State aid: main developments between 1 January and 30 April 2010

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Policy developments

Temporary Framework

In October 2009, Member States submitted a first report on the application of the Temporary Framework, in line with the requirement set out in point 6 of the Framework (2).

On 17 March 2010, DG Competition sent a new questionnaire to Member States in order to gather further and more up-to-date evidence on the use of the Temporary Framework, taking the prevailing economic circumstances into account. The questionnaire was open for comments until 26 April 2010.

Financial crisis

On 30 April 2010, DG Competition prepared a staff working document on the application of State aid rules to government guarantee schemes covering bank debt to be issued after 30 June 2010. The document proposes a review of the conditions under which guarantee schemes can be approved by the Commission. The fee for a government guarantee is to be increased compared to the formula recommended by the ECB in October 2008 at the height of the crisis. Furthermore, banks that continue to rely heavily on government guarantees (i.e. > 5% of total guaranteed liabilities outstanding over total liabilities of the bank, and total amount of outstanding guaranteed debt of more than €500 million) would be required to submit a review demonstrating to the Commission the bank’s long-term viability. These requirements would initiate the phasing-out process concerning the various forms of assistance to banks, starting with the unwinding of government guarantee schemes.

Cases adopted (3)

Decisions taken under Article 106 TFEU: services of general economic interest

La Poste

On 26 January 2010, the Commission completed its investigation (4) into the unlimited state guarantee enjoyed by the French Post Office (‘La Poste’) because of its special status as a public body, following the adoption by the French Parliament of the law on the public enterprise La Poste and on postal activities. The Commission has concluded that converting La Poste into a public limited company (‘société anonyme’), as envisaged in this law, will have the effect of removing the guarantee.

In 2007 the Commission launched an in-depth investigation under the existing aid procedure into the state guarantee implicitly granted to La Poste (5). The Commission considered that La Poste enjoys an implicit state guarantee because of its status. The guarantee is unlimited, is provided free of charge, and is not confined to universal postal service activities but also covers La Poste’s commercial activities, thus conferring on it an economic advantage over its competitors, which are obliged to operate without such a guarantee. The guarantee therefore distorts competition on the postal markets, which makes it incompatible with the common market.

The Commission’s decision in no way calls into question the public service mission or public ownership of La Poste. The Commission is neutral with regard to the ownership arrangements adopted in the Member States. It takes the view that the guarantee enjoyed by La Poste by reason of its special status, and not by reason of its ownership arrangements, is State aid incompatible with the common market and therefore must be withdrawn.

The conversion of La Poste into a public limited company on 1 March 2010, as provided for by the Law on the public enterprise La Poste (‘loi sur l’entreprise publique La Poste’) adopted on 12 January 2010, is therefore a measure that will remove the State aid in question.

(1) The content of this article does not necessarily reflect the official position of the European Commission. Responsibility for the information and views expressed lies entirely with the authors.
(2) ‘… a report on the measures put in place on the basis of this Communication should be provided to the Commission by Member States by 31 October 2009. In particular, the report should provide elements indicating the need for the Commission to maintain the measures provided for by this Communication after 31 December 2009, as well as detailed information on the environmental benefits of the subsidised loans.’
(3) This is only a selection of the cases adopted in the period under review.
(4) C 56/2007
Dutch public broadcasters

Since 2002 the Commission has received complaints from several commercial broadcasters and other media undertakings about various aspects of the financing regime applying to Dutch public service broadcasters. The complainants raised concerns about entrainment and the lack of a precise definition of the public service task, including the financing of online activities, and about the proportionality of the financing.

In March 2005 the Commission had opened a preliminary investigation and requested The Netherlands to clarify the role and financing of the public service broadcasters. The Commission expressed concerns on a number of points, in particular regarding the definition of the public service task, especially for new audiovisual services, the new audiovisual services entrusted to it, and the proportionality of the financing, both as regards adequate mechanisms to prevent overcompensation for public service activities and respect for market principles.

The Dutch authorities came forward with proposals for amending the financing regime and embarked on a reform of the applicable media act, including how to address the initial concerns expressed by the Commission. A new media act entered into force in the Netherlands in December 2008. In November 2009, following further discussions between the Commission and the Dutch authorities, the Dutch authorities submitted undertakings to amend the new financing regime so as to ensure its compliance with the State aid rules.

The Dutch authorities have undertaken to clarify in advance and in sufficient detail the scope of the public service task which will be entrusted to the public service broadcasters. In addition, the Dutch authorities have given an undertaking that new audiovisual services, including pay services, will be subject to a prior evaluation before being entrusted to public service broadcasters. The Dutch authorities will ensure that the prior evaluation process will be conducted in a transparent manner. As part of this prior evaluation process, interested parties will be consulted and the market effects of new audiovisual services will be assessed and balanced against the benefits of the new service for Dutch society. The Dutch authorities have further undertaken to amend the financing mechanism, by limiting the compensation of public service broadcasters to ensure that the public funding does not exceed what is necessary to fulfil the public service tasks, including the control of overcompensation.

On that basis, on 26 January 2010 the Commission cleared the annual financing regime for the Dutch public service broadcasters (\(^{6}\)). This was the second decision taken under the Commission’s revised Broadcasting Communication of 2 July 2009.

Decisions taken under Article 107(3) (b) TFEU

Banking Schemes

Hungarian liquidity scheme

The Commission has approved (\(^{7}\)) a Hungarian measure aimed at providing liquidity to eligible financial institutions in Hungary to support lending to the economy.

In the period from late 2008 to early 2009, the Hungarian financial markets and economy were particularly affected by the global financial crisis. Liquidity sources dried up completely for both financial institutions and the Hungarian State itself, leaving the State with limited financing options and having to resort to external support in the form of a financing package provided jointly by the IMF, the European Union and the World Bank in November 2008.

In this context, Hungary adopted in March 2009 a liquidity scheme aimed at providing loans to Hungarian financial institutions to enable them to maintain lending to the real economy in spite of the severe liquidity shortage. The liquidity support takes the form of non-subordinated, non-structured loans, with a maximum maturity and an entry window open until 30 June 2010.

The Commission has found that the liquidity loans are in line with its Banking Communication. In particular, the loans address the acute liquidity problems of Hungarian financial institutions. The liquidity measures were necessary, in the light of the exceptional turbulence experienced by the Hungarian economy and financial institutions, in order to avoid even greater disruption of the economy. In the context of the IMF-sponsored external financing package received by the Hungarian State, the remuneration — which covers the cost of funds of the State and the risk premium of the institutions — can be considered appropriate. In particular, the level of remuneration of the loans is consistent with the pricing of the Hungarian guarantee scheme.

NAMA

On 26 February 2010, the Commission approved (\(^{8}\)) the establishment of the National Asset Manage-
ment Agency (NAMA), an impaired asset relief scheme for financial institutions in Ireland.

The purpose of NAMA is to restore stability to the Irish banking system by allowing participating financial institutions to sell to the agency assets whose declining and uncertain value is preventing the long-term shoring-up of the capital of the financial institutions and, therefore, the return to a normally functioning financial market.

The scheme was open to all systemically-important credit institutions established in Ireland, including subsidiaries of foreign banks, with a 60-day application window that expired on 19 February. Five institutions are due to take part: Anglo Irish Bank, Allied Irish Bank, Bank of Ireland, Irish Nationwide Building Society and Educational Building Society.

The assets targeted by the measure are all loans issued for the purchase, exploitation or development of land and associated loans. Following the bursting of the Irish real estate bubble, these constitute the riskiest parts of the participating institutions’ asset portfolios. The Irish authorities anticipate that NAMA will purchase land and development loans as well as associated commercial loans with a nominal value of approximately €80 billion for an estimated purchase price of €54 billion.

NAMA’s main objective is to manage the assets expeditiously with a view to maximising their value and recovery prospects in the interest of the State.

The Commission has found that the establishment of NAMA constitutes State aid to the participating institutions, but that this aid is compatible. The scheme and intended operations of NAMA are in compliance with the guidelines set out in the Commission’s Communication on the treatment of impaired assets as regards disclosure and ex ante transparency, eligibility of institutions and assets and the alignment of banks’ incentives with public policy objectives. In particular, the Commission has found that the scheme includes an adequate burden sharing mechanism through the payment of a transfer price which is no greater than the long-term economic value of the assets, and the inclusion of an adequate remuneration for the State in the rate used to discount the long term economic cash flow of the assets.

Finally, the Commission is relying on a number of commitments from the Irish authorities to ensure that NAMA, whilst it achieves its objective of maximising the recovery value of the purchased assets, does not lead to distortions of competition through the use of some of the specific powers, rights and exemptions granted in the NAMA Act. The Commission will also review individual restructuring plans to ensure that the participation of the financial institutions in this measure is followed up with appropriate restructuring measures to promote the return of those institutions to long term viability.

This is the second asset-relief scheme approved by the Commission after that submitted by Germany in May 2009 and cleared at end July (\(^\text{10}\)).

Ad hoc aid

Liquidation Bradford & Bingley

On 25 January 2010 the Commission approved (\(^\text{10}\)) the measures taken by the UK Government for the liquidation of Bradford & Bingley.

Bradford and Bingley provided specialist mortgages and savings products. It operated 197 branches and 141 agencies spread across the UK. Its share of the market for net new mortgage lending at the end of 2007 was 7.7%.

By September 2008, the bank had fallen into difficulties due to its dependence on wholesale funding and its risky loan portfolio, which resulted in the withdrawal by the UK Financial Services Authority of the bank’s licence to accept deposits. The UK authorities decided to nationalise and wind down the bank while it was still solvent, sell its retail deposit book and branches to Abbey National and provide the remaining part of the business with a working capital facility and guarantee arrangements. These measures were authorised by the Commission as rescue aid on 1 October 2008, under which the UK was obliged to submit a liquidation or restructuring plan for Bradford & Bingley.

The liquidation plan submitted by the UK provides for a prolongation of the previously authorised rescue measures, which are now extended for the liquidation of the bank, and a potential injection of capital.

The Commission concluded that the liquidation plan ensures an orderly winding down of Bradford & Bingley in a manner which maintains financial stability. The liquidation period covers more than 10 years. However, once the bank is no longer active in the market, competitive distortions are limited. The wind-down can be accelerated by a sale of the remaining assets when market conditions improve. The Commission accepted that, in order to facilitate the orderly wind-down of its portfolio, it will continue to offer limited services to its existing clients. In the same vein, Bradford & Bingley will relinquish or limit any regulatory permission that is not required for the orderly wind-down of the business. The Commission will strictly monitor the

\(^\text{10}\) N 314/2009, approved on 31.7.2009.
\(^\text{10}\) N 194/2009
progress of the wind-down process and its impact on competition.

**Restructuring Dunfermline**

On the same day, 25 January 2010, the Commission also approved (1) aid given by the UK authorities to facilitate restructuring of the Dunfermline Building Society of the United Kingdom.

The restructuring consisted of the immediate split-up of Dunfermline, after which the part containing the good assets and liabilities was sold in an auction to a competitor, with the UK State making a financial contribution of over £1.5 billion. The part containing the impaired assets was put into administration. The Commission found that the orderly break-up of Dunfermline resulted in the return to viability of the good part that was sold. The Commission furthermore concluded that there was sufficient burden-sharing, as subordinated debt-holders contributed to the restructuring as much as possible, and that the liquidation of a substantial part of Dunfermline limited the distortion of competition caused by the aid.

**Real economy cases adopted under the Temporary Framework**

**Aid in the form of guarantees (N 541/2009)**

The Commission has authorised plans notified by Sweden to provide a guarantee that will enable Saab Automobile AB to access a loan from the European Investment Bank (EIB).

The loan to be granted by the EIB will co-finance Saab’s business plan in the light of its sale by the current owner, General Motors, to the Dutch carmaker Spyker Cars N.V. According to the business plan, Saab intends to use the EIB loan of €400 million for an investment project worth €1 billion related inter alia to fuel efficiency and car safety.

Saab will pay a premium for the guarantee and provide the Swedish Government with high-quality collateral covering the full guaranteed amount. This collateral could be called upon by the Swedish state if it were required to pay out any money under the guarantee. The level of the premiums paid during the lifetime of the loan will be in line with the provisions of the Commission’s Temporary Framework. For a part of the guarantee, the Commission found that, in the current market situation and taking into account the other conditions of the transaction, a premium of 12.48% per annum is the market price for the risk involved in issuing such a guarantee. The Commission therefore concluded that this part of the guarantee did not involve State aid.

**Short-term export credit insurance (N 14/2010, N 713/2009)**

The Commission has authorised an amendment to a Dutch short-term export credit insurance scheme, which was initially approved on 2 October 2009. The amendments include a reduction in the level of premiums to be paid by exporters, and an expansion of risk categories eligible under the scheme. The compensation for the private insurers who are managing the scheme has also been modified to better reflect the actual costs.

The Commission also authorised a Slovenian measure to provide insurance cover via the State-owned agency, SID Banka, to exporters who are unable to obtain cover from the private market as a result of the current financial crisis. The Commission found the measure to be in line with its Temporary Framework for State aid measures to support access to finance in the current financial and economic crisis. In particular, the measures require market-oriented remuneration and are focused specifically on the problem of the current unavailability of short-term export credit insurance cover in the private market. The Commission authorised the measure until 31 December 2010.

**Other measures (NN 4/2010)**

The Commission has authorised a Danish scheme providing export loans to Danish exporters and/or their clients who are experiencing difficulties in accessing funding in the current financial crisis. The Commission found the scheme to be in line with its Communication on Reference Rates, in particular because it provides funding on market terms and therefore does not constitute State aid.

**Decisions adopted on the basis of Article 107(3)(c) TFEU**

**Regional aid & regeneration**

On 29 January 2010, the Commission decided (2) that Sovello AG (formerly EverQ GmbH), a German manufacturer of solar panels, was not entitled to receive public support in the form of a bonus for small and medium-sized enterprises (SMEs) because the company did not meet the relevant criteria of the applicable EU framework for aid to SMEs (Commission Recommendation 2003/361/EC).

Sовello was established as a joint venture at end-2004 by Q-Cells SE – which owns 24.9% of the shares - and the US firm Evergreen Solar Inc. – which owns the remaining 75.1%. When the Renewable Energy Corporation ASA (REC) joined, in September 2005, both of the initial shareholders-

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(1) NN 19/2009

(2) C 27/2008
ers reduced their participation in order to give 15% of the shares to REC. Since September 2006, each of the three joint venture partners has had an equal share (33.3%) in Sovello.

Sovello benefited from regional investment aid, including an SME bonus in 2006 (Sovello1, Commission Decision N 426/2005) for the setting up of a site for the integrated production of photovoltaic modules on the basis of so-called String-Ribbon technology. It requested a second tranche of regional aid for its second solar modules plant (Sovello2), which was authorised by the Commission in June 2009.\(^{14}\)

During its investigation into Sovello2, the Commission uncovered indications that Sovello’s corporate architecture had been artificially designed to meet the formal criteria of the SME definition. An SME is defined on the basis of the number of employees and turnover and balance sheet data. Data from partner companies or linked companies are also taken into account. These formal criteria were only met by artificially keeping the participation of Q-Cells in Sovello below 25%, with the essential purpose to obtain an SME bonus, while the actual influence of Q-Cells in Sovello was considerably higher than the level normally corresponding to a share of 25%.

If the Commission had been aware of this additional information, which was only submitted to it during the notification for Sovello2 but not when it took its decision on 7 June 2006, this would have influenced its assessment.

In addition, the Commission’s investigation revealed that, through its joint venture partners who were active in the same industrial sector, Sovello potentially had access to funds and assistance that were not supported by linked or partner enterprises. The Commission therefore concluded that the SME bonus granted to Sovello was not necessary in order to ensure the financing of the investment.

**R&D&I**

**GAYA**

On 24 March 2010 the Commission authorised\(^{14}\) French aid worth €18.9 million for the GAYA research programme, a programme aimed at developing production technologies for second-generation motor biofuels.

GAYA’s objective is to develop a decentralised biomethane production industry based on biomass gasification using a second-generation thermochemical process. It includes the development of a pre-industrial demonstration plant open to all specialists in the field, which will operate over a period of seven years.

The eligible expenditure for calculating the aid is €42.5 million. The main beneficiary of the public support of €18.9 million will be the GDF SUEZ group, the project leader (€15.5 million in aid). However, the research work will be carried out jointly with the Union des Coopératives Forestières de France (UCFF), public research bodies (CEA, CIRAD, CTP, FCBA, ENSTIMAC-RAPSODEE, LSGC, ENSIACET-LGC, and UCCS) and the Austrian company REPOTEC. The aid forms part of the French Environment and Energy Management Agency’s aid scheme (N397/2007), which was authorised by the Commission on 31 January 2008.

Thanks to the GAYA project, GDF SUEZ and its partners will develop a pre-industrial R&D demonstration plant to test biomass gasification/methanation processes throughout the production chain. This tool will be used as part of a collaborative R&D programme intended to develop processes that will be forerunners of a future move to an industrial stage. The main focus will be on removing the technical, economic and environmental barriers and responding to the main problems of the industry from an integrated perspective.

After conducting an in-depth examination, the Commission took the view that the project met the criteria of the State aid framework for research, development and innovation. The GAYA project should generate substantial benefits in terms of dissemination of scientific knowledge and environmental protection, land use planning, and reduction of Europe’s energy dependency. However, because the potential commercial benefits of the GAYA project are not expected before 2020-2030, the project launch requires public funding. The Commission is particularly concerned that the granting of future intellectual property rights among GDF Suez and its partner research bodies should not distort competitive conditions in the biomethane market in future. In particular, GDF Suez has undertaken to forego the exclusive rights that could be granted to it by its partners over their technologies. The distortions of competition caused by public support will therefore remain limited, in particular because the future demonstration plant will be open to other stakeholders in the sector. Finally, the presence of major European competitors and the fact that the project is different from other expected technologies will make it possible to maintain competitive pressure in energy markets in general, and in the biofuels market in particular.


\(^{15}\) N 493/2009
**State aid**

**Daher-Socata & Sogerma**

The Commission has authorised (\(^{15}\)) France to grant repayable advances of €35.14 million to Daher-Socata (€12.34 million) and Sogerma (€22.8 million) for the development of the next-generation Main Landing Gear Doors (MLGD) and Main Landing Gear Bay (MLGB) of the future Airbus A 350 XWB. Funding will be granted under an existing State aid scheme approved by the Commission in March 2006 (case N 51/2006).

The purpose of both projects is to develop the utilisation of composite materials for the fabrication of specific components of aero-structures. The MLGD project (undertaken by Daher-Socata) involves industrial research and experimental development activities for a total eligible cost of €30.85 million, whereas the MLGB project (undertaken by Sogerma) involves exclusively experimental development activities for a total eligible cost of €57 million.

Both advances will be repaid in full when a predefined sales target has been reached. Each additional delivery beyond this target will trigger the payment of a royalty fee.

The Commission found that the financial sector was reluctant to provide sufficient risk-sharing capital for long-term R&D projects of this kind. The Commission therefore concluded that the aid would address a genuine market failure. Moreover, the Commission identified that the aid granted to both companies is limited to the amount necessary for enabling R&D projects of this magnitude. The Commission therefore concluded that the aid was appropriate and proportionate.

Given the particular structure of the aeronautical market, and the small market shares held by the two beneficiaries, the impact on competition will be limited.

**Energy and environment**

**ArcelorMittal Eisenhüttenstadt**

The Commission has authorised (\(^{16}\)) the granting of investment aid of €30.18 million by Germany to ArcelorMittal Eisenhüttenstadt GmbH's 'Top Gas Recycling' (TGR) project. TGR is an innovative process that enables the separation of CO\(_2\) from other emission gases as they come out of the furnace and recycles the CO\(_2\)-free emissions to produce steel. The use of TGR will reduce CO\(_2\) emissions by 16% as compared to existing state-of-the-art technology, as steel makers use less coke. This is the first ever application of TGR technology on an industrial scale.

The Commission assessed the measure under its Guidelines on State aid for environmental protection. The Commission’s investigation found that the aid is necessary, as — without the aid — ArcelorMittal Eisenhüttenstadt would not translate the technology into an industrial-scale application. The assessment took account of the fact that even if the CO\(_2\) price, currently around €14/t, were to double, it would still be too low to trigger an investment in TGR technology.

It is envisaged that companies participating in a ULCOS consortium, representing approximately 90% of total steel production within the EU, will share among themselves the technological know-how from the TGR project for free. Therefore, the know-how of the project can be seen as a public good which benefits the ULCOS partners collectively.

Given the risks involved in the project, its character as a public good, the alternative investment options of the company and the process that resulted in the selection of the TGR project as documented by Germany, the Commission considered that the aid was proportionate.

**Verbund-Austrian Thermal Power**

The Commission has authorised (\(^{17}\)) Austria to grant €16 million towards an energy-saving project run by Verbund-Austrian Thermal Power GmbH & Co. KG (a subsidiary of the Verbund group) for the combined production of electricity and heat.

The newly-built combined heat and power plant, located in Mellach, near Graz, will achieve substantial savings of primary energy, as electricity and heat will be produced from the same production cycle (co-generation) rather than being produced separately by two distinct installations.

The Commission’s examination under the environmental aid guidelines found that the aid was a necessary incentive to develop the project and that the positive environmental effects would outweigh the potentially negative effects on competition. The latter are in any case limited, as the aid amount accounts for only a small share of the beneficiary’s production costs.

**Power plant in Latvia**

The Commission has authorised (\(^{18}\)) aid that Latvia intends to grant by way of tender for the construction and operation of a 400 MW thermal power

\(^{(15)}\) N 525/2009 and N 527/2009  
\(^{(16)}\) N 450/2009  
\(^{(17)}\) N 295/2008  
\(^{(18)}\) N 675/2009
plant between 2015 and 2025. The aim of the measure is to ensure that future electricity demands are met by available supplies and to reduce the dependency on gas as the dominant fuel source.

On 2 December 2009, Latvia notified its project to subsidise the construction and operation of a new power plant. In order to diversify Latvia’s energy mix, the plant is due to use either LNG regasified in Latvia or solid fuel such as coal, lignite or peat, mixed with at least 10% biomass. The aid would be granted in the form of a direct grant by means of a competitive tender, and the successful tenderer would be obliged to operate the plant at least 6000 hours a year.

Although market forces should, in principle, provide the incentives for the construction of conventional plants, the Commission found that, in view of the effective isolation of the Latvian energy market, security of electricity supply could constitute an objective of common interest, in accordance with Article 107(3)(c) of the TFEU. The Commission also took into account Latvia’s increasing dependence on gas as a dominant fuel source following the closure of the Ignalina nuclear power plant in Lithuania at the end of 2009. Moreover, the Commission’s investigation found that the competitive selection process would minimise the aid and limit distortions of competition. The Commission therefore concluded that, in the specific circumstances of the Latvian electricity market, the aid for the construction and operation of a conventional power plant is an appropriate and proportionate step towards ensuring the security of electricity supply in Latvia for the coming years.

Salzgitter

The Commission has authorised (20) Germany to grant €19.1 million for an energy-saving steel production project run by Salzgitter Flachstahl GmbH, a subsidiary of the Salzgitter AG group. The aid will allow Salzgitter to produce steel using an innovative production process, Direct Strip Casting (DSC), which consumes less energy than alternative processes.

Under the project, Salzgitter will produce steel with a higher proportion of aluminium and silicon, resulting in high strength (HSD) steel, used mainly for car manufacturing.

The Commission found that the aid was necessary and proportionate to develop the project and that the positive effects would outweigh the potentially negative effects on competition. In particular, in order to achieve the energy savings, the innovative process involves higher upfront investments than the alternative process. The Commission found that the HSD production would account for less than 1% of Salzgitter’s current sales and that the effect on competition would therefore be very limited. Moreover, the success of the new product has yet to be confirmed in the years to come.

Stranded costs in Hungary

The Commission has authorised (21) an aid scheme to compensate power generators for certain costs resulting from the termination of long-term power purchase agreements (PPAs) in Hungary.

The aim of the Hungarian scheme is to compensate three power generators for the costs incurred as a result of the termination of their power purchase agreements (PPAs) and which they cannot recoup (so-called ‘stranded costs’). The three beneficiaries are Budapesti, a subsidiary of EDF; Dunamenti, a subsidiary of GDF Suez; and Pannon, a subsidiary of Dalkia. The compensation authorised today will be deducted from the amounts of aid to be recovered from them pursuant to the Commission Decision of 4 June 2008, which found that the PPAs involved illegal State aid incompatible with the EU internal market.

The Commission concluded that the compensation scheme was in line with its Communication relating to the methodology for analysing State aid linked to stranded costs (22). The Commission found that the costs taken into account for the calculation of the compensation were eligible for aid, in particular because they concern investments in assets that have become uneconomic as a result of the liberalisation of the Hungarian electricity sector. Moreover, all revenues generated by the investments and aid previously received have been deducted from the cost amount taken into account to calculate the compensation. This ensures that there is no over-compensation.

Transport

The Commission has approved a proposal by the Cyprus Government to impose a special reduced tax on companies engaged in international maritime transport; this tax would replace the corporate tax (23).

(20) N 451/2009
(21) The Commission agreed in 2001 to the principle of allowing Member States to compensate companies for long-term investments or commitments made when the electricity market was not open and which have become uneconomical as a result of the liberalisation of the sector. The Commission took a decision based on the stranded cost methodology with respect to Austria, Belgium, Greece, The Netherlands, Spain, Portugal and Poland.
(22) N 37/2010
(23) N 691/2009
The Cyprus government has notified a tonnage tax measure for companies engaged in international maritime transport and liable to corporate tax in Cyprus. The scheme allows companies to opt for a tax calculated on the net tonnage of the fleet that they operate (tonnage tax) instead of being taxed on the actual profits of their maritime transport activities. The tonnage tax scheme would also be applicable under certain conditions to tugboats, dredgers and cable-layers.

The Commission considers that the scheme is in line with the European Union’s Guidelines on State aid to maritime transport. It also found that strict ring-fencing measures will avoid any risks of tax evasion or spill-over of the benefits of the scheme to non-shipping activities. Lastly, the scheme complies with the aid ceiling set out in the Guidelines. The government has estimated the annual cost of the measure at €1.5 million.

The Commission authorised the scheme until 31 December 2019. The aim of the scheme is to support the shipping sector in Cyprus; other EU countries with a strong maritime sector have a similar scheme.

**Other**

**Insurance against terrorist acts**

The Commission has authorised a measure adopted by Denmark which provides a State guarantee on non-life insurance against damage arising from nuclear, biological, chemical or radioactive (NBCR) terrorist attacks that exceeds a certain threshold. The Commission found that the measure was an appropriate means of ensuring that insurance coverage against NBCR risks would be available in Denmark.

Denmark considers it an important goal of public policy that Danish citizens and enterprises should have access to insurance against NBCR risks. However, the global reinsurance market for low probability but high impact events, such as a NBCR attack, is underdeveloped and consequently there is insufficient reinsurance capacity for Danish insurers who wish to provide this cover in Denmark.

In order to ensure that NBCR coverage is available, Denmark plans to introduce a state guarantee. Under the scheme, insurers that provide NBCR insurance in Denmark will be liable for non-life damages up to a certain pre-determined threshold. The risk retained by the insurance industry is based on their capital base and the availability of NBCR reinsurance on the global market. This threshold will be reviewed every year and currently stands at DKK 5 billion. The Danish State then provides a guarantee for the next DKK 15 billion of losses over and above this threshold.

Insurers will pay a fee for this guarantee, which is currently set at 0.15% of the guarantee amount (although this percentage may vary according to the level of the threshold). Furthermore, in the event of a payout on the guarantee, Denmark will recover this payout over time from all policyholders through a levy.

The Commission has concluded that the measure complies with the conditions laid down in Article 107(3)(c) TFEU. The scheme favours the provision of insurance cover in an area where no cover would otherwise be available or any such cover might be insufficient. The aid is appropriate, necessary and proportional to alleviate the market failure in the area of NBCR coverage. The scheme also has a limited impact on competition. The scheme is open to all Danish and foreign non-life insurance companies. Lastly, the own risk retained by the insurance industry is recalculated on an annual basis. If the market for NBCR coverage develops in future, and greater reinsurance capacity becomes available on international markets, the insurers’ own risk retention will increase and the threshold above which the State would have to compensate losses will rise. At some point this threshold might become so high that it could be uneconomical for insurers to avail of the State reinsurance, for which there is a minimum fee. In this way the scheme has an in-built review mechanism which ensures that the State is not replacing private market operators. This will ensure that the distortions of competition are kept to a minimum.

**Decisions adopted on the basis of Article 107(3)(d) TFEU**

**Spanish film support**

The Commission has approved €576 million for a Spanish film support scheme until 31 December 2015. The scheme covers Spain’s national film support measures, including film production and distribution. The scheme is in line with the rules of the Commission’s ‘Cinema Communication’.

The scheme is a package of complementary, selective and automatic measures which the Spanish authorities believe are necessary to achieve their objective of preserving linguistic and cultural diversity among the films available to Spanish and European audiences. The selective support is intended to sustain arthouse films, while the automatic, audience-based support is aimed at encouraging independent production.

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(23) N 637/2010

(24) N 587/2009
producers to make better-financed films, rooted in Spanish/European culture.

**Decisions under Article 108 TFEU**

**Hotel industry in Italy**

The Commission has decided to refer Italy to the European Court of Justice for failing to comply with a Commission decision of July 2008.

On 12 November 1998, the Commission approved an aid measure in favour of the hotel industry in the Region of Sardinia (N 25). One of the conditions for approval was that, in order to be eligible for aid under this scheme, companies had to apply for aid before starting to implement the project to be subsidised.

On 21 February 2003, the Commission received a complaint regarding alleged violations of the above condition. On 2 July 2008, the Commission concluded that some of the aid had been granted in violation of the conditions set out in its decision of 12 November 1998, and it ordered Italy to recover the illegally claimed aid.

Subsequently, Italy issued recovery orders to the beneficiaries concerned, some of whom appealed against them before Italian courts, which in many cases suspended the execution of the recovery orders. However, such suspension decisions are clearly contrary to EU law, which requires the effective, timely and full recovery of incompatible aid from the beneficiaries. This appears to be a regular occurrence in the Italian judicial practice, and similar suspension orders have already given rise to a series of Court actions against Italy under Article 108(2) TFEU, which are currently pending before the ECJ.

**Hellenic Shipyards**

The Commission has decided to refer Greece to the European Court of Justice for failing to comply with a Commission decision of 8 July 2008 which found that State aid had been unlawfully granted to Hellenic Shipyards (HSY) and should, therefore, have been recovered.

On 2 July 2008, the Commission decided that subsidies granted by Greece to Hellenic Shipyards S.A. were incompatible with the common market because they distort competition. This is because Greece failed to abide by the conditions attached to the restructuring and closure aid approved by the Commission in its previous decisions of 1997 and 2002. Moreover, various loans and guarantees provided to Hellenic Shipyards by the Greek State and the then State-owned bank ETVA constituted incompatible aid, as they were provided either below market price or at a time when the financial situation of Hellenic Shipyards had become so difficult that it could not find bank financing.

All of these measures benefited the civil activities of HSY, conferring on it an unfair advantage over its competitors. In fact, Hellenic Shipyards is involved in both civil and military activities, but in this decision the Commission only examined aid which had exclusively benefited its civil activities, because the subsidies received by Hellenic Shipyards for its military activities are exempted from EU State aid rules under Article 346 TFEU. Therefore, HSY must reimburse around €230 million of aid, plus interest, from its civil activities.

(N 272/98)