with those state aid measures, which provide unwarranted selective advantages to some firms, preventing or delaying the market forces from rewarding the most competitive firms, thereby decreasing overall European competitiveness. It may also lead to a build-up of market power in the hands of some firms, for instance when companies that do not receive state aid (e.g. non-domestic firms) have to cut down on their market presence, or

where state aid is used to erect entry barriers. As a result of such distortions of competition, customers may be faced with higher prices, lower quality goods and less innovation.

8. Further, it is important to realise that **state aid does not come for free**. Nor is state aid a miracle solution that can instantly cure all problems. Tax payers in the end have to finance state aid and there are opportunity costs to it. Giving aid to undertakings means taking funding away from other policy areas. State resources are limited and they are needed for many essential purposes, such as the educational system, the health system, national security, social protection and others. It is therefore necessary for Member States to make choices transparently and to prioritise action.
9. Article 87 of **the EC Treaty** prohibits any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain firms or the production of certain goods in so far as it affects trade between Member States. The Treaty has given the Commission the task to monitor proposed and existing state aid measures by Member States to ensure that they do not distort intra-community competition and trade to an extent contrary to the common interest. It falls under its responsibility to make sure that the level playing field would be maintained between Member States, no matter their different levels of resources and their different traditions of state intervention in the markets.
10. The Treaty explicitly allows exceptions to the ban on state aid where the proposed aid schemes may have a beneficial impact in overall Union terms. State aid may be declared compatible with the Treaty provided it fulfils clearly defined **objectives of common interest** and does not distort intra-community competition and trade to an extent contrary to the common interest. State aid measures can sometimes be effective tools for achieving objectives of common interest. They can correct market failures, thereby improving the functioning of markets and enhancing European competitiveness. They can also help promote e.g. social and regional cohesion, sustainable development and cultural diversity, irrespective of the correction of market failures.
11. However, state aid should only be used when it is an appropriate instrument for meeting a well defined objective, when it creates the right incentives, is proportionate and when it distorts competition to the least possible extent. For that reason, appreciating the compatibility of state aid is fundamentally about balancing the negative effects of aid on competition with its positive effects in terms of common interest.
12. While the horizontal state aid rules in principle cover all sectors, certain sectors have very specific rules and due to the special nature of the rules governing agriculture, fishery, coal production and transport, special rules apply. While the principles put forward in the Action Plan should apply to all sectors, it does not address the reform of these rules. The objectives of the EURATOM Treaty and the obligations regarding the World Trade Organization have also to be taken into consideration.

I.2 New challenges for the EC state aid policy

13. There are new challenges facing state aid policy at this moment, which call for action. As was clearly expressed by the European Council of November 2004, there is a need

for **renewed impetus to the so-called Lisbon Strategy**. The Commission Communication to the 2005 Spring European Council ‘*Working together for growth and jobs, a new start for the Lisbon Strategy*’, has already set out a new Lisbon Action Programme where state aid control plays an important role.

14. The **European Council** of March 2005 has called on “Member States to continue working towards a reduction in the general level of State aid, while making allowance for any market failures. This movement must be accompanied by a redeployment of aid in favour of support for certain horizontal objectives such as research and innovation and the optimisation of human capital. The reform of regional aid should also foster a high level of investment and ensure a reduction in disparities in accordance with the Lisbon objectives”.
15. State aid policy safeguards competition in the Single Market and it is closely linked to many objectives of common interest, like services of general economic interest, regional and social cohesion, employment, research and development, environmental protection and the protection and promotion of cultural diversity. It must contribute by itself and by reinforcing other policies to making Europe a more attractive place to invest and work, building up knowledge and innovation for growth and creating more and better jobs.
16. **The enlargement** in 2004 was unprecedented in size. This underlines the need for adaptations of state aid policy and for better governance to ensure an effective control in the enlarged Union.
17. Besides, **the increasing complexity and number of documents** progressively adopted by the Commission over time have created a need to streamline state aid policy, focus attention on the most distortive types of aid and make state aid control more predictable and user-friendly, thereby minimising legal uncertainty and the administrative burden both for the Commission and for Member States. There is also a need to strengthen the commitment of Member States to their obligation to enforce state aid rules. Finally, there is a **need to increase transparency** and advocacy about state aid policy to allow undertakings, the academic world, competition specialists, consumers and the broader public to get involved and act against unlawful aid, in particular before national judges.

I.3 How to face the new challenges?

18. To face the new challenges requires a thorough modification of the existing state aid rules, as regards both substance and procedures. Any effective assessment of the allocation or distribution effects of State aid must take into account their actual contribution to commonly agreed, politically desirable objectives. The aim is to present a comprehensive and consistent reform package based on the following elements:
 - less and better targeted state aid;
 - a refined economic approach;
 - more effective procedures, better enforcement, higher predictability and enhanced transparency;

- a shared responsibility between the Commission and Member States: the Commission cannot improve state aid rules and practice without the effective support of Member States and their full commitment to comply with their obligations to notify any envisaged aid and to enforce the rules properly.
19. Economic and legal analyses are used to fulfil the Commission's obligations under the Treaty, in some cases to determine when a measure is state aid (e.g. application of the market investor principle or evaluation of the justification of certain measures by the nature or general scheme of the fiscal system) and in particular to determine when state aid can be declared compatible with the Treaty. In assessing whether an aid measure can be deemed compatible with the common market, the Commission balances the positive impact of the aid measure (reaching an objective of common interest) against its potentially negative side effects (distortions of trade and competition). It is for Member States to provide the necessary evidence in this respect, prior to any implementation of the envisaged measure.
 20. The Commission will continue to develop criteria to fulfil its assessment of aid compatibility, in particular through analyses of specific sectors. In general, the positive impact of an aid depends on: i) how accurately the accepted objective of common interest (whether social, regional, economic or cultural) has been identified, ii) whether state aid is an appropriate instrument for dealing with the problem as opposed to other policy instruments and iii) whether the aid creates the needed incentives and is proportionate. On the other hand, the level of distortion created by an aid generally depends on: i) the procedure for selecting beneficiaries and the conditions attached to the aid, ii) characteristics of the market and of the beneficiary and iii) the amount and type of aid. For example, restructuring aid or investment aid to large companies should be carefully monitored to clearly address an objective of common interest, since the impact of such measures on competition and trade will normally be significant.
 21. To best contribute to the re-launched Lisbon Strategy for growth and jobs, the Commission will, when relevant, strengthen its **economic approach to State aid analysis**. An economic approach is an instrument to better focus and target certain state aid **towards the objectives of the re-launched Lisbon Strategy**.
 22. Making more use of a refined economic approach is a means to ensure a proper and more transparent evaluation of the distortions to competition and trade associated with state aid measures. This approach can also help investigate the reasons why the market by itself does not deliver the desired objectives of common interest and in consequence evaluate the benefits of state aid measures in reaching these objectives.
 23. One key element in that respect is the **analysis of market failures**, such as externalities, imperfect information or coordination problems, which may be reasons **why the markets do not achieve desired objectives of common interest**, in particular if they are of an economic nature. In those cases, identifying the market failure at stake will help evaluate better whether state aid could be justified and acceptable, would represent the most appropriate solution, and how it should be implemented to achieve the desired objective without distorting competition and trade to an extent contrary to the common interest.

State aid in the context of the Lisbon Strategy

Competition is vital for the economy to be efficient, to untap Europe's growth potential to the benefit of the European citizens. In this context, "efficiency" refers to the extent to which welfare is optimized in a particular market or in the economy at large. A "**market failure**" is consequently a situation where the market does not lead to an economically efficient outcome. Market failures have different origins, and notably:

- *Externalities*: externalities exist where actors do not take full account of the consequences of their actions on other actors in society. Market players may not have to pay for the full social cost of their actions (negative externalities) like in the case of pollution through industrial activity. Market players may also be unable to reap the full benefits of their actions (positive externalities) like in the fields of research and innovation.

- *Public goods*: public goods are goods which are beneficial for society but which are not normally provided by the market given that it is difficult or impossible to exclude anyone from using the goods (and hence making them pay for the goods). This can be the case of national defense and some types of public broadcasting.

- *Imperfect information*: imperfect information may lead to transaction costs, agency costs, moral hazard or antiselection, which in turn lead to inefficient market outcomes. A well-known example of imperfect information can be found in the financial market, where start-up firms usually face problems in finding adequate funding.

- *Coordination problems*: markets may also not function efficiently when there is a coordination problem between market actors. Coordination problems may exist for example in the field of standards setting, in transport infrastructures, or in the area of innovation.

- *Market power*: Another reason why the market may not lead to an efficient outcome is the existence of market power, for instance in a situation of monopoly.

When markets do not achieve economic efficiency, Member States or the Union may want to intervene in order to correct the market failures. Some of the above-mentioned situations may be solved by regulatory or other means. In certain cases, however, Member States may envisage to use state aid. One important justification for state aid is therefore the existence of a market failure.

However, it is not enough for state aid to target a market failure. Before resorting to State aid, which is in general only the 'second best' option to achieve optimal allocation of resources, it should be verified whether other less distortive measures could remedy the market failure. State aid should be the appropriate policy instrument and should be designed so that it effectively solves the market failure, by creating an incentive effect and being proportionate. In addition, state aid should not distort competition to an extent contrary to the common interest.

In the context of the re-launched Lisbon Strategy, the European Council has invited Member States to pay attention to market failures. Moreover, an effort to ensure social and economic cohesion and sustainable development should also be made.

II FOCUSING ON THE KEY PRIORITIES

II.1 Targeting Innovation and R&D to strengthen the knowledge society

24. Europe's future economic development depends on its ability to create and grow high-value, innovative and research-based sectors capable of competing with the best in the world. This priority of knowledge and innovation has been clearly endorsed in the Communication to the Spring European Council.
25. In this context, in 2005, the Commission will adopt a **Communication on state aid and innovation** which will analyse the need and the potential to adapt existing rules in order to create the appropriate framework conditions to foster innovation in the EU. This will complement the Competitiveness and Innovation Framework Programme. Innovation is related to a process connecting knowledge and technology with the exploitation of market opportunities for new or improved products, services and business processes compared to those already available on the common market and encompassing a certain degree of risk. This process may be hampered by market failures (mostly externalities, public goods and imperfect information leading to inefficient dissemination, insufficient funding and labour market mismatches). State aid can be justified when it is necessary to increase the incentive to innovate and when it does not lead to a crowding out of private initiatives or to unfair competition.
26. The Commission's Vade mecum on Innovation has shown that a number of possibilities already exist to grant aid to target the market failures which are hampering innovation activities, but that the rules could nevertheless be improved. Additional possibilities will be analysed to cover measures which can boost innovation in the common interest. Particular attention will e.g. be paid to the specific situation of small and medium-sized enterprises, to the role of intermediaries (e.g. clusters, technology centres) and to highly-skilled researchers working in the area of innovation. The specific amendments suggested in the Communication will subsequently be made when the relevant rules are revised.
27. In addition, the Commission will modify the Community **Framework for Research and Development**, in the light of the Lisbon and Barcelona objectives. This review will also seek to better take into account the priorities of the Community's R&D policy such as the promotion of cross-border research cooperation, public-private research partnerships, dissemination of research results and important research projects of common European interest. State aid to R&D could enable Member States to target market failures and provide the right incentives for industry to invest more in R&D. The Commission will base the review of the framework on an approach better reflecting an interactive industrial innovation process which can also take account of continuous feedback from the market.
28. The framework should also take account of the growing importance of public private partnerships in the R&D field. In particular, it should provide for adequate provisions for collaborative research including the ownership of, access to and exploitation of Intellectual Property Rights obtained in such projects. Furthermore, the need to allow for aid for dissemination will have to be considered in the course of the review. The Commission will also consider if the scope of the framework should be extended to cover types of aid in favour of certain innovative activities, not already covered by existing guidelines or regulations thereby creating a **Framework for R&D and**

innovation. In addition, if the Commission can establish clear and general compatibility criteria on the basis of experience, it will exempt certain aid measures from the obligation to notify to the Commission.

II.2 Creating a better business climate and stimulating entrepreneurship

29. Urgent action is needed to improve the business climate, notably by reducing the total administrative burden, simplifying and improving the quality of legislation, facilitating the rapid start-up of new enterprises, and creating an environment more supportive to business.
30. To facilitate the rapid start-up of new enterprises, the Commission will review the **Communication on risk capital**. The aim of the review will be to contribute to a culture of entrepreneurship and further stimulate investment in the form of risk capital, in particular in favour of start-ups and young, innovative SMEs, where this can properly address identified market failures. In particular, the Commission will focus on the need to further increase the flexibility of the rules to take into account diversity, especially as regards the level of the safe-harbour investment tranches for which the so-called 'equity gap' is presumed to exist.

II.3 Investing in Human Capital

31. The achievement of a high level of employment, sustainable growth and economic and social cohesion are key objectives of the Community. The European Employment Strategy (EES), which is a cornerstone of the revised Lisbon Strategy, promotes a high level of employment together with a skilled, trained and adaptable workforce. This requires a substantial investment in human capital. In this context, state aid could be justified when it is necessary to provide the right incentives for employers to engage more workers, particularly those who have difficulties to access and remain on the labour market, and to provide appropriate training for workers. Furthermore, strengthening the adaptability and upgrading skills of workers and enterprises overall, and improving the quality of education and training provisions are a key to improve the capacity of the EU to anticipate, trigger and absorb economic change of an ever accelerating pace.
32. The block exemption regulations for training and employment aids both expire at the end of 2006. The Commission intends to simplify and consolidate these block exemptions in the context of a general block exemption regulation, taking account of the principles set out above.

II.4 High quality Services of General Economic Interest

33. The provision of effective and high quality **Services of General Economic Interest (SGEI)** is a key component of the European welfare state and is essential for ensuring social and territorial cohesion, including in the field of education, training and culture, and for the exercise of an effective citizenship. High quality SGEI also contribute to the competitiveness of the European economy. Member States enjoy a wide margin of discretion when deciding whether and in what way to finance the provision of services of general economic interest. However, to avoid distortion of competition the compensations granted should make the performing of public service missions feasible without leading to overcompensation and undue distortions of competition.

34. The White paper on services of general interest announced that the Commission would adopt legislative texts to provide more guidance on this principle. To increase legal certainty, the Commission will adopt a Decision on the basis of Article 86.3, and guidelines to specify under which conditions public service compensations which constitute state aid are compatible with the Treaty. The Commission Decision would grant an exemption of notification for small scale compensations. Special conditions should also apply to hospitals and social housing companies. Finally, the Commission will adapt the transparency directive, to take account of the evolution of the jurisprudence of the European Courts.

II.5 Better prioritization through simplification and consolidation

35. To ensure better governance and facilitate the granting of aid, which is clearly compatible with the Treaty, the Commission will issue a **general block exemption regulation** to exempt certain categories of aid from the obligation to notify to the Commission. The regulation will be based on the principle that state aid policy should focus on the most distortive types of aid and that it should set clear ‘positive’ and ‘negative’ priorities.

36. The Council has enabled the Commission, through the Enabling Regulation, to exempt certain areas in which the Commission can define general compatibility criteria, which should lead to the same interpretations in different Member States. The Commission has the power under certain conditions to exempt aid related to SMEs, R&D, environment, employment, training and regional development. In the general block exemption, the Commission intends to **simplify and consolidate** the existing block exemptions (training, SME and employment) and integrate a **broader range of exemptions**, notably as regards aid to support SMEs and R&D. Categories of aid which can be clearly defined may fall within the scope of a block exemption regulation, whilst for some forms of aid which cannot be precisely defined in advance, guidelines may constitute a more flexible instrument.

37. The Commission will also consider integrating some categories of aid, such as regional and environmental state aid and rescue aid for SMEs while addressing the problems raised by cumulation of different types of aids. The Commission will also consider exempting larger amounts of aid than presently, on the basis of economic analysis and experience. However, this will be made on the condition of greater responsibility by Member States in **complying with the rules and criteria** set by the block exemptions.

38. In addition, the threshold under which Member States may grant **de minimis aid** without further specific requirements will be increased to take account of the evolution of the economy.

II.6 A focused regional aid policy

39. As was clearly expressed in its Communication to the Spring European Council, the Commission is fully committed to sustainable development and to modernising and advancing Europe’s social model. This commitment also applies to state aid policy.

40. In this context, cohesion in particular is an important element of the Lisbon strategy: reducing disparities between the regions of Europe is a factor of stability and a

tremendous growth potential. Past enlargements have shown that there is scope for win-win development between richer and poorer regions. State aid policy can contribute to such a positive outcome, by preventing a damaging subsidy race between regions, and by creating the right incentives for growth and jobs, in the least-developed regions and elsewhere.

41. The Commission's regional aid policy needs to be updated to take account of developments in the seven years since the last guidelines were adopted in 1998, in particular enlargement. The Commission has launched a review of the **Community guidelines on regional aid (or 'RAG')**, and has the intention to integrate the **Multisectoral Framework on regional aid for large investment projects**. This review will take account of the Third Cohesion Report, which suggests organising future cohesion policy around three main objectives: a) convergence; b) regional competitiveness and employment; and c) European territorial co-operation. These objectives also underlie the Commission's proposals for the structural fund regulations.
42. Given the necessity to use investment aid to large firms sparingly in order to preserve its effectiveness in promoting overall, long-term competitiveness through a reduction of regional disparities, this type of aid could mainly be concentrated on the least-developed regions.
43. Regional aid must be seen in the context of the possibilities for granting aid for horizontal purposes envisaged in this Communication, in particular for aid measures more directly linked to the pursuit of the Lisbon agenda. It will be necessary to examine whether and to which extent regional bonuses present in current horizontal texts should be maintained.
44. The Commission will also examine what levels of aid can be justified outside the least-developed regions, what the aid differentials should be, what categories of undertaking should benefit and for which categories of aid. All this should will the Member States sufficient flexibility to develop policies at national level to promote regional competitiveness and employment and European territorial cooperation, while meeting the overall objective of 'less and better targeted aid'.

II.7 Encouraging an environmentally sustainable future

45. Environmental protection is in itself essential. It can also be a source of competitive advantage for Europe, by providing opportunities for innovation, new markets and increased competitiveness through resource efficiency and investment.
46. The **Community guidelines on state aid for environmental protection** are applicable until 2007. In 2005, the Commission will start reflecting on ways and means to better address the challenges and opportunities that sustainable development creates, as set out in the Lisbon and Sustainable Development Strategies, especially with the aim of ensuring a full internalisation of environmental costs. In particular, the Commission will attempt to encourage eco-innovation and improvements in productivity through eco-efficiency in line with the Environmental Technologies Action Plan (ETAP). Certain measures might also be exempted under the general block exemption from the obligation to notify the aid.

II.8 Setting up modern transport, energy and information and communication technology infrastructures

47. The Lisbon Action Plan stresses that modern transport, energy and information and communication technology infrastructures throughout the EU territory are a prerequisite for reaping the benefits of a re-invigorated Lisbon Strategy. It therefore invites Member States to fulfil their commitments in terms of investments for Transport and Energy Networks. Member States increasingly rely on Public Private Partnerships to build infrastructures. It is thus important that state aid rules are clear for the assessment of public resources involved in Public Private Partnerships. More generally, as a consequence of the recent opening of formerly state-controlled markets, public bodies are increasingly involved in a number of markets. This may raise legal issues regarding the applicability of state aid rules. The Commission will consider the need to issue guidance in those matters.

III MODERNISING THE PRACTICES AND PROCEDURES OF STATE AID

III.1 Better governance - a shared responsibility with Member States

48. Currently, there are certain **shortcomings in the practices and procedures** of state aid policy, which can be observed in the long time frame for the treatment of cases. To a certain extent the reason for this delay is to be found in the many obligatory requirements in the Council procedural regulation N° 659/1999 (ex: linguistic coverage and publication requirements), and if no action is taken this time frame is even likely to increase due to enlargement. Longer time frames are clearly an unacceptable outcome, bearing in mind that a trade off might exist between the duration of the procedure and ensuring an effective control while safeguarding the rights of third parties.

49. Where possible **within the scope of the current procedural regulations**, the Commission will in the short term improve its internal practice and administration, and increase efficiency, enforcement and monitoring. Since the success will depend on the practices in Member States too, they should also make an effort to improve their efficiency, transparency and implementation of state aid policy.

50. The Commission will consider issuing **best practices guidelines** after consulting Member States as well as the public on how procedures could be improved to better administrate state aid control. It will notably try to instil more predictable timelines; clear intermediary steps in the procedure and ensure higher transparency by providing more information on Internet. The Commission will also reduce delays by encouraging a higher quality of notifications and by discouraging incomplete notifications by a more systematic use of the information injunction, requesting Member States to provide complete information within a certain period.

51. While the Commission has the competence to adopt detailed state aid rules, the successful implementation of the rules and procedures depends to a large extent on Member States. In the context of enlargement, the screening of state aid measures was conducted by operationally independent monitoring authorities in the new Member States. This has been a valuable experience which should be taken into account when considering further cooperation between the Commission and all Member States. In

this context, the Commission will examine whether **independent authorities** in Member States could play a role as regards facilitating the task of the Commission in terms of state aid enforcement (detection and provisional recovery of illegal aid, execution of recovery decisions).

III.2 Less bureaucracy and better targeted enforcement and monitoring

52. Best practices guidelines together with the general block exemption and the increased *de minimis* ceiling are expected to reduce both the time it takes before the Commission reaches its decisions and the administrative burden for Member States. But **Member States should engage more actively** to ensure that the conditions for the exemptions are fully respected and that necessary information is kept in accordance with the relevant rules, in order to enable the Commission to verify the compatibility in case of doubts or complaint.
53. The effectiveness and credibility of state aid control presupposes a **proper enforcement** of the Commission's decisions, especially as regards the recovery of illegal and incompatible state aid. Recent experience has shown that the implementation of recovery decisions by Member States is not satisfactory and, moreover, that conditional or positive decisions are sometimes not correctly implemented by the Member States. The Commission will therefore:
- Seek to achieve a more immediate and effective execution of recovery decisions, which will ensure equality of treatment of all beneficiaries. To this effect, the Commission will monitor more closely the execution of recovery decisions by Member States. Recovery has to be carried out in accordance with national procedures. But where it appears that recovery is not carried out in an immediate and effective manner, the Commission will more actively pursue non-compliance under Articles 88(2), 226 and 228 of the Treaty;
 - Request more transparency in the general principles of state aid control and consider establishing a network of state aid authorities or contact points in order to facilitate the flow of information and exchange of best practices;
 - Promote advocacy, awareness and understanding of state aid control at all levels to help the granting authorities in designing measures that are compatible with the treaty rules.
54. The Commission will step up its **monitoring of the compliance** by Member States of conditions laid down in state aid decisions, including the respect of the provisions of the block exemption regulations. It will also encourage Member States to engage in benchmarking to verify that state aid is achieving the objective and is the best type of state intervention for any given objective. This could be done in partnership with national Courts of Auditors.
55. The Commission will also engage in **advocacy** to encourage stakeholders to ensure that the rules of state aid are fully respected. Article 88 (3) EC has direct effect and gives national judges the power to suspend and provisionally recover aid granted illegally before its approval by the Commission. Private litigation in front of national courts could therefore provide increased discipline in the field of state aid. The awareness of company auditors, national market regulators and national Courts of

Auditors could also be reinforced. To this effect, the Commission has launched a study focusing on two main aspects of enforcement of state aid law at national level; namely the role of national courts in the protection of rights conferred upon interested parties, notably competitors of the beneficiaries of unlawful aid, and the enforcement at national level of negative decisions, in particular those with recovery obligation.

56. One additional area where **national judges** could play a greater role could be in controlling whether measures deemed to fall under a block exemption or under the *de minimis* thresholds, and which have therefore not been notified to the Commission, actually fulfil the necessary criteria. If needed, the Commission will consider reviewing the Notice on cooperation between national courts and the Commission in the state aid field, in particular whether to expand its scope to other national bodies.

III.3 Adapting procedural rules to an enlarged European Union

57. The Commission will examine all possible actions to lower administrative costs and improve the procedural rules with a particular aim to reduce the time period for treatment of cases in which the Commission has opened procedure; to provide a clear incentive to comply with the obligation to notify aid measures and to achieve an enhanced efficiency, monitoring and enforcement. In this context, the Commission intends to present a consultation document in 2007 which will be discussed with Member States, and could lead to a **proposal for amendment of Council Regulation n° 659/1999 (procedural Regulation)**.

58. Possible options to consider are e.g.:

- To **save time and increase transparency**, the Commission could increase the use of the internet; the Commission could also commit to conclude its investigation in shorter time-frame, provided Member States ensure good co-operation, that procedures be opened in case of doubts, and that negative decisions could be adopted if all relevant information has not been submitted before a certain deadline. In addition, administrative procedures and linguistic issues such as translation requirements could be reviewed.
- To **ensure that aid measures are duly notified**, the scope of the recovery injunction could be expanded to invoke a systematic transitory recovery of non-notified aid and some sort of deterrence mechanism on Member States could be introduced for measures which have not been notified. For instance, periodical reviews of the track records of Member States in terms of notification could be implemented. Where it appears that a Member State fails in notifying properly its state aid, the Commission could pursue the non-compliance under Articles 226 and 228 of the Treaty to seek penalties.
- To **achieve greater efficiency**, the discussion and design of appropriate measures could be formalised more precisely. Also, the Commission could enhance the consultation of market participants and the gathering of relevant sectoral information through new instruments granting additional investigative powers. A written procedure for the Advisory Committee on state aid could also be foreseen.

59. In addition the Commission will evaluate the need to enlarge the scope of **Council Regulation No 994/98 enabling** the Commission to block exempt additional types of

measures, e.g. aid for culture and heritage conservation. In that context, the Commission intends to clarify the roles and uses of block exemptions and guidelines, and will consider the possibility of giving the block exemptions not only a positive effect like the one they already have, but also in certain cases a negative effect. This would mean that some criteria for exemption of notification would also be criteria for compatibility of aid, which would enable the national jurisdictions to apply block exemptions directly not only by declaring the compatibility by also the incompatibility of certain aid.

III.4 A comprehensive review of the remaining documents

60. The Commission has considered the necessity to review every single Commission document related to the granting of state aid. In the last stage of the reform the Commission will aim at reviewing the remaining documents, where necessary, so that the same principles are applied consistently and comprehensively in all state aid instruments.
61. Along those lines, the Commission will review the **Communication on short-term export-credit insurance**, and the methodology for the **calculation of reference and recovery rates**. Before the new **rescue and restructuring aids guidelines** published in 2004 lapse in 2009, the Commission will start reflecting upon the need to change some of the existing provisions of the guidelines. In particular, it will take into account the amendments of regional aid policy, the relationship with different national insolvency procedures and the rules for the social protection of the workforce of companies under restructuring.
62. Media, audiovisual services, creative industries and the cultural sector as a whole have a high potential in terms of innovation, competitiveness, growth and job creation. They are also key in preserving and promoting the rich cultural and linguistic diversity in the EU. In examining state aid issues in these sectors, the Commission fully takes into account the relevant Treaty provisions (particularly art. 151.4 and 87.3.d) and the Protocol on the system of public broadcasting in the Member States annexed to the Treaty of Amsterdam, and reflects the specific public interests attached to these activities. In that respect, it will revisit its **Communication on the application of state aid rules to public service broadcasting**. Notably with the development of new digital technologies and of Internet-based services, new issues have arisen regarding the scope of public service broadcasting activities. It will also consider reviewing the **Communication on certain legal aspects relating to cinematographic and other audiovisual works (cinema communication)**. In addition, and on the basis of its experience in this field, the Commission could ask the Council to extend the scope of the Enabling Regulation, so that cinema can also benefit from a *block exemption*.
63. In addition, the Commission will engage in a broader thinking about the ways in which state aid is given to undertakings. Some aid measures are more transparent than others; some are more directly targeted towards precise objectives. This raises questions about the effectiveness and distortive effects of different forms of aid. Therefore, the Commission will issue a **consultation document on the aid element in different forms of aid**, in order to collect the view of member states and of undertakings. The consultation could indicate whether the Commission should systematically be stricter towards certain forms of aid than towards others.

64. To complement that general reflection, the Commission will revisit its **Notice on state aid in the form of guarantees** to incorporate its experience and assess whether the current rules and criteria should be amended. In the same context, the Commission will consider revising its **Notice on the application of the state aid rules to measures relating to direct business taxation** published in 1998, in particular to examine whether it should be extended to indirect taxation.
65. Finally, the Commission will decide whether a **Framework for state aid to shipbuilding** is still needed or if the sector should simply be governed by horizontal rules.
66. Following agreement on a new Council regulation on rural development, expected for June 2005, the Commission will undertake a review of the existing specific measures for **state aid in the agricultural sector**. Draft proposals will be presented in time to allow for formal adoption in 2006 and application from 1 January 2007 onwards.

III.5 Establishing and evaluating the new practice for the future

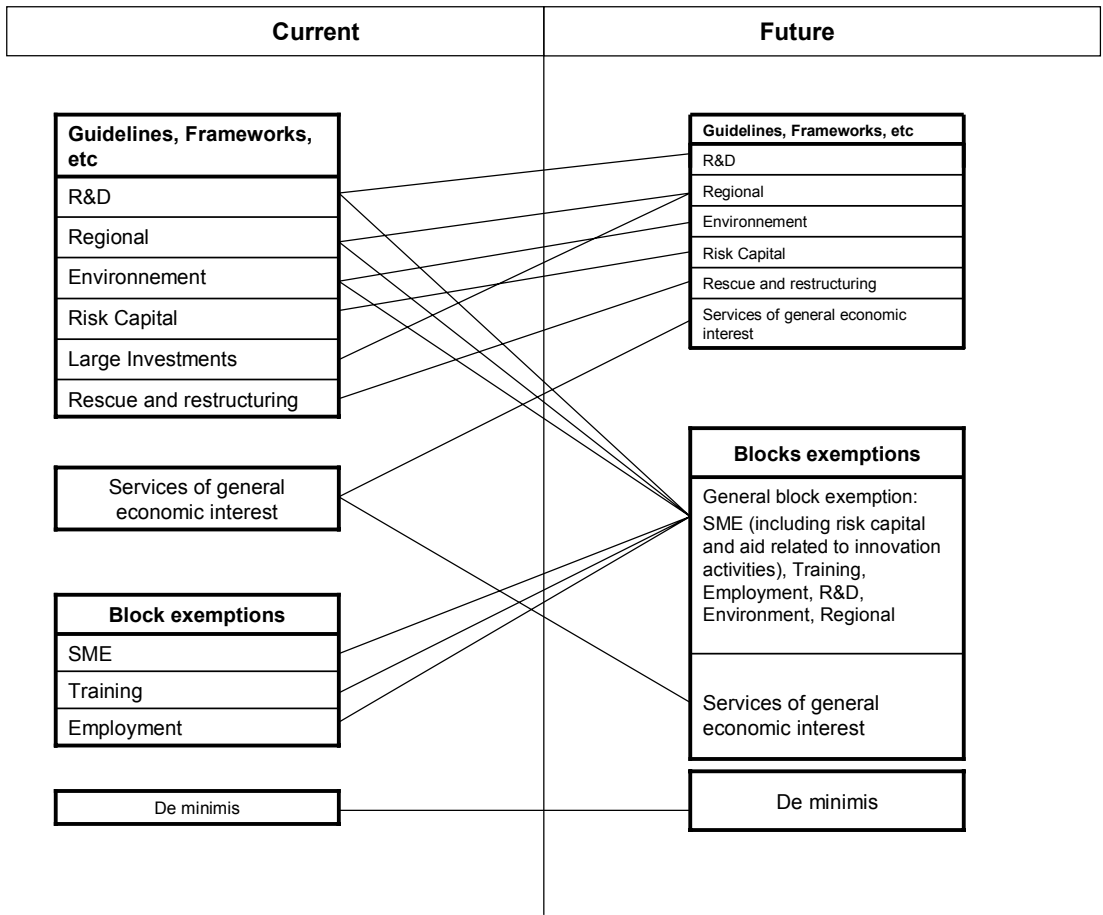
67. After having finalised the comprehensive review of State aid, the Commission will conduct an evaluation exercise, in order to make sure that the new rules and practice of state aid policy work properly for the benefit of European citizens. If necessary, new actions will be proposed.
68. Figure 1 gives an overview of the road map 2005-2009 with an indicative division in three stages.

Figure 1: Roadmap 2005 -2009 (indicative)

Modifications	2005/2006	2007/2008	2009
Substance	Road map for state aid reform 2005-2009 Regional aid guidelines General Block Exemption (SME, employment, training, R&D, <i>de minimis</i> , regional, environment) Communication interest rates Guidelines R&D and Innovation Communication short term credit insurance Communication risk capital Decision and guidelines on the Services of General Economic Interest and transparency directive Guidelines environment Framework on State aid to Shipbuilding	Assessment/modification of the rescue and restructuring aid guidelines. Notice on state aid in form of guarantees Communication on direct business taxation Communication on state aid to public broadcasting. Possible additional block exemptions	Assessment of the reform and review of existing state aid rules
Consultation documents	Communication on innovation	Consultation document on possible modification of Council Regulation 659/99. Consultation document on the different forms of aid	
Procedure	Internal best practices guidelines Promotion of state aid advocacy. Increase monitoring of decisions and recovery Possible proposal for amendment of the Council Regulation No 994/98 (enabling regulation)	Possible proposal for amendment of Council Regulation 659/99 (procedural Regulation) Notice on cooperation between national courts and the Commission in the state aid field	

69. Figure 2 gives an overview of the expected major changes to the architecture of State aid rules.

Figure 2: EXPECTED MAJOR CHANGES TO THE ARCHITECTURE



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