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STAFF PAPER
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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 IN THE REAL ECONOMY AND THE NECESSITY FOR TEMPORARY MEASURES

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

The Commission has adopted on 26 November 2008 the Communication "A European Economy 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 reinforce and accelerate reforms already underway under the Lisbon Growth and Jobs Strategy.

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. The present Communication sets out the details of a number of additional and temporary possibilities for Member States to grant State aid.

The financial crisis first impacted heavily on the EU banking sector. The Council stressed that, while public intervention has to be decided at national level, it needs to be made within a coordinated framework and on the basis of a number of EU common principles². The Commission reacted immediately with different measures³. Sufficient and affordable access to finance is a pre-condition for investment, growth and job creation by the private sector. Member States need to use the leverage they have through the provision of major financial support to the banking sector to ensure that this support does not lead to a merely improvement of the financial situation of the banks with no benefit to the economy at large. Support to the financial sector should therefore be well targeted so as to guarantee that banks resume their normal lending activities. The Commission will take this into account when reviewing State aid to banks.

Whilst the situation on financial markets appears to be improving, the impact of the financial crisis on the real economy is now fully being felt. All observers predict a very serious downturn affecting the wider economy, hitting households, businesses and jobs. In particular, it is almost certain that as a consequence of the crisis on financial markets, banks will start deleveraging and becoming much more risk averse than in previous years leading thereby to a credit squeeze. This financial crisis may provoke credit rationing, drop in demand and recession.

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

² Conclusions of the ECOFIN Council of 7.10.2008.

³ The adoption of the Communication on the application of State rules to measures taken in relation to financial institutions in the context of the current global financial crisis, OJ C 270/8, 25.10. 2008 and a number of decisions authorizing rescue aid to financial institutions.

Such difficulties may 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 more difficulties of access to finance than larger companies. Such situation may not only seriously affect the economic situation of many healthy companies and its employees in the short and medium term but also have longer lasting negative effects for the entire EU investments in the future – in particular towards a sustainable growth and other objectives of the Lisbon Strategy – may be delayed or even abandoned.

1.2. The need for close European co-ordination of national aid measures

In the current financial situation, Member States could be tempted to act individually and engage notably in subsidy war to support their companies. Past experiences show that such individual actions may not be effective and seriously damage the internal market. When granting such support, in full consideration of the current specific economic situation, it is crucial to ensure a level playing field for European companies and to avoid that Member States engage in subsidy races which would be non-sustainable and detrimental to the EU as a whole. Competition policy is there to ensure this.

1.3. The need for temporary State aid measures

Whilst State aid is no miracle cure to the current difficulties, well targeted public support to companies may constitute a helpful component in the overall effort to both unblock lending to companies and encouraging continued investment into a low-carbon future.

The temporary additional measures provided for in this Communication pursue two objectives: First, in light of the exceptional and transitory financing problems linked to the banking crisis, to unblock bank lending to companies and to thereby guarantee continuity in their access to finance. Indeed, as borne out by the recently adopted "Small Business Act" for Europe⁴, SME are of particular importance for the whole economy in Europe and improving their financial situation will also have positive effects for large companies, thus 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 towards a sustainable growth economy. The European Climate Change Action pursues promoting environmental sustainability and combating climate change while ensuring the competitiveness of European economies. Indeed, it would have possibly dramatic consequences, if as a result of the current crisis the significant progress that has been achieved in the environmental field would be halted or even reversed. For this reason, specific temporary support should be granted to companies for investing in environmental projects (which could *inter alia* ensure technological edge to the EU industry), thereby combining urgent and necessary financial support with long-term benefits for Europe.

The present Communication first recalls the manifold possibilities of 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 during a temporary period in

⁴ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - "Think Small First" - A "Small Business Act" for Europe, of 25.06.2008.

order to remedy the current difficulties encountered by certain companies as regards access to finance and to promote investments pursuing environmental objectives.

2. GENERAL ECONOMIC POLICY MEASURES

On 26 November 2008, the Commission has adopted its **European Economic Recovery Plan** response to the current economic situation. Given the scale of the crisis we are facing, the EU needs a co-ordinated 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 take advantage when growth returns so that the European economy is in tune with the demands of competitiveness, 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 reach these objectives, Member States have already at their disposal a number of instruments which do not constitute State aid. For instance, certain companies may currently encounter difficulties of access to finance even more acutely than other companies, thereby delaying or even scuppering the necessary financing for their growth and for development of envisaged investments. For this purpose, Member States could adopt a series of general policy measures, applicable to all companies on their respective territories and consequently falling outside the State aid rules, aiming at temporarily alleviating financing problems in the short an medium term. For example, payment deadlines could be extended with regard to social security and similar charges, or even taxes. If such measures are opened to all undertakings, in principle, they do not constitute State aid.

Member States may also grant financial supports directly to consumers, for instance for the scrapping of old products and/or to buy green products. Where such aid is granted without discrimination related to the origin of the product, it does not raise difficulties as regards State aid.

Moreover, general EU programmes, like the Competitiveness and Innovation Programme and the Research Framework Programme, may be used to best effect to bring 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 POSSIBILITIES UNDER EXISTING INSTRUMENTS

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

The new *De minimis Regulation*⁵ adopted in December 2006 specifies that support measures up to EUR 200 000 per company over any period of 3 years do not constitute State aid within the meaning of the Treaty. This Regulation also states that a guarantee up to EUR 1.5 million does not exceed the above-mentioned *de minimis* threshold and therefore thus does not constitute an aid either. Consequently, Member States can grant such guarantees without calculation of a correspondent aid equivalent and without administrative burden.

The above-mentioned **General block exemption Regulation**⁶ ("GBER"), adopted in August 2008, constitutes a central piece of State aid rules by simplifying the State aid procedure for certain important aid measures and fostering the redirection of State aid to Community priority objectives. All previously existing block exemptions as well as new areas (innovation, environment, research & development for large companies, risk capital measures for SME) have been brought into 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 that process is fully in the hands of Member States. The GBER is **particularly important for SMEs** in that it provides for special rules for investment and employment aid exclusively for SMEs. In addition, all of the 26 measures included are available to SMEs, allowing Member States to accompany SMEs during their different development stages, assisting them in the area of access to finance, research & development, innovation, training, employment, environment etc.

New **Guidelines for environmental protection**⁷ have been adopted in the context of the Energy and Climate Change package in the beginning of this year. Pursuant to these guidelines, Member States may grant State aid, *inter alia*, for the following purposes:

- Aid to companies which improve their environmental performance beyond Community standards or in their absence of up to 70% of the extra investment costs (up to 80% in the field of eco-innovation) for small undertakings and up to 100% of the extra investment costs if the aid is granted in a genuinely competitive bidding process and this even for large companies. Aid for early adaptation to future Community standards and aid for environmental studies are also possible.
- 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 of 28.12.2006

⁶ Official Journal L 214, 9.8.2008, pages 3-47

⁷ Official Journal C 82 of 01.04.2008, page 1.

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

The Commission has adopted in December 2006, a new **Framework on State aid in favour of research and development and innovation**⁸. This text contains new provisions on innovation, specially targeted at SMEs and which also correspond to a better targeting of aid towards job and growth creation along the line set up in the Lisbon agenda. In particular the following could be implemented:

- Aid for R&D projects which allows in particular aid for fundamental research up to 100% of eligible costs and for industrial research up to 80% for small enterprises.
- Aid for young innovative enterprises up to EUR 1 million and even more in assisted regions, aid for innovation clusters, aid for innovation advisory services and 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, aid for industrial property rights costs for SMEs.

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

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

New **guidelines on Risk Capital**¹⁰ were adopted by the Commission in July 2006. These guidelines 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 compared to the past situation. Within this ceiling the Commission accepts, as a principle, that 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 of 30.12.2006, p. 1

⁹ Official Journal C 155 of 20.06.2008

¹⁰ Official Journal C 194, 18.08.2006, pages 2-22

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

These new Regional aid guidelines introduce also 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 guidelines on **State aid for rescuing and restructuring firms in difficulty**¹², Member States can also grant aid to companies requiring public supports. For this purpose, Member States may notify rescue and/or restructuring aid schemes to SME.

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

Finally, additional State aid possibilities are available for specific sectors (notably, fisheries and agriculture).

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 as ruled that the disturbance in question 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 conformity with the need to interpret strictly a derogating provision such as Article 87(3)(b) of the Treaty.¹³

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

In this context, the Commission considers that beyond emergency support to 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 will fall, and fiscal positions will deteriorate.

¹¹ Official Journal C 54, 04.03.2006, pages 13-45.

¹² Official Journal C 244 of 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 *Norther Rock* (OJ C 43, 16.2.2008, p. 1), Commission Decision in Case NN 25/08 *Rescue aid to WestLB* (OJ C 189, 26.7.2008, p. 3), Commission Decision of 4 June 2008 in Case C 9/08 *SachsenLB*, not yet published.

In 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 of time, to remedy these difficulties and that they may be declared compatible with the common market on the basis of Article 87(3)(b) .

4.2. Aid in the form of guarantees

4.2.1. Existing framework

The Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees¹⁵, 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 their application to State guarantees. In particular, the notice specifies under which conditions the presence of State aid can be excluded. This text does not provide compatibility criteria for the assessment of guarantees.

4.2.2. New measure

In order to further encourage access to finance and to reduce the current high risk aversion on the part of banks, the Commission finds that subsidised loan guarantees during a limited period of time, can be an appropriate and well targeted solution to facilitate firm's 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 that all the following conditions are met:

- (a) For SMEs, Member States may grant a reduction up to (25%) of the annual premium to be paid for new guarantees granted in accordance with the safe-harbour of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees¹⁶.
- (b) For large companies, Member States may also grant for new guarantees a reduction up to (15%) of the annual premium calculated on the basis of the same safe-harbour.
- (c) The maximum loan amount cannot exceed the total annual wage bill of the beneficiary (including social charges) for 2008. In case of newly created company, the maximum loan amount cannot exceed the estimate annual wage bill for 2009.
- (d) The guarantee cannot exceed 80% of the loan.
- (e) The guarantee may relate to both investment and working capital loans.
- (f) The aid may be cumulated with all other compatible aid subject to respect of 25% own contribution rule for initial investment, but cannot be cumulated with other subsidized guarantees or with subsidized loans.

¹⁵ Official Journal C 155 of 20.06.2008

¹⁶ Official Journal C 155 of 20.06.2008

- (g) The reduction of the guarantee premium can only be applied for the annual premium to be paid by 31 December 2009.
- (h) Firms in difficulties¹⁷ are not eligible for this measure.

4.3. Aid in the form of subsidised loans

4.3.1. Existing framework

The Commission Communication on the revision of the method for setting the reference and discount rates¹⁸, establishes a methodology for the calculation of the reference rate based on one-year inter-bank offered rate (IBOR) increased by margins ranging from 60 to 1000 basis points, depending on the creditworthiness of the company and the level of collateral offered. When Member States apply this methodology, the interest rate does not contain State aid.

4.3.2. New measure

Due to the current financial crisis, companies are also having more difficulties to access finance for the production of more environmentally friendly products. Aid in the form of guarantees may not be sufficient to provide the financing of costly projects aiming at increasing the environmental protection by adapting earlier to future norms not yet in force or by going beyond these norms.

The Commission considers that the achievement of environmental goals should remain a priority despite the financial crisis. The production of more environmentally friendly products including energy efficient products is in the European common interest and it is important that the financial crisis does not impede this objective.

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

The Commission considers that for a limited period of time, Member States should have the possibility of granting aid in the form of interest rate reduction.

The Commission will consider compatible with the common market on the basis of Article 87(3)(b) of the Treaty, an interest rate subsidy for investment loans that fulfils all the following conditions:

- (a) Aid must relate to investment loans for the financing of projects consisting in the production of new products which improve significantly the environmental protection.
- (b) Aid must be necessary for the launching of a new project. In case of existing projects, aid may be granted if it becomes necessary, due to the new economic situation, to pursue the project.

¹⁷ According to the definition contained in the Community guidelines on State aid for rescuing and restructuring firms in difficulty. Official Journal C 244, 01.10.2004, pages 2-17

¹⁸ Official Journal C 14, 19.1.2008, p. 6-9

- (c) Aid can only be granted for projects consisting in the production of products involving early adaptation or going beyond future Community product standards¹⁹ which increase the level of environmental protection and are not yet in force.
- (d) For products involving the early adaptation or going beyond future environmental Community standards, the investment must start in 2009 with the objective of the production being put at the market at least two years before the entry into force of the standard.
- (e) Loans may cover the costs of investment in tangible and intangibles assets²⁰ without increasing the capacity of production.
- (f) Loans should be granted in 2009.
- (g) For the calculation of the aid, the departure point should be the interest rate that the company should pay in accordance with the provisions of the Commission Communication on the revision of the method for setting the reference and discount rate²¹. The company can benefit from a reduction of interest rate always calculated on the reference rate principles²² of:
 - (25%) for large companies
 - (50%) for SMEs
- (h) The subsidised interest rate can only be applied to calculate the interest due by 31 December 2009.
- (i) The reduction in the interest rate may be applied to loans granted by the State or public finance institutions as well as to loans granted by private financial institutions. The non discrimination between public and private entities should be ensured.
- (j) Firms in difficulties²³ are not eligible for this measure.
- (k) Member States must ensure that the aid is not directly or indirectly transferred to financial entities.

¹⁹ Future Community product standard means a mandatory Community standard setting levels to be attained in environmental terms for products sold in the European Union which has been adopted and are not yet in force.

²⁰ As defined in point 70 of the Community Guidelines on State aid for environmental protection. Official Journal C 82 of 01.04.2008, page 1

²¹ Official Journal C 14 of 19/01/2008 p.6-9

²² As an example a SME located in the Eurozone, having a rating deemed as Weak (B) and offering normal collateral should pay a reference rate composed of the 1-year IBOR set as 5,36% as of 01.12.2008 and a 400 basis points margin, thus leading to a reference rate of 9,36%. Such SME can therefore benefit from an interest rate subsidy of up to a maximum of 4,68% and which can never exceed 50% of the actual interest charge.

²³ According to the definition contained in the Community guidelines on State aid for rescuing and restructuring firms in difficulty. Official Journal C 244, 01.10.2004, pages 2-17

- (l) The aid can not be cumulated with other State aid instruments for the same eligible costs or subsidized guarantees as set out below.

4.4. Risk Capital measures

4.4.1. Existing framework

The Community guidelines on state aid to promote risk capital investments in small and medium-sized enterprises²⁴, sets out the conditions under which State aid supporting risk capital investments may be considered compatible with the common market in accordance with Article 87(3) of the Treaty.

On the basis of the experience gained in applying the Communication on State aid and 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 investments at certain stages of enterprises' development which result from an imperfect matching of supply and demand of risk capital and can generally be described as an equity gap.

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

Point 5.1(a) of the abovementioned 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"*.

4.4.2. Temporary derogation to the existing rules

The financial market turmoil has negatively affected the risk capital market for early growth SMEs by tightening the availability of risk capital. Due to the perceived risks associated with risk capital and possibly lower yield expectations, investors currently tend to invest in safer asset classes rather than in illiquid risk capital investments. The restricted liquidity under current market circumstances has increased the SME equity gap.

Consequently, the Commission considers that in light of the current financial situation, the market failure for tranche of finance per target SME over each period of 12 months can be presumed to be €2.5 million.

Accordingly, on the basis of Article 87(3)(b) it is introduced a temporary derogation (until 31.12.2009) to the Community guidelines on state aid to promote risk capital investments in small and medium-sized enterprises, and in particular to point 4.3.1 thereof, establishing that:

- (a) 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

²⁴ Official Journal C 194, 18.08.2006, pg. 2-22.

each period of twelve months', until 31 December 2009. Approved aid schemes can also benefit 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 2009.

(b) Other conditions of the guidelines on State aid to promote risk capital investments in small and medium-sized enterprises remain applicable.

(c) This derogation does not apply to risk capital measures covered by Commission Regulation n° 800/2008 of 6 August 2008²⁵.

5. SIMPLIFICATION MEASURES

5.1. Short-term export credit insurance

The Communication of 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 insurance²⁶ 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 annex of the abovementioned 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 as marketable.

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

Point 4.4 of the abovementioned communication stipulates 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.

²⁵ Official Journal L 214 of 9/8/92008 page 3.

²⁶ Official Journal C281 of 17/09/1997, p4. Amended by communication of 2001, OJ C 217 of 02.08.2001; p2; communication of 2004, OJ C 307 of 11/12/2004; p12, communication of 2005, OJ C 325 of 22/12/2005; p22.

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".

These provisions constitute an appropriate instrument in the current economic situation if Member States consider that there is unavailability of cover for the risks in the private insurance market for certain marketable credit risks and/or for certain buyers of risk protection (for example SMEs). In this context, in order to speed up the procedure for Member States, the Commission considers that until 31 December 2009, Member States may demonstrate the lack of market by providing evidence from only one large, well-known international private export-credit insurers and one national credit insurer.

5.2. Procedural simplification

Beyond the substantive measures set out in the present Communication, the Commission is currently elaborating a number of improvements to its general State aid procedures, namely to allow quicker and more effective decision-making in close co-operation with Member States. This Simplification Package should, in particular, enshrine joint commitments of the Commission and Member States for more streamlined and predictable procedures at each step of a State aid investigation and allow the approval of straightforward cases within accelerated timelines.

6. MONITORING AND REPORTING

In accordance with the requirements of 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 (63), Member States must submit annual reports to the Commission.

Beyond the requirements stipulated in those provisions, a report on the measures put in place on the basis of the present Communication should be provided by Member States by 31.10.2009. In particular, detailed information on the environmental benefits of the subsidised loans should be provided.

The Commission may request additional information regarding the aid granted, to check whether the conditions of the Commission's decision approving the aid measure have been respected.

7. FINAL PROVISIONS

The Commission will apply this Communication from the date of its publication in the Official Journal of the European Union. This Communication is justified by the current exceptional and transitory financing problems in relation to the banking crisis and will cease to be valid on 31 December 2009. 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 in respect of which it must take a decision after the Communication is published in the Official Journal of the European Union, even where the measures were notified prior to the publication of the 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 its publication in the Official Journal of the European Union;
- (b) the guidelines applicable when the aid was granted in all other cases.

The Commission, in close co-operation with the Member States concerned, will ensure the swift adoption of decisions upon complete notification of the measures dealt with in 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 is entirely dependent on the submission of clear and complete notifications.