Existing State aid in the acceding countries

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Background

The mechanism

In order to prevent incompatible aid from being ‘imported’ into the EU on the date of accession, a system was set up for examining measures which were put into effect in the Acceding Countries before 1 May 2004 and are still applicable after that date (the existing aid mechanism). The purpose of this mechanism is to provide Acceding Countries and economic operators with legal certainty as regards State aid measures that are applicable after the date of accession. The system applies to State aids in all sectors of activity, except for the transport and agricultural sectors, for which different provisions apply.

The Accession Treaty

The Accession Treaty defines as existing aid three categories of measures:

First, aid measures put into effect before 10 December 1994 are automatically considered as existing aid from the date of accession.

Second, measures submitted by the Acceding Countries in 2002 were examined by the Commission in the light of the state aid acquis. Measures considered to be in line with the state aid rules were qualified as existing aid and included in the list annexed to the Accession Treaty. This list was finalised in November 2002.

Third, for measures not accepted to the Treaty list and for those submitted after its finalisation, the so-called ‘interim procedure’ for existing aid was introduced. Under this procedure, Acceding Countries may submit to the Commission aid measures once they are approved by the national state aid authorities. The Commission services assess these measures as to their compatibility with the state aid rules. Measures submitted to the Commission before 1 May 2004 will be considered as existing aid from the date of approval by the Commission.

When the Commission has serious doubts about the compatibility with the Treaty of an aid measure submitted under the interim procedure it shall take a decision to initiate the formal investigation procedure. This decision enters into effect on the date of accession.

Difference between new aid and existing aid

All measures still applicable after the date of accession, which constitute state aid but do not fulfil the conditions of existing aid set out above, shall be considered as new aid upon accession.

The qualification of a measure as existing aid as opposed to new aid has very important consequences for the following reasons:

— The Commission can immediately initiate the formal investigation procedure with regard to new aid not cleared under the interim procedure, either on its own initiative or following complaints by interested parties. If the aid is found to be incompatible with the Treaty, the Commission shall by decision order it to be recovered from the beneficiaries.

— In contrast to new aid, an existing aid measure is ‘protected’ from actions of the Commission since it is subject to a co-operation procedure between the Commission and the Member State. In this context, the Commission invites the Member State either to repeal or to modify the existing aid measure in order to ensure compliance with the State aid rules. In case the Member State does not agree with the Commission proposal, the latter may also in this case open the formal investigation. However, no recovery can be ordered with respect to aid disbursed before the closure of the formal investigation.

— Structural funds money is available to Acceding Countries from 1 January 2004. Structural funds and Phare programs often include measures involving state aid. According to the Structural Funds Regulation, Community funds may not be used to co-finance state aid measures that have not been previously approved by the Commission.

Overall, the interim procedure provides Acceding Countries with legal certainty as regards state aid measures which are still applicable after accession. This is why the Commission has strongly encouraged the Acceding Countries to submit in a timely manner all state aid measures to the Commission so as to allow it to decide which measures can be considered as existing aid and those which cannot, before 1 May 2004.
Statistical overview of the existing aid mechanism

First phase — Treaty list

During the first phase of the existing aid mechanism (establishment of the Treaty list in 2002), the ten Acceding Countries submitted 320 measures. Out of these, 222 measures (69%) were approved by the Commission and have been listed in the Accession Treaty. The breakdown by country is as follows:

Table 1 — Measures approved for the Treaty list

<table>
<thead>
<tr>
<th></th>
<th>CY</th>
<th>CZ</th>
<th>EE</th>
<th>HU</th>
<th>LV</th>
<th>LT</th>
<th>MT</th>
<th>PL</th>
<th>SK</th>
<th>SI</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>31</td>
<td>120</td>
<td>3</td>
<td>21</td>
<td>6</td>
<td>3</td>
<td>7</td>
<td>7</td>
<td>9</td>
<td>15</td>
<td>222</td>
</tr>
</tbody>
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All Acceding Countries were invited to re-submit the measures which were not included in the Treaty list during the interim procedure phase.

Second phase — interim procedure

During the interim procedure phase, which lasted from the beginning of 2003 until the end of April 2004, Acceding Countries submitted 559 measures.

A large number of these measures have not been approved by the Commission yet. This in no way means that they are problematic. Most of them have been submitted only recently, so that no decision has been reached so far. For a significant amount of measures, the information so far submitted is incomplete and exchanges of information are on-going. Other measures have been considered not to be applicable after accession or have been withdrawn by the Acceding Countries. A number of pending cases are likely to lead into an opening of the formal investigation procedure. However, a large majority are very likely to be approved.