

Unclassified

DAF/COMP/GF/WD(2010)3

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

11-Jan-2010

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Global Forum on Competition

COMPETITION, STATE AID AND SUBSIDIES

Contribution from the European Union

-- Session I --

This contribution is submitted by the European Union under session I of the Global Forum on Competition to be held on 18 and 19 February 2010.

Contact: Hélène CHADZYNSKA, Programme Manager of the Global Forum on Competition
Tel: 33 1 45 24 91 05; email: helene.chadzynska@oecd.org

JT03276834

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format



DAF/COMP/GF/WD(2010)3
Unclassified

English - Or. English

STATE AID AND SUBSIDIES

-- European Union --

1. Introduction: The rationale for European State aid control

1. The existing mechanisms and objectives of EU State aid control were laid down as early as 1957, in the original Treaty of Rome establishing the European Community. State aid control is an integral part of EU competition policy and a necessary safeguard to preserve effective competition and free trade in the single market.

2. When granting State aid, for instance by subsidising certain types of business activity (e.g. R&D), Member States aim to foster the economic or social development in their territories. State aid may contribute to creating or maintaining employment, lead to higher tax revenues or to additional economic growth for the Member State concerned. Likewise, State aid granted by national governments can influence firms' choices of production methods so that they become more environmentally friendly or more responsive to social needs.

3. However, when considering State aid measures, national governments may disregard possible negative spill-over effects on other countries. Member States may have incentives to use State aid strategically to promote national economic interests and develop activities on their territory, even though it may undermine the internal market and the common European interest. If State aid diverts similar activities elsewhere, it may be to the detriment of other Member States, and in particular to the detriment of less prosperous ones. Aid with such cross-border effects may trigger reactions by other Member States who might be tempted to retaliate by granting subsidies too. Such a subsidy race could lead to excessive amounts of aid, at the taxpayers' expense, and could seriously damage the internal market.

4. The Treaty on the Functioning of the EU thus establishes the principle that State aid which distorts or threatens to distort competition is prohibited in so far as it affects trade between Member States (Article 107 (1) of the Treaty on the Functioning of the EU, ex Article 87(1) EC).¹ However, State aid, which contributes to well-defined objectives of common European interest without unduly distorting competition between undertakings and trade between Member States, may be considered compatible with the common market (under Article 107(3) TFEU, ex Article 87(3) EC). The Commission assesses a wide range of aid targeted by Member States at objectives of common interest of economic and social development.

2. State aid procedures: Block exemption and notification

5. Before granting State aid, Member States need to obtain the authorisation from the Commission.² However, the majority of State aid measures are exempted from prior formal notification to the

1. In addition, subsidies granted by EU Member States may also be subject to international agreements, such as the WTO subsidies agreement.

2. Aid amounts below € 200.000 over three years to a single undertaking are not considered to be State aid and thus need no authorisation by the European Commission, c.f. Commission Regulation (EC) No

Commission. This mainly flows from the General Block Exemption Regulation which aims at the most obvious market failures and allows Member States – without prior notification – to take measures which with all probability would lead to limited distortions and for which the assessment criteria can be clearly articulated and implemented.³

6. Furthermore a lot of individual aid measures can be implemented under aid schemes: Once the terms and conditions of an aid scheme are approved by the Commission, individual aid measures falling under this scheme do not have to be notified any longer.

7. By this, the Commission can focus its assessment on large State aid cases coming with a high risk of competition and trade distortions. In terms of reported aid volumes (financial crisis measures excluded), such individual aid accounted in 2008 for only 5% of total aid to industry and services, with 75% being granted under approved schemes and 20% under block exemptions. In terms of the number cases, out of a total of 1000 Member State decisions in 2008 on schemes and ad-hoc cases, around 66% fell under the block exemptions (therefore had not to be notified), while 34% had to be notified to the Commission. This has reversed the ratio of two years before (40% vs. 66%).

8. A time limit of two months is set for the examination of notified individual aid or notified aid schemes after the receipt of all relevant information (preliminary investigation). If the Commission has doubts as to the compatibility of the aid project, it opens a formal investigation procedure so as to gather Member States' and interested parties' comments in an open and transparent way. However, the vast majority (92%) of all state aid cases are currently approved at the end of the preliminary investigation procedure without opening the formal investigation procedure.

9. In order to further streamline procedures, the Commission has just adopted a "simplification package", consisting of a Simplified Procedure and a Best Practices Code:

- The *Simplified Procedure*⁴ aims at improving the Commission's treatment of straightforward cases, like those clearly in line with existing Guidelines or established Commission decision-making practice. The Commission wants to ensure aid measures which are clearly compatible are approved within one month from a complete notification by a Member State. This procedure requires important adaptations to the working methods of both the Commission and Member States, the prerequisites for which (templates, standard decisions etc.) have been put in place. A transparency provision also ensures that third parties can provide input.
- The *Best Practices Code*⁵ details how all other State aids procedures should be carried out in practice. It includes a certain number of voluntary arrangements between the Commission and Member States to achieve more streamlined and predictable procedures, at each step of a State aid investigation. With better co-operation, the Commission hopes to be able to deliver State aid decisions within more business relevant deadlines.

10. Companies and consumers are also important players who may trigger investigations by lodging complaints with the Commission. Since 2002, DG COMP receives around 200 complaints annually. Complaints constitute an important source of information for the detection of unlawful aid.

1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid, Official Journal L 379 of 28.12.2006.

3. Official Journal, L 214, 9.8.2008, p.3.

4. Official Journal C136, 16.06.2009, p. 3-12.

5. Official Journal C 136, 16.06.2009, p. 13-20.

11. When a negative decision is taken in cases of unlawful State aid, the Commission shall decide that the Member State must take all necessary measures to recover the aid from the beneficiary. It has to be underlined that recovery has not to be conceived as a penalty, but as a means to restore the situation previous to the granting of the illegal and unlawful aid. This objective is obtained once the aid (plus compound interests) is repaid by the recipient who enjoyed an advantage over its competitors on the market.

12. A Member State is deemed to comply with the recovery decision when the aid (plus compound interests) has been fully reimbursed within the prescribed time limit or, in the case of an insolvent beneficiary, when the company is liquidated under market conditions. Where the Member State concerned has not complied with the recovery decision, and where it has not been able to demonstrate the existence of absolute impossibility, the Commission may initiate infringement proceedings before the European Court of Justice.

3. The compatibility assessment: basic principles and guidelines

3.1. The balancing test

13. When designing general State aid rules for cases that need to be notified, the Commission balances the negative effects on trade and competition in the common market with its positive effects in terms of a contribution to the achievement of well-defined objectives of common interest. Balancing these effects takes into account the impact of the aid on the social welfare of the EU. For that purpose, the Commission has established a "balancing test" which consists of the following elements:

(1) Is the aid measure aimed at a well-defined objective of common interest? (for example, growth, employment, regional cohesion, environment, energy security).

(2) Is the aid well designed to deliver the objective of common interest that is to say, does the proposed aid address the market failure or other objective?

(a) Is State aid an appropriate policy instrument?

(b) Is there an incentive effect, namely does the aid change the behaviour of undertakings?

(c) Is the aid measure proportional, namely could the same change in behaviour be obtained with less aid?

(3) Are the distortions of competition and effect on trade limited, so that the overall balance is positive?

14. The first two questions address the positive effects of a State aid measure, whereas the third question refers to its negative effects on competition and trade and compares the positive and negative effects of the aid.

15. As regards the first question, the Treaty on the Functioning of the EU only provides for some exceptions to the general prohibition of State aid. It is thus necessary to first assess whether the objective pursued by the aid is indeed one that can be regarded as being in the common interest, and to assess the acceptability of that objective. Applying concepts developed in the economic theory, whether a measure contributes to an objective of common interest can be understood either in terms of its contribution to overall welfare and efficiency (does the State aid allow to remedy to a market failure) or in terms of equity (i.e. how is welfare distributed). All objectives of common interest can thus be described as contributing to efficiency and/or equity.

16. The second step is then to assess whether the aid is properly designed to reach the well-defined objective of common interest. More specifically, even if it addresses a well-defined objective, a particular State aid may not be an appropriate instrument. This would be the case where the State aid fails to deliver the desired objective or where other less distortive instruments achieve the same results. Further, the aid must actually induce the recipient to change its behaviour in such a way that the objective can be achieved. This condition would not be fulfilled in cases where the aid is not necessary because the beneficiary would achieve the objective even in the absence of aid. Finally, the aid amount should not exceed the amount necessary to achieve the objective.

17. The last question addresses the negative effects of State aid. Even if it is well-designed to address an objective of common interest, an aid given to a particular undertaking or economic sector may lead to an unacceptable degree of distortion of competition and of trade between Member States. The overall balancing requires not only to trace the effects of the aid on producers and on consumers in the Member States, but also to evaluate their magnitudes and to compare them subsequently. This implies for instance that negative effects of a considerable magnitude need to be offset by a corresponding high level of positive effects.

3.2. Horizontal guidelines

18. The general analytical principles of the balancing test as outlined above have been translated into a number of guidelines for specific aid categories, where the test has been adapted in the light of the specific policy and technical context. These rules explain in more detail under what conditions (e.g. eligible costs, intensity of aid, and nature of the beneficiaries) a Member State can grant aid to its undertakings. The rules cover a wide range of categories of aid: for example aid to research, innovation, environmental protection, regional development, development of SMEs, training, employment, risk capital, rescue and restructuring of firms in difficulty.

BOX 1: Overview of most important non-sectoral State aid rules⁶

- Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation), Official Journal L 214, 9.8.2008, p. 3.
- Community Framework for State aid for Research and Development and Innovation, Official Journal C 323 of 30.12.2006, p.1.
- Community guidelines on state aid to promote risk capital investments in small and medium-sized enterprises, Official Journal C 194, 18.8.2006, p. 2.
- Community guidelines on State aid for environmental protection, Official Journal C 82, 1.4.2008, p. 1.
- Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid, Official Journal L 302, 1.11.2006, p. 29
- Guidelines on national regional aid for 2007-2013, Official Journal C 54, 4.3.2006, p. 13.
- Criteria for the compatibility analysis of training state aid cases subject to individual notification, Official Journal C 188 of 11.8.2009, p.1.
- Criteria for the compatibility analysis of state aid to disadvantaged and disabled workers subject to individual notification, Official Journal C 188 of 11.8.2009, p.6.
- Community guidelines on State aid for rescuing and restructuring firms in difficulty, Official Journal C 244, 1.10.2004, p. 2.

6. These rules are available at http://ec.europa.eu/competition/state_aid/legislation/legislation.html.

19. Most of these guidelines and frameworks focus on areas where State aid alleviates market failures and helps to meet the challenge of sustainable growth (i.e. aid in the fields of research, training and risk capital or environmental aid). Other types of aid are rather aimed at equity issues (i.e. regional aid, aid to disadvantaged and disabled worker).

20. Aid for rescuing and restructuring firms has a particular role to play and rescue and restructuring operations have given rise to some of the most controversial State aid cases in the past and are among the most distortive types of aid. The main provisions of the Rescue and Restructuring guidelines ("R&R guidelines") will therefore be presented in more detail below.

3.3. The Rescue and Restructuring guidelines: strict conditions

21. The EU attaches strict rules regarding aid for rescue and restructuring for firms in difficulty. Aid to such firms may, however, be justified in exceptional circumstance, if there are countervailing benefits. Such benefits can be seen in the restoration of the long term viability of a firm in difficulty which may be desirable for employment or social considerations.

22. To assess a given rescue or restructuring aid measure the Commission developed the rescue and restructuring guidelines⁷ containing precise conditions to be respected by Member States when granting R&R aid. The guidelines ensure that the recourse to rescue and restructuring aid is linked to strict eligibility criteria, the most important of which is that the aid beneficiary has to be in difficulty.

23. There is no Community definition of what constitutes a firm in difficulty. However, for the purpose of the R&R guidelines, the Commission regards a firm as being in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owners/shareholders or creditors, to stem losses which will almost certainly condemn it to going out of business in the short or medium term without outside intervention by the public authorities. The guidelines spell out some specific objective criteria⁸: A firm is regarded as being in difficulty if more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months. In the case of a company where at least some members have unlimited liability for the debt of the company, the same criterion is applied to its capital as shown in the company accounts. Whatever the type of company concerned, a firm is considered as being in difficulty where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.

24. Even when none of the circumstances set out in paragraph 10 of the R&R guidelines are present, a firm may still be considered to be in difficulties, where the usual indicators of a firm being in difficulty are present. The guidelines⁹ mention a number of such indicators. They include qualitative criteria such as increasing losses, diminishing turnover, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value.

25. Legally, the R&R guidelines lay down the application of Article 107 (3)(c) TFEU, ex Article 87(3)(c) EC, in the particular case of firms in difficulty. On the basis of the Guidelines, State support for such firms may be found compatible with the EC Treaty.

7. See Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2).

8. See paragraph 10 of the guidelines.

9. See paragraph 11 of the guidelines.

26. This concerns first rescue aid in so far as the ailing firm is provided with ad hoc short term liquidity support to overcome acute financial shortcomings or restructuring aid in form of longer term support in order to redirect the company's operations. In the case of SMEs, rescue and restructuring aid may also be granted on the basis of schemes.

- Rescue aid can be provided for a period of six months to help the company cover its immediate liquidity needs and undertake other urgent structural measures. It is limited to temporary support to enable the ailing company to come up with a restructuring plan.
- Restructuring aid can be provided on the basis of a comprehensive restructuring plan with the aim to restore long term viability. The plan must define the restructuring period and the restructuring costs as well as the measures necessary to turn around the company. Such measures should imply operative, industrial and financial restructuring. The implementation of a sound restructuring plan is to ensure that the positive effects of the aid also materialise in the long term, as insufficient restructuring would just delay problems by a few years.

27. A further condition for the granting of restructuring aid is that the aid must be limited to the minimum necessary. To this end, a predetermined minimum threshold for private co-financing of the restructuring is introduced (the so called significant own contribution). As this own contribution normally requires the involvement of external financing it also ensures that the capital markets believe in the restructuring project's ability to restore long term viability. Limiting the aid to the minimum necessary avoids providing the company with surplus cash which could be used for aggressive behaviour in the market which is unrelated to the restructuring process.

28. In order to compensate for the distortion of competition caused by the aid, compensatory measures (e.g. divestment of assets, reductions in capacity or market presence and reduction of entry barriers on the markets concerned) must normally be taken.

29. Finally, the "one-time, last-time" principle ensures in cases of both rescue and restructuring aid that a firm that has received already rescue and restructuring aid in the last ten years is no longer eligible for any further aid. A firm has thus only one chance to restructure itself with the help of aid and the principle ensures that unviable firms are kept afloat through repeated injection of state aid.

30. The R&R guidelines were to expire on 9 October 2009. However, the economic crisis had created a difficult and unstable economic environment. Having regard to the need to ensure continuity and legal certainty in the treatment of State aid to enterprises in financial difficulty, the Commission decided to extend the validity of these guidelines until October 2012.¹⁰

4. The financial crisis: State aid control is part of the solution

31. Since October 2008, the financial and real economy crisis has been a major challenge for the field of State aid and has had a significant impact on the activity of the State aid network in terms of the number of cases that had to be assessed by the Commission: The scale and intensity of the crisis in the financial markets and its potential impact on the overall economy of Member States put governments throughout the EU under huge pressure to provide a wide range of support measures to assist vulnerable financial institutions in order to safeguard the stability of the financial system and to assist companies in the real economy.

10. Official Journal C 156 of 9.7.2009, p.3.

32. In view of the exceptional circumstances, there had even been calls for the Commission to considerably “relax” or even “suspend” EU disciplines in the area of State aid, at least as long as the financial crisis lasts. This has, however, never been an option. On the contrary, EU competition policy proved to be an integral part of the solution to the problems stemming from the crisis. Abandoning EU competition discipline at this time of crisis would have risked a disintegration of the European Single Market. Rather than abandoning competition rules, the Commission has found that State aid rules have enabled it to support solutions for stabilising European banks, while at the same time guaranteeing the common European interest.

4.1. Commission response to the financial sector crisis

33. Following the deepening of the financial crisis in the autumn of 2008, the Commission swiftly provided guidance in the form of Communications on the design and implementation of State aid in favour of banks.¹¹ In these Communications, the Commission recognised that the severity of the crisis justified the grant of aid on the basis of Article 107(3)(b) TFEU¹², ex Article 87(3)(b) EC, and set out a co-ordinated framework for the provision by Member States of public guarantees, recapitalisation measures and impaired asset relief, whether to individual banks or as part of a national scheme. The primary rationale of the guidance in these Communications was to ensure that emergency measures for reasons of financial stability guarantee a level playing-field between banks located in different Member States as well as between banks who receive public support and those who do not. On the basis of this guidance, the Commission has since October 2008 approved on a temporary basis a large number of schemes under State aid rules.¹³

34. The Commission also had (and still has) to deal with a large number of individual cases of bank restructuring, which follow from bank rescue aid measures approved on the condition that a restructuring plan would be submitted within six months. In order to foster transparency, predictability and equality of treatment between Member States, the Commission issued guidelines to clarify its approach, the criteria it will base its assessment upon and the type of information required to guide this assessment.¹⁴ These guidelines are based on Article 107(3)(b) TFEU, ex Article 87(3)(b) of the EC Treaty. They will be temporary and apply until the end of 2010. After that date, the normal rules on rescue and restructuring, based on Article 107(3)(c) of the Treaty should resume (see point 3.3. of this paper).

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

12. Article 107(3)(b) allows aid “to remedy a serious disturbance in the economy of a Member State”.

13. On 7 August 2009 DG Competition has published a review of the existing national guarantee and recapitalisation schemes: see DG Competition’s review of guarantee and recapitalisation schemes in the financial sector in the current crisis (“Review paper”) published on http://ec.europa.eu/competition/state_aid/legislation/review_of_schemes_en.pdf.

14. Commission communication on the return to viability and the assessment of restructuring in the financial sector in the current crisis under State aid rules, OJ C 195, 19.08.2009, p.9 (“the Restructuring Communication”).

4.2. Commission response to the real economy crisis

35. As a consequence of the crisis in financial markets, banks had become much more risk averse than in previous years, and as a result much less willing to provide financing to the real economy. This credit squeeze not only affected weak companies, but also healthy companies which found themselves facing a sudden shortage or even unavailability of private funding, whether loans or risk capital.

36. Therefore, in addition to the communications on State aid to financial institutions in response to the financial crisis, in December 2008 the Commission also adopted a "Temporary Framework for State aid measures to support access to finance in the current financial and economic crisis" in response to the growing effects of the crisis on the real economy.¹⁵

37. The Temporary Framework provides for a number of new measures that can be applied by Member States for a limited period of time, until the end of 2010, as well as a number of limited temporary derogations from existing State aid rules. It should be noted that the Temporary Framework in principle of general application to all types of firms. However, a significant exception is that it is not applicable to firms that were in difficulties before 1 July 2008. Companies whose difficulties date from before the credit crunch must address their structural problems exclusively on the basis of the general rules regarding rescue and restructuring aid, as described in point 3.3 of this paper. The rule acknowledges that a number of companies may find themselves cut off from financing due to the drying up of the lending market, although they have a sound business plan. The Temporary Framework is therefore applicable to relieve their temporary financial difficulties. If the aid provided under the framework is not sufficient to address these difficulties, it can mean that the company has more structural problems, in which case the normal rules of rescue and restructuring aid will have to be applied. This set of rules regarding firms in difficulties is precisely devised to ensure that over-protective aid measures devised by the Member States would not revitalise structurally failing firms to the detriment of competition and healthier firms.

4.3. Exit and the return to a "pre-crisis" scenario

38. As a matter of fact, the new rules were to be seen as a temporary adaptation of existing State aid rules that target the specificities and the expected temporary nature of the credit squeeze while fully respecting the general principles and philosophy of the balancing test. Furthermore it needs to be stressed that the existing State aid tool box already provides a good basis for the Member States' response to the crisis along the lines in the European recovery plan, in particular as regards the focus on smart investments.

39. A key challenge will now be to secure the return to viability of the financial sector and the phasing out of State support in the context of an overall coordinated exit strategy. In this context, it will be crucial to develop a coordinated approach, which takes account of financial stability and individual Member States' circumstances and provides adequate incentives for financial institutions to cease to depend on public financial support.

5. Some statistics

40. Total State Aid granted by Member States¹⁶ stood at € 279.6 billion in 2008 or 2.2 % of the EU Gross Domestic Product (GDP). Aid measures implemented by Member States in response to the financial crisis ("crisis aid") amounted to € 212.2 billion or 1.7% of GDP.

15. Official Journal C 16, 22.1.2009, p. 1.

16. The total covers aid to manufacturing, services, coal, agriculture, fisheries and part of the transport sector but excludes aid to the railway sector, aid for compensation for services of general economic interest due to

41. When excluding crisis aid, total State aid amounted to € 67 billion in 2008 or 0.54% of GDP. Almost € 53 billion or 0.42 % of GDP were directed towards industry and services (of which € 2.7 billion to the coal sector), while aid to agriculture amounted to about € 11.8 billion, aid to transport (with the exception of railways¹⁷) to € 2.4 billion and aid to fisheries to € 0.34 billion.

42. During the more favourable economic climate, there was a downward trend of State aid for industry and services from € 55 billion (or 0.5 % of GDP) in the period 2002-2004 to € 50 billion (or 0.4 % of GDP) in the period 2005 – 2007, a marked decrease from rates of around 2% in the 1980s and 1% in the 1990s. In 2008, it slightly increased by 0.04%.

43. The overall EU share of aid earmarked for horizontal objectives of common interest increased from 74 % in 2003-2005 to 85 % in 2006-2008. Taken together, the three most frequently used horizontal objectives in 2008 were: regional development (€ 14 billion) environmental aid (€ 13 billion), aid for R&D (€ 9 billion) account for 66% of total aid to industry and services. In comparison, aid for rescue and restructuring accounted in 2008 for about 2 % (0.6billion) of total State aid to industry and services.

6. Conclusion

44. The EU State aid control policy has played an essential role in the preservation of competition and free trade within the single market and in the promotion of the competitiveness of the EU economy.

45. Of course, the effectiveness of the European Commission's control of State aid granted by Member States is made easier by the supranational nature of the European Union: EU law has superiority over national law, and Commission's decisions are binding on Member States. In addition, the European Commission is independent from the national governments, and as a result, it does not hesitate to order recovery of unlawfully granted State aid.

46. This, however, does not mean that State aid control should be the monopoly of institutions like the European Commission. There are examples which show that such a control can be exercised at a horizontal level, within a national framework. Thus, the candidate countries that aspire to become members of the EU must set up some form of State aid control a few years before they join the Union. As a result, they entrust an authority, usually their competition agencies, with the task of reviewing the aid granted by the different levels of their public authorities. This system is generally effective and ensures that these countries' companies are already used to the application of the strict EU State aid rules before they become

47. Therefore, and to conclude, State aid control is an option which can usefully and realistically be considered by other States, outside the EU.

the lack of comparable data. See Autumn Scoreboard 2009 update: COM(2009) 661, 07.12.2009 and Commission Staff working document "Facts and figures on State aid in the EU Member States", SEC (2009) 1683, 07.12.2009.

17. A large amount of public financing for railways is not notified to the Commission, either because the financing, due to the lack of liberalisation of the sector, is not deemed by Member States to constitute State aid within the meaning of Article 87(1) of the EC Treaty, or because it is exempted from notification in accordance with Regulations 1191/69 and 1192/69. Member States are however required to report to the Commission overall public expenditure to this sector.