

COMMUNICATION FROM THE COMMISSION

Temporary framework for State aid measures to support access to finance in the current financial and economic crisis

1. THE FINANCIAL CRISIS, ITS IMPACT ON THE REAL ECONOMY AND THE NEED FOR TEMPORARY MEASURES

1.1. The financial crisis and its impact on the real economy

On 26 November 2008 the Commission adopted the Communication “A European Economic Recovery Plan”¹ to drive Europe’s recovery from the current financial crisis. The Recovery Plan is based on two mutually reinforcing main elements. Firstly, short-term measures to boost demand, save jobs and help restore confidence. Secondly, “smart investment” to yield higher growth and sustainable prosperity in the longer term. The Recovery Plan will intensify and accelerate reforms already underway under the Lisbon Growth and Jobs Strategy.

In this context, the challenge for the Community is avoiding public intervention which would undermine objective of less and better targeted State aid. Nevertheless, under certain conditions, there is a need for new temporary State aid.

The Plan also includes further initiatives to apply State aid rules in a way that achieves maximum flexibility for tackling the crisis while maintaining a level playing field and avoiding undue restrictions of competition. This Communication gives details of a number of additional temporary openings for Member States to grant State aid.

First, the financial crisis has a hard impact on the banking sector in the EU. The Council has stressed that, although public intervention has to be decided at national level, this needs to be done within a coordinated framework and on the basis of a number of common EU principles². The Commission reacted immediately with various measures³. Sufficient and affordable access to finance is a precondition for investment, growth and job creation by the private sector. Member States need to use the leverage they have acquired as a result of providing substantial financial support to the banking sector to ensure that this support does not lead merely to an improvement in the financial situation of the banks without any benefit to the economy at large. Support for the financial sector should therefore be well targeted to guarantee that banks resume their normal lending activities. The Commission will take this into account when reviewing State aid to banks.

While the situation on financial markets appears to be improving, the full impact of the financial crisis on the real economy is now being felt. A very serious downturn is affecting the wider economy and hitting households, businesses and jobs. In particular, as a consequence of the crisis on financial markets, banks are deleveraging and becoming much more risk-averse

¹ Communication from the Commission to the European Council, COM(2008) 800.

² Conclusions of the ECOFIN Council of 7 October 2008.

³ Adoption of the Communication on 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) and of a number of decisions authorising rescue aid to financial institutions.

than in previous years, leading to a credit squeeze. This financial crisis could trigger credit rationing, a drop in demand and recession.

Such difficulties could affect not only weak companies without solvency buffers, but also healthy companies which will find themselves facing a sudden shortage or even unavailability of credit. This will be particularly true for SMEs, which in any event face greater difficulties with access to finance than larger companies. This situation could not only seriously affect the economic situation of many healthy companies and their employees in the short and medium term but also have longer-lasting negative effects since all EU investments in the future – in particular, towards sustainable growth and other objectives of the Lisbon Strategy – could be delayed or even abandoned.

1.2. The need for close European coordination of national aid measures

In the current financial situation, Member States could be tempted to go it alone and, in particular, to wage a subsidy race to support their companies. Past experience shows that individual action of this kind cannot be effective and could seriously damage the internal market. When granting support, taking fully into consideration the current specific economic situation, it is crucial to ensure a level playing field for European companies and to avoid Member States engaging in subsidy races which would be unsustainable and detrimental to the EU as a whole. Competition policy is there to ensure this.

1.3. The need for temporary State aid measures

While State aid is no miracle cure to the current difficulties, well targeted public support for companies could be a helpful component in the overall effort both to unblock lending to companies and to encourage continued investment in a low-carbon future.

The temporary additional measures provided for in this Communication pursue two objectives: First, in the light of the exceptional and transitory financing problems linked to the banking crisis, to unblock bank lending to companies and thereby guarantee continuity in their access to finance. As borne out by the recently adopted “Small Business Act” for Europe⁴, SMEs are particularly important for the whole economy in Europe and improving their financial situation will also have positive effects for large companies, thereby supporting overall economic growth and modernisation in the longer term.

The second objective is to encourage companies to continue investing in the future, in particular in a sustainable growth economy. There could indeed possibly be dramatic consequences if, as a result of the current crisis, the significant progress that has been achieved in the environmental field were to be halted or even reversed. For this reason, it is necessary to provide temporary support to companies for investing in environmental projects (which could, *inter alia*, give a technological edge to EU industry), thereby combining urgent and necessary financial support with long-term benefits for Europe.

This Communication first recalls the manifold opportunities for public support which are already at the disposal of Member States under existing State aid rules, before setting out additional State aid measures that Member States may grant temporarily in order to remedy

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “Think Small First” – A “Small Business Act” for Europe, of 25 June 2008.

the difficulties which some companies are currently encountering with access to finance and to promote investment pursuing environmental objectives.

The Commission considers that the proposed aid instruments are the most appropriate ones to achieve the above mentioned objectives.

2. GENERAL ECONOMIC POLICY MEASURES

On 26 November 2008, the Commission adopted its **European Economic Recovery Plan** in response to the current economic situation. Given the scale of the crisis, the EU needs a coordinated approach, big enough and bold enough to restore consumer and business confidence.

The strategic aims of the Recovery Plan are to:

- swiftly stimulate demand and boost consumer confidence;
- lessen the human cost of the economic downturn and its impact on the most vulnerable. Many workers and their families are or will be hit by the crisis. Action can be taken to help stem the loss of jobs and then to help people return rapidly to the labour market, rather than face long-term unemployment;
- help Europe to prepare to capitalise when growth returns, so that the European economy is in tune with the demands for competitiveness and sustainability and the needs of the future, as outlined in the Lisbon Strategy for Growth and Jobs. That means supporting innovation, building a knowledge economy and speeding up the shift towards a low-carbon and resource-efficient economy.

To achieve these objectives, Member States already have at their disposal a number of instruments which are not considered State aid. For instance, some companies may be having even more acute difficulties with access to finance than others, thereby delaying or even scuppering the financing necessary for their growth and for seeing through investments envisaged. For this purpose, Member States could adopt a series of general policy measures, applicable to all companies on their territories and, consequently, falling outside the State aid rules, with the aim of temporarily alleviating financing problems in the short and medium term. For example, payment deadlines for social security and similar charges, or even taxes could be extended or measures for employees could be introduced. If such measures are open to all undertakings, in principle they do not constitute State aid.

Member States may also grant financial support directly to consumers, for instance for scrapping old products and/or buying green products. If such aid is granted without discrimination based on the origin of the product, it raises no difficulties as State aid.

Moreover, general EU programmes, like the Competitiveness and Innovation Programme and the Research Framework Programme, may be used to best effect to deliver support to SMEs, but also to large undertakings. This is fully in line with other European initiatives, such as the European Investment Bank's decision to mobilise EUR 30 billion to support European SMEs and its commitment to step up its ability to intervene in infrastructure projects.

3. STATE AID POSSIBLE UNDER EXISTING INSTRUMENTS

Over the last few years, the Commission has significantly modernised the State aid rules in order to encourage Member States to target public support better on sustainable investments, thus contributing to the Lisbon Strategy for growth, jobs and competitiveness. In this context, particular emphasis has been given to SMEs, accompanied by more openings for granting State aid. In addition, the State aid rules have been greatly simplified and streamlined by the recently adopted General Block Exemption Regulation which now offers Member States a wide panoply of aid measures with minimum administrative burden. In the current economic situation, the following existing State aid instruments are of particular importance:

The new *de minimis* Regulation⁵, adopted in December 2006, specifies that support measures worth up to EUR 200 000 per company over any three-year period do not constitute State aid within the meaning of the Treaty. The same Regulation also states that guarantees of up to EUR 1.5 million do not exceed the above-mentioned *de minimis* threshold and therefore do not constitute aid either. Consequently, Member States can grant such guarantees without calculation of the corresponding aid equivalent and without administrative burdens.

The above-mentioned **General Block Exemption Regulation**⁶ (GBER), adopted in August 2008, forms a central piece of the State aid rules by simplifying the State aid procedure for certain important aid measures and fostering redirection of State aid to priority Community objectives. All previously existing block exemptions, along with new areas (innovation, environment, research and development for large companies and risk capital measures for SMEs), have been brought under a single instrument. In all the cases covered by the GBER, Member States can grant aid without prior notification to the Commission. Therefore, the speed of the process lies fully in the hands of Member States. The GBER is **particularly important for SMEs**, in that it provides for special rules on investment and employment aid exclusively for SMEs. In addition, all the 26 measures covered are open to SMEs, allowing Member States to accompany SMEs during the different stages in their development, assisting them in areas ranging from access to finance to research and development, innovation, training, employment, environmental measures, etc.

New **Community guidelines on State aid for environmental protection**⁷ were adopted as part of the Energy and Climate Change Package at the beginning of this year. Under these guidelines, Member States may grant State aid, *inter alia*, for the following purposes:

- Aid for companies which improve their environmental performance beyond Community standards, or in the absence of Community standards, of up to 70% of the extra investment costs (up to 80% in the field of eco-innovation) for small undertakings and of up to 100% of the extra investment costs if the aid is granted following a genuinely competitive bidding process, even for large companies. Aid for early adaptation to future Community standards and aid for environmental studies is also allowed.
- In the field of renewable energies and cogeneration, Member States may grant operating aid to cover all extra production costs.

⁵ Official Journal L 379, 28.12.2006.

⁶ Official Journal L 241, 9.8.2008, pp. 3-47.

⁷ Official Journal C 82, 1.4.2008, p. 1.

- To attain environmental targets for energy saving and for reductions in greenhouse gas emissions, Member States may grant aid enabling undertakings to achieve energy savings and aid for renewable energy sources and cogeneration of up to 80% of the extra investment costs for small undertakings and of up to 100% of the extra investment costs if the aid is granted following a genuinely competitive bidding process.

In December 2006, the Commission adopted a new **Community framework for State aid for research and development and innovation**⁸. This text contains new provisions on innovation, specially targeted at SMEs and also corresponding to better targeting of aid on job and growth creation along the lines set out in the Lisbon Agenda. In particular, the following could be implemented:

- aid for R&D projects, in particular aid for fundamental research, of up to 100% of the eligible costs and aid for industrial research of up to 80% for small enterprises;
- aid for young innovative enterprises of up to EUR 1 million and even more in assisted regions, aid for innovation clusters, aid for innovation advisory services and aid for innovation support services;
- aid for the loan of highly qualified personnel, aid for technical feasibility studies, aid for process and organisational innovation in services and aid for industrial property rights costs for SMEs.

Training is another key element for competitiveness. It is critically important to maintain investment in training, even at a time of rising unemployment, in order to develop new skills. Under the new GBER, Member States may grant both general and specific training aid to companies totalling up to 80% of the eligible costs.

In 2008, the Commission adopted a new **Notice on State aid in the form of guarantees**⁹, which specifies the conditions under which public guarantees for **loans** do not constitute State aid. In accordance with this Notice, guarantees are not considered State aid, in particular, when a market price is paid for them. Besides clarifying the conditions deciding whether or not aid in the form of guarantees is present, the new Notice also introduces, for the first time, **specific safe-harbour premiums for SMEs**, allowing easier but safe use of guarantees in order to foster the financing of SMEs.

New **Community guidelines on State aid to promote risk capital**¹⁰ were adopted by the Commission in July 2006. These are aimed at innovative and fast-growing SMEs – a key focus of the Lisbon Strategy. The Commission put in place a new safe-harbour threshold of EUR 1.5 million per target SME, a 50% increase. Beneath this ceiling the Commission accepts that, as a principle, alternative means of funding from financial markets are lacking (i.e. that a market failure exists). In addition, aid for risk capital has been included in the GBER.

⁸ Official Journal C 323, 30.12.2006, p. 1.

⁹ Official Journal C 155, 20.6.2008.

¹⁰ Official Journal C 194, 18.8.2006, pp. 2-22.

In **disadvantaged regions**, Member States can grant **investment aid** for setting up a new establishment, extending an existing establishment or diversifying into new products under the **regional aid guidelines**¹¹ applicable since January 2007.

These new regional aid guidelines also introduce a **new form of aid** to provide incentives to support **business start-ups** and the early-stage development of small enterprises in assisted areas.

Under the existing Community guidelines on **State aid for rescuing and restructuring firms in difficulty**¹², Member States can also grant aid to companies requiring public support. For this purpose, Member States may notify rescue and/or restructuring aid schemes for SMEs.

On the basis of the existing State aid possible, the Commission has already authorised a large number of schemes that Member States may use to respond to the current financial situation.

4. APPLICABILITY OF ARTICLE 87(3)(B)

4.1. General principles

Article 87(3)(b) of the Treaty states that the Commission may declare compatible with the common market aid “to remedy a serious disturbance in the economy of a Member State”. In this context, the Court of First Instance has ruled that the disturbance must affect the whole of the economy of the Member State concerned, and not merely that of one of its regions or parts of its territory. This, moreover, is in line with the need to interpret strictly any derogating provision such as Article 87(3)(b) of the Treaty¹³.

This strict interpretation has been consistently applied by the Commission¹⁴ in its decision-making.

In this context, the Commission considers that, beyond emergency support for the financial system, the current global crisis requires exceptional policy responses.

All Member States will be affected by this crisis, albeit in different ways and to different degrees, and it is likely that unemployment will increase, demand fall and fiscal positions deteriorate.

In the light of the seriousness of the current financial crisis and its impact on the overall economy of the Member States, the Commission considers that certain categories of State aid are justified, for a limited period, to remedy these difficulties and that they may be declared compatible with the common market on the basis of Article 87(3)(b).

¹¹ Official Journal C 54, 4.3.2006, pp. 13-45.

¹² Official Journal C 244, 1.10.2004, p. 2.

¹³ Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and Volkswagen AG v Commission* [1999] ECR II-3663, paragraph 167.

¹⁴ 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) and Commission Decision of 4 June 2008 in Case C 9/08 *SachsenLB*, not yet published.

4.2. Compatible limited amount of aid

4.2.1. Existing framework

Article 2 of the Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid¹⁵, states that:

"Aid measures shall be deemed not to meet all the criteria of Article 87(1) of the Treaty and shall therefore be exempt from the notification requirement of Article 88(3) of the Treaty, if they fulfil the conditions laid down in paragraphs 2 to 5 of his Article.

The total *de minimis* aid granted to any one undertaking shall not exceed EUR 200 000 over any period of three fiscal years. The total *de minimis* aid granted to any one undertaking active in the road transport sector shall not exceed EUR 100 000 over any period of three fiscal years. These ceilings shall apply irrespective of the form of the *de minimis* aid or the objective pursued and regardless of whether the aid granted by the Member State is financed entirely or partly by resources of Community origin. The period shall be determined by reference to the fiscal years used by the undertaking in the Member State concerned."

4.2.2. New measure

The financial crisis is affecting not only structurally weak companies but also companies which will find themselves facing a sudden shortage or even unavailability of credit. An improvement on the financial situation of these companies will have positive effects for the whole European economy.

Therefore, in view of the current economic situation, it is considered necessary to temporally allow the granting of a limited amount of aid that will nevertheless fall within the scope of Article 87 (1) of the Treaty, since it exceeds the threshold indicated in *de minimis* Regulation.

The Commission will consider such State aid compatible with the common market on the basis of Article 87(3)(b) of the Treaty, provided all the following conditions are met:

- (a) The aid shall not exceed a cash grant of EUR 500,000 per undertaking. All figures used shall be gross, that is, before any deduction of tax or other charge. Where aid is awarded in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.
- (b) The present measure shall only be applicable to aid schemes.
- (c) This measure only applies to firms which were not in difficulty¹⁶ on 1 July 2008. It may apply to firms that were not in difficulty at that date but entered in difficulty thereafter as a result of the global financial and economic crisis.
- (d) Firms active in the fisheries sector are not eligible for this measure.

¹⁵ Official Journal L 379, 28.12.2006

¹⁶ Firm in difficulty as defined as follows:

- For large companies, point 2.1 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty, Official Journal C 244, 1.10.2004, pp. 2-17.
- For SMEs, article 1 (7) on the definition of the 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 241, 9.08.2008.

- (e) This measure shall not apply to export aid or aid favouring domestic over imported products.
- (f) The aid may be granted until 31.12.2010.
- (g) Prior to granting the aid, the Member State shall obtain a declaration from the undertaking concerned, in written or electronic form, about any other de minimis aid and aid relating to this paragraph, received during the current fiscal year. The Member State shall only grant the aid foreseen in this paragraph after having checked that this will not raise the total amount of aid received by the undertaking during the period 01.01.2008 to 31.12.2010, to a level above the ceiling of EUR 500,000.
- (h) This aid measure shall not apply to undertakings active in the primary production of agricultural products¹⁷. It shall apply to undertakings active in the processing and marketing of agricultural products (as defined in Article 2.3 and 2.4 of Regulation (EC) 1857/2006) unless the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned, or the aid is conditional on being partly or entirely passed on to primary producers.

4.3. Aid in the form of guarantees

4.3.1. Existing framework

The Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees¹⁸ aims at giving Member States detailed guidance about the principles on which the Commission intends to base its interpretation of Articles 87 and 88 and application thereof to State guarantees. In particular, the Notice specifies the conditions under which State aid can be considered not to be present. The above-mentioned text provides no compatibility criteria for assessment of guarantees.

4.3.2. New measure

In order further to encourage access to finance and to reduce the current high risk aversion on the part of banks, the Commission finds that subsidised loan guarantees for a limited period can be an appropriate and well targeted solution to give firms easier access to finance.

The Commission will consider such State aid compatible with the common market on the basis of Article 87(3)(b) of the Treaty, provided all the following conditions are met:

- (a) For SMEs, Member States shall grant a reduction of up to 25% of the annual premium to be paid for new guarantees granted in accordance with the safe-harbour provisions of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees¹⁹.

¹⁷ As defined in Article 2.2 of Regulation (EC) 1857/2006

¹⁸ Official Journal C 155, 20.6.2008, page 10 and corrigendum in Official Journal C 244, 25.09.2008, page 32.

¹⁹ This includes the possibility that for SMEs which do not have a credit history or a rating based on a balance sheet approach, such as certain special purpose companies or start-up companies, Member States grant a reduction up to 25% on the specific safe-harbour premium set at 3,8 % in the Notice.

- (b) For large companies, Member States shall also grant a reduction of up to 15% of the annual premium for new guarantees calculated on the basis of the same safe-harbour provisions.
- (c) When the aid element in guarantee schemes is calculated through methodologies already accepted by the Commission following their notification under a regulation adopted by the Commission in the field of State aid²⁰, Member States can also grant a similar reduction of up to 25% of the annual premium to be paid for new guarantees for SMEs and up to 15% for large companies.
- (d) The maximum loan must not exceed the total annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the company site but formally in the payroll of subcontractors) for 2008. In the case of companies created after 01.01.2008, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation.
- (e) Guarantees shall be granted until 31 December 2010.
- (f) The guarantee may not exceed 90% of the loan.
- (g) The guarantee may relate to both investment and working capital loans.
- (h) The reduction of the guarantee premium shall be applied during a period of maximum 2 years following the granting of the guarantee.
- (i) This measure only applies to firms which were not in difficulties²¹ on 1 July 2008. It may apply to firms that were not in difficulty at that date but entered in difficulty thereafter as a result of the global financial and economic crisis.

4.4. Aid in the form of subsidised interest rate

4.4.1. Existing framework

The Commission Communication on the revision of the method for setting the reference and discount rates²² establishes a method for calculation of the reference rate, based on the one-year inter-bank offered rate (IBOR) increased by margins ranging from 60 to 1000 base points, depending on the creditworthiness of the company and the level of collateral offered. If Member States apply this method, the interest rate does not contain State aid.

²⁰ Such as 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) (OJ L 214, 9.8.2008, p. 3) or 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 (OJ L 302, 1.11.2006, p. 29.) or Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001 (OJ L 358, 16.12.2006, p. 3.), provided that the approved methodology explicitly addresses the type of guarantees and the type of underlying transactions at stake.

²¹ Firm in difficulty as defined as follows:
 - For large companies, point 2.1 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty, Official Journal C 244, 1.10.2004, pp. 2-17.
 - For SMEs, article 1 (7) on the definition of the 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 241, 9.08.2008.

²² Official Journal C 14, 19.1.2008, pp. 6-9.

4.4.2. *New measure*

Companies may have difficulties in finding finance in the current market circumstances. Therefore the Commission accepts that public or private loans are granted at an interest rate which is at least equal to the central bank overnight rate plus a premium equal to the difference between the average one year interbank rate and the average of the central bank overnight rate over the period 1/1/2007 to 30/06/2008, plus the credit risk premium corresponding to the risk profile of the recipient, as stipulated by the Commission communication on the method for setting the reference and discount rate.

The aid element contained in the difference between this interest rate and the reference rate defined by the Commission Communication on the revision of the method for setting the reference and discount rates will be considered, on a temporary basis, to be compatible with the Treaty on the basis of Article 87(3)(b), provided the following conditions are met:

- (a) This method shall apply to all contracts concluded until 31 December 2010. It may cover loans of any duration. The reduced interest rates may be applied for interest payments before 31 December 2012²³. An interest rate at least equal to the rate defined in the reference and discount rate Communication²⁴ shall apply to loans after that date.
- (b) This measure only applies to firms which were not in difficulties²⁵ on 1 July 2008. It may apply to firms that were not in difficulty at that date but entered in difficulty thereafter as a result of the global financial and economic crisis.

4.5. **Aid for the production of green products**

4.5.1. *Existing framework*

The Commission Communication on the revision of the method for setting the reference and discount rates²⁶ establishes a method for calculation of the reference rate, based on the one-year inter-bank offered rate (IBOR) increased by margins ranging from 60 to 1000 base points, depending on the creditworthiness of the company and the level of collateral offered. If Member States apply this method, the interest rate does not contain State aid.

4.5.2. *New measure*

Because of the current financial crisis, companies are also finding it more difficult to gain access to finance for production of more environmentally friendly products. Aid in the form of guarantees may not be sufficient to finance costly projects aiming at increasing environmental protection by adapting earlier to future standards not yet in force or by going beyond such standards.

²³ Member States who want to use this facility have to publish the daily overnight rates online and have to make them available to the Commission.

²⁴ Official Journal C 14, 19.1.2008, pp.6-9

²⁵ Firm in difficulty as defined as follows:

- For large companies, point 2.1 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty, Official Journal C 244, 1.10.2004, pp. 2-17.

- For SMEs, article 1 (7) on the definition of the 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 241, 9.08.2008.

²⁶ Official Journal C 14, 19.1.2008, pp. 6–9.

The Commission considers that environmental goals should remain a priority despite the financial crisis. Production of more environmentally friendly, including energy-efficient, products, is in Europe's common interest and it is important that the financial crisis should not impede this objective.

Therefore, additional measures in the form of subsidised loans could encourage production of "green products". However, subsidised loans may cause serious distortions of competition and should be strictly limited to specific situations and targeted investment.

The Commission considers that, for a limited period, Member States should be given the possibility of granting aid in the form of an interest-rate reduction.

On the basis of Article 87(3)(b) of the Treaty, the Commission will consider compatible with the common market any interest-rate subsidy for investment loans that meets all the following conditions:

- (a) The aid must relate to investment loans for financing projects consisting of production of new products which significantly improve environmental protection.
- (b) The aid must be necessary for launching a new project. In the case of existing projects, aid may be granted if it becomes necessary, due to the new economic situation, in order to pursue the project.
- (c) The aid may be granted only for projects consisting of production of products involving early adaptation to or going beyond future Community product standards²⁷ which increase the level of environmental protection and are not yet in force.
- (d) For products involving early adaptation to or going beyond future Community environmental standards, the investment must start before 31 December 2010 with the objective of putting the product on the market at least two years before the standard enters into force.
- (e) Loans may cover the costs of investment in tangible and intangible assets²⁸ with the exception of loans for investments which account for production capacities of more than 3% on product markets²⁹ where the average annual growth rate, over the last five years before the start of the investment, of the apparent consumption on the EEA market, measured in value data, remained below the average annual growth rate of the European Economic Area's GDP over the same five year reference period.
- (f) Loans must be granted until 31 December 2010.
- (g) For calculation of the aid, the starting point should be the individual rate of the beneficiary as calculated on the basis of the methodology contained in point 4.4.2 of this Communication. On the basis of this methodology, the company may benefit from an interest-rate reduction of:

- 25% for large companies;

²⁷ Future Community product standard means a mandatory Community standard setting environmental levels to be attained for products sold in the European Union which has been adopted but is not yet in force.

²⁸ As defined in point 70 of the Community guidelines on State aid for environmental protection. Official Journal C 82, 1.4.2008, p. 1.

²⁹ Defined according to point 69 of the Regional aid guidelines, Official Journal C54, 4.3.2006, pp.13-44

- 50% for SMEs.
- (h) The subsidised interest rate shall apply during a period of maximum 2 years following the granting of loan.
- (i) The reduction in the interest rate may be applied to loans granted by the State or public finance institutions and to loans granted by private financial institutions. Non-discrimination between public and private entities should be ensured.
- (j) This measure only applies to firms which were not in difficulties³⁰ on 1 July 2008. It may apply to firms that were not in difficulty at that date but entered in difficulty thereafter as a result of the global financial and economic crisis.
- (k) Member States must ensure that the aid is not directly or indirectly transferred to financial entities.

4.6. Risk capital measures

4.6.1. Existing framework

The Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises³¹ set out the conditions under which State aid supporting risk capital investment may be considered compatible with the common market in accordance with Article 87(3) of the Treaty.

Based on the experience gained from applying the Communication on State aid to promote risk capital, the Commission considers that there is no general risk capital market failure in the Community. It does, however, accept that there are market gaps for some types of investment at certain stages of enterprises' development which are the result of imperfect matching of supply of and demand for risk capital and can generally be described as an equity gap.

Point 4.3 of the above-mentioned guidelines states that for tranches of finance not exceeding EUR 1.5 million per target SME over each period of twelve months, under certain conditions market failure is presumed and does not need to be demonstrated by Member States.

Point 5.1(a) of the same guidelines states that *“The Commission is aware of the constant fluctuation of the risk capital market and of the equity gap over time, as well as of the different degree by which enterprises are affected by the market failure depending on their size, on their stage of business development, and on their economic sector. Therefore, the Commission is prepared to consider declaring risk capital measures providing for investment tranches exceeding the threshold of EUR 1.5 million per enterprise per year compatible with the common market, provided the necessary evidence of the market failure is submitted”*.

³⁰ Firm in difficulty as defined as follows:

- For large companies, point 2.1 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty, Official Journal C 244, 1.10.2004, pp. 2-17.
- For SMEs, article 1 (7) on the definition of the 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 241, 9.08.2008.

³¹ Official Journal C 194, 18.8.2006, pp. 2-22.

4.6.2. Temporary derogation from the existing rules

The turmoil on the financial market has had a negative effect on the risk capital market for early growth SMEs by tightening the availability of risk capital. Due to the currently greatly increased risk perception associated with risk capital linked with uncertainties resulting from possibly lower yield expectations, investors are currently tending to invest in safer assets the risks of which are easier to assess as compared to the ones associated with risk capital investments. Furthermore the illiquid nature of risk capital investments has shown to currently be a further disincentive for investors. There is evidence that the resulting restricted liquidity under current market circumstances has widened the equity gap for SMEs. It is therefore considered appropriate to temporarily raise the safe-harbour threshold for risk capital investments to meet this currently increased equity gap and to temporarily lower the percentage of minimum private investor participation to 30% also in the case of measures targeting SMEs in non assisted areas.

Accordingly, on the basis of Article 87(3)(b), temporary derogations (until 31 December 2010) are granted from the Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises. The following points shall read:

- (a) Point 4.3.1: "The risk capital measure must provide for tranches of finance, whether wholly or partly financed through State aid, not exceeding EUR 2.5 million per target SME over each period of twelve months", until 31 December 2010.
- (b) Point 4.3.4: "At least 30% of the funding of the investments made under the risk capital measure (in and outside assisted areas) must be provided by private investors", until 31 December 2010.
- (c) Other conditions laid down in the guidelines on State aid to promote risk capital investments in small and medium-sized enterprises remain applicable.
- (d) The derogations do not apply to risk capital measures covered by Commission Regulation No 800/2008 of 6 August 2008³².
- (e) Member States may adapt approved schemes to be in line with points (a) and (b).

4.7. Cumulation

The aid ceilings fixed under this Communication shall apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the Community.

The temporary aid measures contained in this Communication may not be cumulated with *de minimis* aid³³ for the same eligible costs. If the undertaking has already received *de minimis* aid prior to the entry into force of this temporary framework, the sum of the aid received under the measures covered by points 4.2 and the *de minimis* aid received shall not exceed EUR 500,000 between 01.01.2008 until 31.12.2010. The amount of *de minimis* aid received after 01.01.2008 shall be deducted from the amount of compatible aid granted for the same purpose under points 4.3, 4.4, 4.5 or 4.6.

³² Official Journal L 214, 9.8.2008, p. 3.

³³ Official Journal L 379, 28.12.2006.

The temporary aid measures may be cumulated with other compatible aid or with other forms of Community financing provided that the maximum aid intensities indicated in the relevant Guidelines or Block exemptions Regulations are respected.

5. SIMPLIFICATION MEASURES

5.1. Short-term export credit insurance

The Communication from the Commission to Member States pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance³⁴ stipulates that marketable risks cannot be covered by export-credit insurance with the support of Member States. Marketable risks are commercial and political risks on public and non-public debtors established in countries listed in the Annex to the Communication, with a maximum risk period of less than two years. Risks concerning debtors established in the Member States and eight further OECD members are considered marketable.

The Commission considers that, as a consequence of the current financial crisis, a lack of insurance or reinsurance capacity does not exist in every Member State, but it cannot be excluded that, in certain countries, cover for marketable risks could be temporarily unavailable.

Point 4.4 of the above-mentioned Communication states that: *“In such circumstances, those temporarily non-marketable risks may be taken on to the account of a public or publicly supported export-credit insurer for non-marketable risks insured for the account of or with the guarantee of the State. The insurer should, as far as possible, align its premium rates for such risks with the rates charged elsewhere by private export-credit insurers for the type of risk in question.*

Any Member State intending to use that escape clause should immediately notify the Commission of its draft decision. That notification should contain a market report demonstrating the unavailability of cover for the risks in the private insurance market by producing evidence thereof from two large, well-known international private export-credit insurers as well as a national credit insurer, thus justifying the use of the escape clause. It should, moreover, contain a description of the conditions which the public or publicly supported export-credit insurer intends to apply in respect of such risks.

Within two months of the receipt of such notification, the Commission will examine whether the use of the escape clause is in conformity with the above conditions and compatible with the Treaty.

If the Commission finds that the conditions for the use of the escape clause are fulfilled, its decision on compatibility is limited to two years from the date of the decision, provided that the market conditions justifying the use of the escape clause do not change during that period.

Furthermore, the Commission may, in consultation with the other Member States, revise the conditions for the use of the escape clause; it may also decide to discontinue it or replace it with another appropriate system.”

³⁴ Official Journal C 281, 17.9.1997, p. 4. Amended by 2001 Communication, OJ C 217, 2.8.2001, p. 2; 2004 Communication, OJ C 307, 11.12.2004, p. 12; and 2005 Communication, OJ C 325, 22.12.2005, p. 22.

These provisions, applicable to large companies and SMEs, are an appropriate instrument in the current economic situation if Member States consider that cover is unavailable on the private insurance market for certain marketable credit risks and/or for certain buyers of risk protection..

In this context, in order to speed up the procedure for Member States, the Commission considers that, until 31 December 2010, Member States may demonstrate the lack of market by providing sufficient evidence of the unavailability of cover for the risk in the private insurance market. Use of the escape clause shall in any case be considered justified if:

- either a large well-known international private export credits insurer and a national credit insurer produce evidence of the unavailability of such cover or
- at least four well-established exporters in the Member State produce evidence of refusal from insurers for specific operations.

The Commission, in close cooperation with the Member States concerned, will ensure swift adoption of decisions concerning the application of the "escape clause".

5.2. Simplification of procedures

State aid measures referred to in this Communication must be notified to the Commission. Beyond the substantive measures set out in this Communication, the Commission is committed to ensuring the swift authorisation of aid measures that address the current crisis in accordance with this Communication provided close cooperation and full information is provided by the Member States concerned.

This commitment will complement the on-going process, whereby the Commission is currently drafting a number of improvements to its general State aid procedures, particularly to allow quicker and more effective decision-making in close cooperation with Member States. This general simplification package should, in particular, enshrine joint commitments by the Commission and Member States to more streamlined and predictable procedures at each step of a State aid investigation and allow faster approval of straightforward cases.

6. MONITORING AND REPORTING

Regulation (EC) No 659/1999 and Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty require Member States to submit annual reports to the Commission.

By 31 July 2009, Member States should provide the Commission with a list of schemes put in place on the basis of the present Communication.

Member States must ensure that detailed records regarding the granting of aid covered by this Communication are maintained. Such records, which must contain all information necessary to establish that the necessary conditions have been observed, must be maintained for 10 years and be provided to the Commission upon request. In particular, Member States must have obtained information demonstrating that the aid beneficiaries for measures 4.2, 4.3, 4.4 and 4.5 were not companies in difficulty on 01/07/2008.

Beyond these requirements, a report on the measures put in place on the basis of this Communication should be provided by Member States by 31 October 2009. In particular, Member States should provide elements before 31/10/2009 indicating the need for the Commission to maintain the measures covered by this Communication after 31/12/2009, as well as detailed information on the environmental benefits of the subsidised loans. Member States shall provide this information for any subsequent year that the current framework is valid, before 31/10 of each year.

The Commission may request additional information regarding the aid granted, to check whether the conditions laid down in the Commission decision approving the aid measure have been met.

7. FINAL PROVISIONS

The Commission will apply this Communication from the date of its adoption. This Communication is justified by the current exceptional and transitory financing problems related to the banking crisis and will cease to be valid on 31 December 2010. After consulting Member States, the Commission may amend it before that date on the basis of important competition policy or economic considerations. Where this would be helpful, the Commission may also provide further clarifications of its approach to particular issues.

The Commission will apply the provisions of this Communication to all notified risk capital measures on which it must take a decision after the Communication is adopted, even if the measures were notified prior to publication of this Communication.

In accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid ("*consecutio legis*"), the Commission will apply the following in respect of non-notified aid:

- (a) this Communication, if the aid was granted after adoption of this Communication;
- (b) the guidelines applicable when the aid was granted in all other cases.

The Commission, in close cooperation with the Member States concerned, will ensure swift adoption of decisions upon complete notification of measures covered by this document. Member States should inform the Commission of their intentions and notify plans to introduce such measures as early and comprehensively as possible.

The Commission wishes to recall that any procedural improvement depends entirely on submission of clear and complete notifications.