Policy developments

Following a public consultation on the State aid temporary rules established in response to the economic and financial crisis, the Commission believes there are still grounds for considering that the requirements for the application of Article 107(3)(b) have been fulfilled.

On 1 December 2010 the Commission adopted the Communication on the application, from 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis as well as the Temporary Union framework for State aid measures to support access to finance in the current financial and economic crisis. However, the continuous, timely availability of specific crisis aid measures must go hand in hand with a gradual disengagement from temporary extraordinary support. This approach has already started in the financial sector, with the tightening of conditions for new government guarantees from July 2010 through a fee increase and a closer scrutiny of the viability of heavy guarantee users. The new Communication requires that, as of 1 January 2011, every bank in the EU having recourse to State support in the form of capital or impaired asset measures will have to submit a restructuring plan. So far this was limited to distressed banks, i.e. banks that in particular received support of more than 2% of their risk-weighed assets.

The prolonged Temporary Framework will maintain some measures facilitating access to finance, especially for SMEs. These include subsidised State guarantees and subsidised loans inter alia for green products. In these areas, the market is not yet able to meet small companies’ financing needs entirely. The introduction of stricter conditions for those measures will facilitate a gradual return to normal State aid rules while limiting the impact of their prolonged application on competition. For example, under the new rules large firms are excluded from working capital loans and firms in difficulty can no longer benefit from the Framework.

The Commission also concluded that one of the measures introduced during the crisis should be made permanent and has modified the Risk Capital Guidelines accordingly. This concerns the increase from € 1.5 million to € 2.5 million of the maximum equity or other finance that a Member State can invest in a start-up company. This is because private equity investors have moved towards less risky investments during the crisis, making access to finance difficult for start-ups especially in their early stages. The adapted guidelines will expire as planned at the end of 2013.

Finally, as companies are still finding it difficult to obtain adequate trade insurance coverage from private insurers in many sectors and Member States, the Commission also extended the procedural simplifications on short-term export credit insurance that were introduced by the Temporary Framework. This is valid until the end of 2011. At the same time the Commission prolonged the validity of its 1997 Communication on short-term export credit until 31 December 2012.

Cases adopted (1)

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

Preferential dispatch of indigenous coal plants in Spain

On 29 September 2010 the Commission authorised the compensation which Spain intends to grant to electricity generators to meet the costs of fulfilling a public service obligation, namely producing specific volumes of electricity out of indigenous coal. (2)

The EU electricity liberalisation directives governing the functioning of the EU electricity market allow Member States to impose such public service obligations on electricity generators, for reasons of security of energy supply, consisting in the production of electricity from domestic fuel sources within a limit of 15% of national electricity consumption.

In all, 10 power plants are concerned by the public service obligation. The Spanish authorities have given a firm commitment that under no circumstances will the scheme be prolonged beyond 31 December 2014.

(1) This is only a selection of the cases adopted in the period under review.

(2) N178/2009.
The Commission has ensured consistency between this measure and the Coal Regulation (as adopted on 10 December 2010 (7)) which allows specific types of State aid to the coal industry under certain conditions.

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

Banking

Schemes

The Commission has extended a number of bank guarantee schemes for credit institutions in Ireland, Spain, Sweden and Poland. (8) The extended schemes are in line with the 2010 Communication on support measures for banks during the financial crisis.

Furthermore, the Commission approved the re-introduction of the Italian recapitalisation scheme and extended a number of recapitalisation schemes in Hungary and Poland, the Austrian support schemes for financial institutions and the liquidity scheme in Hungary, as well as a winding-up scheme in Denmark until 30 June 2011. (9) Moreover, the Commission authorised the transfer of the second tranche of assets to the Irish National Asset Management Agency (NAMA). (10)

Hellenic Financial Stability Fund for credit institutions

On 3 September 2010 the Commission authorised a scheme for the recapitalisation of credit institutions in Greece by the Hellenic Financial Stability Fund (FSF). (11)

Its capital, which amounts to €10 billion, stems from the euro-area/IMF financial assistance to Greece. On 14 December 2011 the Commission prolonged its authorisation until 30 June 2011. (12) The Fund aims at safeguarding the stability of the Greek banking system when capital is not available through normal, generally private, sources. It can provide equity capital to credit institutions by acquiring preference shares and, under certain circumstances, common shares in respective banks. In the case of preference shares, the scheme requires a remuneration of 10% of the shares and stipulates several behavioural restrictions such as a dividend and a coupon ban. In principle all banks which benefit from the fund are required to present a restructuring plan to the Commission.

Ad hoc aid

WestLB

On 5 November 2010 the Commission extended its ongoing State aid investigation into WestLB after reaching the conclusion that the bank had received an estimated €3.4 billion in State subsidies more than it was initially foreseen in the process of transferring its portfolio of impaired assets to a bad bank. (13)

Before the Commission can approve the aid, further restructuring measures should be considered with a view to addressing the distortions of competition or, alternatively, its gradual reimbursement.

Restructuring aid for Parex Banka

On 15 September 2010 the Commission approved a thorough restructuring of Parex, (14) Latvia’s second biggest bank before the crisis.

The bank, which was partly nationalised in November 2008, benefited from State aid for a total of around 1.1 billion lats (1.6 billion €). Following the Commission’s in-depth investigation into a first restructuring plan in July 2009, a new bank named Citadele banka was registered in June 2010 to which core and well-performing assets and operations as well as part of the State liquidity measures of Parex were transferred on 1 August 2010.

Under the restructuring plan Parex banka’s commercial model as resumed by Citadele banka focuses on its core business in the Baltic countries, while discontinuing more risky lending and leasing in the Commonwealth of Independent States. By refocusing on its core activities and materially reducing the size of its total assets from 3.4 billion to around 1.5 billion lats, Citadele banka should return to profitability in 2011 and repay the State the liquidity support received. Until full repayment of the State liquidity support, the Commission has subjected Citadele banka to market presence caps in deposits and lending markets as well as an acquisition ban. These measures aim at limiting any distortion of competition caused by the aid.


(13) SA.31999.

(10) C 40/09 (ex N 55/09).

(11) C 26/09.
**Restructuring of CajaSur**

On 8 November 2010 the Commission authorised aid for the restructuring of CajaSur. (14)

CajaSur provided retail banking services, mostly in the region of Andalucia, and came into financial difficulties as a result of its significant exposure to real-estate-related transactions. The Bank of Spain intervened in May 2010, placing it under the control of the Fund for Orderly Bank Restructuring (FROB), which provided CajaSur with two temporary rescue measures: a capital injection of €800 million, and a liquidity line of €1.5 billion.

In July 2010 another Spanish savings bank (BBK), agreed to buy the banking business of CajaSur. Before the sale becomes effective, CajaSur must repay the capital injection to FROB. The liquidity measure, which was never used, will be terminated. As part of the sale, a guarantee for five years of approximately €392 million on losses stemming from a €5.54 billion portfolio of loans was granted by the FROB to the banking business bought by BBK.

The Commission considered that the liquidation of CajaSur and the sale of its banking business to BBK via an open and competitive tender procedure limited distortions of competition and ensured that the sold business became viable without continued State support.

**Liquidation of Fionia Bank**

On 25 October 2010 the Commission approved the Danish Government’s measures for the liquidation of Fionia Bank. (15)

Fionia Bank was a regional, full-service bank based on the island of Funen and neighbouring islands in central Denmark.

At the beginning of 2009 the Danish Financial Supervisory Authority ordered Fionia Bank to increase its capital ratios. As the bank also had liquidity problems, it was put under State control and received a credit facility and a capital injection. These measures received temporary clearance from the Commission on 20 May 2009 pending the submission of a restructuring or liquidation plan. (16) As the bank’s problems worsened in line with negative market conditions, especially in the real estate sector, Denmark considered that controlled liquidation was the best option.

In August 2009, after an open, transparent and unconditional tender procedure, Denmark sold the main part of Fionia’s business operations to Nordea. The agreement involved the network of branches, including their staff. Fionia's high-risk assets were carved out and transferred to a newly established subsidiary of the Financial Stability Corporation (FSC), the State’s bail-out fund, which serves as a winding-up vehicle. This included a loan portfolio of approximately €1.4 billion that may be at least partly impaired. In order to meet regulatory requirements and for the purpose of liquidation, the FSC also capitalised this subsidiary, called Nova Bank Fyn, which also received the credit facility, since increased, in order to fill the funding deficit left by the transfer of certain parts of the bank to Nordea.

The Commission found that the liquidation plan ensures that distortions of competition are kept to a minimum. The Commission’s approval of the State aid involved in the liquidation process covers the requirement that the pricing policy of Nova Bank Fyn will be designed to encourage customers to find more attractive alternatives as quickly as possible in order to limit the costs for the State to a strict minimum. Moreover, Nova Bank Fyn will not pursue any new activities but merely phase out ongoing operations. The Commission also concluded that Nordea had not received any State aid to buy Fionia since the sale price was in line with its market value.

**Irish Banks**

The Commission has authorised emergency measures for three Irish banks: Anglo Irish Bank, Allied Irish Bank and Irish Nationwide Building Society (INBS).

For Anglo Irish Bank, the Commission approved a recapitalisation of up to €4.946 billion and a guarantee covering a number of off-balance sheet transactions. (17) The Commission also approved a recapitalisation of €2.7 billion of INBS. (18) Finally, the Commission endorsed a recapitalisation of Allied Irish Bank covering its capital requirements until the end of 2010 and the capital requirements resulting from the Programme for Support agreed between the Irish authorities, the IMF and the EU. (19) The Commission’s approval of these emergency measures to help preserve financial stability in Ireland does not prejudge future decisions on restructuring (for Allied Irish Bank) or on orderly resolution (for Anglo Irish and INBS).

With regard to Allied Irish Bank, the final decision will depend on the Commission being satisfied that the bank will be commercially viable in the long term without further injections of taxpayers’

---

(17) SA.32057.
(18) NN 50/2010.
money, that there is a significant contribution to the restructuring costs from the bank’s shareholders and subordinated debt holders, and that the bank will reduce its activities to offset the distortion of competition caused by the aid.

Real economy cases adopted under the Temporary Framework

Schemes
On 10 September 2010 the Commission authorised a Bulgarian aid scheme to help businesses deal with the current economic crisis.\(^{(20)}\) Aid of up to € 500 000 per firm could be granted until the end of 2010 to small- and medium-sized enterprises facing funding problems.

In line with the stricter conditions of the Temporary Framework adopted in December 2010, the Commission also extended until the end of 2011 certain Italian, Hungarian and German schemes allowing for limited amounts of aid,\(^{(20)}\) subsidised guarantees\(^{(20)}\) and subsidised loans.\(^{(20)}\)

Furthermore, the Commission extended its authorisations of the Danish, Finnish and German short-term export-credit insurance schemes and as well as the Hungarian export-credit insurance scheme for SMEs with limited export turnover.\(^{(22)}\)

Ad hoc aid

Péti Nitrogénművek
On 27 October the Commission concluded that part of the State support granted in 2009 to fertiliser producer Péti Nitrogénművek infringed EU State aid rules.\(^{(23)}\)

In January 2009 Hungary issued guarantees in favour of Nitrogénművek covering an investment loan of € 52 million and debt amounting to HUF 10 billion (around € 35 million), both provided by the State-owned Hungarian Development Bank MFB. In October 2008 Nitrogénművek had stopped production and the support package was aimed at re-launching the company’s operations. Hungary did not notify these measures to the Commission. The Commission opened the formal investigation procedure on 29 April 2009 because it was not sure that the measures were in line with EU State aid rules.

\(^{(20)}\) N 333/2010.
\(^{(21)}\) Italy: SA.32036; Germany: SA.32031; Hungary: SA.32040.
\(^{(22)}\) Italy: SA.32035; Germany: SA.32032.
\(^{(23)}\) Italy: SA.32039; Germany: SA.32030.
\(^{(25)}\) C14/2009.

In the light of the investigation, the Commission found that the measures confer a selective advantage to Nitrogénművek and therefore constitute State aid. However, as the company’s difficulties were caused by the financial and economic downturn, it was entitled to receive aid under the Commission’s Temporary Framework for State aid to business during the crisis.

As the remuneration paid by Nitrogénművek for the State financing package was too low, the Commission concluded that the measures comply only partly with the Temporary Framework. The difference between the remuneration that Nitrogénművek should have paid according to the Temporary Framework and the remuneration it actually paid to the Hungarian authorities must be repaid by the company.

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

Regional aid

Fri-el Acerra
On 15 September 2010 the Commission decided that the regional investment aid of € 19.5 million that Italy intended to grant towards the takeover and conversion, by Fri-el Acerra S.r.l, of a closed thermoelectric power plant into a power plant fuelled by bioliquids is not compatible with EU State aid rules.\(^{(24)}\)

In July 2008 the Italian authorities notified an aid measure in favour of Fri-el Acerra S.r.l. In 2006 Fri-el had bought a disused thermoelectric power plant that used to belong to NGP in order to convert it into a bio-fuelled power plant, mostly from palm oil. The eligible expenses of the project amounted to € 80.6 million and the notified regional grant was € 19.5 million.

The Commission launched an in-depth investigation in March 2009 over concerns that the aid did not meet the criteria of the regional aid guidelines 2007-2013 contributing to the development of Campania (an area eligible for regional aid under Article 107(3)(a) TFEU). In particular, the Commission had doubts about the incentive effect of the aid, the takeover conditions of the closed thermoelectric power plant and the impact of the investment project on the development of the region. The in-depth investigation convinced the Commission that the takeover of the closed thermoelectric power plant was carried out under market conditions between independent parties and that the transfer
of the plant could be considered as an initial investment, in line with the regional aid guidelines.

However, the Commission found that the aid did not contribute to attracting new regional investment to Campania, because the investment project was launched in February 2006, long before the decision to grant the aid. The project is now finished and the bio-fuelled power plant has been operational since 2009.

**Sovello 3**

On 14 December 2010 the Commission authorised €15.5 million of regional investment aid for the German company Sovello AG for the production of solar modules in Bitterfeld-Wolfen (Thalheim, Sachsen-Anhalt), Germany. (26)

Sovello already has two solar module production plants in Bitterfeld-Wolfen (Sovello1 and Sovello2), for which it received regional aid. The new investment covers the extension of the existing production site through the construction of a third plant (Sovello3) on adjacent land. The investment costs are €147 million, while the aid amounts to €15.5 million.

The Commission took into account aid granted to a previous investment project by Sovello and verified whether the notified aid was fully in line with the regional aid guidelines, in particular their thresholds regarding the market share and production capacity of beneficiaries of aid for large regional investment projects. The guidelines also provide for a progressive reduction of the regional aid ceiling for large projects, because these suffer less from typical regional handicaps than smaller projects do.

The Commission noted that Sovello’s market shares on the world market for solar modules are well below 25% before and after the investment. As the photovoltaic market has a double-digit growth rate, which is significantly higher than the EEA growth rate, the Commission concluded that the additional production capacity created by the project would not raise concerns. As these thresholds were not exceeded, the Commission concluded that the positive impact of the investment on regional development outweighed any distortion of competition.

**R&D&I**

**Mapper**

On 29 September 2010 the Commission authorised The Netherlands to grant €15.6 million of soft loans and a direct grant of €5.7 million to Mapper Lithography B.V. for the development of ‘E-beam lithography’. (26)

Mapper is a young medium-sized enterprise, a spin off from the Technical University Delft in 2000. It is developing so-called ‘maskless parallel electron beam writing’ (in short: ‘E-beam’) technology for use in lithography machines. Such machines image the circuit patterns of semi-conductor chips on silicone wafers and are the centrepieces of semiconductor manufacturing.

Current lithography still relies on photo masks for that purpose. The number of transistors that can be placed on an integrated circuit is expected to increase exponentially, doubling approximately every two years (so-called ‘Moore’s Law’). However, existing mask-based lithography will soon have reached its physical limits. Various technologies are currently being explored in order to overcome these limits. ‘E-beam’ involves the use of parallel electronic beams that ‘write’ the blueprint of a chip on a wafer (without any mask). If successful, Mapper will help tackle a new miniaturisation challenge.

The Commission found that Mapper would not have been able to carry out this risky R&D project had it not received the aid. The aid addresses a specific failure of the private venture capital market and is limited to the necessary minimum. The impact on competition is limited, given that E-beam technology as such is currently not available and that Mapper is a new entrant on the market. The Commission further established that Mapper’s project is in line with European priorities, such as those defined by the European Union’s R&D Framework Programmes, the ENIAC Joint Technology Initiative and the EUREKA programmes.

**GoBiGas**

On 14 December 2010 the Commission authorised the support that Sweden intends to grant to the Gothenburg Biofuels Gasification (GoBiGas) research and development (R&D) project to develop a pre-commercial demonstration plant for the indirect gasification of low-quality forest raw material residue into bio-methane. (27)

On 23 June 2010 Sweden notified the GoBiGas project, based on an existing support scheme approved by the Commission in 2008. (28)

The project will be carried out over a ten-year period and its costs are estimated at a total of SEK 978 million (€105 million). The public aid amounts to SEK 222 million (€24 million) and will be provided to GoBiGas AB.

It is expected to produce valuable information regarding the up-scaling and viability of the new technologies involved in the production of second-generation biofuels. Furthermore, it can produce useful input for the European standardisation work on gas quality, for example.

The Commission assessed the project under the EU framework for R&D&I, which allows aid that is well designed, palliates a market failure and results in benefits that outweigh potential distortions of competition brought about by the aid. The Commission found that the research project could not attract sufficient financing from the financial market and that the benefits of the project clearly outweigh any distortion of competition brought about by the aid.

Energy & environment

Carbon capture and storage project in The Netherlands

By its decision of 27 October 2010 the Commission authorised The Netherlands to provide a € 150 million grant for a CO₂ capture and storage (CCS) demonstration project to a joint venture between E.ON and GDF Suez. (allest)

The joint venture will construct a CO₂ capture plant in the Rotterdam port area. The aim is to capture part of the CO₂ emitted by E.ON’s coal-fired power plant and transport it to a depleted gas field in the North Sea for storage.

The development of CO₂ capture and storage is part of the 2008 climate and energy package, which is geared towards the EU 2020 environmental objectives. The Commission concluded that the Dutch State aid is an appropriate and proportionate measure necessary to achieve an objective of EU interest, and that, despite its strategic interest, without the aid the large-scale CCS project would not have been developed, at least not before 2020.

The Commission also considered that the distortions of competition and the effect on trade were limited and that, on balance, the positive effects of the measure outweigh any negative effects on competition. In particular, the beneficiary’s obligation to share and disseminate information effectively about the results and progress of the project will minimise potential distortions of competition. The project also receives EU support from the European Energy Programme for Recovery and it is part of the European CCS Demonstration Project Network which will foster knowledge-sharing of CCS demonstration projects.

Transport

Air Malta

On 15 November 2010 the Commission authorised a short-term € 52 million State loan to tackle liquidity problems at Air Malta. (allest)

The Maltese authorities had notified emergency support to prevent the collapse of Air Malta. If Air Malta did collapse, it would disrupt the economy of the island, as more than half of the destinations served from Malta’s international airport are only operated by Air Malta.

The Commission granted temporary approval, as the measure is in line with the guidelines on the rescue and restructuring of companies in difficulties and the aid amount is limited to what is needed to keep the company in business over the next six months. Moreover, the Maltese authorities have committed to submit a restructuring plan within six months.

Other

Switch-over to digital TV broadcasting in Slovakia

On 17 November 2010 the Commission approved a € 7 million aid scheme supporting parallel analogue and digital broadcasting during the transition to digital TV in Slovakia. (allet)

Under this scheme broadcasters and network operators who fulfil certain criteria defined by the Slovak authorities are entitled to a 50% contribution to the costs related to analogue signal transmission and the purchase or rental of temporary mobile analogue transmitters during the transition period when signals will be transmitted simultaneously in both analogue and digital form.

According to the Slovak authorities, broadcasters would not switch to digital broadcasting in advance of the legal deadline (end of 2012), because the population are unwilling to acquire digital decoders. Thus, in order to avoid a ‘last-minute’ switchover as well as blank signal reception spots, the Slovak authorities provided for a transitional period of parallel transmission of analogue and digital broadcasting for a maximum of 12 months, to end by December 2011.

The Commission examined the measure under Article 107(3)(c) TFEU, and found that the scheme targeted only the additional costs that simultaneous broadcasting would trigger in connection with broadcasting in both analogue and digital


mode and that it did not favour one technology over another. The beneficiaries will be selected in open and non-discriminatory calls based on clear pre-defined criteria and the Slovak authorities will submit annual reports to the Commission on the allocation of the funds. The Commission therefore concluded that the measure would facilitate the digital switch-over without unduly distorting competition.

Another measure supporting the purchase of digital television terminal equipment for socially vulnerable groups in Slovakia was approved by the Commission on 15 September 2010.\(^{(3)}\)

The aim is to bring digital television within the reach of citizens on a low income, old-age pensioners and handicapped persons, who would no longer be able to receive television signals with their existing TV sets. The scope of this measure is limited, as it enables persons who fulfil social exclusion criteria defined by the Slovak authorities (approximately 10% of the population) to receive a contribution of up to €20 for the purchase of digital decoders.

The Commission examined this measure under Article 107(2)(a) TFEU, which makes provision for aid of a social character. The Commission found that the scheme was targeted at individual consumers and that it was technologically neutral, as it did not favour any particular transmission platform. Finally, all set-top-boxes, irrespective of their geographical origin, are eligible for the subsidy.

### Legal downloads of music in France

On 12 October 2010 the Commission approved a French scheme that subsidises legal downloads of music by French residents aged from 12 to 25 years.\(^{(3)}\)

France proposed the creation of a *Carte musique* for young Internet users to download music from subscription-based website platforms. The measure is aimed at combating illegal downloads. The card would include a €50 credit for the purchase of music online but would cost the consumer €25, with the remainder borne by the French State. The notified scheme is expected to last two years and each consumer would be able to buy one card a year. The French Government expects one million cards will be sold each year.

The measure requires website operators to contribute to the scheme by reducing the price of the music, extending the duration of the subscription and/or contributing to the cost of advertising the card. It caps at €5 million the benefit each operator may draw from the scheme, to ensure that independent and niche operators are also able to benefit from the scheme. As a result, the scheme will help preserve pluralism and cultural diversity in the online music industry. The Commission therefore concluded that the benefits of the measure outweigh any distortion of competition that might be brought about by the aid.

### CELF

On 14 December 2010 the Commission adopted a negative decision with recovery on the Centre d’Exportation du Livre Français (CELF).

The CELF case dates back to the beginning of the 90’s with the lodging of a complaint against State aid granted (approximately €4.8 mio) to CELF by the French Ministry of Culture from 1980 to 2001, to boost the distribution of French books abroad.

In its judgment of 15 April 2008, the Court of First Instance (now the General Court) annulled the Commission’s decision dated 20 April 2004, which authorised the State aid granted by the French authorities to CELF. It was the third judgment in this case to annul a positive decision of the Commission.

On 8 April 2009 the Commission adopted a decision extending the formal investigation procedure and requesting the French authorities and interested parties to submit their comments on the factual and legal background of the case following the Court’s judgment. After an information injunction sent on 20 November 2009, France was not able to submit detailed data to resolve the flaws to which the General Court refers in its judgment.

### No aid decisions

#### Reconstruction of Funicular at Mt Sněžka

On 29 September 2010 the Commission decided that financial support of CZK 250 million (€10 million) for the reconstruction of a cableway on Mount Sněžka did not constitute State aid.\(^{(4)}\)

The support will be granted to the municipality of Pec pod Sněžkou, as owner and main shareholder of the cableway operator that connects the town with the summit of Mount Sněžka. Mount Sněžka is situated on the border between the Czech Republic and Poland, in the protected area of the Krkonoše / Karkonosze National Park and thus subject to strict regulations (e.g. limitation on capacity, prohibition of sport/tourism facilities, etc.).

The cableway is the most environmentally-friendly means of transport in this protected area, de facto replacing the need for a main access road.

\(^{(2)}\) N671a/2009.  
\(^{(3)}\) N97/2010.  
\(^{(4)}\) N702/1999.
Pedestrian paths are the only alternative means of access to the summit available to the general public.

Restrictions imposed by the national parks, for economic, legal and environmental reasons, prevent a cableway or any alternative means of transport to the summit from being newly constructed or operated on either side of the mountain. Hence, the service provided by the cableway is not subject to competition and trade between Member States and, consequently, exempts the funding provided by the State from EU State aid control.

Decisions under Article 108 TFEU

Commission refers Spain and Italy to Court for failure to respect Court ruling to recover illegal aid

On 30 September 2010 and on 24 November 2010 the Commission decided to refer Spain to the Court of Justice for failing to implement a previous Court ruling which confirmed certain Commission decisions finding that incompatible aid had been granted and had to be recovered, namely State aid granted to the Magefesa group and State aid granted by the Basque Provinces of Alava, Guipúzcoa and Vizcaya.

On 28 October 2010 the Commission decided to refer Italy to the Court of Justice for failing to implement a previous Court ruling decision ordering the recovery of illegal and incompatible State aid from utilities with a majority public capital holding (35).

Neither Spain nor Italy have yet completed these recovery procedures.

As these are all referrals to the Court for failure to respect a previous Court ruling, the Commission has asked the Court to impose a daily penalty payment and a lump sum per day for the period between the Court judgment and the second Court ruling. These payments would act as an incentive to ensure that the illegal aid amounts are recovered rapidly from the beneficiaries. The proposed fines take into consideration the seriousness of the infringement, the very significant period which has already elapsed since the previous Court judgment and the situation of the Member State.

approach to specific issues. Using this possibility, the Commission adopted a range of amendments to the Framework(7).

2. Phasing-out of the State aid temporary framework: the Commission’s assessment of the situation

An appropriate and timely “exit strategy” from the exceptional measures, which was adopted to counter the financial and economic crisis, is a key element for European recovery.

State aid control remains a key EU instrument to facilitate a successful exit from the crisis. This exit process, for the real economy as well as for the financial sector, should lead to viable solutions that do not discriminate between Member States, while at the same time promoting a return to normal functioning of the market.

Delaying the exit from State support would damage the level playing field and European economies at large; yet it would equally be wrong to place financial stability at risk by an overly abrupt disengagement.

Within the context of this global exit strategy the Commission had to decide whether or not it was appropriate, in view of the economic situation, to stop the application of the temporary framework on the planned date – 31 December 2010.

As already mentioned, the purpose of the temporary framework was to unblock bank lending to companies and thereby ensure their continued access to finance. Consequently, when the financial situation normalises, the temporary framework should normally lapse, giving priority to normal State aid rules.

In order to decide on the expiry/prolongation of the temporary framework, a range of factors were taken into account: the use made of the temporary framework by Member States, the capacity of the financial institutions to supply adequate credit to the creditworthy corporate sector, the effectiveness of the Framework to remedy that problem without leading to distortions that would run counter to the single market and its capacity to contribute to a sustainable recovery beyond 2010, in line with the overall exit strategy designed to support European growth.

2.1. Evaluation of the use made of the State aid temporary framework

The Commission collected information about measures taken by Member States under the temporary framework as well as the state of credit supply to creditworthy companies(6).

The temporary framework has generally been very well received by the Member States and stakeholders. Between 17 December 2008 and 1 October 2010, the Commission approved 73 schemes(2) and 4 ad hoc aid measures on very short deadlines. The majority of these are schemes for aid of up to €500 000 per company (23 Member States), subsidised guarantee measures (14 Member States) and subsidised loan interest (7 Member States). Moreover, 12 Member States facilitated export activities via export credit schemes.

In 2009 the Commission approved measures totalling approximately €81.3 billion(5). However, the aggregated aid element of the measures implemented by Member States in 2009 is estimated at €2.2 billion(6). It appears that Member States were cautious when determining the budget, given the uncertainties as to the depth and duration of the crisis, but they were strict when it came to granting aid, also in view of the budgetary constraints.

In general, the temporary framework was implemented by adopting separate aid schemes for each aid instrument. All of the approved temporary framework schemes were open to all sectors. This horizontal approach is justified by the need to support the economy as a whole.

The significant use of the framework shows that the Commission has provided the Member States with a useful tool to confront the impact of the crisis.

(7) On 25 February 2009 and in December 2009, the Commission introduced some technical adjustments, in particular as regards aid in the form of guarantees. In October 2009, the Commission introduced an amendment to the Framework in order to allow for a compatible limited amount of aid of EUR 15,000 for the agricultural sectors, which was initially excluded from the scope of application of this measure.

(6) DG Competition carried out an initial evaluation of the temporary framework in October 2009 through a questionnaire sent to the Member States and published in DG Competition’s webpage, with a view to obtaining comments from third parties. At that time, Member States considered the temporary framework as a useful tool which has provided an important support for companies and confirmed that companies were still facing difficulties on access to finance. On 17 March 2010 a second questionnaire was launched focusing on the impact and effectiveness of the temporary framework in the reactivation of access to finance. In addition, a multilateral meeting with the Member States was held on 26 October 2010.

(2) Figure includes only measures that fall under aid to industry and services.

(5) Autumn Scoreboard data 2010.

(6) According to the annual reports submitted by Member States and their reply to the Commission’s questionnaire on the Temporary framework.
on the real economy, which serves as an additional instrument to secure credit flows to firms.

2.2. Access to finance

Among other sources, the Commission assessment made use of a range of ECB surveys on access to finance by SMEs and the euro area bank lending survey. These surveys are widely used as a means of analysing issues of access to finance within the euro area and they rely on objective, comparable and continuous data-sets, which are regularly updated.

In general, large companies appeared to be less negatively disposed to the availability of bank financing than SMEs, as the former had partially replaced it with market-based financing.

As regards credit standards, banks that reported a tightening of their credit standards during 2010 were in a slight majority, although the position was far less serious than in 2008 and the first half of 2009, when the vast majority reported a tightening. The industry- or firm-specific outlook, together with expectations as regards general economic activity remained the most important factors contributing to a net tightening of credit standards. Tighter standards were expected in order to meet an increasing demand for funding by enterprises, in particular by SMEs.

While recovery is still fragile and uneven across the Union, some Member States are nevertheless posting modest or even more robust growth rates. In addition, despite some pockets of vulnerability, the health of the banking sector has improved in broad terms compared with the situation one year ago. Lending to the private sector appears to have turned positive in line with past patterns. As the economic recovery establishes itself on firmer ground, and concerns about fiscal sustainability are addressed, conditions on the financial market should continue to improve gradually and provide support to the recovery. However, the uncertainty about developments in particular market segments and countries still remains.

2.3. The Commission’s assessment

The temporary framework has provided ample possibilities for credit support during the crisis. However, it is necessary to prepare the recovery and scale down the support by reserving it only for those companies that really need it.

Despite encouraging signs of stabilisation in financial markets, the Commission - in view of the outstanding problems around access to finance and of the fragility of the recovery - considered it premature to let the temporary framework expire totally by the end of 2010. On the other hand, given that the market situation was far from being as dramatic as in 2008/2009, a full prolongation was not an option either. All in all, it was agreed that a gradual phasing-out of the Framework was the most appropriate response to the market situation.

This type of approach was also in line with that taken with regard to the crisis rules in the financial sector.

3. The prolonged State aid temporary framework

3.1. Main features

The main principles applied to the phasing-out of the temporary framework were the following:

Maintenance of measures that address the remaining market failures: although the market situation has improved, SMEs still face problems of access to finance (although these difficulties appear to be less pronounced for large companies). Therefore, it seems justified to prolong those temporary framework measures that are aimed at facilitating access to finance by SMEs. In the same vein, as regards access to trade, there are still groups of companies and sectors that are finding it difficult to obtain coverage from a private insurer. Consequently, there was also a strong case for prolonging the procedural simplification on short-term export credit insurance during 2011.

Tightening of conditions; measures that will be prolonged during 2011 will be subject to tighter conditions to reflect a gradual transition to the normal State aid regime. This approach will also help to limit possible distortions of competition. In practical terms, this means the following:

- Some measures will be only applicable to SMEs only *
- SMEs face particular problems of access to finance compared to large companies.
- Reduction of the allowed guaranteed amount from 90% to 80% * This would align the temporary framework provision with the provision in the Guarantee Notice and increase the incentive for the banks providing the underlying loans to carry out a thorough risk assessment.
- A smaller reduction applied to the annual guarantee premium for SMEs from 25% to 15%.
- A smaller reduction applied for green products for SMEs from 50% to 25% and for large companies from 25% to 15%.
- No working capital loans for large enterprises * working capital loans involve operating aid, which