Measure for Measure: Recent developments in EU competition policy and regional aid control

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Preface

This paper provides a review and assessment of EU competition policy control of regional State aid. The paper was prepared by the European Policies Research Centre (EPRC) under the aegis of EoRPA (European Regional Policy Research Consortium), which is a grouping of national government authorities from countries across Europe. The Consortium provides sponsorship for the EPRC to undertake regular monitoring and comparative analysis of the regional policies of European countries and the inter-relationships with EU Cohesion and Competition policies. EoRPA members currently comprise the following partners:

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It should be noted that the content and conclusions of this paper do not necessarily represent the views of individual members of the EoRPA Consortium.

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1. INTRODUCTION

Over the past decade the regulatory framework for regional aid has changed radically. The EU is now well into its second set of multiannual guidelines which determine the overall coverage of the assisted areas, area designation criteria, maximum rates of award and forms of aid for all Member States. Prior to the 2000-2006 Regional Aid Guidelines (RAG 1998),[1] the Commission lacked a comprehensive and predictable framework for assessing the regional aid proposals of the Member States. Driven by the planning schedule for EU cohesion policy and pressures for policy coordination, not to mention the impact of enlargement, RAG 1998 brought some order to the approval of national assisted area maps and ceilings and made competition policy control of regional aid proactive, rather than essentially reactive as it had been in the past. The 2007-13 Regional Aid Guidelines (RAG 2006)[2] followed a similar pattern, maintaining the broadly the same criteria for 'a' regions, but offering more flexibility for 'c' areas (but lower coverage) and further reducing aid ceilings.

In parallel, the Commission has sought to address its longstanding concern at the use of regional aid for large projects, reflecting its view that the distortive effect of such aid is magnified as other government-induced distortions of competition are dismantled and markets become more open and integrated.[3] This began in 1998 and, following substantial reforms in 2002, has become an integral part the regional aid guidelines; it significantly reduces award values to large firms, requires reporting of all cases and notification of those above given thresholds.

Alongside the substantive impact of these changes, regional aid control has also been affected by changes in the Commission's wider State aid agenda, reflected in the State Aid Action Plan (SAAP), adopted in 2005.[4] This emphasised the need for 'less and better' targeted aid and a 'refined' economic approach, more effective procedures and partnership between the Commission and the Member States in enforcement. For regional aid, the most tangible outcome of this agenda was the first block exemption regulation in the field of regional aid,[5] enabling the majority of regional aid schemes to escape notification. This

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[1] Regional Aid Guidelines, OJEC No C 74 of 10 March 1998.
[2] Guidelines on National Regional Aid for 2007-13, OJEU No C 54 of 4 March 2006.
[3] Multisectoral Framework on regional aid to large investment projects – Rescue and restructuring aid and closure aid for the steel sector, OJEC No C 70/8 of 19 March 2002, paragraph 8.
[4] State Aid Action Plan - Less and better targeted state aid: a roadmap for state aid reform 2005-2009, COM(2005) 107 final.
[5] Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Article 87 and 88 of the Treaty to national regional investment aid, OJEU No L 302 of 1 November 2006.

regulation is itself in the process of being superseded by a 'super' block exemption regulation covering a range of aid types.[6]

Together, the regional aid guidelines, the block exemption regulations and the rules on aid to large projects have brought about step change in the Commission's handling of regional aid. This has required not only the redrawing of the assisted area maps in all countries, but also the expiry of all aid schemes dependent on the previous map. The majority of assisted area maps for 2007-13 were approved in the course of 2006 and early 2007. As a result, for the Member States, the emphasis has shifted to the implementation phase since an approved regional aid map is a necessary pre-condition for authorised regional aid schemes.

Against this background, the main focus of this paper is on the implementation of aid schemes within the context of the new regulatory framework. The paper begins with an overview of the main recent developments in State aid control of relevance to regional aid (Section 2). It goes on to outline the new regulatory architecture for regional aid control (Section 3) before looking in more detail at aid measures reported under the block exemption regulation (Section 4), at measures requiring notification (Section 5) and at the scale and treatment of aid to large projects (Section 6). Section 7 provides a brief overview of regional incentive policy in selected Member States. A final section highlights some issues that merit further discussion.

2. COMPETITION POLICY AND REGIONAL STATE AID UPDATE

This section reports briefly on three developments of relevance to the control of regional aid. First, changes in assisted areas; second the adoption of the General Block Exemption Regulation to replace the existing Regulations, including the Regional Block Exemption Regulation; and third, the recent Court decision on the issue of regional tax autonomy and the definition of regional aid.

2.1 Assisted area maps – recent developments

(i) Approval of the Italian assisted areas

While most assisted area maps were approved in the course of 2006 and early 2007, the Italian submission was delayed due to domestic difficulties in producing a map. These difficulties stemmed from two main factors. First, constitutional reforms have devolved economic development responsibilities to the regional level; as a result, the emphasis was on reaching agreement between the regions. Second, Italy was accorded a very small 'c' area population quota– just 3.9 percent of the national population. Moreover, of this quota, most (2.9 percent) was accounted for by Sardegna which, as an economic development area, had an *a priori* claim on 'c' area status. Ultimately Sardegna was persuaded to concede some 700,000 of its total population quota (1.6 million) to other regions. After

[6] RAPID Press Release (2008) State aid: Commission adopts Regulation automatically approving aid for jobs and growth, IP/1110/08 of 7 July; Commission Regulation (EC) No 800/2008 of 6 august 2008 declaring certain categories of aid compatible with the common market in application of Article 87 and 88 of the Treaty (General Block Exemption Regulation), OJEU No L 214/3 of 9 August 2008.

many months of negotiation, and an informal rejection of the original proposal by the Commission, the map was ‘pre-notified’ on 30 March 2007 and following a meeting with the Commission was formally notified on 12 June 2007; further discussions and amendments to the proposal took place during the course of the autumn, with the map ultimately being approved in November 2007.[7] The difficulties involved in agreeing a map with such a small quota make clear why the Italian authorities had been opposed to the retention of ‘c’ areas (other than for regions losing ‘a’ region status) in the 2007-13 period.

The bulk of the Italian assisted areas map comprises full ‘a’ regions (Campania, Puglia, Sicilia and Calabria) and one statistical effect ‘a’ region (Basilicata); together these amount to about 29 percent of the national population and almost 90 percent of the assisted areas.

As noted, of the total ‘c’ area quota of 3.9 percent of the national population, around three-quarters of this was accounted for by the status of Sardegna as an economic development region on the basis of *Paragraph 30a.* Under the political compromise reached within Italy, 55.1 percent of the Sardinian population was designated on this basis with coverage including at least part of every commune in the region.

Only one area (adjoining parts of Abruzzi and Lazio) was designated on the basis of *Paragraph 30c*, reflecting the constraint of the remaining population quota (740,433) on designating areas with a minimum population of 100,000. The Abruzzi-Lazio zone contains a population of 263,219.

Also in Abruzzi, the Commission approved the designation of Castel di Sangro, with a population of 5,749, on the basis of *Paragraph 30e* reflecting the geographical isolation of the area in the Appenines.

Five zones with a total population of just over 500,000 were approved under *Paragraph 30g* (areas bordering ‘a’ regions); Sardegna aside, this provision accounted for the highest ‘c’ area population coverage (2.5 percent of the assisted area population). Three of the areas (all in Friuli-Venezia Giulia) border Slovenia; two further areas are in Molise, bordering Basilicata, and Lazio, bordering Campania.

Eight zones with a total population of 435,265 were designated under *Paragraph 30h* (restructuring). These are in Piemonte / Val d’Aosta (65,382), Veneto (50,070), Liguria (50,155), Emilia-Romagna (50,001); Abruzzi (58,892) and three zones in Lazio each containing 50,000-60,000 inhabitants.

Last, six areas with a total population of 165,919 were designated for SME aid on the basis of *Paragraph 31.* Two of these zones are in Lazio, two are in Toscana and there is one each in Umbria and Marche.

Under the transitional arrangements, Italy had a quota of 5.6 percent of the national population. This was used to designate 38 areas in the regions of Val d’Aosta, Piemonte,

[7] Guidelines on national regional aid 2007-2013: National regional State aid map – Italy (N324/07), OJEU No C90/4 of 11 April 2008.

Lombardia, Veneto, Liguria, Emilia Romagna, Toscana, Umbria, Marche, Abruzzo, Lazio and Molise. Eligibility of these areas expires on 1 January 2009.

The overall outcome of this process is that every NUTS II region except the autonomous provinces of Bolzano and Trento contain assisted areas; however, following the expiry of the transitional period, Lombardia will also cease to have any assisted areas.

(ii) Extension of the French map

Also worth noting is that the French authorities have made an adjustment to the existing map. This used a population 'reserve' which had been set aside to cover future requirements to expand assisted area coverage. The reserve amounted to 250,120 inhabitants; the extension to the map involves 70,950. This was approved by the Commission in June 2008. Two distinct areas were added to the map. First, in the Centre region, the French authorities proposed two labour market areas (Chateaudun and Nogent-le-Rotrou) on the basis of *Paragraph 30h* of the Guidelines (areas affected by restructuring); these areas contained a population of 52,741. This was justified on the basis of recent job losses following plant closures and the fall in employment relative to the national average. Second, in the Picardie region, a modest extension (18,209 inhabitants) was made to an existing area designated on the basis of *Paragraph 30c* (areas with a minimum population of 100,000 with below EU average GDP per head or above national average unemployment). It is anticipated that the French authorities will make further use of the reserve to designate areas affected by restructuring in the defence sector.

(iii) Impact on assisted area coverage

Overall these changes are clearly small and neither the Italian map nor the extension of the French map changes the overall picture of assisted areas across the EU as a whole. This is illustrated in Figure 1. This shows that, as is well-known, coverage is heavily concentrated in the new Member States where almost 98 percent of the population resides in assisted areas; by contrast, less than a third of the EU15 population has assisted area status. There is also a sharp divide regarding 'a' region status. This covers 95 percent of the new Member States population, but just 15 percent of that of the EU15. Across the EU27, half of the 'c' areas are designated on the basis of Paragraph 30c, ie. they involve population blocks of at least 100,000 and meet the GDP or unemployment criteria.

Figure 1: Assisted areas by type under the 2007-13 Guidelines (% of national population)

	'a' regions	Stat effect	Econ dev	LPD	Cyprus/ Lux	Pop 100000	NUTS 3	Islands / isolated	Islands <5000	Border	Struct chg.	SMEs	'c' areas	TOTAL	Res.	Trans
Guidelines para	**15**	**18**	**30a**	**30b**	**Note 32**	**30c**	**30d**	**30e**	**30f**	**30g**	**30h**	**31**	**30-31**	**ex Res /Trans**		**95**
Belgium		12.3				9.8				0.97	1.2	1.5	**13.5**	**25.7**		
Bulgaria	**100.0**													**100.0**		
Czech Rep	**88.5**													**88.5**		7.6
Denmark						4.5	0.8	0.80	0.189			2.2	**8.5**	**8.4**		2.6
Germany	**12.5**	4.9				8.4	0.2		0.002	1.71	0.5	0.1	**10.9**	**28.4**		
Estonia	**100.0**													**100.0**		
Greece	**36.6**	55.5	7.8										**7.8**	**100.0**		
Spain	**36.2**	5.8	14.3	0.3		1.8				0.70	0.6		**17.7**	**59.6**		12.4
France	**2.8**					10.5		0.51		0.02	3.5	0.6	**15.1**	**18.0**	0.4	6.9
Ireland			26.5			10.8			0.014			12.7	**50.0**	**50.0**		23.5
Italy	**28.9**	1.0	1.6			0.5		0.01		0.86	0.74	0.28	**4.0**	**33.8**		5.6
Cyprus						44.9		5.14					**50.0**	**50.0**		
Latvia	**100.0**													**100.0**		
Lithuania	**100.0**													**100.0**		
Lux					15.8								**15.8**	**15.8**	0.2	4.6
Hungary	**72.2**		27.8										**27.8**	**100.0**		
Malta	**100.0**													**100.0**		
Neths						7.5							**7.5**	**7.5**		2.4
Austria		3.4				15.1	0.3			3.74			**19.1**	**22.5**		
Poland	**100.0**													**100.0**		
Portugal	**70.2**	3.8								2.72			**2.7**	**76.7**		17.6
Romania	**100.0**													**100.0**		
Slovenia	**100.0**													**100.0**		
Finland			12.6	12.0		2.9			0.736	2.20	1.0	1.4	**32.8**	**32.9**		
Slovakia	**88.9**													**88.9**		7.2
Sweden				7.8		3.4					4.0		**15.2**	**15.3**		
UK	**4.0**	0.6	6.4			12.6				0.30			**19.3**	**23.9**		
Iceland				32.0									**32.0**	**32.0**		
Lichtenstein														**0.0**		
Norway				27.5									**27.5**	**27.5**		
EU27	**32.1**	**3.2**	**3.3**	**0.3**	**0.01**	**5.5**	**0.05**	**0.08**	**0.010**	**0.66**	**0.78**	**0.31**	**11.0**	**46.3**	**0.04**	**3.5**
EU15	**15.0**	**4.0**	**3.4**	**0.4**	**0.02**	**6.9**	**0.06**	**0.09**	**0.013**	**0.83**	**0.98**	**0.39**	**13.1**	**32.1**	**0.05**	**4.1**
NMS12	**94.8**		**2.7**			**0.3**		**0.04**					**3.0**	**97.8**		**1.1**
EEA3				**27.8**									**27.8**	**27.8**		

Source: Own calculations from information in Commission decisions and Eurostat data.

2.2 General Block Exemption Regulation

(i) Background

As part of the rationalisation and simplification of the State aid rules, the Commission adopted a General Block Exemption Regulation (GBER) in July 2008;[8] the GBER entered into force on 29 August 2008. This represented the latest stage of a process begun under the 1998 Enabling Regulation[9] which envisaged the possibility of block exemptions in a number of policy areas, namely aid for SMEs, R&D, training, environmental protection and regional aid. In practice, block exemption regulations were only adopted for SME and training aid (in 2001) employment aid (in 2002) and regional aid (in 2006).

The main purpose of the block exemption approach is to obviate the need for prior notification and approval of aid schemes in areas where the Commission has defined the circumstances in which it will find aid to be compatible with the common market. In other words, provided that a given measure meets the conditions set out in the relevant regulation, then there is a presumption that the measure is compatible with the Treaty. The principal rationale for this was to reduce the administrative burden on the Commission which, historically, had committed considerable resources to 'rubber stamping' aid schemes which national administrators had already taken care to ensure were in line with the Commission's published guidelines. In principle, the resources saved would in turn enable the Commission to focus on more complex cases and the most distortive types of aid. In addition, the direct applicability of regulations in the Member States meant that compliance with block exemption regulations could be ensured through private enforcement in national courts.

This approach was endorsed and enlarged upon in the 2005 State Aid Action Plan. This proposed to simplify and consolidate the existing block exemption regulations, bringing them within a single document – a general block exemption regulation - and expanding the approach to other policy areas mentioned in the Enabling Regulation, but for which regulations had not been devised.

(ii) Relationship between the Regional BER and the GBER

Consultation on the GBER, presaged in the SAAP, began in April 2007; the version finally adopted is the fourth iteration of the text. It had been anticipated that the text would be adopted earlier in 2008 enabling the existing block exemptions for SME, training and employment aid simply to be replaced on their expiry (30 June 2008). However, this

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[8] RAPID Press Release (2008) State aid: Commission adopts Regulation automatically approving aid for jobs and growth, IP/1110/08 of 7 July; Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Article 87 and 88 of the Treaty (General Block Exemption Regulation), OJEU No L 214/3 of 9 August 2008.

[9] Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 (now 87 and 88 respectively) of the Treaty establishing the European Community to certain categories of horizontal State aid, OJEU No L 142/1 of 14 May 1998.

timetable proved to be too ambitious and the Commission extended these block exemptions to 30 September 2008.[10]

The GBER repeals and replaces the existing block exemption regulations, including the Regional Aid Block Exemption Regulation (BER)[11] introduced at the end of 2006. Transitional provisions apply so that aid already reported is 'grandfathered in' under the GBER and can be implemented unaffected until 2013. Moreover, Member States effectively have a choice as to whether to report under the Regional BER or the GBER until 31 December 2008. After 31 December 2008, all new regional aid schemes must comply with the GBER in order to be exempted from notification.

Reflecting the aim of consolidating and rationalising existing texts, the GBER is in two main parts. The first sets out the so-called 'common provisions'. The second sets out the provisions relating to different aid types, namely, regional aid, SME investment and employment aid, aid for female entrepreneurship, environmental protection aid, aid for consultancy and fair participation for SMEs, aid in the form of risk capital, research, development and innovation aid, training aid and aid for disadvantaged and disabled workers.

As far as regional aid is concerned, the provisions governing exempted schemes are, not surprisingly given how recent the regional BER is, very similar to those under the regional BER. There are two main changes.

First, the GBER requires regional aid measures to have 'incentive effect';[12] this is not required under the regional BER. For SMEs, it is sufficient for the beneficiary to have applied for aid before work on the project has begun for incentive effect to be demonstrated. The requirements are more onerous for large firms. In such cases (as well as applying for aid before project start) the Member State must verify before granting the aid that the documentation prepared by the beneficiary establishes one or more of the following criteria:

- a material increase in the size of the project/activity due to the aid
- a material increase in the scope of the project/activity due to the aid
- a material increase in the total amount spent by the beneficiary on the project/activity due to the aid
- a material increase in the speed of completion of the project/activity concerned
- that the project would not have been carried out as such in the assisted region concerned in the absence of aid.

[10] Commission Decision of 20 June 2008 on the prolongation of certain State aid decisions, OJEU No L164/43 of 25 June 2008.
[11] Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Article 87 and 88 of the Treaty to national regional investment aid, OJEU No L 302 of 1 November 2006.
[12] GBER, Article 8.

In the consultation process, some respondents raised concerns about the administrative burden surrounding this requirement or indeed whether it could be proven (for example, Germany, Belgium and France), but in practice, most national authorities seem to have been content at its introduction, largely reflecting the fact that the requirements echo the approaches already taken in many Member States in trying to ensure the effectiveness of aid and minimise deadweight effects.

The second main change is an extension of the scope of the block exemption to include aid for newly created small enterprises. To this end, the provisions in RAG 2006[13] have essentially been transposed into the GBER. The only change is that the GBER contains a requirement that small enterprises controlled by shareholders of undertakings that have closed down in the previous 12 months cannot benefit from aid under this provision if the enterprises concerned are active in the same or adjacent markets.

The net effect of this change is that aid to newly created enterprises need no longer be notified and assessed against the RAG 2006 but may benefit from the GBER, provided that it complies with the provisions of the GBER, for example, in relation to transparency. Although not explicitly stated, it seems probable that this change resulted from the limited competition considerations that arise from such aid, together with the very small number of aids of this type notified under RAG 2006 and the renewed emphasis on SME support reflected in the so-called Small Business Act.[14]

Overall, the introduction of the GBER does not radically alter the context for the approval of regional aid schemes beyond that provided for by the Regional BER. There is some sharpening-up of administrative aspects of the block exemption – such as the requirement that the internet address provided under the transparency requirements should lead directly to the full text of the aid measure (many of the addresses provided under the BER simply lead to the website of the administering body; moreover, a number are already invalid). However, it remains to be seen how many regional aid schemes will ultimately be reported under the GBER. Clearly a substantial number have already been reported under the Regional BER, and this continues to operate in parallel with the GBER until end 2008; it may be that this constitutes the bulk of regional aid measures to be introduced in the 2007-13 period.

(iii) Evaluation of the block exemption approach

A Commission evaluation of the block exemption regulations was published in 2006.[15] This was broadly positive and showed that between 2001 and 2005 Member States had put some 1279 measures into effect under the various regulations (including 183 measures for agriculture and fisheries). However, some Member States observed that the introduction of the regulations had shifted on to them administrative burdens that were excessive and

[13] RAG 2006, paragraphs 84-91.

[14] European Commission (2008) *"Think small first": A "Small Business Act" for Europe*, COM(2008)394, 25 June 2008.

[15] European Commission (2006) Evaluation report on the application of the Council Regulation (EC) No 994/98 of 7 May 1998 regarding the application of Articles 87 (ex-Article 92) and 88 (ex-Article 93) of the EC Treaty to certain categories of horizontal State aid, COM(2006) 831 final of 21 December 2006.

difficult to discharge in practice. Moreover, although the reduction in notified cases should have enabled the Commission to concentrate resources on the most distortive cases, in reality this reduction was largely offset by an increase in the overall number of cases arising from enlargement.

Use of the block exemption facility has varied widely between policy area and Member States. Strict comparisons are complicated by the differing lifespans of the regulations (the SME and Training BERs predate the Regional BER by five years) and by enlargement. Nevertheless, some clear patterns do emerge.

Over the period for which data have been published (2001-7), over 2800 schemes were reported under the various block exemptions (see Figure 2). Historically, the majority of schemes for manufacturing and services have been accounted for by the SME BER, with relatively few under the Employment BER. It seems likely that this results from a variety of definitional issues and complexities in the Employment BER which meant that Member States preferred to notify and gain clearance for schemes for reasons of legal certainty.

Figure 2: Trends in the use of block exemption regulations

	2001	2002	2003	2004	2005	2006	2007	Total
SME	102	123	139	149	197	183	303	1196
Training	48	80	55	79	68	57	108	495
Employment			8	21	26	35	31	121
Regional							189	189
Agriculture				72	88	119	496	775
Fisheries				1	22	24		47
Total	**150**	**203**	**202**	**322**	**401**	**418**	**1127**	**2823**
Total exc. Ag & fish	*150*	*203*	*202*	*249*	*291*	*275*	*631*	*2001*

Source: European Commission (2008) State Aid Scoreboard – Spring 2008 update, COM(2008)304 final, 21 May 2008.

In 2007 there was a significant upturn in the number of use of the block exemption regulations. This is partly attributed to the introduction of a Regulation in the agricultural sector,[16] but also to the start of a new Structural Funds planning period in 2007 and a high take-up rate for the Regional BER. Following the expiry of the block exemption for fisheries, there were no schemes for this sector in 2007, but a new Regulation was adopted in July 2008.[17]

[16] Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products, OJEU No L358/3 of 16 December 2006.

[17] Commission Regulation (EC) No 736/2008 of 22 July 2008 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products, OJEU No L 201/16 of 30 July 2008.

Figure 3: Schemes reported under the block exemption regulations

	Number of schemes (2001-2007)								€ m
	SME	**Train.**	**Emp.**	**Reg.**	**Agric.**	**Fish.**	**Total**	**Exc. Agric &Fish**	**2001-2006**
Italy	316	126	14	1	120	18	595	457	4481
UK	215	103	5	17	80	4	424	340	1633
Germany	147	86	13	13	42	0	301	259	1890
Spain	151	40	12	35	93	5	336	238	799
Poland	49	5	26	21	7	0	108	101	1114
Austria	61	15	0	23	17	0	116	99	387
Neths.	66	3	3	1	61	4	138	73	45
Hungary	22	10	17	12	11	0	72	61	91
Czech	33	5	1	18	10	0	67	57	181
Belgium	6	37	3	3	17	0	66	49	373
Greece	26	4	3	3	1	1	38	36	198
Cyprus	15	10	7	2	6	0	40	34	5
Estonia	12	10	3	3	1	4	33	28	7
France	9	5	6	3	76	0	99	23	482
Ireland	11	10	0	2	20	1	44	23	159
Malta	9	6	3	1	0	0	19	19	1
Denmark	9	4	0	2	5	0	20	15	15
Slovenia	5	4	1	4	159	1	174	14	1
Slovakia	11	1	1	1	11	0	25	14	5
Latvia	9	1	0	1	16	2	29	11	9
Portugal	2	4	0	5	5	0	16	11	153
Romania	0	0	0	11	0	0	11	11	na
Finland	6	1	0	3	5	6	21	10	4
Lith.	4	2	1	2	12	1	22	9	9
Bulgaria	1	2	1	1	0	0	5	5	na
Sweden	0	1	1	1	0	0	3	3	16
Lux.	1	0	0	0	0	0	1	1	19
EU-27	**1196**	**495**	**121**	**189**	**775**	**47**	**2823**	**2001**	**12077**

Notes: (i) For NMS12 figures are as of 1 May 2004 or 1 January 2007, as appropriate. **(ii)** Expenditure data do not include agriculture and services. **(iii)** Note that number of schemes refers to 2001-7 and expenditure to 2001-6.
Source: European Commission (2008) State Aid Scoreboard – Spring 2008 update, COM(2008)304 final, 21 May 2008.

Clearly the data in Figure 3 are distorted by the timing of enlargement, with fewer schemes in the new Member States than might otherwise have been the case. Notwithstanding this, there are wide variations between countries of comparable size and membership status. For example, Italy and the UK together account for almost 800 schemes for manufacturing and services, while France has reported just 23. Moreover, in the short period since accession, many of the new Member States have made active use of the regulations, with Poland, for example, already registering over 100 schemes. Figure 3 also suggests that the Regional BER has been well-used in the 18 month period since it came into force. The operation of the Regional BER is discussed in more detail later in this paper.

Expenditure data for 2007 will not be available until autumn 2008. This impedes any country-by-country or policy-related analysis of the data in Figure 3, not least because of the very significant increase in the number of schemes reported in 2007 (see Figure 2) and

the absence of trend data disaggregated by country. Nevertheless, it is worth noting the very high level of spending in some Member States over the period – Italy alone accounts for over third of the total expenditure of some €12 billion under the block exemption regulations in 2001-6. Together, Italy, Germany, the UK and Poland account for more than three-quarters of spending under block-exempted schemes in 2001-6.

Although the Commission evaluation of block exemption approach was positive, it is also evident that, in many countries, a rather modest proportion of total horizontal aid was awarded under block-exempted schemes. For example, in 2005, just 7.8 percent of horizontal aid expenditure was accounted for by block exempted schemes. This fell to as little as 0.1 percent in Denmark and peaked at 62.8 percent in Poland.[18] Of course, this is partly because of the scope of the regulations (as noted earlier, no regulations were introduced for environmental protection or research and development which, in some countries, account for a significant proportion of aid). In addition, however, the Commission considered that the need for notification could be reduced not only by extending new rules to policy areas thus far excluded, but also by clarifying the various provisions and definitions and, in some instances, by raising notification thresholds.

2.3 Regional aid, regional autonomy and taxation

The relationship between fiscal affairs and competition policy has long been controversial. This is essentially because sovereignty over taxation is jealously guarded by the Member States; on the other hand, it is well-established that certain tax arrangements and concessions may constitute State aid. In the regional development context, a crucial issue concerns the circumstances in which regional fiscal autonomy involves State aid; for many years, this important question was unresolved, the European Court of Justice (ECJ) never having had to pronounce on a clear-cut case. However, a series of recent cases have had to address this issue, with significant implications for the State aid treatment of regional tax autonomy.

On 11 September 2008 the European Court of Justice (ECJ) handed down its judgment in a series of joined cases concerning taxation in the Basque country (the La Rioja case).[19] This judgment confirms and refines the criteria, first set out in the Azores case,[20] which determine when regional tax decisions involve State aid. A judgment in the Gibraltar case,[21] which concerns similar issues, is expected shortly. This section begins by outlining the key issues in the relationship between regional aid and taxation before setting out the criteria developed in the Azores case and refined in the recent La Rioja case.

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[18] European Commission (2006) Evaluation report, *op cit*, Table 3.

[19] Joined Cases C-428/06 to C-434/06: *UGT-La Rioja, Comunidad Autónoma de La Rioja and Comunidad Autónoma de Castilla y León v Juntas Generales del Territorio Histórico de Vizcaya, Diputación Foral de Vizcaya, Cámara de Comercio, Industria y Navegación de Bilbao and Confebask* (C-428/06, C-429/06 and C-434/06), *Comunidad Autónoma de La Rioja and Comunidad Autónoma de Castilla y León v Diputación Foral de Álava, Juntas Generales de Álava and Confebask* (C-430/06 and C-433/06), *Comunidad Autónoma de La Rioja and Comunidad Autónoma de Castilla y León v Diputación Foral de Guipúzcoa, Juntas Generales de Guipúzcoa and Confebask* (C-431/06 and C-432/06).

[20] C-88/03 Portugal v European Commission.

[21] T-211/04 Gibraltar v Commission.

(i) Regionally-differentiated taxation

Tax and social security concessions that discriminate in favour of certain regions have consistently been treated by the Commission as constituting State aid; an early example is the German coal closure areas case.[22] More recently, in the context of membership of the European Economic Area, the Norwegian system of social security was challenged by the EFTA Surveillance Authority (ESA).[23] The system involved different rates of employers' social security contribution based on the zone in which the employee had his/her registered permanent residence. The Norwegian authorities argued that because the regional differentiation was neutral with regard to sector, occupation, size of undertaking, etc. and was linked to municipality of residence, not workplace, it was an integral part of the general tax and transfer system in Norway. In line with earlier Commission decisions, however, this argument was not accepted by ESA which considered the system to constitute regional State aid in the form of operating aid.[24] The ESA decision was challenged by the Norwegian authorities, but the EFTA Court upheld ESA's decision.[25] This was not a surprising outcome given the precedents that had already been established.[26]

(ii) Regional tax autonomy and State aid – historical perspectives

In most countries a range of services are financed from taxes raised at the subnational level. Where all local authorities are free to set the tax rate for their jurisdiction, and that rate applies to the whole area, no State aid is involved - even though there may be considerable variation in subnational tax rates across the country as a whole. In this case, lower tax rates set in a given jurisdiction, if such should arise, are not viewed as an exception from the general application of the system.

More complex issues arise where there is regional tax autonomy over taxes 'normally' levied by central government, or asymmetric devolution. In Spain, for example, the authorities in the Basque country have greater tax autonomy than most of the Spanish regions under a special regime dating back to the 19th century. As a result, the Basque country levies its own taxes in place of the national taxation system and has the scope to offer concessions on those taxes. The Commission has had occasion to consider tax concessions offered within the Basque country in a number of cases dating back to 1993, although not the question of a lower headline tax rate.[27] A constant theme in these disputes was the historic tax agreement (*conciertos económicos*) and the issue of fiscal autonomy. In the first of these cases[28] proposals to offer tax concessions were condemned on the basis of Article 43 (then Article 52) since they were restricted to firms with all plants

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[22] Case 70/72 *Commission v Germany* [1973] ECR 813.
[23] EFTA Surveillance Authority, State aid (95-010) Norway, OJEC No C 38 of 5 February 1998.
[24] EFTA Surveillance Authority Decision No 165/98/COL of 2 July 1998 with regard to State aid in the form of regionally differentiated social security taxation, OJEC No L 327 of 3 December 1998.
[25] Case E-6/98 Government of Norway v EFTA Surveillance Authority.
[26] In practice, although such concessions have been classified as aid, RAG 2006 introduced greater flexibility in the interpretation of Article 87(3), allowing the Commission and ESA to authorise such measures to continue in the sparsely-populated areas where duly justified by the Member States.
[27] A lower rate had been proposed in 1996, but was not implemented so that the issue was not addressed at that time.
[28] Commission Decision of 10 May 1993 concerning a scheme of tax concessions for investment in the Basque country, OJEC No L 134 of 3 June 1993.

located in the region, a condition which was considered to restrict freedom of establishment. In consequence, the Commission did not need to become embroiled in questions of fiscal autonomy. This was perhaps fortuitous since it seemed that the Commission was deeply divided on the issue.

Subsequently, however, a revised form of the concessions became the subject of a preliminary reference to the European Court of Justice from the Basque courts in a case involving the Basque and the Spanish authorities.[29] In this context, Advocate-General Saggio addressed the question of whether regional autonomy in taxation could amount to State aid. He observed that:

> "The fact that the measures at issue were adopted by regional authorities with exclusive competence under national law is… …purely a matter of form, which is not sufficient to justify the preferential treatment reserved to companies which fall within the scope of the provincial laws. If this were not the case, the State could easily avoid the application, in part of its own territory, of provisions of Community law on State aid by making internal changes to the allocation of competence on certain matters, thus raising the general nature, for that territory, of the measure in question."

This paved the way for a more robust approach on the part of the Commission to the exercise of fiscal autonomy. Building on the Opinion of AG Saggio, the Commission rejected part of a tax regime for the Azores[30] and refused the implementation of proposed tax reforms for Gibraltar[31] (the latter partly based on its decision in the Azores case); both of these decisions were appealed before the European courts,[32] with the ECJ ruling on the Azores case and the Court of First Instance expected to rule on the Gibraltar case in 2008.

The importance of these cases lies in the fact that the measures proposed were only selective to the extent that they applied in the territories concerned – there was no sectoral or other targeting of the type that had confused matters in the Basque country cases. As a result, the Court's findings in the Azores case set out some important principles about the precise form of regional autonomy that can be exercised without contravening the State aid rules.

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[29] Joined cases C-400/97, C-401/97 and C-402/97 *Administración General del Estado v Juntas Generales de Guipúzcoa and Diputación Foral de Guipúzcoa*, Opinion of AG Saggio delivered on 1 July 1999. (Case removed from the register of the Court of Justice on 16 February 2000 following discontinuance of the applicant in the cases in the main proceedings and a compromise over the so-called *Concierto económico*).

[30] Commission Decision of 11 December 2002 on the part of the scheme adapting the national tax system to the specific characteristics of the Autonomous Region of the Azores which concerns reductions in the rates of income and corporation tax, OJEC No L 150 of 18 June 2003.

[31] Commission Decision of 30 March 2004 on the aid scheme which the United Kingdom is planning to implement as regards the Government of Gibraltar Corporation Tax Reform, OJEC No L 85 of 2 April 2005

[32] Action brought on 27 February 2003 by Portuguese Republic against the Commission of the European Communities (Case C-88/03), OJEC No C 112 of 10 May 2003; Action brought on 9 June 2004 by the Government of Gibraltar against the Commission of the European Communities (Case T-211/04), OJEC No C 217 of 28 August 2004.

(iii) Regional tax autonomy and State aid – the Azores test

The Azores case concerned the decision of the Autonomous Government of the Azores to reduce rates of income and corporation tax in the region. This measure was not notified to the Commission as State aid, but the Commission opened a formal investigation, following its request for information on the scheme. The Commission found the measure to constitute State aid, but, given the status of the Azores as an 'a' region, authorised the lower tax rate *except* for specified financial service and coordination centre activities. For these activities, the Commission ordered the recovery of aid received in the form of the lower tax rate, with interest.

This Decision was challenged by the Portuguese authorities, whose principal argument was that the reduction in tax rates did not constitute a State aid at all: the Commission should not have taken the whole of the Portuguese territory as the reference framework, but only the region of the Azores, over which the Autonomous Government had jurisdiction. In the absence of any other 'selective' characteristics (such as targeting specified sectors) which would have condemned the measure as aid, the case hinged on defining the circumstances in which the decision of an autonomous regional authority to lower tax rates may constitute State aid. As noted earlier, this question had never been directly addressed by the European Court.

The case was first considered by Advocate General Geelhoed, whose opinion was followed by the ECJ. In his view, the crucial question concerned whether the decision was taken by an authority that was truly autonomous from the central government of the Member State. For this purpose, AG Geelhoed put forward a three-part test with a view to determining whether a local authority is institutionally, procedurally and economically autonomous. More specifically:[33]

- Institutionally autonomous means that "the decision must be taken by a local authority with its own constitutional, political and administrative status separate from central government"

- Procedurally autonomous means that the central state does not have the power "to intervene directly in the procedure of setting the tax rate" and the local authority is not obliged "to take the interests of the central state into account in setting the rate"

- Economically autonomous means that the lower tax rate applicable must not be "cross-subsidised or financed by central government, so that the economic consequences of these reductions are borne by the region itself."

This test was largely adopted by the ECJ in confirming the Advocate General's view that the Azores government was *not* truly autonomous from central government.[34] This

[33] At paragraph 54. The Opinion of the Advocate General and the Judgment of the ECJ in C-88/03 *Portugal v Commission* are available at <www.curia.eu.int>.
[34] The Court differed on some points of detail – it did not, for example, take up the point that local authorities should not be obliged to take the interests of the State into account in setting tax rates.

stemmed from the Portuguese legislation which gives rise to a duty incumbent on both the national and regional authorities to promote the correction of inequalities arising from insularity by reducing the local tax burden and by ensuring an appropriate level of public services and private activities. In addition, reductions in tax revenue may be offset by a centrally-managed financing mechanism. For this reason, the Court concluded that the Azores government was not 'truly autonomous' – it did not have procedural or budgetary autonomy - and that the lower rates of tax in the region constituted State aid.

In spite of the failure of the Portuguese authorities to win the case on substance, this was a landmark case which confirmed that, in certain circumstances, subnational authorities could set rates of tax below those prescribed by central government, without infringing the State aid rules.

(iv) The La Rioja case – refinement of the criteria

In a more recent case, the ECJ has had the opportunity to refine the criteria for determining regional autonomy for State aid purposes. The facts of the case were as follows. The Basque country has two different political and institutional levels: the Autonomous Community of País Vasco and the 'foral' institutions of the three historic territories, Ávala, Vizcaya and Guipúzcoa, which make up the Basque country. In 2005 each of the foral authorities adopted tax measures which set the rate of corporation tax at 32.5 percent and introduced a number of tax concessions. Spanish national legislation sets a corporation tax rate of 35 percent and does not provide for such deductions.

In response, a trade union (UGT - La Rioja) and two neighbouring autonomous communities (La Rioja and Castilla y León) brought proceedings against the foral authorities before the Supreme Court of the Basque country, seeking annulment of these measures (under seven separate proceedings). The Court made a reference for a preliminary ruling by the ECJ on whether the measures operated by the foral authorities should be considered selective measures on the grounds that they do not apply to the whole territory of the Member State concerned. The cases were joined for the purposes of the proceedings and judgment of the ECJ. As a preliminary ruling, the judgment of the ECJ provides the basis for the relevant domestic court (in this case the Supreme Court of the Basque country) to make a decision.

In considering the question raised by the Basque court, the ECJ applied the Azores test of institutional, procedural and economic autonomy. It concluded that both the foral authorities and Autonomous Community of País Vasco satisfied the *institutional autonomy* criterion.

As to *procedural autonomy*, the ECJ noted that this is fulfilled if the decision is taken by the subnational body without central government being able directly to intervene in its content. However, the Court observed that this does not preclude the operation of a conciliation procedure in order to avoid possible legislative conflicts, provided that the final decision is taken by the subnational body. The Court also noted that it did not appear that the Spanish central government could intervene directly in the process of adopting foral legislation in order to ensure compliance with general principles such as solidarity,

fiscal harmonisation or other principles which had to be taken into account in adopting tax measures. Nevertheless, it was for the domestic court to establish that this was so.

The *economic autonomy criterion* requires that the financial consequences of a reduction of the national tax rate for undertakings in the region are not offset by subsidies or transfers from other regions or central government. The calculation of financial transfers between the Spanish State and the Autonomous Community of País Vasco is particularly complex and essentially derives from the *concierto económicos*, an agreement between the Spanish State and the Basque country referred to earlier. Under this agreement, the Basque country pays the Spanish State sums (a 'quota') related to costs of providing services which are not devolved to the Autonomous Community. A key element in calculating the quota is the so-called attribution rate. This rate must generally reflect the weight of the Basque economy within the Spanish economy as a whole, but is set within what are essentially political negotiations rather than being the precise outcome of a given set of calculations. The Court concluded that a decision to reduce the tax rate would not necessarily result in a change in the attribution rate. The Commission had argued that the attribution rate was undervalued, so that the foral authorities contributed less to the Spanish State than they should. However, the Court declined to examine the application of the mechanism in detail and argued that the undervaluation of the attribution rate "is capable of constituting merely an indicator that the Historical Territories lack economic autonomy." For that lack of autonomy to be confirmed there "must be compensation, namely, a causal relationship between a tax measure adopted by the foral authorities and the amounts assumed by the Spanish State".[35] The Court noted that it was for the domestic court to determine whether the process of setting the attribution rate had the aim of permitting central government to compensate the foral authorities for the cost of cutting tax rates. The Court did not exclude the possibility that the foral authorities' decisions to cut tax rates might result in larger transfers in favour of the Basque country because of the methods used to determine those transfers; it ruled that it was for the domestic court to establish whether foral laws might result in hidden compensation in sectors such as social security, the guarantee of minimum public services by the Spanish State or the functioning of the Interterritorial Compensation Fund.

3. THE REGULATORY ARCHITECTURE FOR REGIONAL AID

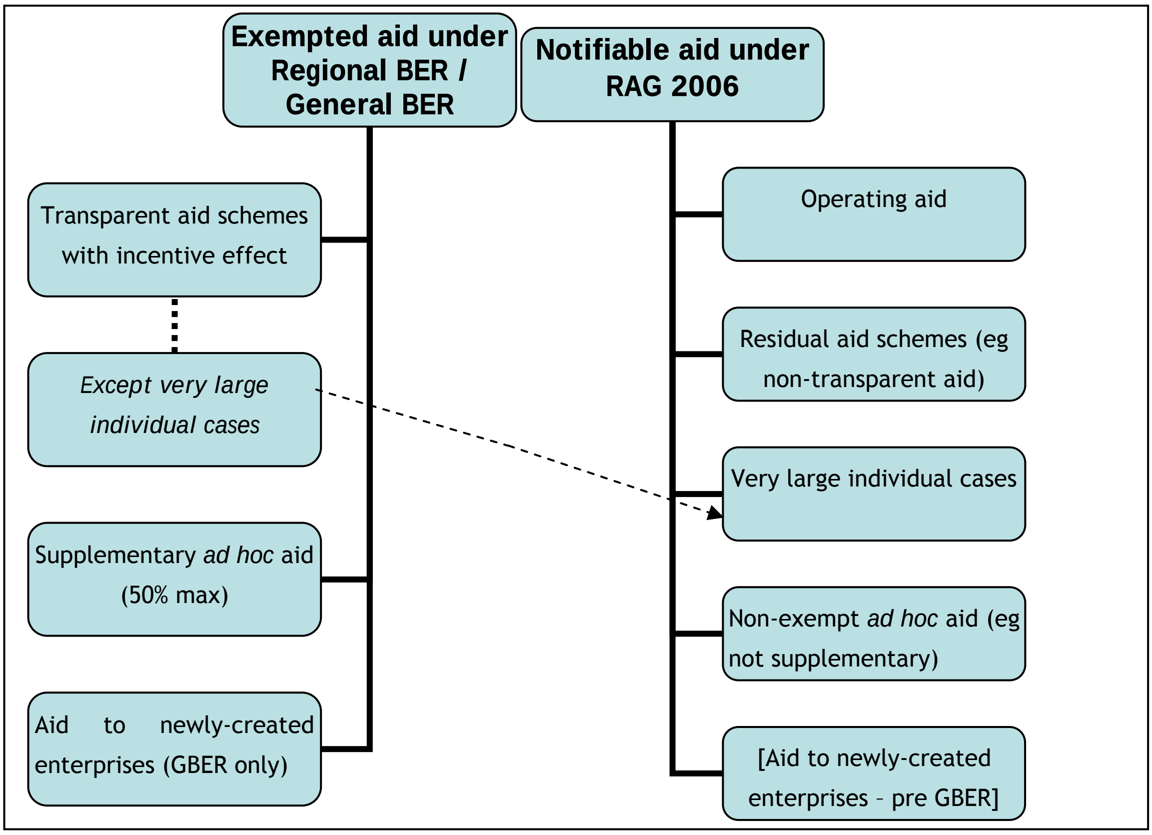
3.1 Background

The regulatory architecture for regional aid has undergone a radical overhaul in the last decade, but especially in the last two years. The Commission has pursued a two-pronged approach to regional aid discipline, in line with objectives set out in the SAAP. On the one hand, it takes a more relaxed approach to schemes meeting clearly specified criteria; on the other, large individual aids and certain types of measure are subject to scrutiny. In all cases, the responsibilities of the Member States in relation to transparency, monitoring and reporting are reinforced – in part shifting the burden of policing regional aid to the national level.

[35] Judgment in Joined Cases C-428/06 to C-434/06 at paragraph 129.

The overall system is summarised in Figure 4. This illustrates the filtering and threshold approach which aims to target Commission resources on the scrutiny of those measures which it considers raise the most competition concerns.

Figure 4: The new regulatory architecture for regional aid control



The key elements of the system are threefold:

- the exemption from notification and prior approval of certain aid schemes and supplementary ad hoc aid under the General Block Exemption Regulation (GBER) (or Regional BER);
- the notification and prior approval of non-exempt schemes under RAG 2006
- and the scrutiny of individual awards either because of their size or because they involve ad hoc aid which does not qualify for an exemption.

In effect, the Commission's approach is calibrated according to its perception of risk to competition. In the 'low-risk' category are measures which meet the tightly prescribed criteria of the GBER, with the *qui pro quo* that the burden of policing falls largely to the Member States. In the 'medium-risk' category are measures which lack the transparency for exemption or which involve the subsidisation of ongoing costs; these require case-by-case scrutiny of the scheme, but not, in general, of individual awards under approved schemes. In the 'high-risk' category, and meriting individual analysis at the level of the firm, are very

large awards, even when offered under schemes that are either approved or exempted, together with *ad hoc* awards offered independently of any aid scheme.

3.2 Regional aid under the Block Exemption Regulation

The Regional BER applies to schemes put into effect between 31 December 2006 and 31 December 2008. The Regulation enables schemes meeting certain criteria and whose legal basis cites the Regional BER to be exempted from prior notification and Commission approval. After 31 December 2008, the Regional BER will be repealed by the GBER, although schemes already introduced under the Regional BER are unaffected and may remain in place until 31 December 2013. The remainder of this section outlines the terms of the GBER, which came into force on 29 August 2008.

In order to fall within the scope of the GBER, aid schemes must be 'transparent',[36] must comply with the geographical coverage[37] and aid ceilings[38] of the approved regional aid map and aid must have 'incentive effect'.[39] In addition, eligible expenditure must meet certain criteria, notably that investment be retained in the recipient region for at least five years (three for SMEs).[40]

In the context of the Regulation, *transparency* means regional investment aid schemes under which it is possible to calculate *ex ante* the gross grant equivalent (GGE) as a percentage of eligible expenditure. Such schemes include grants, interest rate subsidies and capped fiscal measures. Schemes which comprise a guarantee element may be considered transparent if the Commission has, since the adoption of the Regional BER, accepted the methodology used to calculate the intensity of the guarantee.[41] Repayable advances are transparent if the total advance does not exceed the aid ceiling expressed as a percentage of eligible expenditure. The following are not considered transparent:[42] aid comprised in capital injections (without prejudice to the specific provisions on risk capital); and aid comprised in risk capital measures (except for risk capital aid schemes for SMEs that comply with the BER).

Regarding *incentive effect*, the GBER only exempts schemes from notification if, prior to work on the project starting, the beneficiary has submitted an application for aid. In the case of SMEs, fulfilment of this condition is sufficient to show incentive effect.[43] In the case of large firms, Member States must in addition, and prior to granting aid, verify that the documentation provided by the beneficiary establishes the incentive effect of aid on the basis of one or more of the following criteria:

(i) a material increase in the size of the project/activity due to the aid;

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[36] GBER, Article 5(1).
[37] GBER, Article 13(2).
[38] GBER, Article 13(3).
[39] GBER, Article 8(1).
[40] GBER, Article 13(7).
[41] See section 5.3 below for examples.
[42] GBER, Article 5(2).
[43] GBER, Article 8(2).

(ii) a material increase in the scope of the project/activity due to the aid;

(iii) a material increase in the total amount spent by the beneficiary on the project/activity due to the aid;

(iv) a material increase in the speed of completion of the project/activity due to the aid; and/or

(v) that the project would not have been carried out as such in the assisted region concerned in the absence of aid.[44]

These requirements do not apply to fiscal measures granted automatically without any discretion on the part of the awarding authorities and where the measure has been adopted prior to project start.[45]

Ad hoc aid which is used to supplement aid granted on the basis of transparent regional aid schemes, and which does not exceed 50 percent of the total aid, is also exempt from notification provided that the *ad hoc* aid fulfils all the criteria of the Regulation.[46] This provision would enable, for example, a local authority to complement national level incentives (subject to the prevailing regional aid ceiling); however, it does not allow for the use of *ad hoc* aid independently, which must be notified and assessed on the basis of RAG 2006.

The following categories are *not* exempted from notification under the GBER and must be approved by the Commission on a case-by-case basis prior to implementation:

- Non-transparent regional aid schemes or those not meeting the criteria with respect to incentive effect

- Regional aid schemes targeted at specific sectors of economic activity within manufacturing or services (schemes targeting tourism are not considered specific).

- Regional aid schemes which involve operating aid.

- Regional aid for large projects on the basis of existing schemes where the amount of aid exceeds the notification threshold – ie. the amount that a €100 million investment could receive.

- Ad hoc aid, other than that which supplements exempted aid (as mentioned above).

- Aid to firms which are subject to a recovery order following the award of illegal and incompatible aid.

[44] GBER, Article 8(3).
[45] GBER, Article 8(4).
[46] GBER, Article 2(5).

Member States must provide summary information on schemes they deem to be exempted from notification within 20 days of implementation.[47] The full text of the aid scheme must be published and the direct internet address of the publication provided.[48] Regional aids to large projects (those involving eligible expenditure exceeding €50 million) must be reported within 20 days of aid being granted.[49] Records of aid awarded under exempted schemes must be maintained; these must be sufficiently detailed for the Commission to establish that the conditions of the Regulation have been complied with. These records must be maintained for 10 years from the date of any individual award or, in the case of aid schemes, from the date of the last award made under the scheme.[50] Last, the GBER provides for the monitoring of the implementation of the terms of the Regulation.[51]

3.3 Approval of schemes under the 2007-13 Regional aid guidelines

The 2007-2013 Regional aid guidelines (RAG 2006) set out the circumstances in which the Commission will approve regional State aid that does not fall within the ambit of the block exemption. RAG 2006 deals with three categories of aid scheme: regional investment aid;[52] operating aid;[53] and aid for newly-created enterprises.[54] Under the Regional BER, aid for newly-created enterprises was subject to authorisation under Article 87(3); however, the GBER now brings this category within the scope of the exemption. The provisions for those categories of aid apply to all sectors apart from coal and fisheries, agricultural production,[55] steel and synthetic fibres.[56] In general, regional aid should be part of a multisectoral scheme which forms part of a regional development strategy with clearly defined objectives.[57]

In practice, the vast majority of *regional investment aid* schemes will fall within the scope of the GBER, not least since many of the assessment criteria (for example, compliance with the regional aid map and accompanying aid intensities, eligible expenditure and eligible investments) under RAG 2006 are identical to those under the GBER. The principal exceptions are regional investment aids that do not meet the transparency criteria in the GBER (together with individual cases, which are discussed separately below); these 'residual' schemes are assessed in relation to the provisions of RAG 2006 on a case-by-case basis.

Operating aid, ie. aimed at reducing a firm's current expenses, is normally prohibited and cannot be exempted under the GBER; it is always subject to notification and Commission scrutiny. However, under RAG 2006, such aid may be granted in Article 87(3)(a) regions provided that it is justified in terms of its contribution to regional development, and

[47] GBER, Article 9(1).
[48] GBER, Article 9(2).
[49] GBER, Article 9(4).
[50] GBER, Article 10(2).
[51] GBER, Article 10(3).
[52] RAG 2006, paragraph 33-75.
[53] RAG 2006, paragraph 76-83.
[54] RAG 2006, paragraph 84-90.
[55] As specified in Annex I to the Treaty
[56] RAG 2006, paragraph 8.
[57] RAG 2006, paragraph 10.

provided that its level is proportional to the handicaps it seeks to alleviate. Member States are responsible for demonstrating the existence and scale of any such handicaps. In addition, certain specific forms of operating aid can be authorised in the low population density and least populated areas.[58] Operating aid should in principle only be granted for a pre-defined set of eligible expenditures (such as replacement investment, transport or labour costs) and should be limited to a certain proportion of those costs.[59] Operating aid intended to promote exports is excluded.[60]

Aid for newly-created enterprises was expressly provided for under RAG 2006, but has since been subsumed within the GBER. This means that schemes targeting this group of firms, provided that they meet all the conditions of the GBER, may be exempted from notification and no longer fall to be assessed under the guidelines (unless, for example, they do not meet the transparency criteria of the GBER).

3.4 Individual cases: very large awards and ad hoc cases

At the 'high-risk' end of the spectrum in terms of competition effects, the GBER and RAG 2006 provide for case-by-case scrutiny of certain individual awards to firms.

In particular, individual notification is required where the aid proposed is higher than that which a project involving eligible investment of €100 million could have obtained on the basis of the prevailing regional aid ceiling. The matrix underpinning the notification requirement is described in more detail in Section 6 below.

As already noted, in general, regional aid should be part of a multisectoral scheme which forms part of a regional development strategy with clearly defined objectives.[61] Where, exceptionally, *ad hoc* aid is proposed, the onus is on the Member State to demonstrate that the project contributes to a coherent regional development strategy.[62]

4. BLOCK EXEMPTED REGIONAL AID

This section provides an overview of block exempted regional aid. In practice, the legal basis for the exemption of the schemes discussed here has been the Regional BER, the GBER only having come into force on 29 August 2008. The main impact of the GBER in this regard is likely to be the reporting of schemes for newly-created enterprises. These were not exempt under the Regional BER and required notification under RAG 2006. In purely numerical terms, block-exempted schemes will account for the vast majority of regional aid measures implemented by the Member States. Indeed, in some Member States it is likely that only block-exempted schemes will be operated.

There has been a high level of activity in the implementation of aid schemes under the Regional BER since it took effect on 1 January 2007. By early September 2008, over 230

[58] RAG 2006, paragraph 76.
[59] RAG 2006, paragraph 77.
[60] RAG 2006, paragraph 78.
[61] RAG 2006, paragraph 10
[62] RAG 2006, paragraph 10.

schemes had been notified under the Regulation, with the majority reported in 2007 (see Figure 5).[63]

Figure 5: Schemes reported under the Regional BER 2007-8

	Number of schemes			Annual budgets (€m)	
	2007	2008	Total	2007	2008
Austria	15		15	254	
Belgium	3	2	5	158	81
Bulgaria	1		1	12	
Cyprus	2	1	3	3	4
Czech Republic	17	12	29	430	428
Denmark	2		2	2	
Estonia	3	1	4	13	8
Finland	3		3	91	
France	3	6	9	370	150
Germany	11		11	1908	
Greece	3		3	2253	
Hungary	12	6	18	2536	250
Ireland	2	1	3	85	20
Italy	1	7	8	4	749
Latvia	1	1	2	7	5
Lithuania	2	5	7	11	83
Malta	1	1	2	2	6
Netherlands	1	1	2	14	13
Poland	22	11	33	307	516
Portugal	3		3	43	
Romania	11	3	14	103	178
Slovakia	1		1	99	
Slovenia	4		4	213	
Spain	31	2	33	1061	5
Sweden	1		1	53	
UK	15		15	663	
EU27 Total	171	60	231	10695	2496
Norway	1			28	

Notes: Annual budgets refer only to the schemes reported in that year. Currencies were converted into € (as appropriate) on 8 August 2008, but no adjustments have been made for inflation in the figures reported.

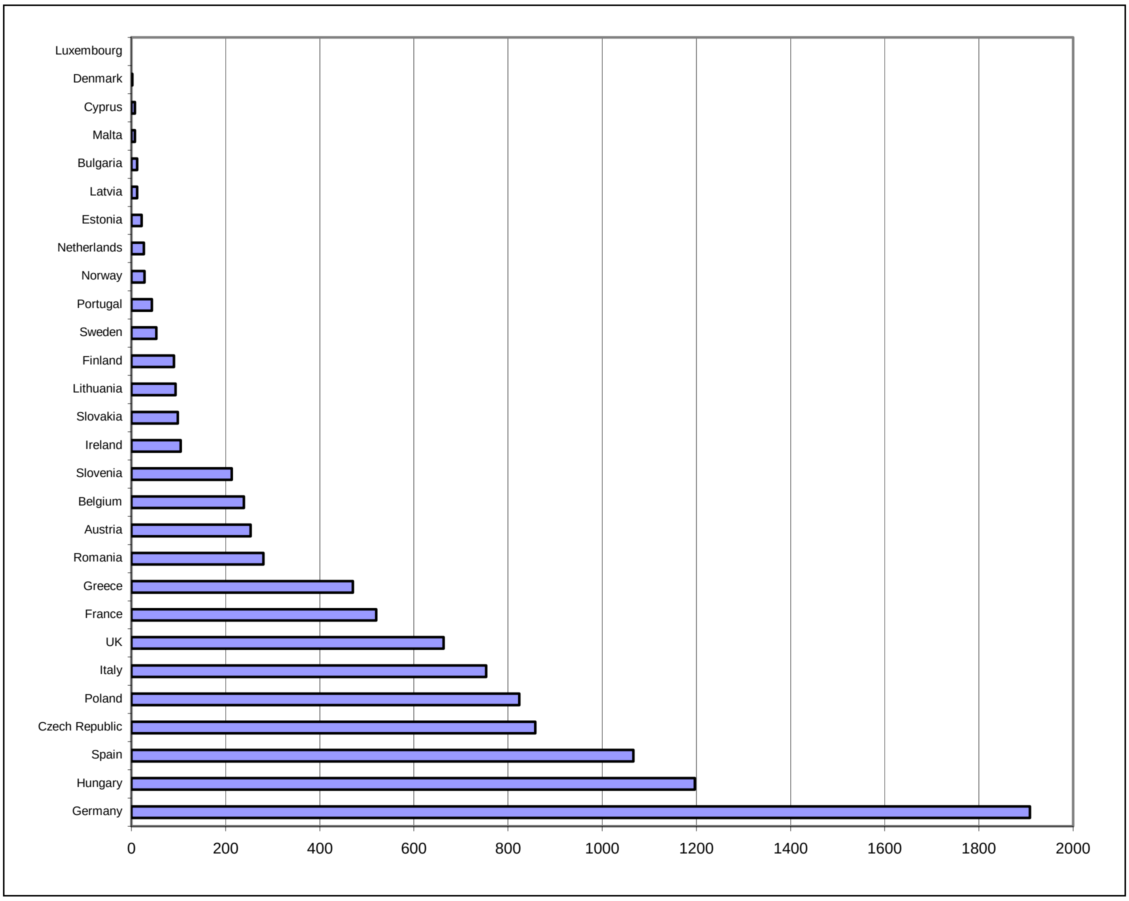
Source: Generated from information reported to the Commission and available on the DG Competition register at: http://ec.europa.eu/comm/competition/state_aid/register/ii/; and from the EFTA Surveillance Authority website at: http://www.eftasurv.int/.

Almost all EU27 Member States have reported schemes under the Regional BER – Luxembourg is the only exception; among the EFTA states, only Norway has made use of the exemption.[64] However, there are wide variations between countries in the number of schemes submitted. Four Member States (Czech Republic, Hungary, Poland and Spain) account for approaching half of all reported schemes. This partly reflects the extent of

[63] This is more than the number in Figure 3 which was derived from an earlier Commission report comparing outcomes under the various regulations. The figures discussed here were generated directly from schemes reported as available at 13 September 2008.
[64] A parallel system operates for the remaining EEA states (ie. Iceland, Lichtenstein and Norway) and is overseen by the EFTA Surveillance Authority (ESA).

subnational responsibilities for economic development – in Poland and Spain, which account for almost a third of all reported schemes, the vast majority of schemes apply to a single region within the country. Moreover, of the Spanish total of 31, Galicia and Murcia account for 17 schemes between them. Elsewhere, the variation can, at least in part, be attributed to decisions about whether to aggregate or disaggregate a package of measures. However, it is also important to note, especially in the context of measures operated at the subnational level, that authorities may have opted to report measures under the block exemption regulation for SME aid, in part reflecting the fact that subnational level support is often mainly directed at small firms. Moreover, the SME BER and the GBER[65] allow for higher rates of award for SMEs located in the assisted areas, although this option may not be systematically taken up. To this extent, a consideration of the measures reported under the Regional BER by subnational authorities, in particular, gives only a partial view of the scope of policy.

Figure 6: Proposed annual budgets for block-exempted regional aids (€m)



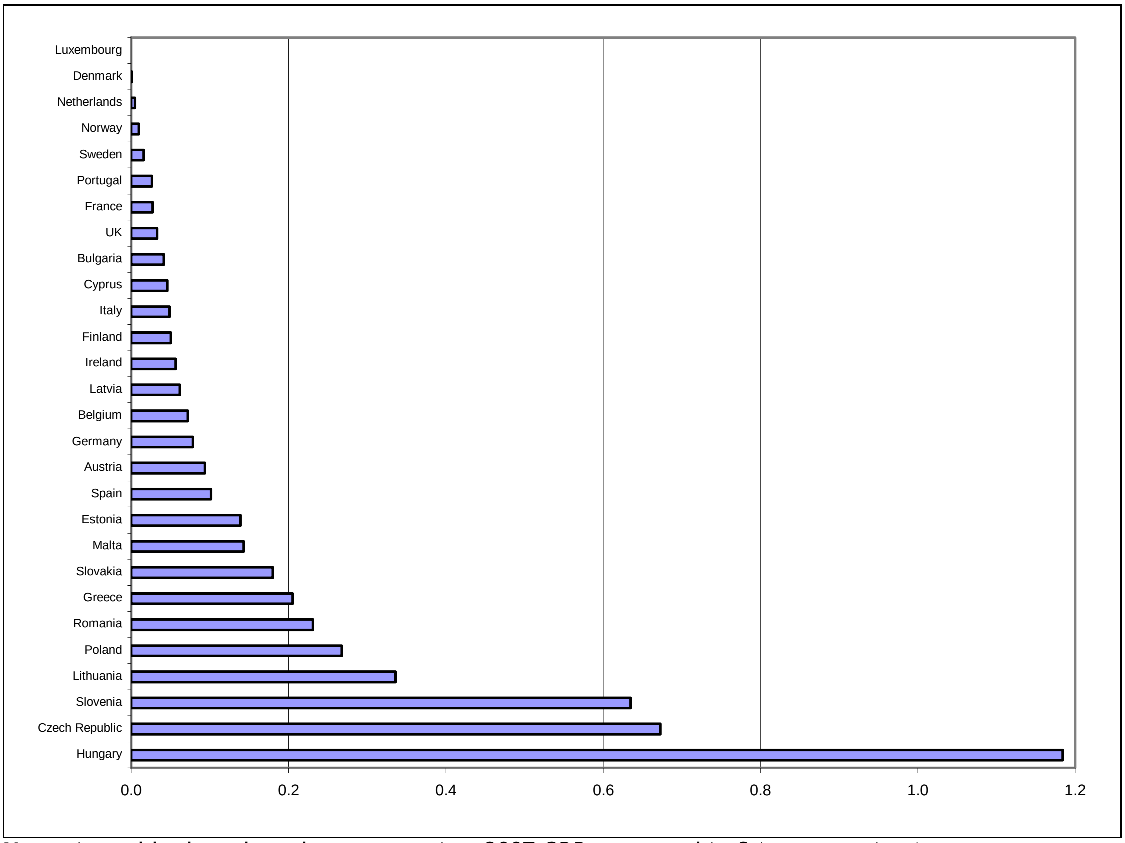
Source: Figure 5.

There are also significant are variations in the annual budgets envisaged for reported measures (see Figure 5). However, it should be stressed at the outset that the budget data should be treated with considerable caution and is shown here only to give an indication of broad orders of magnitude. There are several reasons for this. The data provided are

[65] Which supersedes the SME BER on 30 September 2008.

generally annual planned expenditure; however, not all the schemes notified are set to run for the full term of the guidelines. To this extent, the data is a 'snapshot' of the annual budgets of the schemes reported to date.[66] Perhaps more important (and this also applies to comparisons of numbers of schemes) there is a significant number of measures, particularly at the subnational level, which, although they have been reported under the Regional BER, might in fact more properly be viewed as elements of devolved SME policy. A further 'classification' issue arises from the fact that, in many Member States, the main schemes cannot be block-exempted (for example, non-transparent aid or operating aid) so that a consideration only of block-exempted schemes distorts the overall regional aid expenditure picture.[67] Notwithstanding these important caveats, the variations in the budgets of exempted schemes are significant. Three countries alone, Germany, Hungary and Spain, account for over 40 percent of reported budgets under block-exempt regional aid schemes, while the 'bottom ten' together account for less than 2 percent.

Figure 7: Annual budgets for block exempted regional aid as % of national GDP



Note: Annual budgets have been set against 2007 GDP expressed in € (current prices).

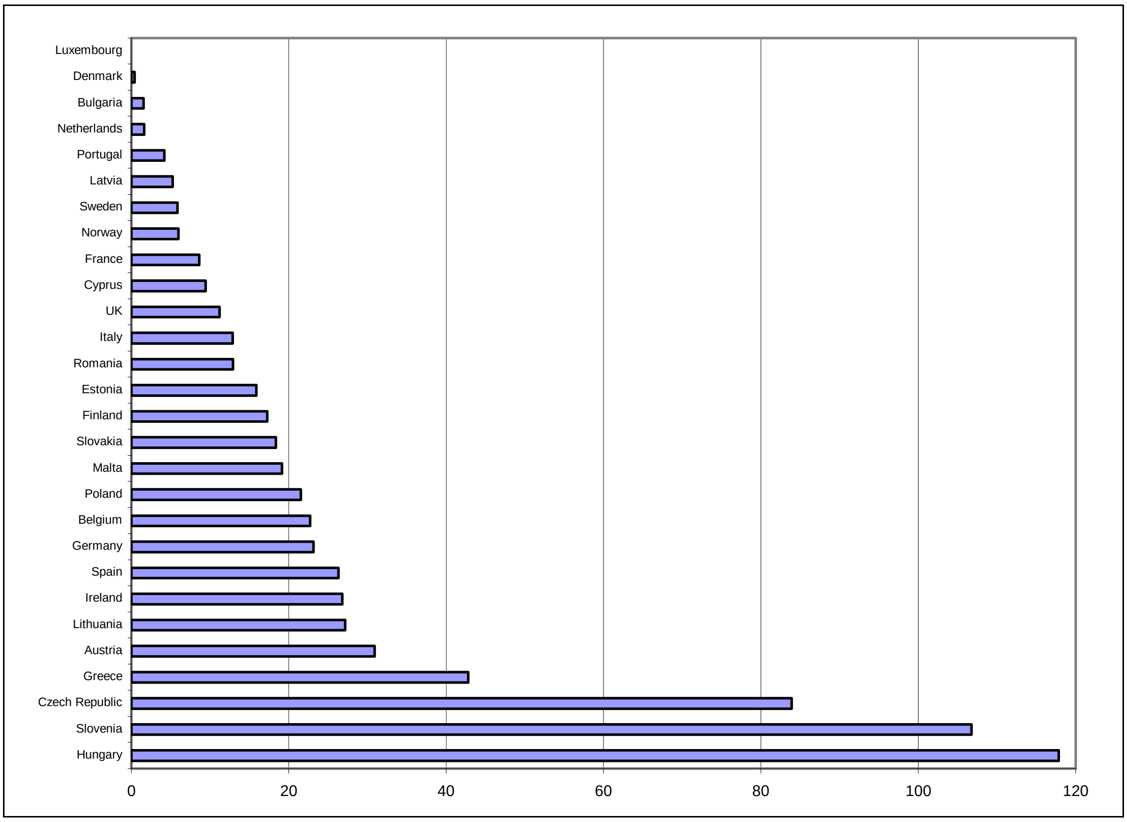
Source: Own calculations from EUROSTAT data and Figure 5.

A different perspective emerges from considering planned expenditure in relation to the size of the national economy (see Figure 7). In Hungary, and to a lesser the Czech Republic, annual budgets remain high compared with elsewhere, reflecting the large proposed budget and the relatively small size of the national economy. Note also the proportionately high

[66] In other words, the budgets for each scheme is counted only once, irrespective of the duration of the scheme.
[67] But see Section 5, below.

spend in Slovenia, which 'moves up' the rankings when spend is set against GDP, while Germany moves down. By contrast, in many of the more prosperous countries (eg. Denmark, Norway, the Netherlands and Sweden), proposed expenditure is relatively small as a proportion of GDP. However, it is important to stress that these figures concern only schemes reported under the block exemption regulation. For Norway and Sweden, in particular, this represents only a partial view of the aid schemes being implemented since a number of the measures in force have required prior notification and approval by the Commission or the EFTA Surveillance Authority because they involve operating aid. Nevertheless, Figure 7 suggests that, in general, the new Member States plan to spend relatively more on regional aid in relation to the size of their national economies than do the EU15 countries. This is scarcely surprising given relative national poverty and the extensive assisted areas and high aid ceilings authorised by the Commission. Nevertheless, it is notable that the budgets in Germany, Austria and Belgium are higher in relation to GDP than those in Latvia and Bulgaria.

Figure 8: Annual budgets for block exempted regional aid (€ per head of national population)

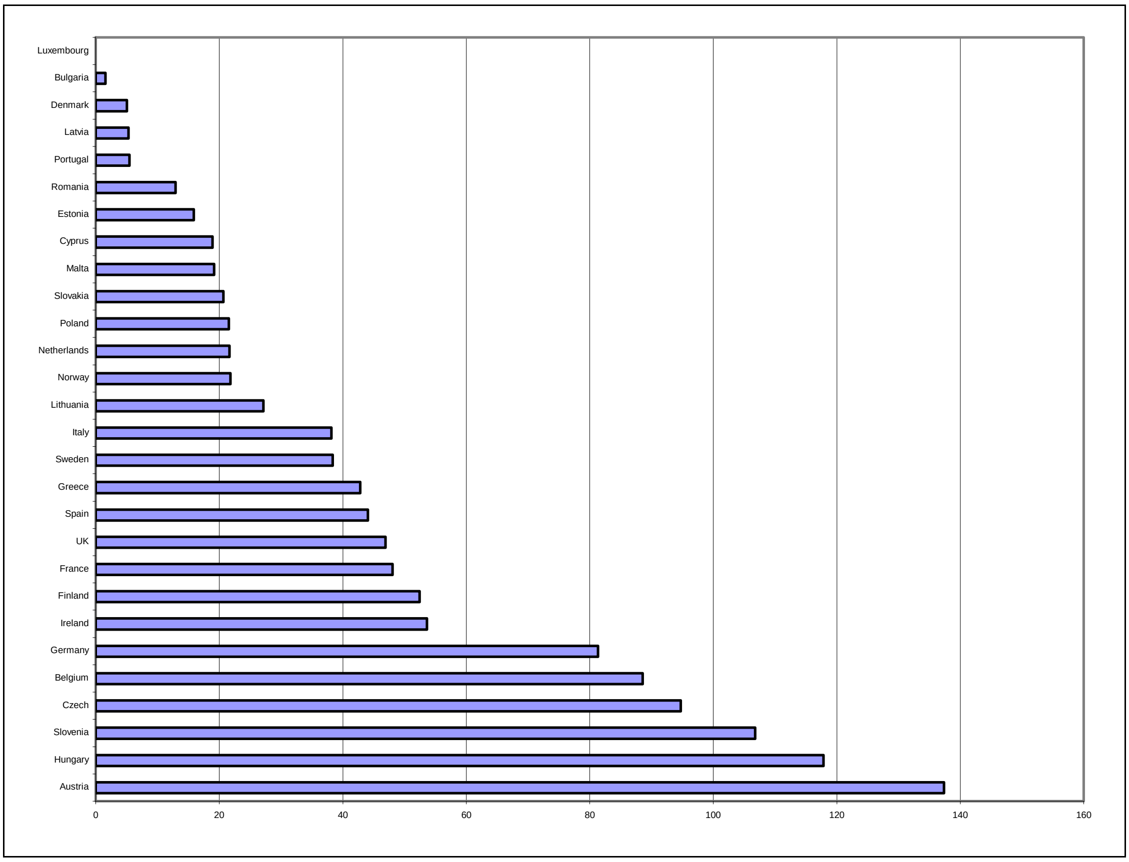


Source: Own calculations from EUROSTAT data and Figure 5.

Figure 8 illustrates the annual budgets of block exempted schemes in per capita terms – ie in € per head of national population. Hungary, Slovenia and the Czech Republic remain high spenders on this measure, but budgets in Greece and Austria are also significant. As would be expected, spending is low in most of the more prosperous countries when set against national population, partly reflecting the comparatively small proportion of the population eligible for regional aid. On the other hand, spending in Latvia and Bulgaria, which are classed as 'a' areas in their entirety, is lower than in most of the EU15 Member States.

An alternative view emerges from relating planned expenditure to the size of the assisted area population to give an indication of the 'intensity' of aid. This is illustrated in Figure 9, which yields the rather surprising outcome that aid intensity is highest in Austria. In practice, this is partly because one of the federal measures and a number of *Land* level schemes which have been reported under the Regional BER are available throughout the *Land* to SMEs; as a result, aid intensity is artificially concentrated by relating spending only to the 'a' regions and 'c' areas.

Figure 9: Annual budgets for block exempted regional aid - € per head of assisted area population



Source: Own calculations and Figure 5.

It is also noteworthy that, while budgets remain high in Hungary, Slovenia and the Czech Republic, some of the more prosperous countries, such as Germany, Finland, Ireland and the UK close the gap when spending is considered in relation to assisted area population rather than national population. On this basis, the two poorest Member States, Bulgaria and Romania, plan to spend less on regional aid than virtually all of the EU15. Note, however, that both Bulgaria and Romania have notified aid schemes under RAG 2006; these are discussed below (see Section 5).

These shifts are largely the product of the much more extensive assisted area coverage in the new Member States than in most of the EU15. As a result, expenditure in countries which are eligible for regional aid in their entirety is 'diluted' while that in countries with lower coverage is focused on a limited population, raising the aid intensity.

Although these data provide some insight into the priority being given to regional aid schemes under the block exemption regulation, they should be treated with some caution. In particular, the figures refer to *planned* annual expenditure; actual outcomes may well be significantly different. Also, the intensity data (aid per head in the assisted areas) has taken account of the total assisted area population; however, in many cases schemes are restricted to a single assisted region or to a subset thereof. Calculating aid intensities at the level of individual schemes and regions would produce different outcome from those at the national level. Last, and this applies generally, there is an issue of timing and phasing: it remains to be seen how many schemes are still to be implemented under the block exemption regulation, but there is evidence than some countries are more advanced than others in implementation.

5. NOTIFIED MEASURES

5.1 Background

Clearly the Commission's intention was that the vast majority of regional aid schemes should be designed to comply with the Regional BER or its successor the GBER, and this has indeed proved to be the case. However, several types of aid explicitly fall outside the scope of the Regional BER and are subject to scrutiny under the terms set out in RAG 2006. The main categories of aid *scheme*[68] subject to notification and prior approval are: operating aid (including transport aid); non-transparent aid and any other aid not compliant with the block exemption regulation; and aid to newly-created enterprises (which is now within the scope of the GBER, but which previously fell to be assessed under RAG 2006). In addition, there is in effect provision for aid intensity methodologies to be notified such that otherwise non-transparent schemes (notably guarantees) can be rendered transparent for the purposes of the block exemption.

To date, some 32 measures have been notified to the Commission for assessment against RAG 2006; so far, none has been subject to the investigative procedure. In addition, Norway has notified six schemes under the parallel arrangements for the EFTA members of the EEA; one of these, involving regional transport aid for the round wood sector, is being investigated by the EFTA Surveillance Authority.[69]

As Figure 10 shows, the number of measures notified is distributed very unevenly among countries. France accounts for almost a third of all notified measures, largely owing to the special regimes in place for the *départements d'outre mer* (DOM) which involve operating aid. Most Member States have not notified any regional aid schemes. This partly reflects the wide scope of the BER and the fact that there is an in-built incentive to design schemes that fit within it. Moreover, the circumstances in which aid that does not comply with the BER (other than operating aid) *can* be approved under RAG 2006 are quite limited.

[68] In addition, and as already noted, *individual* awards exceeding certain thresholds and *ad hoc* aid not falling within the scope of the BER is also notifiable.
[69] ESA Press Release (2008) The EFTA Surveillance Authority opens the formal investigation regarding a transport aid scheme for round wood in Northern Norway, PR(08)31.

Nevertheless, notification does provide for legal certainty in cases where national authorities may be in doubt about whether the precise criteria of the BER are met.

Figure 10: Measures notified under RAG 2006 (as at August 2008)

MS	Aid for new firms	Method	Operating aid	Transport aid	Other	Total
Austria	1					1
Bulgaria					1	1
Finland				1		1
France	1	1	10	1		13
Germany		1			1	2
Hungary		1			1	2
Ireland					1	1
Italy					1	1
Lux	1					1
Malta	1					1
Portugal			2			2
Romania					1	1
Spain	1		2		1	4
Sweden				1		1
Norway	1		1	2	2	6
Total	6	3	15	5	8	38

Note: This table excludes notifications that simply amend existing schemes.

Source: Compiled from notifications to the Commission and available on the DG Competition register at: http://ec.europa.eu/comm/competition/state_aid/register/ii/; and from the EFTA Surveillance Authority website at: http://www.eftasurv.int/.

5.2 Aid to newly-created enterprises

RAG 2006 introduced a new model for aid to promote new businesses in the assisted areas.[70] The aim is to facilitate the provision of aid for running costs in the early years of a firm; it may be combined with investment aid.

Aid is restricted to small firms,[71] is limited to € 2 million in the 'a' areas and € 1 million in the 'c' areas; it is linked to expenses incurred in the first five years of a business, but need not be investment related.

Eligible expenditure includes: legal, advisory and other costs directly related to new firm formation; interest on external finance and a dividend on own capital employed; rental of production facilities and equipment; energy, water, heating, administrative charges, except VAT and corporate taxes on business income; and depreciation, leasing and wage costs, provided that the underlying investments or jobs created have not benefited from other forms of aid. The award ceilings are as follows:

- 'a' areas: 35 percent of eligible expenditure in the first three years and 25 percent thereafter, subject to a ceiling of € 2 million;

[70] RAG 2006, paragraphs 84 to 91.

[71] As defined in the Block exemption regulation on aid to small and medium-sized enterprises, now superseded by the General BER, Annex I.

- 'c' areas: 25 percent of eligible expenditure in the first three years and 15 percent thereafter, subject to a ceiling of € 1 million.

These rates are increased by five percentage points in the following areas: 'a' regions with GDP per head of less than 60 percent of the EU average; regions with population density of less than 12.5 inhabitants per km^2; small islands with a population of less than 5000; other communities of the same size suffering from similar isolation.

Six countries (or regions within them) have notified aid to newly-created enterprises. Following the entry into force of the GBER on 29 August 2008, these no longer need to be notified but can simply be reported if they comply with the provisions of the regulation. In practice, RAG 2006 was clear about the form which aid to newly-created firms should take in order to gain approval. Moreover, as the amounts of aid were relatively modest, the Commission presumably took the view, based on this early experience, that such aid did not pose a significant threat to competition. It remains to be seen whether the uptake will increase now that notification is no longer required. In any event, apart from France where the estimated annual budget is €100 million, the sums involved are comparatively small, with the Norwegian budget at around €13 million, but Kaernten (Austria), Murcia (Spain) and Malta all proposing annual budgets of less than €6 million; the Luxembourg budget for its scheme is not yet known, but seems unlikely to be significant.

5.3 Aid intensity methodologies

Three countries (France, Germany and Hungary) have notified methodologies for calculating the grant-equivalent of measures. Clearly these measures do not involve expenditure *per se,* but instead seek the endorsement of a methodology that effectively renders aid transparent.[72] This enables the Member State concerned to report schemes under the GBER that use the methodology to calculate aid values and increases the scope of the BER to include measures – notably guarantee schemes - that would otherwise lack the transparency for exemption.

5.4 Operating aid

Under RAG 2006, and in line with longstanding practice, the Commission regards operating aid as a form of assistance that can only be authorised in exceptional circumstances. Operating aid can generally only be offered in 'a' regions and subject to the condition that: (i) it is justified in terms of its contribution to regional development; and (ii) its level is proportional to the handicaps it seeks to alleviate.[73] It is for the Member States to demonstrate the existence of these handicaps and to measure their scale. In all cases operating aid is to be regularly re-examined and the Commission will only approve operating aid schemes for the duration of the Guidelines. In practice, no operating aid schemes have been notified under these general terms for 'a' regions. All the operating aid measures notified and approved to date have involved the special cases of the outermost regions (OMR) or the low/least populated regions.

[72] GBER, Article 5(1).
[73] RAG 2006, paragraph 76.

(i) Ongoing operating aid: OMRs and least-populated regions

In principle, operating aid must be temporary and phased out over time. Operating aid which is *not* both progressively reduced and limited in time may only be authorised in the OMRs and the least-populated regions. In the OMRs aid of up to 10 percent of the turnover of the beneficiary may be offered without the need for specific justification; on this basis the Commission authorised reduced excise duty on locally-produced beer in Madeira.[74] Aid above this level must be justified in terms of its contribution to regional development and set at a level to offset additional costs linked to their situation as OMRs.[75] Thus in the Spanish notification of aid regimes for the Canary Islands,[76] the authorities cited research which quantified the additional costs to businesses located in the Canaries compared to those in mainland Spain.

Least-populated areas are defined as NUTS II regions (and adjacent and contiguous smaller areas) with a population density of 8 inhabitants per km^2 or less. It is for the Member State to demonstrate that aid is necessary to reduce or prevent depopulation. For the least-populated regions this provision is a partial reversal of previous decisions which had curtailed operating aid, such as social security concessions, in the Nordic Member States. It also effectively confirmed and extended the decision reached by Common Accord of the EFTA Member States to allow a zero rate of social security contributions in northern Norway.[77] On this basis, the EFTA Surveillance Authority has authorised a scheme of regionally-differentiated social security contributions in the least-populated regions.[78] These areas cover around 17.7 percent of the Norwegian population and have an average population density of 3.5 persons per km^2.

The budgets involved in the operating aid approved by the Commission are variable (see Figure 11), but in some cases quite substantial – especially compared with the sums accorded under block-exempted schemes. For example, annual spending on the tax packages for the Canaries is comparable to that planned under exempt schemes for the whole of Spain. Similarly, spending proposed on the measures for the French DOMs far outstrips the budgets for exempt schemes for mainland France. However, the figures should be treated with some caution since expenditure under approved schemes is not always easily distinguishable from general measures (as in the case of the DOM social security concession where the additional expenditure is estimated at around €400 million). Similarly, in the case of Norway, the social security concession is open to all undertakings in all sectors except steel and shipbuilding. This includes public bodies and institutions so that around €440 million annually is likely to benefit the public sector.

[74] Case N 293/07.
[75] RAG 2006, footnote 74. The factors identified in Article 299(2) of the Treaty which may be offset by aid include remoteness, insularity, small size, difficult topography and climate and economic dependence on a few products.
[76] Cases N 377/2006 and N 376/2006.
[77] See EFTA Surveillance Authority Decision of 12 November 2003 with regard to State aid in the form of regionally differentiated social security contributions, 218/03/COL.
[78] EFTA Surveillance Authority Decision of 19 July 2006 on the notified scheme concerning regionally differentiated social security contributions (Norway), 228/06/COL.

Figure 11: Approved operating aids (excluding transport aid) and annual budgets (€m)

MS	Region	Case No	Title	Type	Budget
France	DOM	N542/2006	Social security concession	Social security concession	850.0
France	DOM	N522/2006	Framework law for the DOM - fiscal aid	Tax reduction	360.0
France	DOM	N524/2006	VAT deductibility on certain products	Tax reduction	200.0
France	DOM	N529/2006	Tax reduction *octroi de mer*	Tax reduction	165.0
France	DOM	N560/2006	Employment tax reduction	Employment subsidy	105.0
France	DOM	N559/2006	Reduction in taxable profits	Tax reduction	70.0
France	DOM	N540/2006	Employment access contracts	Soc. sec. & wage subsidy	35.0
France	DOM	N627/2006	Fonds DOM	Guarantee	8.1
France	DOM	N667/2007	Support for young graduates	Employment subsidy	1.0
France	DOM	N668/2006	Job creation grant	Employment subsidy	0.9
Portugal	Madeira	N421/2006	Zona Franca Madeira	Tax package	22.5 (2007-20)
Portugal	Madeira	N293/2007	Reduced excise duty on beer produced in Madeira	Tax reduction	1.6
Spain	Canarias	N377/2006	Regimen economico y fiscal de Canarias	Tax package	981.9
Spain	Canarias	N376/2006	Zona Especial Canaria	Tax package	20.1
Norway	Least-popd	228/06/COL	Regionally-differentiated social security concession	Social security concession	1060.0

Source: Compiled from notifications to the Commission and available on the DG Competition register at: http://ec.europa.eu/comm/competition/state_aid/register/ii/; and from the EFTA Surveillance Authority website at: http://www.eftasurv.int/.

(ii) Ongoing operating aid: transport aid

Aid partly to offset the additional costs of transport may be authorised in the OMRs and in the low population density regions (basically, NUTS III regions with a population density of less than 12.5 persons per km^2). The criteria for transport aid are that:[79]

- Aid may serve only to compensate for the additional cost of transport, taking account of other transport aid schemes. Aid may be calculated on a 'representative basis' but systematic overcompensation must be avoided.

- Aid is restricted to the extra transport costs within national boundaries; it must not be allowed to become export aid. Aid is not available to sectors with no alternative locations (eg hydroelectric power, extractive industries).

[79] RAG 2006, paragraph 81.

- Aid must be objectively-quantifiable in advance on the basis of an aid-per-passenger or aid-per-ton/kilometre ratio, and the subject of an annual report which sets out the operation of this ratio.

- Estimates of additional cost must be based on the most economical form of transport and the shortest route between production or processing and commercial outlets using that form of transport; "external costs to the environment should also be taken into account".

- For the OMRs only, aid may cover the cost of transporting primary commodities, raw materials or intermediate products from the place of their production to the place of final processing in the region.

Finland, Sweden and Norway, together with France (for the DOMs) have all notified transport aid in line with these provisions (see Figure 12). In practice, the schemes operated in the three Nordic countries are rather different in character. In budgetary terms, the Swedish scheme is the most significant with an annual budget of around €54 million. It comprises two elements: an 'outward' transport aid which subsidies the cost of transporting goods from firms in sparsely populated areas; and 'inward' transport aid for raw materials or semi-finished products being shipped for processing at firms located in the least-populated regions.[80] This second component will account for about 15 percent of the overall budget. In Finland, transport aid is restricted to SMEs located in sparsely-populated areas but, as in Sweden, is run by the national authorities. By contrast, in Norway, where the scheme is also comparatively small-scale (although not restricted to SMEs), the scheme is financed and administered by the municipalities in the sparsely-populated regions and there is no national budget as such.

Figure 12: Notified transport aid schemes and annual budgets

MS	Region	Case No.	Title	Budget (€m)
France	DOM	N199/2007	Support for freight	71.0
Finland	Sparsely-popd	N886/2006	Transport aid for SMEs	4.7 (2007)
Sweden	Sparsely-popd; least popd	N152/2007	Regional transport aid	54.0
Norway	Sparsely-popd	143/07/COL	Regional transport aid	8.8

Source: Compiled from notifications to the Commission and available on the DG Competition register at: http://ec.europa.eu/comm/competition/state_aid/register/ii/; and from the EFTA Surveillance Authority website at: http://www.eftasurv.int/.

In addition, Norway has notified a scheme of transport aid for the round wood industry, involving an annual budget of around €375,000 and fewer than 10 undertakings. However, the EFTA Surveillance Authority has expressed doubts about the compatibility of the scheme with RAG 2006 owing to its sectoral coverage and has opened the investigative procedure against the scheme.[81]

[80] Essentially NUTS II areas with a population density of less than 8 inhabitants per km^2.
[81] EFTA Surveillance Authority Decision of 11 June 2008 on Regional Aid for Transport of Round Wood, Dec 358/08/COL.

5.5 Other notified aid

As described above, aid for new firms, operating aid and transport aid are explicitly envisaged in RAG 2006. In addition, any regional aid which does not meet the precise requirements of the Regional or General BER must be notified and assessed against RAG 2006 and approved prior to implementation. In practice, relatively few cases are likely to arise. This is partly because national authorities have a clear incentive to design measures to fit with the GBER; moreover, the key conditions of RAG 2006 are substantially the same as those of the GBER so that RAG 2006 offers little additional scope anyway. The main circumstances in which aid would fall to be notified would involve schemes where the transparency criteria were not met or where the awarding body had doubts about whether the BER criteria were fulfilled and wanted to ensure legal certainty by securing explicit approval.

Figure 13: Other notified aid schemes and annual budgets

MS	Region	Case no	Title	Type	Budget
Italy	‘a’ regions; some ‘c’ areas	N39/2007	Tax credit for new investment	Corporate tax deduction	€750m
Hungary	‘a’ regions and ‘c’ areas	N651/2007	Development tax benefit	Corporate tax deduction	€77m
Ireland	Shannon (part)	N751/2007	Tourism infrastructure	Accelerated depreciation	€10.6m (2008-11)
Bulgaria	High unemployment areas	N166/2007	Regional aid under CITA	Tax relief	€11m
Romania	‘a’ regions (whole country)	N103/2008	Regional development by direct investment	Grant for large projects	€95.8m (2008-12)
Spain	Asturias (‘c’ area)	N337/2007	Regional investment aid	Interest subsidy & national aid top-up	€6m-€14m
Germany	Sachsen-Anhalt (‘a’ region)	N311/2008	Guarantee scheme for working capital	Guarantee	na
Norway	‘c’ areas	410/06/COL	Regional risk loan	Loan	Loans €38m; losses €13m
Norway	Finnmark and parts of Troms	411/06/COL	Depreciation for large natural gas facilities	Amended depreciation rule	na

Note: Unless otherwise stated the annual budgets apply to each year for the period 2007-13.

Source: Compiled from notifications to the Commission and available on the DG Competition register at: http://ec.europa.eu/comm/competition/state_aid/register/ii/; and from the EFTA Surveillance Authority website at: http://www.eftasurv.int/.

As a result, and as illustrated in Figure 13, this ‘residual’ category of notified aid schemes is diverse both in form and scale. In terms of scale, by far the most significant scheme is the Italian tax credit; this is the second, non-discretionary, strand of the Italian regional aid package. Assistance in the form of tax deductions has also been approved in Hungary and Bulgaria. The Hungarian scheme has a significant budget – at over €578 million for the period 2007-13, especially considering that this is in addition to the spend under the block-

exempted schemes - and provides nationwide support[82] for projects that meet minimum investment and/or job creation targets. The Bulgarian scheme is interesting insofar as aid is restricted to areas with unemployment rates 35 percent higher than the national average in the preceding year; these areas are defined annually. Like the Italian and Hungarian schemes, aid is claimed automatically, subject obviously to the limits and notification requirements applicable to large investment projects. However, the annual budget (€11 million) is relatively modest given that 101-500 beneficiaries are anticipated.

In Romania, a grant aid scheme that targets large investment projects has been notified to and approved by the Commission. Large projects are defined as initial investments of more than €100 million, with eligible expenditure exceeding €50 million and which create at least 500 new jobs. The overall budget for the scheme is €575 million for the period 2008-until 2012. It remains to be seen what the uptake of this measure is – Romania has so far had no reported aids to large investments and one notified large investment case. Although the scheme has been approved, the standard reporting and notification requirements in respect of large projects applicable to all regional aid schemes still apply to awards under this scheme.

Other more diverse forms of aid have also been approved, including sector-specific depreciation allowances in Ireland and Norway and guarantee-based schemes again in Norway and also in Sachsen-Anhalt (Germany).[83]

6. LARGE PROJECTS AND NOTIFIABLE AWARDS

6.1 Background

A key feature of the reform of regional aid control over the last decade has been the priority given to reducing the amounts of aid to large projects, monitoring the scale of such aid and Commission intervention in certain cases – even where the award proposed is to be offered under an approved scheme. The first such mechanism was introduced in the late 1990s in the form of the so-called 1998 Multisectoral Framework (MSF 1998).[84] This provided that aid exceeding specified ceilings had to be notified individually and assessed by the Commission against a set of predetermined criteria. In practice, MSF 1998 failed to have any real impact on award values, largely owing to the design of the assessment criteria. It was replaced by the 2002 Multisectoral Framework (MSF 2002).[85] The terms of MSF 2002 have themselves now been incorporated into RAG 2006,[86] albeit with some changes.

[82] All of Hungary has either 'a' region or 'c' area status.
[83] Although this scheme has been authorised, the approval letter has not yet been published so no details (eg. budget) are available.
[84] Multisectoral framework on regional aid for large investment projects, OJEC No C 107 of 7 April 1998.
[85] Multisectoral Framework on regional aid to large investment projects – Rescue and restructuring aid and closure aid for the steel sector, OJEC No C 70/8 of 19 March 2002.
[86] RAG 2006, Section 4.3.

Under MSF 2002 and RAG 2006, there have been two main strands to Commission action. First, the systematic lowering of aid maxima for all projects involving eligible investments exceeding €50 million and the reporting of all aid to such projects (whatever the amount of aid); and second, the prior notification and approval of very large awards and their assessment against the terms of RAG 2006 by the Commission. The remainder of this section is in three parts. The first outlines the mechanism for establishing maximum rates of award for large projects. The second focuses on notifiable awards, including both the criteria for assessment and the cases handled by the Commission to date. The third part considers the information arising from the reporting mechanism to provide an overview of the scale and distribution of large aided projects.

6.2 Award values for large projects

The essence of the provisions on large investment projects is to reduce rates of award under existing regional aid schemes[87] to projects with eligible investment of more than €50million. This is achieved through a reduction scale (the larger the project, the lower the rate of award) incorporated into the regional aid schemes operated by the Member States, as set out in Figure 14.

Figure 14: Rate reduction matrix for large investments

Eligible expenditure	Aid ceiling
Up to € 50 million	100 % of regional aid ceiling
For the part between € 50 and € 100 million	50 % of regional aid ceiling
For the part exceeding € 100 million	34 % of regional aid ceiling

As Figure 14 shows, projects involving investments of less than €50 million are unaffected by the matrix. However, for larger projects the standard award rate is progressively reduced. This is illustrated in RAG 2006 as follows:

Maximum rate of award = **R * (50 + 0.5B + 0.34C)**

Where **R** is the unadjusted regional aid ceiling; **B** is the eligible expenditure between € 50 million and € 100 million; and **C** is any expenditure above € 100 million

The impact of this formula on the standard award maxima under the RAG 2006 is shown in Figure 15. As would be expected, the higher the amount of eligible investment, the lower the rate of award applicable since an increasing proportion of the investment qualifies for aid at only 34 per cent of the prevailing regional aid rate. Thus, for an investment of €500 million, the maximum rate of award in a 10 percent rate 'c' area would be 4.22 percent of eligible investment – a maximum of €21.1 million. It is important to note that in MSF 2002 there was a significant exception to this principle: the reduction matrix did *not* apply to the motor vehicle industry where, instead, the aid ceiling was set at 30 percent of the prevailing rate for all projects with investment exceeding €50 million or an aid amount exceeding €5 million. This provision was not carried through into the corresponding RAG

[87] Whether block-exempted or notified and approved investment aid schemes.

2006 provisions, but is important in the later discussion of individual aid cases since most cases to date have been dealt with under MSF 2002 rather than RAG 2006.

Figure 15: Impact of the large investment project provisions on award rates

	Standard ceilings (% GGE)					
	10	15	20	30	40	50
Eligible expenditure	**Adjusted ceilings (% GGE)**					
€ 50 m	10.00	15.00	20.00	30.00	40.00	50.00
€ 100 m	7.50	11.25	15.00	22.50	30.00	37.50
€ 150 m	6.13	9.20	12.27	18.40	24.53	30.67
€ 200 m	5.45	8.18	10.90	16.35	21.80	27.25
€ 300 m	4.77	7.15	9.53	14.30	19.07	23.83
€ 500 m	4.22	6.33	8.44	12.66	16.88	21.10

6.3 Notifiable individual awards

(i) Notification requirements

Importantly, *individual* notification is required where the aid proposed is higher than that which a project involving eligible investment of €100 million could have obtained on the basis of the application of the formula.

Figure 16: Individual notification ceilings for large investment projects

	Standard ceilings (% GGE)					
	10	15	20	30	40	50
	Aid notification threshold (€ million)					
	7.5	11.25	15.0	22.5	30.0	37.5
Eligible expenditure	**Notification threshold (% of eligible expenditure)**					
€ 50 m	~	~	~	~	~	~
€ 100 m	~	~	~	~	~	~
€ 150 m	5.0	7.5	10.0	15.0	20.0	25.0
€ 200 m	3.75	5.63	7.5	11.25	15.0	18.75
€ 300 m	2.5	3.75	5.0	7.5	10.0	12.5
€ 500 m	1.5	2.25	3.0	4.5	6.0	7.5

As Figure 16 shows, for *very* large projects the notification thresholds bite at very low levels of aid when expressed as a percentage of investment. In a 10 percent rate area, the notification threshold in proposed aid would be €7.5 million, just 1.5 percent of a €500 million investment.

(ii) Assessment criteria

Where a project is notified to the Commission because of the size of the award, the Commission has a degree of discretion in the assessment criteria and the decision about whether aid up to that stipulated in the matrix can be awarded. The key issues in the assessment of aid to notified projects concern the market share of the beneficiary and the capacity created by the project.

For individually notifiable projects where either:

a. the aid beneficiary accounts for more than 25 percent of the sales of the products concerned on the markets concerned (either before or after the investment); or

b. the capacity created by the project is more than 5 per cent of the size of the market measured in apparent consumption, except in rapidly growing markets,

the Commission will only approve regional aid after opening the Article 88(2) investigative procedure and a "detailed verification… that the aid is necessary to provide an incentive effect for the investment and that the benefits of the aid outweigh the resulting distortion of competition and effect on trade". Prior to the entry into force of RAG 2006, the Commission was to draw up further guidance on how it would carry out the assessment of the incentive effect against the distortion of trade and competition, but no such guidance has been published to date.[88]

The onus is on the *Member States* to demonstrate that a given project does not reinforce a high market share or increase capacity in a stagnant sector. Where no such competition concerns arise, the matrix given in Figure 15 is used to determine the maximum rate, as for projects under the € 100 million investment threshold.

The scope for Commission discretion in cases which *do* raise competition concerns is new to RAG 2006; under MSF 2002, the Commission could not approve the award if the beneficiary accounted for more than 25 percent of the sales of the product or if the capacity created was more than 5 percent of the market.[89]

6.3.2 Notified cases

This section considers cases notified to the Commission since MSF 2002, including the small number notified under RAG 2006. In practice, this involves relatively few projects. This is perhaps not surprising for two reasons. First, the motor vehicle industry accounts for a substantial proportion of large aided projects and, as discussed, the transitional provisions meant that a separate award matrix applied and there was no prior approval requirement for awards of any size aided under an approved scheme under MSF 2002. Second, it seems reasonable to assume that the very existence of a ceiling beyond which notification is required would act as a cap on aid values. This is because, in such cases, it is for the Member State to demonstrate that the project does not raise market power and capacity concerns; in cases of doubt, the Commission must open the investigative procedure, a lengthy process with an uncertain outcome. The notification then withdrawal of proposed aid to Intel, when the Commission indicated that it would open the investigative procedure, lends support to the view that the prospect of an investigation is viewed negatively by firms. In this case, Intel opted not to proceed with the full investment proposed and the balance of the project (the part for which aid approval was sought) was apparently undertaken in Israel. It is difficult fully to substantiate the impact of the notification threshold on award values from the evidence available - partly because project size data is

[88] RAG 2006, paragraph 68, footnote 63.
[89] See MSF 2002 at point 24 for more details.

not published and partly because there is a lack of consistency in the use of gross and net grant-equivalents to express award values. However, an analysis of the information available suggests a significant clustering of award values at or just below the level beyond which notification is required.

Figure 17: Notified aid proposals under MSF 2002 and RAG 2006 (as at end July 2008)

MS	Beneficiary	Relevant product market(s)	Aid €m	Aid %	Investment €m	Outcome
IE	Intel	Not known – notification withdrawn				Withdrawn
IE	Centocor	Drugs for asthma, rheumatoid arthritis, psoriasis, Crohn's disease, MS	45.47	7.39 NGE	562.00	No objections
SK	Getrag Ford Transmissions	Automotive transmissions	[53.50]	18.14 NGE	227.34	No objections
DE	First Solar	Solar modules	[45.48]	38.52 GGE	[115.70]	No objections
HU	Hankook Tire Hungary Ltd	Tyre manufacture	92.61	20.55 NGE	424.88	No objections
DE	HighSi GmbH	Solar modules	73.45	14.73 GGE	498.70	No objections
IT	Atlantica Invest AG	Theme park	86.56	12.20 NGE	460.72	No objections
PT	About the Future	Uncoated wood-free paper	37.95	6.99 NGE	379.50	No objections
DE	AMD	x86 Microprocessors	262.40	11.99 GGE	2,205.10	No objections
PT	Soporcel	Uncoated wood-free paper	46.52	23.28 GGE	199.86	No objections
DE	Q-Cells	Solar cells and modules	38.16	17.64 GGE	216.40	No objections
DE	Avancis	Solar modules	38.93	15.36 GGE	253.46	No objections
DE	Qimonda	DRAMs (memory chips)	140.94	13.25 GGE	1,063.79	No objections
PT	Repsol Polimeros	Polypropylene; linear low density polypropylene; butadiene; pyrolisis gasoline	103.32	12.99 NGE	750.00	No objections
PT	Artensa	Purified terephthalic acid (PTA)	80.09	19.43 NGE	358.05	No objections
PT	CELBI	Bleached hardwood pulp (BHKP)	68.07	18.60 NGE	319.00	No objections
HU	Matrai Eromu Zrt	Electricity supply (not further defined)	47.30	9.14 NGE	517.20	No objections
HU	IBIDEN Hungary Gyarto Kft	Diesel particulate filters and diesel oxidation catalysts	39.29	22.44 NGE	168.30	Investigative procedure; refusal
DE	Propapier	Corrugated case material and corrugated board	72.15	12.30 GGE	586.72	No objections
RO	Ford Craiova	Not yet known	[143.00]		[600.00]	No objections
DE	Wacker Schott Solar	Solar wafers, cells and modules	[47.00]		[322.00]	No objections
DE	Deutsche Solar	Solar wafers, cells and modules	[48.00]		[350.00]	Investigative procedure; ongoing
DE	Intico Solar	Solar modules	65.62	11.88 GGE	552.19	No objections

Notes: Aid and investment amounts are in present values (ie. discounted), except where given in square brackets where the amounts are nominal.

Source: European Commission press releases and DG Competition State aid register at: <http://ec.europa.eu/comm/competition/state_aid/register/>

By end July some 23 aid proposals had been notified under MSF 2002 or RAG 2006 (see Figure 17). Of these, in two instances the Commission has opened the investigative procedure. The first concerned proposed aid to IBIDEN in Hungary, a manufacturer of ceramic substrates for diesel particulate filters (DPF) used in car exhaust systems.[90] The Commission expressed doubts about the definition of the relevant product market and the consequent share of the beneficiary in that market. It investigated whether the market for DPFs could be considered as separate from the market for diesel oxidation catalysts (DOC), both of which form part of the exhaust gas treatment system for diesel cars. The Commission concluded that the relevant product market covered only DPFs and found that IBIDEN held over 25 percent of the European DPF market, exceeding the threshold beyond which it was obliged to prohibit additional aid under MSF 2002. However, in line with the aid reduction matrix in MSF 2002, IBIDEN had already been awarded €29.73 million in aid; this was unaffected by the decision, which concerned an additional €9.56 million.[91]

An investigation is also underway into proposed aid to Deutsche Solar for a solar wafer production facility in Sachsen.[92] Deutsche Solar already has two plants – Freiburg South and Freiburg Saxonia - and intends to create a third in Freiburg East. A proposed extension at Freiburg South is also being aided, but the investment involved is less than €50 million, so that the German authorities did not consider that notification was required. However, given the timing of the two investments, the Commission has opened the investigative procedure to assess the links between the two investments and establish whether they should in fact be considered as a single project, in which case a lower aid amount would apply.

As noted above, in another instance the aid notification was withdrawn. This concerned aid to Intel in Ireland, where the proposal was shelved when it became apparent that the Commission would open the investigative procedure. In the remaining 20 cases, the Commission has raised no objections to the aid proposals.

Of the 23 notifications, 10 have involved investments in Germany. There have also been five cases in Portugal and three in Hungary, but the vast majority of Member States have not notified any large projects under this mechanism. Of the ten German cases, two were major projects in the computer components industry (Qimonda and AMD) and a further seven were in the solar energy sector.

Size comparisons are made complicated by gaps in the data available. Aid values are calculated on the basis of present values, but information on investment and aid amounts is not always given in these terms; similarly, award rates are sometimes presented in net (NGE) and sometimes in gross grant equivalent (GGE) terms. Nevertheless, it is noteworthy that in five cases (AMD, Qimonda, Repsol Polimeros, Ford Craiova and Matrai Eromu), the

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[90] Rapid Press Release (2007) State Aid: Commission opens in-depth investigation into €39 million aid to IBIDEN Hungary, IP/07/1071 of 11 July 2007; State aid C21/07 (ex N 578/06) – MSF 2002 – Individual aid to IBIDEN Hungary Gyártó Kft. – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, OJEU C224/2 of 25 September 2007.
[91] Decision not yet published in the OJ, but summarised in Rapid Press Release (2008) *State aid: Commission prohibits planned €9.56 million aid to IBIDEN Hungary*, IP/08/670, 30 April 2008.
[92] Rapid Press Release (2008) State aid: Commission endorses €47 million aid to Wacker Schott and opens in-depth investigation into €48 million aid to Deutsche Solar, IP/08/1178 of 17 July 2008.

nominal amount of aid was significantly in excess of €100 million. These amounts are lower in present value terms – for example, aid to Matrai Eromu falls from €112.5 million in nominal terms to €47.3 million in present value. However, even in present value terms, aid to AMD exceeds €262 million. By far the largest two investments were accounted for by the computer components sector (AMD and Qimonda) and involved €2.2 billion and €1.1 billion respectively.

Sectoral coverage is relatively disparate except that around a third of projects (seven in total) are in the solar energy industry; a further four projects are in the pulp and paper sector; and three projects involve the manufacture of computer components (including the withdrawn Intel notification).

6.4 Aids reported under the transparency mechanism of the Multisectoral Framework

An important element of recent State aid reforms is the emphasis on transparency. Since MSF 2002 the Commission has required *ex-post* reporting of aid to projects exceeding €50 million. Under the MSF 2002 transparency mechanism, as continued under RAG 2006, Member States' reporting of aid to large projects is published online.[93] The data concern regional investment aid of any amount awarded to projects involving investments of more than €50 million. There is no scope for *ex-post* control of such awards by the Commission, but such information provides an indication of the scale and distribution of aid to large projects. It is also possible that this data could also form the basis for future changes in the control of regional aids if, for example, particular sectoral trends emerged, although the Commission has not explicitly stated this as an objective.

By July 2008 some 133 projects had been reported under the transparency mechanism. In purely numerical terms, these were heavily concentrated in just three countries, namely Germany, Spain and Hungary, which together account for over half of all such projects (see Figure 18).

[93] See: <http://ec.europa.eu/comm/competition/state_aid/register/msf_2007.pdf>

Figure 18: Reported aid to investments exceeding €50 million since 2003

Member State	Number of projects	Aid total (€ million)
Austria	1	14.080
Belgium	5	49.489
Czech Republic	9	282.998
Germany	25	548.003
Spain	20	393.418
France	5	46.497
Hungary	23	497.912
Ireland	13	109.160
Italy	6	167.643
Netherlands	1	8.762
Poland	6	40.938
Portugal	9	280.012
Sweden	1	4.910
UK	9	84.010
Total	133	2,527.833

Source: Own calculations from European Commission data provided in <http://ec.europa.eu/comm/competition/state_aid/register/msf_2007.pdf> as at 31 July 2008.

As far as the total *amounts* of aid are concerned, these too are concentrated in the same countries (Germany, Spain and Hungary), but Portugal and the Czech Republic also account for significant sums. These five countries together account for almost 80 percent of reported aid to large projects, which itself totals over € 2.5 billion since the introduction of the reporting mechanism.

Clearly the expenditure figures should be treated with some caution. The data are discounted amounts awarded at a given date, but no adjustment has been made for different award dates. As such, the figures presented here are rather crude, but nevertheless give an indication of broad orders of magnitude.

The *sectoral* distribution of aid to large projects is dominated by the motor vehicle industry and associated industries (including parts, components, tyres etc.). Aid to this sector amounts to one-third of reported aid paid to large projects over the period (see Figure 19). However, this data is distorted by the fact that, until the RAG 2006, slightly different rules applied to the motor vehicle industry, leading to higher aid amounts. The impact of this is discussed in more detail below.

Figure 19: Reported aid to investments exceeding € 50 million by sector since end 2003

Sector	Aid amount (€ m)	Share of total (%)	Number of projects	Average aid amount (€ m)
Aerospace	46.1	1.8	3	15.4
Chemicals	157.1	6.2	10	15.7
Construction materials	48.2	1.9	4	12.1
Electronic equipment & components	413.9	16.4	17	24.3
Energy production	158.6	6.3	10	15.9
Food & drink	113.5	4.5	6	18.9
Glass	46.8	1.9	3	15.6
Medical & surgical equipment	50.0	2.0	4	12.5
Metal products & processing	17.4	0.7	2	8.7
Mining	29.3	1.2	1	29.3
Motor vehicles & parts	844.8	33.4	33	25.6
Pharmaceuticals	110.9	4.4	12	9.2
Plastics	114.2	4.5	5	22.8
Pulp, paper & printing	95.6	3.8	6	15.9
Tourism	42.0	1.7	5	8.4
Transport, comms & logistics	63.2	2.5	4	15.8
Wood & wood products	87.4	3.5	4	21.9
Other manufacturing	88.9	3.5	4	22.2
Total	**2527.8**	**100.0**	**133**	**19.0**

Source: Own calculations from European Commission data provided in <http://ec.europa.eu/comm/competition/state_aid/register/msf_2007.pdf> as at 31 July 2007.

The weight of motor vehicle sector aid in the total is partly a reflection of the 'top ten' projects, as measured in terms of the aid amount (see Figure 20). Six of these are in the motor vehicle and related sectors. Not surprisingly, the 'top ten' projects are concentrated in the 'a' regions, where the prevailing award rate is relatively high - the progressive nature of the formula for calculating aid means that the maximum bites at lower levels in countries with lower award ceilings.

The large amounts of aid to the motor vehicle sector are partly a consequence of the very large scale of the projects typical of the sector. Information on the size of investments is not disclosed, but, from the data available, it may be surmised that eight of the ten largest investments involved major motor vehicle manufacturers (the other projects being Intel in the computer components sector and Ely Lily in pharmaceuticals, both in Ireland). It can be estimated that these projects each involved eligible investment in the range €450 million to €1200 million.

Figure 20: 'Top ten' reported investment aids (by € million) 2003-7

MS	Beneficiary	Sector	Aid type	Aid (€ m)	Aid (%)
PT	Autoeuropa Portugal	Motor vehicles & parts	Tax relief	69.4	8.1 NGE
ES	Peugeot Citroën Automoviles España SA	Motor vehicles & parts	Grant	58.3	8.2 NGE
IT	FIAT AUTO - Pomigliano d'Arco	Motor vehicles & parts	Grant	47.1	10.5 NGE
ES	Renault España Valladolid	Motor vehicles & parts	Grant	45.1	9.8 NGE
PT	Autoeuropa Automoveis Lda	Motor vehicles & parts	Grant, tax credit	44.6	6.0 NGE
CZ	SQS Vlaknova optika a.s.	Electronic equipment & components	Tax relief	44.3	48.9 GGE
IT	Sevel SpA	Motor vehicles & parts	Grant	40.5	5.8 NGE
HU	Kárpát Energo Ltd.	Energy production	Tax credit	37.5	35.9 NGE
HU	Holcim Hungaria Cementipari	Construction materials	Tax credit	37.5	22.5 NGE
HU	Samsung Electronics Magyarorszag	Electronic equipment & components	Grant, tax credit	37.5	36.8 GGE

Source: Own calculations from European Commission data provided in <http://ec.europa.eu/comm/competition/state_aid/register/msf_2007.pdf> as at 31 July 2008.

Importantly, the high levels of aid to the motor vehicle sector also result from the application of transitional provisions for the motor vehicle sector[94] under MSF 2002 until end 2006. Under these provisions, as mentioned earlier, the standard award reduction matrix did not apply; instead, there was a flat rate reduction in award ceilings to 30 percent of the prevailing rate (a much sharper reduction than under the standard matrix) for any project involving investment exceeding €50 million or aid exceeding €5 million. Of *key* importance, however, the notification and prior approval requirement for projects where the aid exceeds that which a €100 million project could receive, did *not* apply to the motor vehicle sector either. This meant that there was no mechanism for the Commission to scrutinise exceptionally large awards to the sector. By way of example, the single largest aid amount was €69.4 million to AUTOEUROPA Portugal for investment in Setubal, where the prevailing regional aid rate in 2003 was 26.9 percent NGE. Under the standard rules, such an award would have been subject to notification and prior Commission approval if the award proposed was in excess of that which a €100 million project could have obtained, this being €20.2 million. Instead, the Portuguese authorities were able to award over three times this sum, without Commission scrutiny.

This situation has been changed under RAG 2006 with the same maxima now applicable to *all* eligible sectors. This is likely to mean that far more motor vehicle sector projects will be subject to individual scrutiny by the Commission – assuming that Member States opt to notify rather keep aid below the notification threshold. Following notification, the onus will be on Member States to show that the market power and capacity criteria are not met.

[94] Note that some activities, such as tyre production, have been included in 'motor vehicles and parts' in the tables in this section but are not classified as belonging to the motor vehicle sector under the 2002 Multisectoral Framework Annex D.

7. NATIONAL PERSPECTIVES

This paper has largely taken a regulatory perspective on regional aid policy, discussing measures in relation to the legislative provisions authorising their use. This section takes a country-by-country view of the measures implemented in selected Member States under the block exemption regulation and notified for approval under RAG 2006. By way of introduction, and as a crude measure of regional aid 'activity,' Figure 21 sets out the number schemes falling into each category by country, together with the number of notified or reported individual aid cases.

Figure 21: Regional aid notification and reporting

	Block-exempt schemes	Notified schemes	Notified large aid	Reported large aid
Austria	15	1 (1)	-	1
Belgium	5	-	-	5
Bulgaria	1	1	-	-
Cyprus	3	-	-	-
Czech Rep	29	-	-	9
Denmark	2	-	-	-
Estonia	4	-	-	-
Finland	3	1	-	-
France	9	13 (1)	-	5
Germany	11	2	10	25
Greece	3	-	-	-
Hungary	18	2	3	23
Ireland	3	1	2	13
Italy	8	1	1	6
Latvia	2	-	-	-
Lithuania	7	-	-	-
Luxembourg	-	1 (1)	-	-
Malta	2	1 (1)	-	-
Netherlands	2	-	-	1
Poland	33	-	-	6
Portugal	3	2	5	9
Romania	14	1	1	-
Slovakia	1	-	1	-
Slovenia	4	-	-	-
Spain	33	4 (1)	-	20
Sweden	1	1	-	1
UK	15	-	-	9
Norway	1	6 (1)		-

Notes: (i) For regional aid schemes, the numbers refer to the period since the entry into force of RAG 2006 and the Regional BER. For individual cases (notified and reported) the numbers refer to the period since the entry into force of MSF 2002. **(ii)** Number of notified schemes in brackets refers to aid to newly-created enterprises. These will now almost always come under the GBER.

In *Austria* the operation of regional incentives is rather fragmented because of the federal structure and the complicated division of responsibilities. However, 15 measures have so far been reported under the Regional BER. Four of these are national schemes in the sense of being available in all assisted areas. Two major schemes by the Federal Ministry of Economics and Labour, each with an annual budget of €60m provide support for investments involving job creation and maintenance. One of these is available throughout Austria for SMEs and available to large firms in the assisted areas (with higher rates of

award for SMEs);[95] the second is available in eligible areas only.[96] Another federal scheme supports young entrepreneurs and innovation in SMEs in the form of grants and loans.[97] The annual budget for the scheme is €6.5 million. In addition, a very modest programme for the tourism sector (budget €0.25m) is also in operation. The remaining schemes are offered by the *Land* level. Expenditure on some of these measures is quite significant, eg. a scheme to support tourism in Lower Austria[98] (€23.5m per annum) and a business development scheme in Burgenland[99] (€20m). Typically these schemes are available throughout the whole *Land* (excluding large firms in non-assisted areas) but offering higher rates to SMEs in assisted areas. One, albeit modest, measure is restricted to the ‘c’ area of Lungau under the RCE Operational Programme for Salzburg.[100] Austria has just one case of notified aid (for newly-created firms) under RAG 2006 and no instances of either reported or notified aid to large firms.

In *Finland* three measures have been reported under the Regional BER. However, one of these, the investment aid scheme,[101] has effectively expired following the entry into force of new legislation and its merger with new measures under that law. The main Finnish scheme under the Regional BER is business development aid.[102] This carries an annual budget of €70 million and is available in all ‘c’ areas. The scheme is aimed at SMEs (which can also be supported outside the assisted areas) but large firms may also be assisted if the investment is significant and in a new product, service, operating unit or technology or is important for employment in the locality and has a significant impact on SMEs in the area. A separate small-scale scheme (annual budget €0.8 million) operates for the rural areas and archipelago of the Åland region.[103] In addition, Finland has notified transport aid under RAG 2006,[104] although the annual budget (at €4.7 million) is rather modest compared with other elements of the regional aid package. Finland has no cases of reported aid to large projects nor any instances of notified individual cases.

France has notified nine measures under the Regional BER. The longstanding regional policy grant (PAT)[105] remains in place, albeit subject to a number of changes including higher job creation and investment eligibility criteria. At €40 million the annual budget remains broadly as before (although low in historical terms), but the PAT is the main national level regional incentive. France has also notified a framework for regional aid to be offered by

[95] XR033/07: Gewährung von Beihilfen (Förderung) gemäß § 51a Abs 3-5 AMFG.
[96] XR034/07: Förderung von Unternehmen in Problemgebieten aus arbeitsmarktpolitischen Gründen gemäß § 35a AMFG.
[97] XR002/07: Jungunternehmer- und Innovationsförderung für KMU – Prämienförderung.
[98] XR049/07: Spezielle Richtlinien des Niederösterreichischen Wirtschafts- und Tourismusfonds für die Förderung von Investitionen sowie - als integrierter Bestandteil - die Allgemeinen Richtlinien des Niederösterreichischen Wirtschafts- und Tourismusfonds.
[99] XR016/07: Richtlinien betreffend die Gewährung von nicht rückzahlbaren Zuschüssen gemäß dem Landes-Wifög 1994.
[100] XR003/07: Richtlinie zur Förderung von Maßnahmen des Programms zur Stärkung der Wettbewerbsfähigkeit der Region Salzburg 2007-2013; Kurzbezeichnung RWF-Richlinie Salzburg.
[101] XR054/07: Investointituki.
[102] XR120/07: Yrityksen kehittamisavustus.
[103] XR075/07: Investeringsbidrag till skargarden och landsbygden.
[104] N088/08: Transport aid for SMEs.
[105] XR017/07: Prime d’amènagement du territoire.

local authorities;[106] rather than being an aid scheme *per se*, the framework enables aid offered in the context of the framework to be deemed to be in conformity with the Regional BER. It is not clear how the budget figure is arrived at, given that expenditure would primarily be undertaken by subnational authorities; however, at €300 million a year, this is significantly more than that planned under the PAT. In similar vein, France has reported an aid scheme which enables local authorities to provide property-related aid in assisted areas; an annual budget of €30 million is envisaged.[107] The remaining block-exempted regional aid schemes take the form of fiscal concessions, with specific packages of measures for firms created in assisted areas (annual budget €80 million)[108] for Corsica (€43 million)[109] and for designated rural areas falling within the regional aid map (€16 million).[110] Also important in the French context, although quite distinct from mainland regional policy, are the measures notified and approved under the operating aid provisions of RAG 2006 for the *départements d'outre mer* (DOM); together the annual budgets for these schemes exceed €1800 million, more than three times that for mainstream regional aid. France has not had any cases of large individual aid requiring notification. This is scarcely surprising given the relatively small budget for the PAT scheme. However, there have been five reported cases of aid to large projects (four of which in mainland France).

In *Germany,* the main regional incentives are the investment grant under the Regional GA[111] and the investment allowance.[112] The Regional GA has an annual budget of €1200 million and provides incentives in both 'a' regions and 'c' areas. The investment allowance is restricted to the new *Länder* and provides automatic tax concessions of up to 15 percent of eligible costs; it has an annual budget of €580 million. At a more modest level of expenditure (some €20 million annually) a loan guarantee scheme is available in Berlin and the new *Länder*.[113] The remaining schemes reported under the Regional BER are operated at the *Land* level and mainly involve the provision of loan guarantees. As Figure 21 shows, Germany has the largest number of reported and notified individual cases in the EU27. This largely reflects the automatic nature of the tax allowance. Related, all of the notified and reported cases are in the new *Länder*, with almost half of all reported aid cases located in Sachsen-Anhalt, but with most of the notified cases – including the major projects by AMD and Qimonda – in Sachsen. The automatic nature of the investment allowance has been criticised because of its perceived deadweight effects since it is available to all projects which meet specified criteria, rather than being focused on projects judged to be of the highest quality. Nevertheless, the scheme is perceived to be important in the new *Länder* both because it can help attract private sector investment and because the financing of the scheme means it is relatively inexpensive for the new *Länder* governments. Although the

[106] XR061/07: Régime cadre d'aide publique a finalite regionale.

[107] XR154/07: Aide a l'investissement immobilier et a la location d'immeubles accordées aux entreprises par les collectivités territoriales et leurs groupements.

[108] XR034/07: Mesures fiscales en faveur des entreprises créées dans les zones d'aide à finalité régionale.

[109] XR037/07: Mesures fiscales d'aide à l'investissement en Corse.

[110] XR035/08: Exonération de la taxe professionnelle en zone revitalisation rurale correspondant à une zone AFR.

[111] XR031/07: Gemeinschaftsaufgabe 'Verbesserung der regionalen Wirtschaftsstruktur'.

[112] XR006/08: Investitionszulage.

[113] XR156/07: Bundesburgschaften unter Einbindung paralleler Landesburgschaften für investitionskredite.

scheme has been extended for 2009-13, award rates are set to decline over the period (to zero by 2013) when the scheme will end.

In *Italy* eight schemes have been reported under the Regional BER. Of these the main one is the *contratti di programma*[114] which offers negotiated aid packages to large investment programmes (involving individual projects of at least €25 million, set within the context of investment programmes of €40 million or more) and carries an annual budget of €500 million; it is available in designated 'a' regions and 'c' areas. In addition, targeted assistance is available for the reindustrialisation of areas in crisis within the assisted areas map (budget €80 million).[115] The remaining schemes reported under the Regional BER involve smaller budgets and are operated at the subnational level (two in Friuli-Venezia-Giulia; one each in Calabria, Piemonte, Basilicata and Valle d'Aosta). Of key importance, however, Italy has notified a tax credit[116] scheme under RAG 2006, which has been approved by the Commission. The scheme applies to all 'a' regions and to 'c' areas in Sardegna, Abruzzi and Molise – in other words, to assisted areas in the *Mezzogiorno,* and those (small) areas in the Centre-North which are within the map are excluded. The annual budget for the scheme is €750 million, so that together with the *contratti di programma,* there continue to be two main strands to Italian regional incentive policy – one comprising a discretionary element and one essentially automatic. In practice, concerns have already been raised about the unpredictable nature of expenditure under the scheme and the Italian authorities have notified changes to the Commission with a view to improving budget planning. Italy has had just one case of notified large aid – to a theme park in Sicily. There have been six cases of reported aid to large projects, mainly in the motor vehicle sector; however, most of these cases would have required individual reporting had the motor vehicle sector not been subject to separate transitional arrangements until RAG 2006.

Two schemes have been reported by *the Netherlands*, although in practice they are elements of a single scheme. The sole national regional aid scheme is the IPR[117] which carries an annual budget of €13.50 million. Given the relatively small budget, the national scheme tends to be focused on a small number of larger projects. In addition, a decentralised version is available in (and administered by) the three northern provinces (SNN) and open to firms undertaking smaller projects;[118] this has a budget of €12.8 million for 2008. The Netherlands has no cases of regional aid schemes notified under RAG 2006 and only one reported case of aid to a large project.

Poland has reported over 30 measures under the block exemption regulation, including two instances of *ad hoc* aid, as provided for by the Regional BER;[119] it appears to be the only Member State to have reported supplementary *ad hoc* aid to date. In practice, only five schemes apply in all assisted areas (in this case, throughout Poland, which has 'a' region

[114] XR043/08.
[115] XR023/08: Interventi reindustrializzazione destinati alle aree di crisi industriale comprese nella carta degli aiuti a finalità regionale.
[116] N 039/2007: Tax credit for new investment in the assisted areas.
[117] XR145/07: Uitvoeringsregeling Besluit subsidies regionale investeringsprojecten 2007/2013.
[118] XR077/08: Investeringspremieregeling 2008.
[119] In line with Articles 3(3) and 8(1) of the Regional BER which allows for ad hoc aid of up to 50 percent of total aid to be offered, subject to reporting.

status in its entirety). The remaining measures are principally the regional implementation of tax concessions for which the regulatory framework is provided at the national level;[120] moreover, the annual budgets for the regional level schemes are quite modest, with most amounting to less than €1 million annually. At the national level, the most significant measure is a package of assistance measures provided within the context of the Polish Structural Fund cofinanced operational programme for productive investment,[121] which has an annual budget of around €560 million. In addition, support is provided for investments in Special Economic Zones (SEZ) under two funding streams,[122] amounting to some €230 annually. The SEZ are a longstanding element of Polish economic development policy and historically have been the source of some tension in relations with the Commission which has curtailed their application. Nevertheless, they remain an important component of policy, especially in the attraction of foreign investment. They provide tax concessions and other benefits in designated zones, of which there currently 14, mainly located near major cities. Poland no notified aid schemes under RAG 2006. It has reported six cases of large investment aid under the transparency mechanism, but has no instances of aid exceeding the notification ceiling.

Sweden has to date reported a single measure under the Regional BER, the regional investment aid scheme,[123] with an annual budget of €53.1 million. The scheme targets strategic investments or those of importance for the development of the area where capital requirements cannot be covered by loan finance. In addition, Sweden has notified transport aid under RAG 2006, which has a broadly similar budget of around €54 million. Sweden has one instance of reported aid to a large project.

In the *United Kingdom*, the mix of measures notified under the Regional BER is a consequence of the variable geometry of devolution to the constituent parts of the UK. A total of 15 measures have been reported; only one of these applies to all UK assisted areas.[124] In terms of the main incentives available, separate instruments providing discretionary support ('selective' assistance) to capital investment projects are operated in England (budget €113.9 million),[125] Scotland (€107.6 million),[126] Wales (€69.6 million)[127] and Northern Ireland (€126.6 million).[128] A second priority common to all assisted areas concerns property and business premises-related support, largely reflecting the scale of the urban regeneration dimension to the UK regional problem. These are supported by separate measures for each part of the UK, in addition to the tax allowances noted above;

[120] XR185/07: Rozporządzenie Rady Ministrów z dnia 23 lipca 2007 r. w sprawie

udzielania przez gminy zwolnień od podatku od nieruchomości, stanowiących regionalną pomoc inwestycyjną (Dz. U. Nr 138, poz.969).

[121] XR093/08: Rozporzadzenie ministra rozwoju regionalnego w sprawie udzielania regionalnej pomocy inwestycyjnej w ramach regionalnych programow operacyjnych.
[122] XR098/07: Program pomocy regionalnej udzielanej przedsiebiorcom prowadzacym dzialalnosc gospodarcza w specjalnych strefach ekenomicznych na podstawie zezwolenia wydanego po 1 stycznia 2007; and XR173/07: Wsparcie nowej inwestycji z Funduszu Strefowego.
[123] XR072/07
[124] XR087/07: Business premises renovation allowances.
[125] XR039/07: Selective Finance for Investment in England (SFIE).
[126] XR015/07: Regional Selective Assistance – Scotland.
[127] XR124/07: Regional Selective Assistance (RSA) Cymru Wales.
[128] XR011/07: Selective financial assistance (NI).

collectively these five measures involve an annual budget of around €190 million. The UK has not notified any measures under RAG 2006; all aid schemes have come within the scope of the block exemption. Last the UK has a reported a total of nine awards to large investment projects, but has had no cases of notified aid to large projects to date.

In *Norway*, only one scheme has been reported under the regional block exemption arrangements. The regional investment grant[129] aims to promote economic development in designated areas eligible for regional aid. The scheme is funded from both the State budget and through allocations from the counties. The annual budget is around €27.7 million. However, and more importantly in budgetary terms, Norway has also notified several measures for approval by the EFTA Surveillance Authority. The most significant of these is the social security concession, which has an annual budget of around €1060 million. However, as noted earlier, the scheme is available in virtually all sectors and to both public and private bodies so that around 40 percent of total spending is likely to go to the public sector.

8. ISSUES

The aim of this paper has been to provide an overview of the implementation of regional aid in the context of the new regulatory framework for regional aid discipline. This final section sets out a number of issues and questions as a starting point for discussion

(i) What does the implementation of the new regulatory architecture reveal about the nature of regional incentive policy?

The review of measures implemented under the new regulatory system for regional aid provides a complex but only partial view of regional aid policy. In some countries, the measures assessed against the Regional BER and RAG 2006 include schemes not perceived as genuine components of regional policy, but exclude some that are a regarded as central to it. In several countries, the measures implemented under the Regional BER include a number of subnational measures with a partial regional policy orientation insofar as they are essentially SME aid regimes that offer higher rates when firms are located in the assisted areas. However, it would be possible, in theory, for *all* of the budget of such a scheme to be expended in non-assisted areas. Equally, some of the measures reported under the SME BER may in fact be restricted to assisted areas if the entire region or country is eligible for aid, but support would be classed as SME aid not regional aid. Last, in some countries, the emphasis on competitiveness has meant that key measures of regional policy may have been reported as elements of R&D and innovation policy.

Several points arise from this. Perhaps most obviously, there are dangers in taking a strictly 'regulatory' perspective on the definition of regional aids; this paper has provided an overview of the measures implemented under the regional aid regulatory framework, but the outcome does not fully coincide with national perceptions of regional aid policy. In practice, it is extremely difficult to gain an insight into the scope and scale of incentive

[129] Forskrift om geografisk virkeomrade og bruk av dei regional- og distriktpolitiske verkemidla.

support in the assisted areas. As mentioned, an SME scheme reported under the Regional BER that favours the problem regions through higher rates need not actually expend any of its budget in the problem regions. Similarly, it is difficult to isolate the actual incidence of assisted area expenditure under SME or other horizontal aid schemes that favour the problem regions.[130]

More generally, there are questions about the role of the subnational level in the provision of State aid. The extent of decentralisation of economic development varies widely between countries, but it is evident that overall a large proportion of the block-exempted measures[131] are regional or local authority schemes. What is less clear, is what oversight *national* authorities have of subnational level activities. Of course, such actions are partly regulated by domestic constitutional law or secondary legislation, but even so, concerns have been expressed at the proliferation of such measures, the risks of internal competition and the implications for national cohesion, especially where more prosperous regions are better able to finance measures. In a recent report, the French court of auditors[132] was scathing in its condemnation of subnational incentive schemes and, among other shortcomings, highlighted the lack of coordination, the limited impact of the measures in place, uneven compliance with national and EU law on State aids and poor understanding of the rules, including those on *de minimis* aid. It seems unlikely that such concerns are limited to France.

(ii) The SAAP emphasises transparency, but can it be delivered effectively and by whom?

Commission use of the internet has radically improved the availability of information on aid measures, including both cases where a decision has been required and where a scheme is block-exempted. However, the presumption inherent in the block-exempted approach – that a measure which meets the precise criteria of the regulation is lawful and need not be notified – carries with it a significant administrative burden for Member States. Under the Regional and the General BER this is more onerous than the earlier block exemption regulations. The 'first generation' of BERs required Member States to submit a summary of the scheme to be published in the official journal and to which the Commission's State aid register links.[133] The Regional and General BER require Member States provide internet links to the relevant legislation; in the case of the General BER, the requirement is to provide a direct link to the actual text of the aid scheme, which must be maintained on the internet for as long as the scheme is operational.[134] Clearly this has the scope to provide much more detailed information on aid schemes than do the brief summaries published in the Official Journal (albeit typically only in the original language). However, experience in drafting this paper suggests that the maintenance of a transparent system is likely to prove a challenge: there are often lengthy delays between the reporting of a given measure and its

[130] The Commission requires a regional breakdown in the reporting of aid to SMEs; this can be produced by NUTS II region or by category of assisted area ('a' region, 'c' area, non-assisted), but expenditure data is not provided in this form in the regular 'scoreboards'.
[131] Of which there were over 1100 in 2007, including those for agriculture and fisheries.
[132] Cour des Comptes (2007) *Les aides des collectivités territoriales au développement économique*, available at:<http://www.ccomptes.fr/CC/documents/RPT/Cccc_077409.pdf
[133] http://ec.europa.eu/comm/competition/state_aid/register/
[134] GBER, Article 9(2).

appearance on the Commission register – there is at least one example of a scheme that had actually expired before its details were made available; a significant number of the internet links to legislative texts are invalid; the complexity of the addresses in many cases makes them prone to error, but Member States will also need to guard against the relocation or renaming of internet resources by unwitting IT personnel; and, the Commission has been slow to publish *corrigenda* where the published details of schemes have been inaccurate. These shortcomings may undermine the objective of transparency longer-term.

(iii) The SAAP aimed, among other things, to promote less and better aid and a refined economic approach to State aid analysis. How well does the new regulatory framework for regional aid serve these objectives?

Under the State Aid Action Plan (SAAP)[135] the Commission has developed and is implementing a comprehensive reform package. Key elements of the reform are "less and better targeted state aid" and "more use of a refined economic approach", of which the incentive effect of aid is "one of the cornerstones". This involves, among other things, an analysis of market failures which explain why the markets do not achieve objectives of common interest, whether State aid could be justified and acceptable and how it should be implemented to achieve the desired objective without distorting trade and competition to an extent contrary to the common interest.

The control of regional aid is conventionally conceived in terms of balancing equity and competition considerations.[136] In RAG 2006 this involves four main elements: limiting the spatial coverage of regional aid; modulating award values; reducing aid values for large investment projects; and case-by-case scrutiny of aid for large projects exceeding certain thresholds. In practice, these elements have been reinforced, rather than revolutionised under recent reforms.

In terms of 'less aid', the control of aid values has long been an element of regional aid discipline, although it was arguably not until RAG 1998 that the ceilings imposed by the Commission began to bite. Until then, for internal budgetary reasons, Member States had tended to offer substantially less than the authorised ceilings. MSF 2002, and subsequently RAG 2006 have had a significant impact on the rates that can be offered to large firms without prior notification.

As far as 'better targeted' aid is concerned, the emphasis on the need for aid and its incentive effect are new.[137] To some extent the RAG 2006 provisions on the necessity for aid echo the requirements that many Member States already operate, but the GBER goes

[135] European Commission (2005) State Aid Action Plan, COM(2005) 107 final, 7 June 2005.
[136] Obviously, there are also efficiency arguments in favour of regional policy, notably that policy can help reduce inflationary pressures and congestion in the more prosperous regions, but these arguments are currently somewhat out of favour both at national and EU levels where the dominant theme is that of 'regional competitiveness'. Nevertheless they are relevant to the Commission's growing emphasis on the need for market failure arguments to justify the use of State aid.
[137] Although under the motor vehicle industry rules in the 1990s, prospective beneficiaries had to show that there was a viable alternative non-assisted area location in order for regional aid to be considered.

further than many, and obliges Member States to demand from potential beneficiaries documentation that demonstrates the incentive effect of the aid. It can be argued that the real value of such documentation is questionable: due simply to information asymmetry, firms will always be better placed to provide such justification than aid administrators will be to challenge it.[138]

Incentive effect is also relevant to the *case-by-case scrutiny* of notifiable aid to large projects. RAG 2006 introduces a new discretionary element to Commission decision-making. For individually notifiable projects with market share or capacity exceeding certain thresholds, the Commission will only approve aid after a "detailed verification… that the aid is necessary to provide an incentive effect for the investment and that the benefits of the aid outweigh the resulting distortion of competition and effect on trade".[139] RAG 2006 entered into force on 1 January 2007 and the guidelines state that, before this date, the Commission would draw up further guidance on the criteria it would take into account during this assessment;[140] no such guidance has been issued to date. This guidance must address the very nub of the relationship between regional aid policy and competition distortion and will, even if rarely used in practice, lay bare the Commission's approach to balancing cohesion considerations, incentive effects and the distortion of competition. The task cannot, however, be easy and it might be surmised the promise to publish such guidance is now regretted.

In summary, although in procedural terms the new regulatory architecture arguably does contribute to the objectives of the SAAP, on substance, it is hard to contest the view that, so far, "regional aid policy remains largely independent from the trend towards an increased economic analysis".[141]

(iv) What constraints and opportunities does the Azores test provide for subnational authorities?

The recent Azores and La Rioja decisions on the definition of regional tax autonomy have significant implications for the ability of subnational authorities to alter tax rates within their jurisdictions. Initially, the constraints implied by the Azores test appeared tight, but the La Rioja decision makes clear that the autonomy criteria are likely to be fulfilled by some jurisdictions.

There is also an important regional policy dimension to this new development. Although the emphasis of the Commission and Court is ostensibly on the *effect* of a measure and not its form, there is a risk that the test discriminates against the less prosperous regions. For example, a prosperous region meeting the autonomy test could lower the rate of national taxation within its jurisdiction, assuming that this falls with the range of powers delegated to it. On the other hand, a poorer region, with the same degree of autonomy, may not be

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[138] Anecdotal evidence suggests that motor manufacturers had little difficulty in substantiating the existence of viable non-assisted area alternatives.
[139] RAG 2006, paragraph 68.
[140] RAG 2006, footnote 63.
[141] Merola, M. *et al* (2007) 'The most appropriate economic tool for a better targeted State aid policy', in Derenne, J. and Merola, M. (eds.) *Economic Analysis of State Aid Rules – Contributions and Limits,* Lexxion, Berlin.

in a position to risk the loss of revenue that might arise from lower tax rates.[142] Equally, in a poorer region with no tax autonomy in respect of national taxation rates, the national level could not lower the tax rate for a given region without the measure constituting State aid. In short, while the decisions clarify the distinction between variable taxation rates that arise from true regional autonomy and those that are really regionally differentiated taxation, there is a risk that the difference is one that may be readily exploited only by the more prosperous regions. Importantly, given trends towards devolution in many countries, it remains to be seen how far the test can be applied beyond constitutional arrangements of long standing.

[142] Some might argue that lower tax rates could actually increase overall revenues, but this is unlikely to be known in advance.