# The Beginning of the End, or Just Another New Chapter?

## Recent developments in EU competition policy control of regional state aid

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# Preface

This paper on the reform of EU competition policy and the control of regional state aid provides an assessment of the debate on the proposals put forward by DG Competition for the operation of regional aid after 2006. The paper was originally drafted for the 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 regional and competition policies.

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The paper has been drafted by Fiona Wishlade. It draws on country-specific research contributed by the following research team

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*It should be noted that this paper was drafted in September 2004 based on information – notably the positions of Member States – available at the time.*

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## Disclaimer

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.

# Abstract

State aid control is evolving rapidly against the background of a changing economic and geopolitical context. The so-called Lisbon agenda and subsequent Council conclusions have emphasised the objectives of “less, but better” aid, which in turn have begun to influence Commission thinking on aid discipline. More fundamentally, enlargement of the Union to 25 members in May 2004 not only radically alters the economic landscape of the Community as a whole, but also presents formidable challenges for both the formulation and implementation of State aid control policy. At the same time, a number of State aid frameworks are due for renewal before 2007, providing the Commission with an opportunity for a comprehensive review of aid rules. This paper examines the new frameworks – LASA and LET – proposed by the Commission and their implications for regional aid. It then analyses the Commission’s proposals for regional aid reform, charting the national responses to the initial consultation, the proposals put forward by DG Competition and the reactions of Member States. The paper concludes by highlighting some of the main issues and implications from the debate.

# RECENT DEVELOPMENTS IN EU COMPETITION POLICY CONTROL OF REGIONAL STATE AID

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# RECENT DEVELOPMENTS IN EU COMPETITION POLICY CONTROL OF REGIONAL STATE AID

## 1. INTRODUCTION

State aid control is evolving rapidly against the background of a changing economic and geopolitical context. The so-called Lisbon agenda and subsequent Council conclusions have emphasised the objectives of “less, but better” aid, which in turn have begun to influence Commission thinking on aid discipline. More fundamentally, perhaps, enlargement of the Union to 25 members in May 2004 not only radically alters the economic landscape of the Community as a whole, but also presents formidable challenges for both the formulation and implementation of State aid control policy. At the same time, a number of State aid frameworks are due for renewal before 2007, providing the Commission with “an unprecedented window of opportunity for a comprehensive review of the horizontal, and particularly Lisbon, objectives, and the new cohesion policy set out in the forthcoming Structural Fund regulations as well as to consolidate, and wherever possible simplify the rules.”[1]

The control of regional State aid is by no means immune from the effects of this general climate of change: the current guidelines expire at the end of 2006 and the upcoming reform of Cohesion policy adds a further variable to the complex mix of issues to be taken into account in revising regional aid control in an enlarged EU. Moreover, the increasing tendency for policy objectives to be interlinked and for State aid control to evolve as a matrix of rules and codes means that regional policies will be impacted not only by the revised regional aid guidelines but also by developments in adjacent policy areas.

Following this introduction, this paper begins by looking at recent changes in State aid policy with implications for regional aid, before examining the Commission’s proposals for regional aid reform *per se*. It concludes by drawing out wider issues and implications.

## 2. NEW FRAMEWORKS: LASA AND LET

Previous research in this annual series of papers on competition policy[2] highlighted four key elements underpinning the changing context for State aid control, namely: the role of market failure as a justification for State aid approval; concerns with the efficiency and effectiveness of aid; the place of economic analysis in State aid control; and the simplification, modernisation and clarification of the State aid rules. Over the past year the Commission has begun to add substance to these themes, introducing a number of changes and floating new policy proposals with the Member States. These new developments reflect an approach that focuses increasingly on measures that are perceived to be most damaging and which aims to ensure that those aids which *are* approved facilitate the achievement of Community objectives. Moreover, recent decisions and pronouncements suggest a growing preoccupation with the evaluation of the *effects* of State aid not only from the perspective of competition distortion, but also in relation to substantive policy objectives.

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[1] European Commission (2004) *A Pro-active Competition Policy for a Competitive Europe,* COM(2004) 293 final, 20 April 2004, Brussels.
[2] Wishlade, F. (2003) ‘Regional Aid Control After 2006: the Forces of Change’ EoRPA Paper 03/03, *Paper to the EoRPA Consortium,* 6-7 October 2003, Ross Priory, Loch Lomondside.

An important new policy initiative has been the development of significant impact tests in the form of draft Communications providing for frameworks for the assessment of lesser amounts of aid (LASA) and aid which has a limited effect on trade (LET).[3] These proposals were heavily trailed by Commissioner Monti and the Director-General, Philip Lowe, during the course of 2003.[4] In principle, they both aim to improve the proportionality of scrutiny in relation to aids that are perceived to be potentially less harmful and to increase the flexibility available to Member States in designing aid instruments.

## 2.1 Draft Framework for Lesser Amounts of State Aid (LASA)

The LASA framework introduces a new category of State aid: aid which exceeds the *de minimis* threshold, but which is still regarded as too modest to pose a serious threat to competition, provided that it contributes to the achievement of certain Community objectives and that specified criteria are met. This contrasts with the *de minimis* provision that aid "not exceeding a ceiling of €100,000 over any period of three years does not affect trade between the Member States and/or does not distort or threaten to distort competition…".[5] According to the LASA draft, the Commission considered raising the *de minimis* threshold but concluded that any increase that could be allowed would be too modest to improve the flexibility available to Member States. Instead, LASA builds on what the Commission calls the principle that "size matters" providing a framework for the approval of aid which remains limited in scale, and subject to certain constraints. Nevertheless, LASA aid is still subject to prior notification to the Commission under Article 88(3) either as a scheme or as *ad hoc* aid.

### *2.1.1 Scope*

LASA applies to all ***sectors*** except agriculture, fisheries, aid to transport companies for investment in road haulage vehicles or inland waterway vessels and coalmining. It also applies to firms of any ***size***.

To qualify for approval under LASA, measures must contribute to the achievement of one of the following Community ***objectives***: research and development; environmental protection; creation of new and better employment; training; risk capital; SME development; and regional development. Aid to firms in difficulty and export-related aid cannot be approved under LASA; nor can aid to a firm solely to reduce its indebtedness, irrespective of whether the firm is in difficulty.

In principle, LASA aid can be in any ***form***. However, less 'transparent' forms of aid (such as repayable advances, guarantees etc.) are disadvantaged to the extent that the whole of the amount advanced or guaranteed counts against the LASA limit, and not just the aid element. Moreover, the Commission will not approve LASA in the form of tax deductions or exemptions unless the Member State can provide

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[3] 'Draft Communication from the Commission: A new framework for the assessment of lesser amounts of State aid' and 'Draft Communication from the Commission: A new framework for the assessment of State aid which has limited effects on intra-Community trade' available on the DG Competition WebSite at: www.europa.eu.int/comm/competition/state_aid/others/

[4] Philip Lowe, 'Introduction', *EC Competition Policy Newsletter,* 2003(1) Spring; Mario Monti (2003) 'New developments in State aid policy,' *Paper to British Chamber of Commerce,* Brussels, 1 December 2003; Philip Lowe, 'State aid: the Commission's plans for reform,' *Paper to British Chamber of Commerce,* Brussels, 1 December 2003.

[5] Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Article 87 and 88 of the EC Treaty to *de minimis* aid, OJEC No L 10 of 13 January 2001.

undertakings based on a worst-case scenario that the ceilings for LASA will not be exceeded.

### 2.1.2 Aid limits

LASA aid is subject to three ***aid ceilings***:

- 30 percent of project costs;
- a total of € 1 million per independent enterprise in any three-year period;
- an annual limit on the amount of LASA aid that may be granted by each Member State. The aim is to limit LASA aid at Community level to around five percent of other aid. National LASA spending ceilings would be calculated as follows:

  0.025% x (EU GDP per head x national population)

With the exception of *de minimis* support, LASA aid may not be ***cumulated*** with any other aid in respect of the same project.

### 2.1.3 Procedural and administrative aspects

As already mentioned, LASA does not obviate the need for ***notification*** to and approval by the Commission of the measure before implementation. The basis for approval is Article 87(3)(c), namely, aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. LASA schemes will initially be approved for up to four years. In the first instance, the LASA framework will remain in force until 31 December 2006.

An important aspect in retaining control over LASA aid are the ***monitoring*** obligations imposed on the Member States. Approval of LASA aid is conditional on the establishment of a database that is publicly accessible through the internet and which, as a minimum, identifies the name of the beneficiary, the amount of LASA aid provided and the national legal basis for the aid. This aims, among other things, to ensure that LASA aid from different sources is not cumulated.

The LASA framework also provides for the ***evaluation*** of approved measures. Not later than two years after approval, Member States must prepare a report on the effects of the aid measure and the extent to which it has met the targets set. Failure to produce such a report by the end of the third year following approval will result in approval lapsing.

### 2.1.4 Observations

The LASA framework may, in principle, enable the Commission to approve relatively swiftly a range of measures that currently fail to sit squarely with existing frameworks but which are nevertheless relatively innocuous from a competition perspective. At present, where a notified scheme cannot readily be accommodated within prevailing rules, the Commission is in effect obliged to open the investigative procedure and give interested parties an opportunity to comment, even where the amounts of aid are modest and where the objectives, while not explicitly addressed in State aid frameworks, are nonetheless in line with wider Community objectives. However, the

scope and impact of LASA may, in practice, be quite modest and this for several reasons.

First, Member States may be dissuaded from using the provisions because of the onerous monitoring obligations. These involve the establishment of a publicly-accessible database, covering all LASA aid, enabling beneficiaries to be identified; some national policymakers may have concerns about issues of commercial confidentiality. Second, and related, while *ex-post* monitoring is onerous, this is not compensated for by a streamlined notification and approval process; while the Commission has indicated that a major objective of the LASA approach is to focus resources on cases most likely to raise concerns, the LASA draft does not indicate any substantive differences in the treatment of notified LASA aid from other forms of aid. Third, treatment of non-grant forms of aid is ungenerous: for reasons of simplicity, the amount of aid involved in guarantees, equity injections, repayable advances and soft loans is taken to be the whole amount guaranteed, injected or advanced. On this basis, loans could readily reach the aid ceiling although the real aid element might be very small indeed. Moreover, 'innovative' or risk-sharing approaches to support could be disadvantaged by the approach to calculating aid values.

Other aspects of the framework are unclear. For example, what would be the relationship between LASA aid and existing frameworks where the objectives coincide – such as R&D? It is clear that LASA aid cannot be cumulated with aid approved under another framework and that LASA does not amend those frameworks, but could LASA aid exceed the limits allowed under those frameworks in respect of the same project?

Another issue is the interpretation of 'Community objectives'. These are listed in broad terms in the framework, but it is not known how these would be viewed in practice. For example, would support for R&D in a very highly-specialised activity not otherwise targeted by EU R&D policy nevertheless be considered to 'demonstrably facilitate' the promotion of R&D in Community terms? More pertinently, perhaps, in the present context, how would the Community objective of regional development be interpreted? Does this imply a map-based approach? Could it be used to address urban, rural, fisheries, upland areas etc., or would its application be limited to areas targeted by EU Cohesion policy?

Also interesting are the budget limits on LASA spend. This is in line with the 'less aid' objective underlined at successive Council meetings. However, there is an inherent contradiction in capping the spend on LASA aid, on the one hand, and claiming, on the other, that "There is ample evidence that Member States often subsidize industries in an inefficient manner, and *do not sufficiently address* market failures in other areas such as R&D training, innovation, and venture capital."[6] (emphasis added). Moreover, the *competition* policy rationale for limiting LASA budgets is not clear; if measures do not raise competition issues on a case-by-case basis, then why should they in the aggregate? At a practical level, the budget limits could raise some difficult operational issues. This will depend on the extent of the take-up of the LASA option by policymakers, but it is possible to envisage problems in the allocation of LASA budget quotas between potential granting authorities, especially in Member States where economic development responsibilities are wholly or partially devolved.

[6] European Commission (2004) A pro-active Competition Policy for a Competitive Europe, COM(2004) 293 final, 20 April 2004, Brussels.

LASA aid limits would be calculated in a uniform manner for all EU countries, set as a percentage of EU GDP and adjusted for population size. However, the practical effects of this may be quite variable, depending on current levels of spending. Although on average LASA aid would be limited to around 5 percent of total aid spending (excluding agriculture, fisheries and transport), the relative importance of the LASA budget limit would differ widely between countries, with high-spending countries having a low LASA ceiling and vice-versa. For example, in the UK, the LASA ceiling would amount to around one-sixth of aid expenditure; by contrast, in Denmark, LASA would be equivalent to around 2 percent of spending. Figures for the acceding countries differ yet more widely, but it seems plausible to assume that the data may be somewhat less reliable, given the shorter history and difficulties in data collection. In general, however, it is probable that differences in the relative values of the LASA limits will impact on Member States' willingness to put in place the administrative mechanisms to take advantage of the facility.

**Figure 1: LASA Budget Limit Estimates**

| | **LASA aid limit (€m), based on 2000 data** | **Aid spend 2000 €m (ex agriculture, fisheries and transport)** | **LASA ceiling as % of 2000 Aid Spend** |
|---|---|---|---|
| **Austria** | 39.4 | 434.0 | 9.1 |
| **Belgium** | 50.5 | 808.5 | 6.2 |
| **Denmark** | 26.3 | 1412.1 | 1.9 |
| **Finland** | 25.5 | 314.5 | 8.1 |
| **France** | 299.0 | 6859.2 | 4.4 |
| **Germany** | 404.2 | 13694.1 | 3.0 |
| **Greece** | 53.7 | 609.7 | 8.8 |
| **Ireland** | 18.9 | 728.6 | 2.6 |
| **Italy** | 284.4 | 4536.9 | 6.3 |
| **Luxembourg** | 2.2 | 41.9 | 5.2 |
| **Netherlands** | 78.8 | 667.7 | 11.8 |
| **Portugal** | 50.5 | 1254.2 | 4.0 |
| **Spain** | 197.7 | 3010.6 | 6.6 |
| **Sweden** | 43.7 | 525.7 | 8.3 |
| **UK** | 288.8 | 1742.1 | 16.6 |
| **EU15** | **1863.5** | **36639.8** | **5.1** |
| **Cyprus** | 3.5 | 87.4 | 4.0 |
| **Czech Rep** | 50.2 | 569.8 | 8.8 |
| **Estonia** | 6.7 | 4.2 | 161.3 |
| **Hungary** | 50.0 | 539.5 | 9.3 |
| **Latvia** | 11.6 | 27.6 | 41.9 |
| **Lithuania** | 17.1 | 43.4 | 39.4 |
| **Malta** | 1.9 | *not available* | ~ |
| **Poland** | 189.7 | 1626.0 | 11.7 |
| **Slovak Rep** | 26.5 | 64.6 | 41.1 |
| **Slovenia** | 9.8 | 165.8 | 5.9 |
| **AC10** | **366.9** | **3128.2** | **11.7** |
| **EU25** | **2230.4** | **39768.0** | **5.6** |

Note: Calculations use 2000 GDP and aid expenditure data – the most recent year for which figures are available for EU25.
Source: Own calculations from REGIO, State aid Scoreboard Special Edition on the Candidate Countries, COM(2002) 638 final and DG Competition online scoreboard at: http://europa.eu.int/comm/competition/state_aid/scoreboard/

Last, the ultimate role of evaluation in the process is uncertain, although clearly it echoes the drive for 'better' aid signalled in Council. As already mentioned, the Commission will require a report on the effects of the measure and the extent to which it meets the targets established. Failure to publish such a report will result in

Commission approval of the scheme lapsing. But what of the *content* of the report? If targets are not met or the scheme is perceived to be viewed as inefficient or ineffective (but nonetheless innocuous from a competition perspective) could these be grounds for approval to be withdrawn? Irrespective of whether there are sanctions for poorly performing measures, it is of interest that competition policy instruments are, in effect, giving legal force to more general economic policy aspirations.

## 2.2 Draft Framework for Aid with a Limited Effect on Intra-Community Trade (LET)

The LET framework is cast in a similar mould to LASA. While the principle underlying LASA is that ‘size matters’, the objective of LET is to provide a simplified framework for measures that can be expected only to have a limited effect on trade and need not be a cause for concern at Community level;[7] in other words, ‘activity matters’ too. More generally, the Commission identifies a number of factors relevant to the assessment of the impact on trade, namely:

- amount of aid
- tradable/non-tradable nature of the aided activity
- competitive structure of the market concerned
- possible market power of the beneficiaries
- availability of the aid to different operators in the market.

These considerations in turn limit the scope and value of LET aid. Like LASA aid, LET aid is still subject to notification under Article 88(3).

### *2.2.1 Scope*

LET applies to all ***sectors*** except agriculture, fisheries, aid to transport companies and coalmining. It also applies to firms of any ***size***. Of key importance, however, LET applies to a limited number of ***activities*** that, by nature, are considered not to produce significant cross-border effects or be characterised by high concentration or barriers to entry. It includes a very limited number of manufacturing activities (lime, plaster, articles of concrete, plaster and stone); some construction activities (site preparation, building installation and completion), although building construction *per se* is excluded; and a wide range of services activities, but excluding banking and insurance and network industries.

As with LASA, to qualify for approval under LET, measures must contribute to the achievement of one of the following Community ***objectives***: research and development; environmental protection; creation of new and better employment; training; risk capital; SME development; and regional development. Aid to firms in difficulty and export-related aid cannot be approved under LET; nor can aid to a firm solely to reduce its indebtedness, irrespective of whether the firm is in difficulty.

In principle, LET aid can be in any ***form***. However, the same rules on less ‘transparent’ forms of aid and tax deductions and exemptions apply as under LASA.

[7] Measures that have no effect on trade do not involve State aid.

### 2.2.2 Aid values and limits

LET aid is subject to several limits relating to undertakings and project costs. Specifically:

- LET aid is subject to a ***ceiling*** of 30 percent of the project costs incurred for the development of the aided activity
- The ***total amount*** of LET aid that any undertaking can receive, for all projects combined, is limited to €3 million per year

In addition, LET aid must be operated: through a tender procedure which ensures that the amount of aid is limited to the minimum necessary; or, through a scheme which is open to any undertaking able to carry out the identified activities and does not allow for any single beneficiary to receive more than 10 percent of the total budget of the scheme actually spent.

With the exception of *de minimis* support, LET aid may not be ***cumulated*** with any other aid in respect of the same project. Unlike LASA aid, however, there is no overall cap on the budget for LET aid.

### 2.2.3 Procedural and administrative aspects

As already mentioned, LET does not obviate the need for ***notification*** to and approval by the Commission of the measure before implementation. The bases for approval are Articles 87(3)(c) and (d), namely, aid to facilitate the development of certain economic activities or of certain economic areas, and aid for culture and heritage conservation where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

LET schemes will initially be approved for up to four years; in the first instance, the LET framework will remain in force until 31 December 2006. These timescales are the same as under the LASA framework.

LET aid is subject to the same ***monitoring*** obligations as LASA: approval of LET aid is conditional on the establishment of a database that is publicly accessible through the internet and which, as a minimum, identifies the name of the beneficiary, the amount of LET aid provided and the national legal basis for the aid. This aims, among other things, to ensure that LET aid from different sources is not cumulated and that the amount of aid granted does not exceed the limits set out above. Different from LASA, however, there is no obligation to undertake evaluations of LET aid.

### 2.2.4 Observations

The draft LET framework raises some of the same issues as LASA, notably whether the framework will have any real impact given the relatively onerous monitoring requirements.

In addition, although the framework purports to subject LET aid to a simplified notification and approval process, in practice, it is not clear in what sense this is really made easier. In particular, the framework notes that the standard notification form should be used and mentions a supplementary information form (which is not reproduced with the draft framework); moreover, there are no explicit changes made to standard procedures under which proposed LET aid is to be scrutinised.

Last, the activity coverage of the framework includes some activities carried out by firms with international operations – notably in the property and construction sectors – and excludes others where aid would be likely to have purely local effects – such as community-based mutual funds or credit unions.

### 2.3 Multisectoral Framework 2002

At the opposite end of the size spectrum recent developments have reinforced controls over aid to large projects. The 2002 Multisectoral Framework[8] became of general application from 1 January 2004,[9] replacing the 1998 Multisectoral Framework,[10] which was perceived to have a number of shortcomings.[11]

The essence of the 2002 Multisectoral Framework is essentially two-fold: first, a matrix is applied to reduce the standard award maxima for projects exceeding € 50 million investment (this is set out in Figure 2); second, for projects exceeding € 100 million investment, individual notification is required if the aid amount proposed exceeds that for which a € 100 million investment would have qualified. For such projects, Member States have to show that the project does not reinforce a high market share or increase capacity in a stagnant sector in order for the award matrix to apply. Member States were required to modify existing regional aid schemes to take account of the new award matrix and notification requirements.

**Figure 2: Rate Reduction Matrix for Large Projects**

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

One of the aims of the 2002 Multisectoral Framework was to bring sectoral aid within a horizontal framework and replace the existing rules for different activities. In addition, the Commission was, by end 2003, to draw up a list of sectors with structural difficulties in which aid would be prohibited. In the interim, aid to large firms in the synthetic fibres industry was prohibited and aid for the motor industry was subject to a ceiling of 30 percent of the prevailing regional aid maximum. In practice, the adoption of such a list was postponed due to "methodological and technical difficulties" and to take account of Member State requests.[12] The "technical feasibility and the political and economic opportunity" to adopt a list of sector with structural difficulties will be examined again by the Commission before end 1995,[13] but in the meantime the interim provisions for the synthetic fibres and motor vehicle industry have been extended to 31 December 2006. Last, as will be seen, DG Competition has floated the possibility of incorporating the Multisectoral Framework into the Regional Aid Guidelines, post-2006.

[8] Multisectoral Framework on regional aid for large investment projects – Rescue and restructuring aid and closure aid for the steel sector, OJEC No C 70 of 19 March 2002.
[9] The provisions relating to the steel sector had come into force on 24 July 2002 and those for the motor vehicle and synthetic fibre industries on 1 January 2003.
[10] Multisectoral framework on regional aid for large investment projects, OJEC No C 107 of 7 April 1998.
[11] See 'Regional aid and large investment projects' in Wishlade, F. G. (2003) *Regional State Aid and Competition Policy in the European Union,* Kluwer Law International, The Hague, for an overview of the 1998 Multisectoral Framework and its impact.
[12] European Commission, XXXIIIrd Report on Competition Policy, SEC(2004)658 final at point 389.
[13] S. Cavallo and K. Junginger-Dittel, (2004) 'The Multisectoral Framework 2002: new rules on regional aid to large investment projects', *Competition Policy Newsletter* No. 1, Spring.

# 3. REGIONAL AID GUIDELINES

Of central importance to regional aid control, in 2003 DG Competition began a review of the Regional Aid Guidelines with a view to reforming the rules for the post-2006 period. The review was initiated by letter to the Member States in April 2003 requesting comments, observations or information relevant to the review by 30 May 2003.[14] In parallel, external studies were commissioned, bilateral discussions were held between DG Competition and national authorities and a questionnaire in the form of a 'non-paper' was circulated to Member States.[15] The questionnaire raised an eclectic mix of issues ranging from the effectiveness of investment aid to large firms to points of detail about aid values and population coverage. It was initially anticipated that DG Competition would produce some proposals by summer 2003; in practice, this did not take place until spring 2004.

## 3.1 National Perspectives on the Initial Consultation

In practice many Member States were rather tardy in making responses to the Commission letter and questionnaire; some did not respond directly to the questionnaire, and others did not submit a formal response at all. In general, however, most Member States took the existing rules as the basis for their comments, arguing that the basic principles should be retained. Some suggested quite detailed amendments and responded to the issues of whether and how enlargement should affect regional policy in the existing membership. The ***Italian*** and ***UK*** responses took as their starting points internal reviews of regional policy that provided a somewhat different context for the future role of regional aid.[16]

The following discussion highlights the issues raised by Member States on the key elements of the Guidelines.

### *3.1.1 Population coverage*

The starting point for the 1998 Guidelines was the view that regional aid should be the exception rather than the rule and, consequently, that coverage should not exceed 50 percent of the EU population. The 2000-06 ceiling took account of the enlarged population then envisaged and the objective of 'coherence' between the national and the EU regional aid maps; coverage of 42.7 percent was judged to be the minimum necessary to enable the Structural Funds areas to be contained within the national assisted areas maps.

Most responses endorsed the view of continued discipline over population coverage. The ***French*** response to the Commission supported the view that population coverage should be constrained and suggested a ceiling of 50 percent of the European population, this was supported by ***Finland*** and the Belgian region of ***Wallonia*** but the French also argued that decisions of key importance to Member States – such as population coverage – should be endorsed by the Council of Ministers. The ***German*** and ***Irish*** responses also favoured overall population control

[14] The consultation was extended to the EEA Member States, Iceland, Lichtenstein and Norway and the ten acceding countries.
[15] The external studies were made available in July 2004 on the DG Competition website at: <http://europa.eu.int/comm/competition/state_aid/regional/>; national responses have kindly been provided by policymakers for the purposes of this study.
[16] Memorandum sulla riforma della politica regionale di coesione comunitaria, in the case of Italy, and HM Treasury, DTI & ODPM (2003) A Modern Regional Policy for the United Kingdom.

and suggested a ceiling of 50 percent of the EU25 population, but argued that this should be raised for a transitional period to accommodate some of the negative impacts of enlargement on the current membership. The ***Austrian*** authorities argued that the existing rule that coverage should not exceed 50 percent of the Community population would have to be abandoned.

By contrast, the ***Italian*** authorities took the view that population thresholds and maps were not suitable for regulating regional aids and did not allow the flexibility to respond to changing circumstances; instead, discipline could, it was suggested, be based on expenditure ceilings. Similarly, the ***UK***, whilst not explicitly rejecting the notion of population thresholds, focused on alternative, essentially horizontal and impact-based mechanisms for disciplining regional aids.

### *3.1.2 Article 87(3)(a) definition*

The 1998 Guidelines define Article 87(3)(a) areas on the basis of top-down criteria – a threshold of 75 percent of EU GDP(PPS) per head is applied and the population eligible on this basis is subtracted from the global ceiling (currently 42.7 percent) to determine Article 87(3)(c) coverage. The major questions related to the future definition of Article 87(3)(a) concern the treatment of regions losing eligibility as a consequence of the statistical effect of enlargement, the relationship between Objective 1 and Article 87(3)(a) and the treatment of the outermost regions.

In practice, the formal submissions to the Commission did not explore these issues in depth. The ***French*** position did not address the question of the statistical impact of enlargement on Article 87(3)(a) coverage, but instead argued that, whatever levels of GDP per head pertain, Article 87(3)(a) should include the outermost regions and mountainous areas such as Corsica where a significant proportion of GDP is accounted for by the public sector. The ***Spanish*** submission also highlighted the question of the outermost regions, arguing that all should be included in Article 87(3)(a), irrespective of levels of GDP and that the population of the outermost regions should not be included in any calculations for national population quotas. The ***German*** authorities stressed the need for appropriate transitional provisions for regions losing Article 87(3)(a) status, but did not propose any change to the Article 87(3)(a) criteria. A similar stance was taken by ***Austria*** and ***Ireland***.

### *3.1.3 Article 87(3)(c) coverage*

Under the 1998 Guidelines, Article 87(3)(c) coverage is determined by the global coverage decided by the Commission, less the population eligible for Article 87(3)(a) on the basis of top-down criteria. This in turn is shared between the Member States on the basis of a complex methodology, complemented by a series of adjustments.[17]

Regarding Article 87(3)(c) coverage, the ***French*** authorities argued that in future this should be distributed on the same basis as under the 1998 Guidelines, but with greater transparency in the application of the methodology. A further proposal concerned the need for a transitional period for areas losing Article 87(3)(c) status, as applied under the Structural Funds Regulation in 2000-06. The ***German*** submission proposed a major change to the distribution methodology for Article 87(3)(c) regions: namely, that this should be determined by the number of inhabitants

[17] For a full description, see Guidelines on National Regional Aid, Annex III, OJEC No C74 of 10 March 1998 and 'The 1998 Guidelines: the start of a new era?' in F. G. Wishlade (2003) *op cit.*

outside the Article 87(3)(a) regions in each Member State. This proposal was strongly resisted by the ***Irish*** authorities who argued in favour of a safety net. ***Finland*** and ***Austria*** also stressed the need for safety nets to ensure that coverage in the existing Member States was not 'squeezed' as a consequence of enlargement but in the absence of any real improvement in the prevailing economic conditions.

### 3.1.4 Article 87(3)(c) area designation

The 1998 Guidelines contain a number of rules relating to the methodologies for the selection of assisted areas. These concerned the number and type of indicators, the geographical units of analysis and the relationship between the national and the Structural Funds assisted areas. The designation of Article 87(3)(c) areas was a major source of difficulty for many countries in the 1999-2000 map negotiations.[18] Although ostensibly the Guidelines increased the freedom of Member States in selecting Article 87(3)(c) areas, in practice they were highly prescriptive.

The main thrust of national views concerned the need for greater flexibility in area designation within the Article 87(3)(c) ceiling. The ***German*** authorities considered that the Commission should limit itself to examining whether Member States had used homogeneous regional units chosen according to objective, transparent and consistently applied national criteria; this implied that the Commission should focus solely on the choice of geographical building block. This contrasted with the ***French*** position insofar as their submission argued for the scope to *subdivide* building blocks and to abolish the minimum 100,000 population rule. The ***Finnish*** position also proposed a revision to the 100,000 population rule, reflecting the fact that this represents around two percent of the national population; the ***Austrian*** authorities, too, criticised the emphasis on "homogeneity" and "compactness" and the use of NUTS units. Moreover, the Austrians argued that eligibility should not be determined by a rigid demarcation of geographical areas, but rather by the impact of individual projects on the relevant assisted area.

The ***French*** submission also noted the need to take account of industrial restructuring, particularly given the historical nature of the area designation indicators and the absence of any mechanism to respond to specific problems without recasting the map in its entirety. In this context, a 'floating' Article 87(3)(c) population quota of 10 to 20 percent of the national population was suggested; according to the French proposal, this could be used for designating areas affected by restructuring for a maximum period of two or three years.

***Finland*** and ***Sweden***, not surprisingly, emphasised the importance of the low population density criterion. ***Norway*** argued that low population density should be supplemented by other indicators and suggested that 'accessibility' be taken into account and together with ***Austria*** noted the need to take account of the special needs of mountain regions.

### 3.1.5 Aid intensity

Historically, aid intensity has tended to be a much less contentious issue in regional aid relations between the Commission and the Member States; authorised award

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[18] See 'The impact of competition on regional aid policies' in F. G. Wishlade (2003) *op cit.* and Wishlade F, Yuill D and Méndez C (2003) *Regional Policy in the EU: A Passing Phase of Europeanisation or a Complex Case of Policy Transfer?* European Policy Research Paper 50, European Policies Research Centre, University of Strathclyde.

values have typically been higher than the levels that policymakers wanted to offer (for budgetary reasons) or at least have not constrained award decisions. However, the 1998 Guidelines saw the beginnings of national concerns over the competition policy limits on award values and this for two main reasons. First, the Guidelines reduced aid intensities to a level at which they were likely to bite – this was especially so in the more prosperous regions with relatively low unemployment in relation to the European average where a maximum aid ceiling of 10 percent was set.

**Figure 3: Maximum rates of award under the 1998 Guidelines**

| Assisted area type | General maximum rate |
|---|---|
| Article 87(3)(a) (outermost) | 65 |
| Article 87(3)(a) (standard) | 50 |
| Article 87(3)(a) (outermost with GDP > 60% EC average) | 50 |
| Article 87(3)(a) (GDP > 60% EC average) | 40 |
| Article 87(3)(c) (Northern Ireland) | 40 |
| Article 87(3)(c) (low population density) | 30 |
| Article 87(3)(c) (standard) | 20 |
| Article 87(3)(c) (GDP > EC av. & unemployment < EC av.) | 10 |

Note: Rates are expressed in net grant-equivalent (NGE). Supplements of 10 percent and 15 percent gross for small and medium-sized enterprises apply on top of these ceilings, except, it transpired, in the case of the sparsely-populated regions.
Source: Drawn up on the basis of the text of the Regional Aid Guidelines, point 4.8.

The second reason for the emergence of national concerns at the impact of competition policy on regional aid values was the introduction of the first Multisectoral Framework in 1998, now superseded by the 2002 Multisectoral Framework (see Section 2.3 above). These rules concern aid to particularly large projects and have the capacity to reduce award values to a level at which, some would argue, aid loses its incentive effect and windfall gains may be increased.

In responding to the consultation, the ***Irish*** authorities argued that aid intensities should not be reduced, but rather maintained at a level at which they could be effective. The ***German*** authorities suggested a significant reduction in award maxima across the board in both the Article 87(3)(c) and the Article 87(3)(a) regions. In parallel, they argued that, given these much lower aid intensities, the Multisectoral Frameworks should be abolished in order to avoid award values being reduced to a level at which they have no effect on investment decisions.

***Austria*** expressed concern at the differential in maximum aid intensities between the Austrian border regions and neighbouring regions in the new Member States. Similarly, the ***Swedish*** submission argued that the aid differentials between Article 87(3)(a) and (c) regions be reduced.

A fundamental issue raised in the ***French*** response concerned the ‘decoupling’ of regional aid and SME aid ceilings; in other words, the argument that the regional aid map should not determine the ceilings for SME aid. Instead, an award matrix for SMEs was proposed with rates differing depending on whether firms are located in designated rural areas, the PAT (*prime d’aménagement du territoire*, regional policy grant) map and or the Objective 2 map.

Also in relation to award values, the ***German*** position questioned whether the level of detail in the current Guidelines concerning issues such as replacement investment and eligible expenditure was justified. The ***French*** submission, for its part, proposed a series of detailed changes to the rules on minimum own funds and to the rules on replacement investment and operating aid in the outermost regions. Similarly, ***Austria*** and ***Spain*** proposed that the detailed rules on expenditure be clarified in the

interest of legal certainty with Spain specifically suggesting that land be excluded from the calculation of eligible investment.

### *3.1.6 Relationship with the Structural Fund areas*

Under the 1998 Guidelines, the emphasis on coherence between the national and the EU assisted areas resulted in an important derogation from the general rules on area designation for Article 87(3)(c). This enabled Objective 2 areas to be proposed as part of the Article 87(3)(c) map without needing to comply with the single building block requirement. In practice, only Italy used this derogation in its initial map proposal (and this proposal was rejected on the grounds that the Objective 2 map had not been decided); moreover, in Germany, recourse to this provision in order to enable parts of labour market areas to be designated was not accepted by the Commission. Elsewhere, however, it was to become an important device in diffusing sometimes difficult disputes between DG Competition and national policymakers; the main motivation for national policymakers lay not in the principle of coherence but rather in securing approval for national assisted area proposals.

As to the future relationship between national and EU regional policies, the ***German*** authorities expressed the view that the State aid rules should be developed separately from the rules on the Structural Funds and that eligibility for national regional aid should not be dependent on eligibility for the Structural Funds. Similarly, the ***Austrian*** submission proposed a decoupling of national and EU assisted area maps. The ***UK*** also argued that the two policies be targeted separately, reflecting the broader UK position that EU cohesion policy be focused on the poorest Member States. The ***French*** position paper did not address the role of the Structural Funds derogation directly (and France benefited from this considerably in the 1999-2000 negotiations) but argued that the national (PAT) and Structural Funds maps should be different since their policy objectives are not the same. However, the French authorities also argued that, for rural Objective 2 areas outside the PAT map, SMEs should qualify for a higher rate of award than that indicated under the SME aid guidelines.

## 3.2 Community Perspectives: the Genesis of a Reform

The main lines of DG Competition thinking became apparent during the course of 2003, although its stance was not confirmed until the publication of the Third Cohesion Report and the Working Paper sent to the Member States in May 2004.

Early indications that radical change might be countenanced were contained in the ‘non-paper’ questionnaire circulated to the Member States. This indicated that the Commission’s position on the Article 87(3)(a) areas, the former Article 87(3)(a) areas, the ultra-peripheral regions and regions with a low population density was “relatively clear”, but sought to open the debate about what might be acceptable elsewhere. In particular, the non-paper asked a number of leading questions, including whether “investment aid is a relic of an obsolete concept of regional aid” and querying the necessity of investment aid for large firms other than in the least-developed regions. More specifically, it asked whether it would be possible to prohibit investment aid for large firms outside Article 87(3)(a). This line of thinking is consistent with the views

expressed by Philip Lowe (Director-General of DG Competition) in a paper given in June 2003;[19] this outlined two "provisional scenarios".

The first scenario would involve limiting regional aid map coverage to Article 87(3)(a) areas (those regions with per capita GDP below 75 percent of the EU25 average) and to "earmarked" Article 87(3)(c) regions (those losing Article 87(3)(a) status because of the statistical effect of enlargement or rising GDP, areas with low population density and outermost regions). Coverage would amount to around 34 percent of the EU25 population. Investment aid to large firms would not be allowed outside the regional aid maps.

The second scenario would build on a simplification of the current approach. In addition to the Article 87(3)(a) and "earmarked" Article 87(3)(c) regions, further Article 87(3)(c) areas could be designated, subject to an overall ceiling of 50 percent of the EU25 population. These would be designated on the basis of a simplified version of the 1998 Regional Aid Guidelines, the only restriction being that a minimum size of geographical unit be used in drawing up the maps.

Philip Lowe argued that the first scenario would be simpler and best satisfy the considerations and constraints on DG Competition's agenda, namely, the objective of less and better State aid, the need to reconcile the reduction of State aid volumes with the aim of economic and social cohesion, the modernisation and simplification of the rules and the experience with the 1998 Regional Aid Guidelines.

It was hardly surprising, perhaps, that this view held sway in the Third Cohesion Report. This stated that the consistency between cohesion and competition policies was "a key question" and went on to outline the main principles: that Article 87(3)(a) should apply to regions with GDP per head below 75 percent of the EU average; that regions impacted by the "statistical effect" of enlargement be eligible under Article 87(3)(c) with award values to decline over the period to 2013; and that outermost regions outside the new Convergence Objective benefit from a specific transitional State aid regime.[20]

### 3.3 DG Competition 'Working Paper' on Regional Aid Guidelines

The Working Paper on the review of the Regional Aid Guidelines sets out DG Competition's current thinking on the reform of regional aid control post-2006.[21] The paper states that it draws on the comments submitted by the Member States in response to its earlier consultation, as well as taking account of the literature on the economics and effectiveness of aid, including two preparatory studies commissioned for the review,[22] the conclusions of recent Council meetings and its own experience with the 1998 Guidelines. However, the future form of regional aid control is unclear: the paper indicates that the Commission does not propose to present a complete draft of the new Regional Aid Guidelines at this stage; at the same time, there is

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[19] Philip Lowe (2003) "State aids and Cohesion Policy", Paper to Sub Rosa strategic discussion *Regional Policy after 2006: co-operation, co-existence or conflict*, University Club, Brussels, 13 June 2003; available at: <http://europa.eu.int/comm/competition/speeches/text/sp2003_061_en.pdf>

[20] Third Cohesion Report, pp xxxiii-xxxiv.

[21] *Review of the Regional Aid Guidelines – a first consultation paper for the experts in the Member States*, available at: <http://europa.eu.int/comm/competition/state_aid/regional/>

[22] Ibex consultants Ltd, *Review of Community guidelines for national regional aid*, final report to DG COMP, April 2003 and M. Parissaki, *Methodology and Indicators Used by Member States to determine eligible regions for Regional State Aid for 2000-2006: An Inventory of Choices and Summary of Efficiency analyses*, both available at: <http://europa.eu.int/comm/competition/state_aid/regional/>

mention of the possibility of a regional aid block exemption regulation being adopted in the future. Member States are asked to submit their comments to the Working Paper by 1 July 2004. The key features of the proposals for future regional aid control are essentially threefold:

- that Article 87(3)(a) areas be defined on the basis of EU25 GDP(PPS) per head data, rather than EU15 averages;
- that Article 87(3)(c) coverage be limited to so-called "earmarked" regions, rather than based on national population quotas as at present; and,
- that aid ceilings across the board be reduced.

These features are reviewed briefly in turn.

### 3.3.1 Article 87(3)(a) criteria and coverage

As mentioned above, the main change with respect to Article 87(3)(a) is the move to EU25, rather than EU15 averages, reflecting enlargement to include 10 new Member States: the Working Paper proposes that the threshold for Article 87(3)(a) be 75 percent of EU25 GDP(PPS) per head.

As is well-known, the main effect of this is to lower the limit for Article 87(3)(a) status thereby excluding a number of regions in EU15 from eligibility. This would mean that Article 87(3)(a) coverage in EU15 would fall from around 22 percent of the population to just over 14 percent; coverage in the 10 new Member States would be in excess of 92 percent (the exclusions are Prague, Bratislava, Budapest, Malta and Cyprus).

According to the Working Paper, under the new definition, and using data for 1999-2001, Article 87(3)(a) would cover 27.11 percent of the EU25 population.

### 3.3.2 Article 87(3)(c) criteria and coverage

For Article 87(3)(c), DG Competition proposes to replace the current system of "population quotas" with an approach based on so-called "earmarked" regions. The Working Paper proposes four such categories of region.

*(i) "Statistical effect" regions*

This concerns areas that would have met the Article 87(3)(a) GDP per head threshold using EU15 data, but are excluded on the basis of EU25 averages. For the most part these are areas which currently have Article 87(3)(a) status, mainly in Germany, Greece and Spain. However, on the basis of current data, three regions that are not currently within Article 87(3)(a) would meet the Article 87(3)(a) criteria were these based on EU15 averages. The Working Paper acknowledges this situation – citing the example of Hainaut – and proposes to include such areas within the "statistical effect" group; the Highlands & Islands and Namur (Belgium) along with

Hainaut fall within this category.[23] Among the new Member States, Malta would also be a statistical effect region.

According to the Working Paper, the statistical effect regions would cover 4.18 percent of the EU25 population.

### *(ii) Economic growth regions*

A further group of regions would have ceased to qualify for Article 87(3)(a), even without enlargement, owing to a relative increase in levels of GDP per head. About half the population concerns two Spanish regions (Valencia and Castilla y León); Border, Midlands & Western (Ireland), Sardegna and South Yorkshire, among others, are also in this grouping.

According to the Working Paper, the economic growth regions account for 2.71 percent of the EU population.

### *(iii) Outermost regions*

The Outermost regions are treated as a distinct category, reflecting the conclusions of the Third Cohesion Report and the provisions of Article 299 of the Treaty. In practice, most fall within Article 87(3)(a). However, GDP per head in Madeira and the Canaries would place these regions in the "economic growth" grouping. Like the Outermost regions that do fall within Article 87(3)(a), Outermost regions within Article 87(3)(c) may benefit from operating aid.

According to the Working Paper, the Outermost regions covered by Article 87(3)(c) account for 0.43 percent of the population.

### *(iv) Low population density areas*

The Working Paper proposes to continue to make special provision for regions of low population density, using the same definition as at present, this being NUTS III regions with a population density of less than 12.5 inhabitants per km$^2$. The Working Paper notes that "transportation aid can continue as before" and proposes that for arctic areas suffering from continued depopulation, the Commission may authorise "other types of operating aid where such aid is necessary to stop depopulation".

Although special provision for low population density regions was initially associated with the accession of the Nordic Member States to the EU, in practice, small parts of Greece, Spain and the UK also meet the criterion (see Figure 4). For the most part, these other regions are covered either by Article 87(3)(a) or fall into one of the other earmarked Article 87(3)(c) categories. As a result, all of the low population density regions, with the exception of Teruel in Spain, are in Finland or Sweden.[24]

According to the Working Paper, the low population density areas cover 0.41 percent of the EU population.

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[23] According to the data published in the Third Cohesion Report, the UK region of Tees Valley and Durham would also qualify as a statistical effect region. However, "non-provisional" data for the same period suggests that it would not.

[24] The Third Cohesion Report refers to sparsely-populated areas in the "far north", but there is no such explicit limitation in the Regional Aid Working Paper.

**Figure 4: Low Population Density Regions in EU25**

| | Population per km$^2$ (2001) | Other status? |
|---|---|---|
| **ES423 Cuenca** | 11.6 | Article 87(3)(a) |
| **FR930 Guyane (FR)** | 2.0 | Article 87(3)(a) |
| **ES417 Soria** | 8.8 | Article 87(3)(c) economic growth |
| **FI131 Etelä-Savo** | 11.4 | Article 87(3)(c) economic growth |
| **FI133 Pohjois-Karjala** | 9.6 | Article 87(3)(c) economic growth |
| **FI134 Kainuu** | 4.1 | Article 87(3)(c) economic growth |
| **GR243 Evrytania** | 10.5 | Article 87(3)(c) economic growth |
| **UKM41 Caithness and Sutherland, Ross and Cromarty** | 6.9 | Article 87(3)(c) statistical effect |
| **UKM43 Lochaber, Skye and Lochalsh, Argyll and The Islands** | 7.1 | Article 87(3)(c) statistical effect |
| **UKM44 Comhairle Nan Eilan (Western Isles)** | 8.4 | Article 87(3)(c) statistical effect |
| **ES242 Teruel** | 9.2 | |
| **FI1A2 Pohjois-Pohjanmaa** | 10.4 | |
| **FI1A3 Lappi** | 2.0 | |
| **SE062 Dalarnas län** | 9.8 | |
| **SE071 Västernorrlands län** | 11.3 | |
| **SE072 Jämtlands län** | 2.6 | |
| **SE081 Västerbottens län** | 4.6 | |
| **SE082 Norrbottens län** | 2.6 | |

Source: Eurostat data.

### *3.3.3 Award rates and ceilings*

An important element of the Working Paper is the proposal to reduce rates of award across the board, (except for SMEs, where the Commission intends to raise the ceilings). This is achieved through the combined effects of reductions in nominal award values and the setting of rates of award in gross rather than net terms. In addition, in the statistical effect regions, rates of award would fall over the 2006-13 period, reflecting the phasing-out of eligibility for Article 87(3)(c) over the longer term.

Direct comparisons between award values are difficult because of the shift to gross values and the fact that the GDP thresholds have been impacted by enlargement. However, the maximum rate for a large firm in one of the more prosperous Article 87(3)(a) areas would be 40 percent net grant equivalent under the 1998 Guidelines, but 30 percent gross under the new proposals; similarly, the standard rate for large firms in low population density regions would fall from the current 30 percent net grant equivalent to 20 percent gross.

**Figure 5: Rates of Award post 2006? (gross grant equivalents)**

| | Large | Medium | Small |
|---|---|---|---|
| **Article 87(3)(a) ≤ 50% GDP** | 50 | 60 | 70 |
| **Outermost Article 87(3)(a) ≤ 60% GDP** | 50 | 60 | 70 |
| **Article 87(3)(a) ≤ 60% GDP** | 40 | 50 | 60 |
| **Outermost Article 87(3)(a) ≤ 75% GDP** | 40 | 50 | 60 |
| **Article 87(3)(a) ≤ 75% GDP** | 30 | 40 | 50 |
| **Outermost Article 87(3)(c) statistical effect** | 40 → 30 | 50 → 40 | 60 → 50 |
| **Article 87(3)(c) statistical effect** | 30 → 20 | 40 → 30 | 50 → 40 |
| **Other Article 87(3)(c) (low population density; economic growth)** | 20 | 30 | 40 |
| **Non-assisted** | 0 | 10 | 20 |

Source: Regional Aid Working Paper.

### *3.3.4 Other proposals / issues*

Several other issues are raised by the Working Paper. Regarding regional aid specifically, there is reference to the definition of eligible investment and especially the treatment of land and intangible investment. There is also the suggestion that the definition of initial investment be clarified.

More generally, it is proposed to increase rates of award for small and medium-sized enterprises in the non-assisted areas from 15 percent and 7.5 percent gross to 20 percent and 10 percent respectively (as illustrated in Figure 5). In addition, as mentioned earlier, the Commission sees the current period as a 'window of opportunity' for reviewing many of the existing State aid frameworks.

### *3.3.5 Observations*

Overall, the Working Paper represents a very significant shift in the rules governing regional aid. There are both sharp cutbacks in coverage, most of which are borne by the EU15 Member States, and significant reductions in award values for those regions that will be eligible. As Figure 6 shows, the implication of the proposals for the EU15 is a cutback in assisted area coverage of 20 percentage points compared to the current position (43 percent to just over 23 percent). There are a number of more specific points to be made about the outcomes presented in Figure 6.

First, there are some small discrepancies between the coverage resulting from calculations based on the latest Eurostat data and that presented in the DG COMP Working Paper. These principally concern the figures for Article 87(3)(a) and the Article 87(3)(c) statistical effect regions. It seems probable that the difference in the statistical effect coverage is mainly accounted for by the UK regions and Tees Valley and Durham; data presented in the Third Cohesion Report suggests that GDP per head in the region for the latest three years is 75 percent of the EU15 average, although more recent data puts the figures higher. The region contains 0.25 percent of the EU25 population. The remaining (very small) differences may be accounted for by the treatment of Ceuta and Melilla for which up-to-date information is not available.

Second, the reductions in total coverage within EU15 are dramatic – every country is affected except Greece – but they are not uniform. There would be no assisted area coverage at all in Denmark, Luxembourg and the Netherlands or in mainland France. In Austria, Germany, Ireland and the UK coverage would fall by more than half. Greece aside, the country least affected is Sweden, reflecting the fact that coverage was already largely determined by the presence of sparsely-populated areas and could not therefore fall much further, provided that this criterion was retained.

Third, some observations are worth making about the new Member States. There is some uncertainty surrounding the existence and status of an assisted area map for Hungary. Although the whole country is designated as Objective 1 for the 2004-6, there does not appear to be a corresponding regional aid map approved under Article 87(3)(a) and (c). In consequence, the region of Budapest (which would otherwise have been an Article 87(3)(c) economic growth region) is excluded from eligibility. This has some implications for coherence with the Structural Funds assisted areas since the region appears to be classified as a "phasing-in" region for cohesion policy purposes. As single region countries, Cyprus and Malta are in somewhat anomalous positions with respect to the relationship between EU competition and cohesion policies. Both countries would, on the basis of current data, qualify for the Cohesion Fund (which is based on GNI(PPS) per head at the national level) but neither would gain either Article 87(3)(a) or Convergence status, which is based on GDP(PPS) per head at NUTS II, in spite of the fact that they are single region countries. Last, it is worth noting that the NUTS II boundaries of Slovenia (also a single region country at the moment) are currently being negotiated with Eurostat; it seems probable that, unless the country is divided into more than one NUTS II regions, the whole territory would cease to qualify under Article 87(3)(a) post-2006.

Last, and more generally, the calculations are highly sensitive to small changes in the data – this is borne out by the situation of Tees Valley and Durham mentioned above. The status of a number of regions is subject to change reflecting the fact that actual eligibility will probably be based on data for 2001 to 2003 whereas the calculations presented here are based on data for 1999 to 2001. This, of course, raises some questions about the validity of long-term designation (seven years) on the basis of transient indicators purporting to measure relative prosperity.

**Figure 6: Assisted Area Coverage Post-2006 (% of population)**

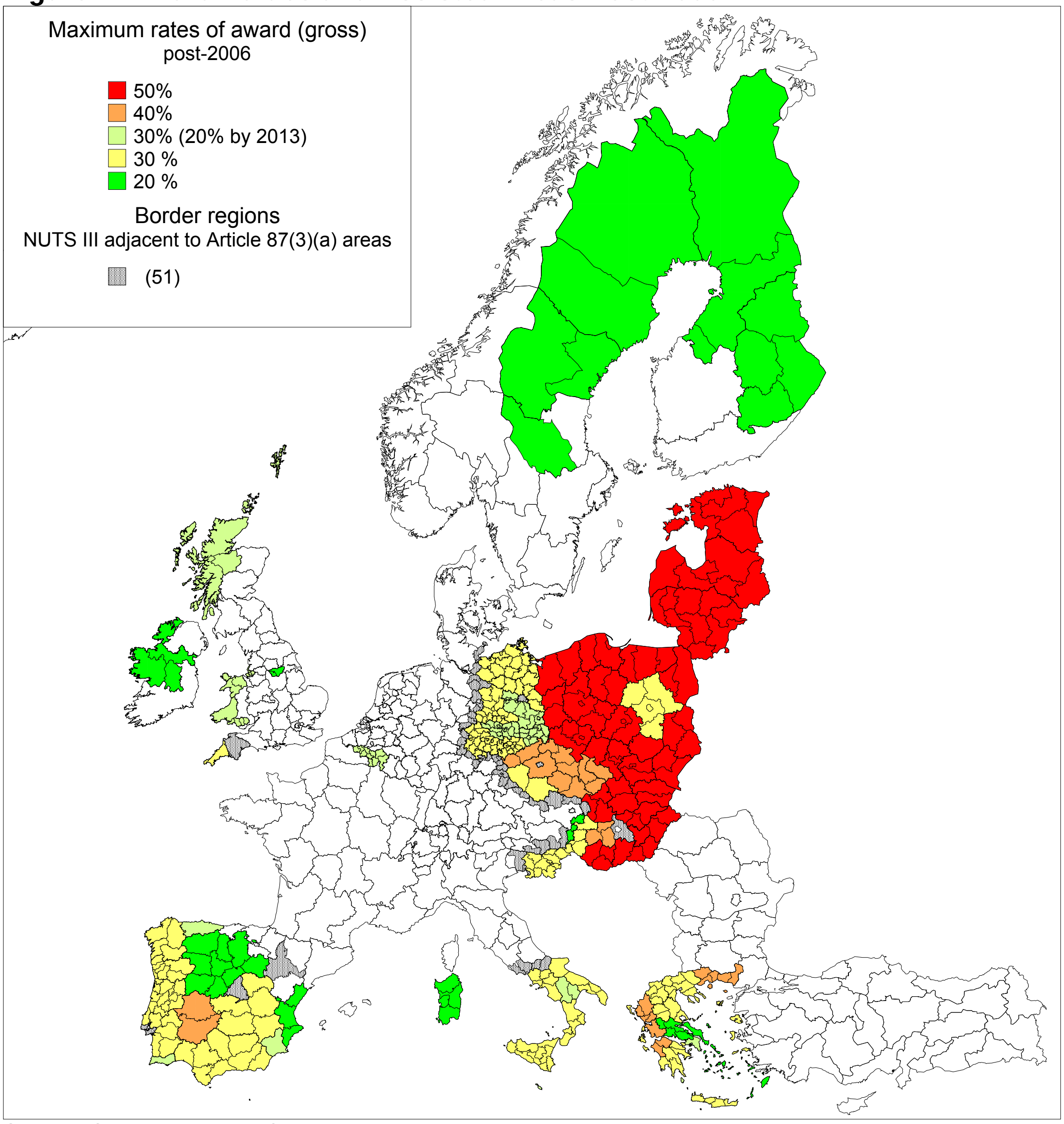
| | | Coverage post 2006? | | | | | | | Coverage 2000-6 (EU15) | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Pop (2001) 000s | **Article 87(3)(a)** | Stat Effect | Outer-most | Econ growth | Sparse pop | **Article 87(3)(c)** | **Total** | Article 87(3)(a) | Article 87(3)(c) | **Total** |
| EU25 (DG COMP) | | **27.11** | 4.18 | 0.43 | 2.71 | 0.41 | **7.73** | **34.84** | | | |
| EU25 | 454325.9 | **27.08** | 3.96 | 0.44 | 2.71 | 0.41 | **7.51** | **34.59** | | | |
| EU15 | 304512.7 | **14.22** | 4.64 | 0.52 | 3.24 | 0.49 | **8.89** | **23.11** | 21.9 | 21.1 | **43.0** |
| NMS10 | 149813.3 | **92.39** | 0.53 | 0.00 | 0.00 | 0.00 | **0.53** | **92.91** | | | |
| Austria | 8031.6 | | | | 3.45 | | **3.45** | **3.45** | 3.5 | 24.1 | **27.6** |
| Belgium | 10286.6 | | 16.79 | | | | **16.79** | **16.79** | 0.0 | 30.9 | **30.9** |
| Germany | 82340.3 | **10.59** | 6.16 | | | | **6.16** | **16.75** | 17.2 | 17.7 | **34.9** |
| Denmark | 5355.1 | | | | | | | **0.00** | 0.0 | 17.1 | **17.1** |
| Spain | 40265.5 | **31.83** | 5.80 | 4.31 | 16.29 | 0.34 | **26.74** | **58.57** | 58.4 | 20.8 | **79.2** |
| Finland | 5188.0 | | | | 13.08 | 10.74 | **23.82** | **23.82** | 13.4 | 28.9 | **42.3** |
| France | 60916.6 | **2.83** | | | | | | **2.83** | 2.8 | 33.9 | **36.7** |
| Greece | 10937.7 | **56.50** | 35.69 | | 7.81 | | **43.50** | **100.00** | 100.0 | 0.0 | **100.0** |
| Ireland | 3838.9 | | | | 26.36 | | **26.36** | **26.36** | 26.6 | 73.4 | **100.0** |
| Italy | 57926.1 | **29.32** | 1.04 | | 2.84 | | **3.88** | **33.20** | 33.6 | 10.0 | **43.6** |
| Luxembourg | 442.0 | | | | | | | **0.00** | 0.0 | 32.0 | **32.0** |
| Netherlands | 16046.2 | | | | | | | **0.00** | 0.0 | 15.0 | **15.0** |
| Portugal | 10299.2 | **68.51** | 3.82 | 2.37 | | | **6.20** | **74.71** | 66.6 | 33.4 | **100.0** |
| Sweden | 8896.0 | | | | | 13.08 | **13.08** | **13.08** | 0.0 | 15.9 | **15.9** |
| United Kingdom | 58836.7 | **0.85** | 6.09 | | 2.15 | | **8.24** | **9.10** | 8.6 | 22.1 | **30.7** |
| Cyprus | 701.5 | | | | | | | **0.00** | | | |
| Czech Republic | 10224.2 | **88.61** | | | | | | **88.61** | | | |
| Estonia | 1364.1 | **100.00** | | | | | | **100.00** | | | |
| Hungary | 10187.6 | **72.22** | | | | | | **72.22** | | | |
| Lithuania | 3481.3 | **100.00** | | | | | | **100.00** | | | |
| Latvia | 2355 | **100.00** | | | | | | **100.00** | | | |
| Malta | 393 | | 100.00 | | | | **100.00** | **100.00** | | | |
| Poland | 38641 | **100.00** | | | | | | **100.00** | | | |
| Slovenia | 1992 | **100.00** | | | | | | **100.00** | | | |
| Slovak Republic | 5379.8 | **88.86** | | | | | | **88.86** | | | |

Source: DG COMP Working Paper; own calculations from REGIO data; and Wishlade, F. Regional State Aid and Competition Policy in the European Union, *Op cit* at p 205.

Aside from questions related to spatial coverage, some wider issues emerge. At a country level, within EU15, the proposals virtually eliminate the possibility of conducting "traditional" regional policy in many Member States: this is the case, for example, for France and the Netherlands, where there would be no Article 87(3)(c) areas. Even in countries with some coverage, such as the UK, Austria and Germany, Article 87(3)(c) areas are, like Article 87(3)(a) areas, designated on a top-down basis, rather than by national policymakers, and may only partially correspond to nationally-determined needs and priorities. As a matter of principle, one might question whether it is legitimate for EU competition policy to dictate the substance and targeting of national regional policy in this way.

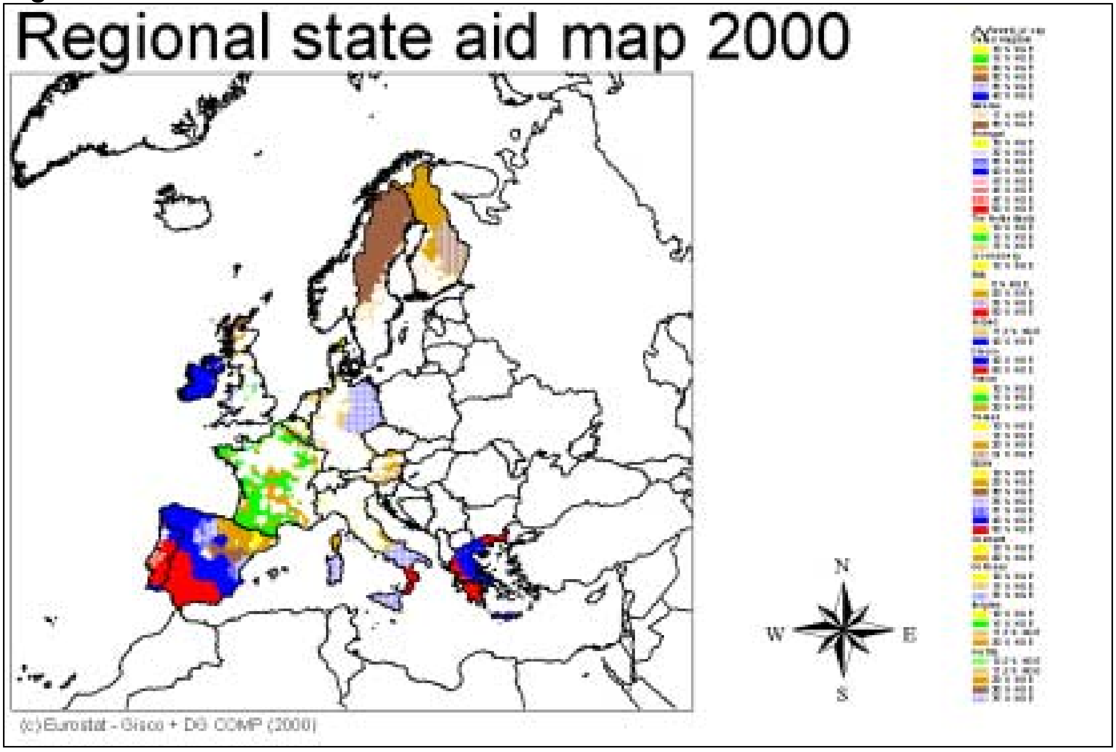
Across the EU as whole the proposals involve significant differences in maximum award values. Of particular importance, the effective absence of Article 87(3)(c) designation means there are often no 'intermediate' zones between Article 87(3)(a) and non-assisted areas. This 'border effect' impacts on over 50 NUTS III regions; moreover, some non-assisted areas border Article 87(3)(a) regions across a national frontier – notably in Austria, Germany and Italy.

**Figure 7: Award Values and Assisted Areas Post-2006?**




Source: Own calculations from Eurostat data.

**Figure 8: Award values and Assisted Areas 2000-6**




Source: DG Competition.

There is also the question of whether such a dramatic reduction in assisted area coverage and award values might affect the competitiveness of the EU as a whole as a location for internationally-mobile investment. Financial incentives are seldom the key factor in location decisions, but they can be a deciding factor between locations offering broadly similar advantages. Some national policymakers, especially in countries where foreign direct investment is viewed as important, may be concerned at the loss of regional aid as a useful policy instrument in the competition for mobile projects.

At a practical level, there are some important issues for the Member States. Not the least of these is the fact that approval of the current regional aid maps expires at the end of 2006. This means that there is the risk of a policy vacuum if new Guidelines cannot be agreed in good time.

### 3.4 National Perspectives on the DG Competition Working Paper

As already noted, DG Competition sought comments from the Member States by 1 July 2004. Most EU15 Member States appear to have responded within that timeframe, with some, notably ***France*** and the ***United Kingdom***, making their responses provisional pending the outcome of wider consultation.

In relation to the *form* of regional aid control, there is widespread support for the introduction of a block exemption regulation.[25] However, ***Finland*** argues that this should not cover aid to large firms and ***Germany*** that the possibility of individual notification should be retained. This presumably means that the Commission should

[25] This is, in principle, provided for under Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid, OJEC No L 142 of 14 May 1998.

still have some measure of discretion to approve aid in individual cases where the precise criteria of the block exemption notification are not met. Only the ***Netherlands*** is opposed to a regional aid block exemption regulation, favouring instead “strict, central and independent monitoring of State aid”.

Procedural issues aside, the remainder of this section focuses on the substantive matters raised by the Working Paper; the discussion that follows aims to synthesise the views of the EoRPA sponsoring countries, as expressed in their responses to DG Competition,[26] in relation to assisted areas, award values and the relationship between regional aid and other policies.

### 3.4.1 Assisted areas

As discussed, the main thrust of DG Competition’s proposals was to shift the criteria for Article 87(3)(a) onto a EU25 basis, thereby excluding most current Article 87(3)(a) areas in EU15 from eligibility and to limit the application of Article 87(3)(c) to certain ‘earmarked’ regions. The spectrum of responses from the Member States is wide. On the one hand, the ***Netherlands*** argued for an even tougher approach, suggesting that investment aid should only be allowed in the new Member States, with transitional arrangements for currently eligible regions in EU15. In contrast, as will be seen, many countries (***Austria, France, Germany, Ireland*** and the ***United Kingdom***) expressed concern at the loss of scope for *national* policy to target underperforming regions, with Ireland and the United Kingdom questioning the appropriateness of NUTS II as the effective building block for area designation. The remainder of this section discusses the various area designation issues raised in the national responses.

*(i) Article 87(3)(a)*

The change in criteria for Article 87(3)(a) designation pass largely unremarked by the national authorities. This doubtless partly reflects the widely-held expectation that the thresholds for Article 87(3)(a) would be adjusted post-enlargement, which had also been confirmed in the Third Cohesion Report and paralleled the approach taken to the new Convergence Objective. Instead, the focus for many policymakers had been on the status of regions losing Article 87(3)(a) eligibility and/or the future of Article 87(3)(c) regions.

The ***United Kingdom*** is alone in making observations about Article 87(3)(a) designation criteria. Its initial response to DG Competition expresses concern at the use of NUTS level II arguing that this would “prevent aid being targeted at some of the least favoured areas of the EU, while other more relatively prosperous areas would benefit.” Instead, the UK proposes that Article 87(3)(a) be designated at NUTS III, this being the only alternative that would ensure a consistent approach across the EU.

The outcome of designating Article 87(3)(a) areas on this basis is illustrated in Figure 9. Direct comparisons between NUTS II and III are slightly complicated by some gaps in the availability of data. Nevertheless, while overall Article 87(3)(a) coverage would remain broadly similar, there would be an increase in Article 87(3)(a) coverage in EU15 (with Austria, Belgium, Germany and the UK being the chief beneficiaries,

[26] National responses have kindly been provided by policymakers for the purposes of this study. They concern Austria, Finland, France, Germany, Ireland, Italy, the Netherlands, Norway, Sweden, the United Kingdom.

along with Hungary among the new Member States) and a decrease in the new Member States, especially in Slovakia and Slovenia.[27]

**Figure 9: Article 87(3)(a) coverage based on NUTS III**

| | Pop (2001) '000s | Article 87(3)(a) at NUTS II | Article 87(3)(a) at NUTS III (%) | Change (% point) |
|---|---|---|---|---|
| **EU25** | 454325.9 | 27.1 | 26.7 | -0.3 |
| **EU15** | 379606.5 | 14.2 | 16.0 | **1.7** |
| **NMS10** | 74719.5 | 92.4 | 75.5 | -16.9 |
| **Austria** | 8031.6 | 0.0 | 5.3 | **5.3** |
| **Belgium** | 10286.6 | 0.0 | 14.3 | **14.3** |
| **Denmark** | 5355.1 | 0.0 | 0.0 | 0.0 |
| **Finland** | 5188.0 | 0.0 | 0.0 | 0.0 |
| **France** | 60916.6 | 2.8 | 3.0 | **0.2** |
| **Germany** | 82340.3 | 10.6 | 18.6 | **8.0** |
| **Greece** | 10937.7 | 56.5 | 44.4 | -12.1 |
| **Ireland** | 3838.9 | 0.0 | 0.0 | 0.0 |
| **Italy** | 57926.1 | 29.3 | 21.6 | -7.8 |
| **Luxembourg** | 442.0 | 0.0 | 0.0 | 0.0 |
| **Netherlands** | 16046.2 | 0.0 | 1.0 | **1.0** |
| **Portugal** | 10299.2 | 68.5 | 59.9 | -8.6 |
| **Spain** | 40265.5 | 31.8 | 28.8 | -3.1 |
| **Sweden** | 8896.0 | 0.0 | 0.0 | 0.0 |
| **UK** | 58836.7 | 0.9 | 10.2 | **9.3** |
| **Cyprus** | 701.5 | 0.0 | 0.0 | 0.0 |
| **Czech Rep** | 10224.2 | 88.6 | 88.6 | 0.0 |
| **Estonia** | 1364.1 | 100.0 | 100.0 | 0.0 |
| **Hungary** | 10187.6 | 72.2 | 82.8 | **10.6** |
| **Lithuania** | 3481.3 | 100.0 | 100.0 | 0.0 |
| **Latvia** | 2355.0 | 100.0 | 100.0 | 0.0 |
| **Malta** | 393.0 | 0.0 | 0.0 | 0.0 |
| **Poland** | 38641.0 | 100.0 | 78.5 | -21.5 |
| **Slovenia** | 1992.0 | 100.0 | 70.1 | -29.9 |
| **Slovak Rep** | 5379.8 | 88.9 | 88.9 | 0.0 |

Note: GDP per head data at NUTS level III are not available for Ceuta and Melilla (Spain), Malta and some Polish regions. These have been omitted from the calculations.
Source: Own calculations from Eurostat data and Figure 6.

### *(ii) Article 87(3)(c) statistical effect*

A major concern in the initial consultation had been the treatment of regions losing Article 87(3)(a) status owing to the statistical effect of enlargement. This concern appears to have been addressed in the DG Competition proposals. Other than observations about award values (see below), ***Germany*** is alone in commenting on the proposals for statistical effect regions, arguing that, in effect, the status of regions should be monitored on an ongoing basis so that phase-out provisions would cease to apply and rate reductions be reversed in the event that the situation of a region worsened.

[27] Poland would probably also be negatively affected, but lack of data at NUTS III means that this cannot be confirmed.

*(iii) Article 87(3)(c) low population density*

DG Competition's Working Paper contained a number of proposals in relation to sparsely-populated regions, notably: that such areas be 'earmarked' under Article 87(3)(c); that transport aid continue as before; and that other types of operating aid be authorised in so-called 'arctic areas'.

The notion of 'arctic areas' was not defined in the Working Paper. However, it seems probable that DG Competition has in mind the very northernmost areas, ie. a subset of the earmarked regions, reflecting the continued operation of the social security concession in northern Norway, following a decision of the EFTA States.[28]

Notwithstanding the probable restrictive interpretation intended by DG Competition, the position papers of ***Finland, Sweden*** and ***Norway*** all seize the opportunity to argue that arctic areas should coincide with the areas listed in Protocol 6 to the Accession Agreement as eligible for Objective 6.[29] In addition, Norway argues sparsely-populated regions need to be defined flexibly owing to the heterogeneous nature of the areas when defined at NUTS III. All three countries also propose that the sparsely-populated regions should receive the same treatment as the Outermost regions in terms of award values.

*(iv) Border regions*

DG Competition's Working Paper makes no provision for special treatment of non-assisted areas bordering designated regions, whether or not across national frontiers. This issue is raised by ***Austria, Germany, Ireland*** and ***Italy*****,** which all propose that special provisions be introduced to counter negative cross-border effects.

Figure 7 identified non-assisted NUTS III areas adjacent to Article 87(3)(a) areas (whether within the same Member States or not). Together these regions account for around 5 percent of the EU25 population. However, much of this is accounted for NUTS III areas containing capital cities (Lisbon, Madrid, Budapest, Bratislava, Prague). Arguably more pertinent is the question of non-assisted areas adjacent to assisted areas across a national frontier, whether designated under Article 87(3)(a) or (c). The extent of this is illustrated in Figure 10.

**Figure 10: Non-assisted areas bordering assisted areas across national frontiers**

| Non-assisted areas in: | Neighbouring assisted areas in: | % of population |
|---|---|---|
| EU25 | | 1.3 |
| EU15 | | 1.6 |
| France | Belgium | 4.7 |
| Germany | Czech Republic | 1.0 |
| Austria | Czech Republic, Slovakia, Slovenia | 17.9 |
| Italy | Slovenia | 1.6 |

Note: Population is measured at NUTS III.
Source: Own calculations from Eurostat data.

Figure 10 reveals the cross-border question to be a major issue for Austria; moreover, the population concerned would be higher still were it not for the 'buffer' provided by the Article 87(3)(c) status of Burgenland against assisted areas in

[28] See EFTA Surveillance Authority, *Annual Report 2003*.
[29] OJEC No C 241 of 29 August 1994.

Hungary. The ***Austria*** position paper proposes that border regions at NUTS IIII and adjacent areas be included in Article 87(3)(c) in order to avoid increasing the aid rate differential with the new Member States.

Within the old Member States, however, it is noteworthy that relatively disadvantaged parts of France (Nord and Ardennes) border parts of Belgium that would have Article 87(3)(c) status. Perhaps surprisingly, this issue is not raised in the French position paper. By contrast, the issue is raised by Ireland, which, on the basis of current proposals, would not have any non-assisted areas adjacent to assisted areas across a frontier; this perhaps reflects the anticipation of special provisions for Northern Ireland.

*(v) Islands*

A number of position papers - ***Finland, France, Ireland, Italy*** and ***Norway*** – argue for the special treatment of islands, a claim which has some backing from the Treaty of Amsterdam and in the Constitutional Treaty (Article III-116) which identifies island regions as among those to which particular attention shall be paid.

According to the *Second Progress Report on Economic and Social Cohesion*, there are some 286 islands[30] in the EU15 containing a population of around 10 million.[31] Most of the population (95 percent) is found in the Mediterranean with five island regions (Sicily, Sardinia, the Balearics, Crete and Corsica) accounting for 85 percent of the total island population. Of these, Corsica is wholly within Article 87(3)(c) and the Balearics are currently partly eligible under Article 87(3)(c); the remainder currently have Article 87(3)(a) status. Under current proposals, Corsica and the Balearics would lose assisted area status while Sardinia would be eligible under Article 87(3)(c) as an economic growth region. The Finnish Åland islands would also lose their partial Article 87(3)(c) status, as would the Irish and Norwegian regions not meeting the economic growth or population density criteria respectively.

The position papers cited put forward a range of proposals – addressing particular national situations – to mitigate the impact of the Working Paper on islands. The Norwegian position argues that island municipalities should be eligible for transport aid even if the population density criteria are not met; the Finnish position suggests that island regions should have Article 87(3)(c) status; the French and Italian papers argue for special treatment of Corsica and Sardinia respectively; and the Irish paper for more generous treatment of islands under LASA and LET, possibly restricted to those with a population of less than 1,000.

*(vi) Northern Ireland*

Northern Ireland has special status under the 1999 Regional Aid Guidelines; the region was included in the list of eligible areas *in addition* to those selected in Great Britain on the basis of an area designation methodology; [32] and rates of award are higher than in Article 87(3)(c) areas generally. DG Competition's Working Paper alludes to some form of special treatment, stating that the specific position of the province will have to be "re-assessed". However, as the document stands, no special

[30] Those meeting the criteria laid down by Eurostat.
[31] This appears not to include the outermost regions that are islands (Canaries, Azores, Madeira and the French DOMs except Guiana), which together have a population of around 3.6 million.
[32] In fact, the Commission allowed the UK to exceed its population quota by reinterpreting the UK population quota as applying to Great Britain.

treatment is provided for and the province would be excluded from eligibility if the current criteria were applied.

The ***United Kingdom*** position paper argues strongly for careful consideration of the impact of the proposals on Northern Ireland, noting the fragility of the political process and the risk of shocks to the economic structure. It also points to the border effect of continuing regional aid in the neighbouring Republic of Ireland.

*(vii) Other assisted areas*

Beyond the calls for special treatment of particular types of region outlined above, a number of countries are vociferous in their opposition to the withdrawal of Article 87(3)(c) areas designated on the basis of national criteria. The **German** position argues that the ability to support weak regions under Article 87(3)(c) is a core function of national independence and that there must be room for national policy, based on national socioeconomic criteria within the new EU framework. Similarly, the **Austrian** paper describes the “complete abolition” of Article 87(3)(c) as a “severe interference with the policy of reducing regional disparities in Austria and argues that regions with low GDP per head in relation to the national average should remain eligible under Article 87(3)(c). It also argues for two to three year transitional arrangements for areas losing Article 87(3)(c) status.

The ***Irish*** and ***UK*** papers both express concern at the use of NUTS II, the risk that disparities are concealed at this level and that Member States are not able to target assistance at the worst-off areas. The Irish authorities propose a safety net approach with, for example, 20 percent of the former Article 87(3)(c) population being designated by the Member States. This, it is argued, could be done while maintaining overall coverage at a lower level than at present.

The impact of the Irish proposal is illustrated in Figure 11. All of the current Member States, except Greece (which is wholly covered by other provisions), would benefit.

**Figure 11: Impact of a 20 percent safety net on Article 87(3)(c) coverage**

| | | Article 87.3.c | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | **Article 87.3.a** | **Stat Effect** | **OMR** | **Econ growth** | **Sparse pop** | **Safety net** | **Total post-2006** | **Total 2000-6** |
| **EU25** | 27.08 | 3.96 | 0.44 | 2.71 | 0.41 | 3.53 | 38.12 | ~ |
| **EU15** | 14.22 | 4.64 | 0.52 | 3.24 | 0.49 | 4.22 | 27.33 | 43.0 |
| **Austria** | | | | 3.45 | | 4.82 | 8.27 | 27.6 |
| **Belgium** | | 16.79 | | | | 6.18 | 22.97 | 30.9 |
| **Germany** | 10.59 | 6.16 | | | | 3.54 | 20.29 | 34.9 |
| **Denmark** | | | | | | 3.42 | 3.42 | 17.1 |
| **Spain** | 31.83 | 5.80 | 4.31 | 16.29 | 0.34 | 4.16 | 62.73 | 79.2 |
| **Finland** | | | | 13.08 | 10.74 | 5.78 | 29.60 | 42.3 |
| **France** | 2.83 | | | | | 6.78 | 9.61 | 36.7 |
| **Greece** | 56.50 | 35.69 | | 7.81 | | | 100.00 | 100.0 |
| **Ireland** | | | | 26.36 | | 14.68 | 41.04 | 100.0 |
| **Italy** | 29.32 | 1.04 | | 2.84 | | 2.00 | 35.20 | 43.6 |
| **Lux** | | | | | | 6.40 | 6.40 | 32.0 |
| **Neths** | | | | | | 3.00 | 3.00 | 15.0 |
| **Portugal** | 68.51 | 3.82 | 2.37 | | | 6.68 | 81.39 | 100.0 |
| **Sweden** | | | | | 13.08 | 3.18 | 16.26 | 15.9 |
| **UK** | 0.85 | 6.09 | | 2.15 | | 4.42 | 13.52 | 30.7 |

Note: For the purposes of this table the Irish proposal has not been applied to the new Member States owing to the uncertain assisted area status of some regions. However, even if it covered 20 percent of all regions not designated as Article 87(3)(a) (Cyprus, Prague, Bratislava, Budapest) the impact in overall population terms would be modest, amounting to 1.4 of the new Member States population and raising the overall total for EU25 to 38.35 percent.
Source: Own calculations from Eurostat data.

The ***UK*** paper puts forward a similar suggestion, although without a suggested safety net figure. This population could be used with a geographical unit chosen by the Member State, but perhaps subject to a minimum population. An alternative UK proposal for the designation of Article 87(3)(c) areas is to use NUTS III, but a wider range of indicators.

The ***French*** position describes the abolition of government support for significant projects in Article 87(3)(c) areas as unacceptable, but notes that the Commission is not proposing to abolish Article 87(3)(c) areas as such, but rather to limit them to former Article 87(3)(a) areas, sparsely-populated regions and outermost regions. As an alternative, it proposes the *complete* abolition of Article 87(3)(c) regional aid maps and their replacement with a thematic approach echoing that envisaged under EU cohesion policy, which would allow aids that met specific horizontal priorities. Included in these is an ‘economic change’ theme, which, according to the French proposal, would enable timely intervention based on objective socioeconomic criteria in target areas affected by changes in the structure of economic activities. Implicit in this is some form of spatial targeting. No detail on how this would be operationalised is provided in the initial position paper, but the French authorities offer to supply further information in their definitive response to the consultation.

### *3.4.2 Award values*

The overall thrust of the DG Competition proposals in relation to award values is to lower rates of award both by reducing aid values and by expressing those values in gross rather than net terms. In addition, comments were sought on more technical aspects of regional aid control, notably the proposal to express award values in gross

grant-equivalents (GGE) rather than net grant-equivalents (NGE) – ie. after tax - as has hitherto been the case for regional aid.

*(i) Rates of award*

The majority of position papers express the view that rates of award, and specifically rate differentials between Article 87(3)(a) areas and the rest, are too high. This largely reflects the proposed abolition of Article 87(3)(c) areas based on national criteria, leaving EU15 Member States with no scope to offer aid to large firms in regions of their choosing, but with the prospect of rates of 50 percent in parts of the new Member States (see Figure 7). Several countries put forward specific proposals for reducing aid differentials.

The ***Italian*** paper provides a detailed matrix of suggested award maxima which are lower than those proposed by DG Competition and which it argues should only be achievable where certain horizontal criteria are met in relation to human capital, research, innovation and environmental protection. Where these are not met, much lower rates would apply – for a large project in the least-prosperous grouping the proposed rate would be 25 percent GGE (35 percent if the horizontal criteria *are* met), compared with the DG Competition proposal of 50 percent. The ***German*** paper argues that 70 percent for SMEs is too high and that the maximum should be 50 percent, with the possible exception of micro-enterprises serving only local markets where 60 percent could be acceptable. It also suggests that the graduated rate increase be less than the 10 percentage points proposed as GDP per head falls – ie. that the differential should be reduced. The ***Netherlands*** argues that the rate of 30 percent for the statistical effect regions is too high at the outset and should fall to zero by 2013, rather than 20 percent.

Although the general consensus is that rates of award are excessive, in several areas Member States propose higher rates. ***France*** observes that the Outermost regions suffer the greatest cutback in percentage terms and argues that this risks undermining national and Community efforts. ***Ireland*** notes that the proposed rate reduction in economic growth regions is greater for medium-sized firms than for large firms and also proposes an extra 10 percentage points for micro-enterprises in all regions. More radically, in the context of addressing the issue of EU competitiveness for mobile investment, Ireland argues that the possibility of offering a 10 percent rate everywhere should be considered. ***Italy*** proposes a five percentage point increase for island regions losing Article 87(3)(a) status (effectively only Sardinia) and a special provision for non-assisted areas bordering designated areas across a national frontier. According to the Italian proposal, this would involve ensuring that the rate differential did not exceed 20 percentage points; for NUTS III areas where this is the case, the rate of award applicable would be 50 percent of the differential. The ***Finnish, Swedish*** and ***Norwegian*** positions all argue for higher rates of award for the sparsely-populated regions, suggesting that these receive the same treatment as the Outermost regions.

*(ii) Net or gross grant equivalents*

At a more technical level, one of the changes proposed by the Commission is the move from expressing award rates in gross, rather than net terms, in line with aid for SMEs and most other aid frameworks.

A number of countries express support for this – ***Finland, Germany, Sweden,*** the ***UK*** (although it was noted that this view was not shared by all UK stakeholders) and

***Norway***. On the other hand, ***France*** and ***Italy*** favour the retention of net grant-equivalents. The position of ***Austria*** and ***Ireland*** is more nuanced: Austria argues that the relevant levels of taxation need to be established if calculations are to be in gross terms and that further mechanisms would be needed to prevent competition between different tax relief regimes; for its part, Ireland proposes that, if GGE is used, then the discounting of aid to calculate present values should be allowed – this is especially relevant where investment is staggered over long periods or where interest rate subsidies or accelerated depreciation allowances are used.

*(iii) Definition of eligible expenditure*

DG Competition's Working Paper does not put forward detailed changes on the definition of eligible expenditure, but rather highlights some issues raised by Member States in relation to relocation, definition of initial investment and intangible investment.

A number of countries express concern that the aid differentials proposed by DG Competition could create an incentive for relocation within the EU, and specifically a drift of investments from west to east. Against this background, ***France*** argues for a clear strategy to combat relocation (*délocalisations*) comprising a monitoring capability and eligibility restriction on transferred activities. In similar vein, ***Austria*** proposes that relocation should not be eligible - only increases in capacity should be aided. The concept of initial investment should be more closely defined and there should be criteria for assessing fiscal aid associated with initial investment.

The ***Irish*** perspective is more concerned with *global* competitiveness for mobile investment and suggests more flexible rules for non-EU foreign direct investment (FDI) where only one Member State is under consideration. As already mentioned, the Irish paper also proposes that consideration be given to allowing a 10 percent rate everywhere. Further, there is the suggestion that there should be scope to support large firms throughout the Community, which, through genuine innovation, create a new product market. ***France*** also points to the need to consider the impact of aid reductions on global competitiveness. In contrast, ***Italy*** argues that incentives cannot compensate for low labour costs in, for example, south-east Asia, even if award rates are high.

As far as the definition of eligible investment is concerned, there are few concrete proposals from the Member States, but general support for greater clarity. Both ***Germany*** and ***Italy*** oppose the exclusion of modernisation from eligible investment and favour continuing support for intangible investment: Germany argues that this be defined as widely as possible and Italy that the proportion of intangible investment eligible be raised from 25 percent to 35 percent. ***Ireland*** and the ***UK*** express concern at the possible exclusion of land from eligible costs, even if brownfield sites were to remain eligible. ***Italy*** argues that land should be excluded for large firms, except for contaminated sites.

A further, and somewhat distinct strand to the ***UK*** response is the suggestion that the Regional Aid Guidelines be used to ensure that regional aid is used in as effective a way as possible to raise regions' economic performance by requiring Member States to make assessments against criteria that seek to ensure value for money and avoid direct job displacement.

*(iv) Multisectoral framework*

The 2002 Multisectoral Framework (MSF) - see section 2.3 above - is currently set to apply until 2009, but may be amended earlier. In its Working Paper, DG Competition argues in favour of decreasing aid intensities in line with the MSF matrix, effectively merging the two documents and rendering the MSF superfluous.

The Multisectoral Framework does not receive a great deal of attention in the responses from the Member States. However, ***Finland*** supports the incorporation of the MSF in the new Regional Aid Guidelines and suggests that a further limit on aid expressed in euros could be added. ***Germany*** supports the proposal to further reduce aid intensities in Article 87(3)(a) areas (given the levels proposed) by merging the documents, but cautions that for large projects, a sufficient incentive must be present in order for the measure to have any effect. It also argues that the additional support for ERDF co-financed projects should be abolished so that Community policies also contribute to the aim of "less but better" aid. ***Sweden*** and the ***UK*** also support the case for further reductions through the MSF.

### 3.4.3 Relationship with other policies

An important dimension to DG Competition's Working Paper is the relationship to the wider reform agenda and the scope for horizontal policies to address regional disparities. The Working Paper makes explicit reference to the possibility of the proposed LASA and LET frameworks[33] being used for regionally-differentiated aid, without the need for an aid map. In addition, the paper holds up the prospect of the revision of many of the horizontal aid rules which, coupled with the significant impact test approach, would provide Member States "with a large margin for manoeuvre to tackle such problems and to differentiate between regions where this is considered to be necessary". Last, the paper points to the compatibility of regional aid proposals with the conclusions of the Third Cohesion Report and, specifically, the consistency between the 'thematic' approach proposed under the Regional Competitiveness and Employment Objective (formerly Objectives 2 and 3, in broad terms) and the revision of the horizontal aid guidelines against the backdrop of the Lisbon agenda.

*(i) LASA and LET*

The new frameworks based on the notion of a 'significant impact test' receive a mixed reception in Member State responses to the Working Paper on regional aid.[34] LASA is implicitly or explicitly supported, at least in principle, by ***France, Ireland, Italy*** and the ***United Kingdom***. However, several countries express doubts that, at least in their present form, the proposed new frameworks are sufficient to compensate for the loss of regional aid policy. For example, the UK paper states that while it supports LASA and views it as an important tool, it does not enable regional economic disadvantage to be addressed; ***Austria*** expresses a similar view. Others query the validity of having both a firm-based aid ceiling *and* a national LASA expenditure limit: ***Ireland*** and ***Italy*** both call for the latter to be dropped. There is widespread concern that the potential benefits are outweighed by the monitoring and administrative requirements.

[33] See Sections 2.1 and 2.2 above.
[34] The LASA and LET drafts themselves were the subject of a separate, earlier, consultation between DG Competition and the national authorities. The discussion here is limited to the interaction between LASA and LET on the one hand, and regional aid, on the other.

Other countries are more sceptical about the role of LASA and LET at all. The ***German*** paper notes that the proposed frameworks are untried and untested and are administratively cumbersome; it proposes that regional aids be offered in parallel before being abolished in favour of support authorised under LASA and LET. Moreover, some doubt the effectiveness of LASA and LET in State aid control: the ***Netherlands*** is not convinced that LASA and LET will be of much help or bring sufficient “focus” to State aid monitoring policy; the ***Swedish*** paper notes the lack of clarity in the relationship between LASA and LET on the one hand, and regional aid on the other and takes the view that LET is too generous and risks complicating the existing rules.

*(ii) Other horizontal policies*

Several countries – notably ***France, Italy*** and the ***United Kingdom*** explore the issue of the relationship between regional aid and horizontal policy frameworks in their responses.

As mentioned above (see Section 3.4.1(vii)), the ***French*** paper proposes the *complete* abolition of Article 87(3)(c) regional aid maps and their replacement with a thematic approach echoing that envisaged under EU cohesion policy, which would allow aids that met specific horizontal priorities, namely:

- economic change, enabling timely intervention based on objective socioeconomic criteria in target areas;
- research, innovation and centres of excellence (*pôles de compétitivité*), in line with the Lisbon objectives;
- environmental protection and prevention of technological and natural disasters;
- improvement of the business environment;
- projects of Community interest with employment impacts in several Member States.

The French paper also insists on the need for the existing horizontal frameworks to be reviewed at the same time as the Regional Aid Guidelines and argues that to segment the discussion would be to deprive the Member States of an overall appreciation of the industrial policy instruments aimed at achieving the Lisbon objectives. Last, the French paper suggests that the matter be put on the agenda of the next Competitiveness Council meeting following informal consultation undertaken by DG Competition.

The Italian paper proposes the integration of horizontal objectives into the award matrix. The policies cited are R&D and innovation, environmental protection and human capital. As well as lowering overall rates of award for large firms everywhere and SMEs in Article 87(3)(c) areas in relation to those proposed by DG Competition, the Italian paper also proposes that these (lower) ceilings could only be reached where projects integrated the specified horizontal objectives. For small and medium-sized firms in Article 87(3)(a) areas, the Italian paper generally proposes higher maxima than those suggested by DG Competition, but stipulates that these should only be achieved where horizontal objectives are integrated into the project. The

main thrust of the Italian proposal is to reduce rate differentials between the different categories of assisted area.

The ***UK*** position suggests that there might be scope for the horizontal guidelines to address issues outside the assisted areas, for example, by allowing a ‘top-up’ of horizontal aid rates in order tackle local market failures or underperformance. The examples cited are aid for SMEs, aid for risk capital and aid for employment and training (especially for SMEs). Under such a mechanism, it is suggested that each Member State could be allocated a population quota to define areas within which ‘top-ups’ would be allowed.

Higher basic rates of award for SMEs proposed by the Commission (10 and 20 percent gross for medium and small firms, respectively, as opposed to 7.5 and 15 percent as at present) seem to be welcomed (although, as noted earlier, several position papers questioned the need for rates in excess of 50 percent even in the worst-off regions). In addition, however, some countries (for example, ***Finland*** and ***Ireland***) suggested higher rates of award for micro-enterprises. Last, several Member States (for example, ***Austria, France*** and ***Ireland***) either in these position papers or elsewhere have argued for the *de minimis* threshold to be raised.

Aside from the existing horizontal frameworks, ***Ireland, the Netherlands*** and the ***United Kingdom*** all draw attention to urban problems. The UK has long lobbied for a separate framework to allow aid for the physical regeneration of land and property; the Irish paper notes that regeneration is not addressed in DG Competition’s paper; and the Dutch response notes the increase of urban problems and raises the question of whether and how these can be addressed under the regional aid framework.

*(iii) EU Cohesion policy*

Many of the national position papers draw attention for the need to coordinate the reform of regional aid control with changes to EU Cohesion policy (eg. ***Austria, France***). The ***German*** paper goes so far as to argue that regional aid control should not be agreed until the Council has decided on the new Structural Fund regime. The ***Italian*** paper makes some explicit proposals regarding the relationship between the two, suggesting that, outside the assisted areas, maximum rates of award should be achievable under horizontal aid regimes only if measures are cofinanced by the Structural Funds. As already discussed, ***Finland, Sweden*** and ***Norway*** all argue for the definition of ‘Arctic’ areas to be based on the Objective 6 definition contained in the Act of Accession in the interests of coherence between the national and the EU assisted areas.

The ***UK*** position is somewhat distinct; the paper reiterates the long-held view that coincidence of the national and EU assisted area maps is unnecessary and, in line with the recent UK White Paper on regional policy,[35] argues that only the poorest Member States should receive the Structural Funds while the State aid rules should enable Member States to tackle underperformance wherever it occurs.

[35] HM Treasury, Department of Trade and Industry and Office of the Deputy Prime Minister, *A Modern Regional Policy for the United Kingdom,* DTI URN 03/649, The Stationery Office, London, March 2003 (available online at: <www.dti.gov/europe/consultation.pdf>).

# 4. CONCLUSIONS

### (i) The new "economic turn" in State aid control is a positive development, but the achievement of the stated objectives may be undermined by the burden of implementation.

Recent developments in State aid control bear witness to a new "economic" turn in State aid control. The LASA and LET drafts aim to facilitate the approval of instruments that are considered to have a limited impact on competition and trade between the Member States.[36] In parallel, the 2002 Multisectoral Framework tightens the rules on investment aid to large projects and introduces market power as a criterion in determining whether given levels of aid should be authorised. These developments can be viewed as a genuine attempt to address the arbitrariness for which past State aid control policy has been criticised.

In practice, however, there are reasons to believe that these proposals may not deliver the benefits claimed. First, there is little concrete evidence of any 'light touch' in the notification and review process proposed for LASA and LET aid and therefore little incentive to subject proposed schemes to the other constraints that LASA and LET impose. Second, the monitoring requirements are onerous; they seem likely to be bureaucratic and administratively cumbersome, as well as raising issues of commercial confidentiality. Third, for LASA, the obligation to evaluate the effectiveness of policy arguably goes beyond the scope of what is required for competition impacts to be assessed and strays into what might properly be viewed as domestic concerns about good husbandry and management of public resources. Moreover, the relationship between poor outcomes and continued approval of the scheme by the Commission is unclear. Last, the imposition of budget limits could raise some difficult operational issues, not least in the allocation of funding quotas between different granting authorities and tiers of government. The rationale of the limits is anyway questionable – if the measures do not raise competition issues on a case-by-case basis, then why should they in the aggregate?

### (ii) The relationship between spatially-targeted and 'horizontal' policies is set to become more complex and may disproportionately benefit the more prosperous regions.

A key feature of a number of the existing horizontal aid frameworks[37] is that projects in designated problem regions may benefit from higher rates of award or more flexible conditions than generally apply. The loss of assisted area status under Article 87(3)(a) or (c) therefore involves the loss of these benefits under the existing horizontal frameworks.

DG Competition's Regional Aid Working Paper itself and various policy statements have indicated that many of these horizontal frameworks will be revised in the run-up to 2007. However, although the Working Paper indicates that such revisions will provide Member States with "flexibility for regional differentiation", current proposals are short on detail. More generally, the combined effects of the Lisbon agenda and enlargement are shaping EU Cohesion Policy and State aid control policy in ways

[36] It should be noted that the future of the drafts, especially LASA, is unclear. The Commission's legal services are said to have expressed concerns about the compatibility of the texts with existing case law and the risks of third party challenges to decisions based on LASA and LET.
[37] For example, aid to SMEs, aid for R&D, aid for environmental protection and aid for rescue and restructuring.

that have significant implications for the problem regions of the EU15. On the one hand, the competitiveness agenda promotes horizontal policies that favour the development of *all* regions – but using policy instruments where the impact and uptake is likely to be higher in the more prosperous regions; on the other hand, the future of EU cohesion policy, and with it regional aid control, targets assistance at the least-prosperous regions, principally in the new Member States. The net effect of this pincer movement may be to create a policy vacuum for those regions that are neither well-placed to benefit from policies focused on innovation or other horizontal priorities, nor yet sufficiently disadvantaged to qualify for regional aid *per se*, either at the national or Community levels. Related, there is also the potential for *conflict* between the Lisbon agenda and national regional development. For example, LASA aid (and perhaps other horizontal instruments) may be deployed in ways that promote competitiveness, but indirectly or implicitly exclude the problem regions from eligibility. For instance, how would support targeted at designated centres of excellence be viewed?

A further consideration is the relationship between national and EU policy objectives. The LASA and LET drafts require schemes put forward to address *Community* objectives. It remains to be seen how this is interpreted in practice but it is not difficult to envisage circumstances in which Member States seek to introduce instruments in policy areas that are either not addressed at the EU level or where policy is relatively underdeveloped. It is not clear how the thematic component of the Structural Funds Competitiveness and Employment Objective will evolve, and to what extent that may determine the Commission's position on whether Community objectives are being met. The mention of specific types of problem region in the Treaty (islands, mountain regions, sparsely-populated areas…) provides a 'ready-made' justification for support for some disadvantaged areas, but for the majority of the *current* Article 87(3)(c) areas there is no clear EU legal basis for targeted policy. Moreover, even where there *is* a Treaty basis for favourable treatment, it is unclear whether the Commission will seek to define the areas of intervention on its own terms[38] or accept the area designation methodology of the Member States concerned. Related, even if the targeting of urban problem areas is approved, LASA and LET, as they stand, offer insufficient scope to address urban regeneration issues: the overall ceilings are too modest to allow for the scale of land reclamation and remediation required, given the capital intensity of such activities.

### (iii) The approach outlined in the Regional Aid Working Paper precludes the operation of traditional regional aid policies in most of the EU15 and may exacerbate relocation trends to the new Member States and outside the EU.

As described earlier, the Working Paper represents a very significant shift in the rules governing regional aid. It proposes radical cutbacks in assisted area coverage and sharp reductions in award values focused principally on the EU15 Member States. For many countries the pressure on regional aid is in line with domestic priorities. Regional aid spending has declined everywhere in the last decade,[39] and this arguably independently of Commission influence. Rather there has been a general trend *away* from government intervention and increasing emphasis on obtaining value for money in award decisions. Nevertheless, every EU15 country has retained

[38] This has some implications for the sparsely populated areas which are defined differently for Cohesion Policy and Competition Policy purposes.

[39] See past Overview reports to the EoRPA consortium – for instance, Yuill D. 'A Comparative Overview of Recent Regional Policy Developments in the Member States and Norway, EoRPA Paper 03/1, *Paper to the EoRPA Consortium*, 6-7 October 2003, Ross Priority, Loch Lomondside.

the possibility to provide investment aid to large firms in the problem regions;[40] moreover, successive Commission reports[41] have shown regional incentives to be the single largest area of State aid spending after agriculture and transport. In short, in spite of trends towards more market-led approaches to policy and the move towards 'softer' policy instruments aimed at improving the business environment, regional State aids have proven a remarkably resilient instrument of policy. If DG Competition succeeds in pushing through its current proposals, this will represent a significant step in the elimination of investment aid to large firms.

Even in EU15 Member States where the scope to offer regional aid remains, DG Competition's proposals have important implications for the conduct of regional policy. In particular, the use of Article 87(3)(a) and 'earmarked' Article 87(3)(c) regions means that the areas where large firms can be assisted is defined purely in relation to EU criteria. The legitimacy of constraining national regional policy in this way is perhaps questionable, especially when there is no evidence in the Working Paper of any assessment of the competition impacts of regional State aid. Instead, the justification for withdrawing regional aid in the current Article 87(3)(c) areas is mainly couched in terms of the *effectiveness* of policy and the suggestion that other instruments are more appropriate.

As discussed, DG Competition's proposal is that most of the current Article 87(3)(c) regions should lose eligibility; at the same time, the Article 87(3)(a) regions, mainly located in the new Member States, benefit from the possibility of offering relatively high rates of award – up to 50 percent of eligible investment. Although DG Competition proposes a general ratcheting down of award values, the rate *differentials* may still be such as to encourage relocation away from non-assisted areas to central and eastern Europe; this view is widely-expressed among the EU15 Member States. In practice, however, this fear may be overstated. It is unclear how much of a role incentives play in relocation decisions; other considerations, notably labour costs, fiscal systems and access to new markets, seem likely to be more important. Moreover, the budget constraints facing many of the new Member States are likely to preclude the attainment of maximum award values. This argument was used by Portugal and Spain in the past when policymakers there considered that the higher ceilings available to them were of little value for this reason and pushed for lower rates in the Article 87(3)(c) regions in order to increase their own competitive edge in rate terms. Ironically, these two countries, for which foreign direct investment remains an important aspect of regional development, may be best-placed to take advantage of rate differentials under the proposed new system: most of the current Article 87(3)(c) regions will have no scope to offer investment aid to large firms, and the new Member States will be less able to offer the aid ceilings than the poorest regions of the EU15.

A more general concern is whether the reductions in assisted area coverage and rates might affect the EU's global competitiveness for mobile investment. Some are sceptical about the capacity of incentives to offset locational advantages elsewhere, but it is worth noting that the EU system of State aid discipline is unique; alternative locations are unlikely to display similar levels of self-restraint and are therefore often in a position to offer long-term tax and other advantages that may prove irresistible to mobile investors.

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[40] Even Denmark, which has no operational aid scheme, retains the scope to introduce such measures by act of Parliament and has an approved assisted area map – again see past Overview reports to the EoRPA consortium.

[41] See State aid surveys <http://europa.eu.int/comm/competition/state_aid/others/> and Scoreboards <http://europa.eu.int/comm/competition/state_aid/scoreboard/>.

### (iv) National responses to the Working Paper are diverse; is there sufficient consensus for significant aspects of DG Competition's proposals to be amended to address national concerns or will the Commission succeed in exploiting divisions in order to push through its plans unscathed?

Member States' responses to the Spring 2003 consultation on the reform of the Regional Aid Guidelines were largely shaped by their experiences with the 1999 Guidelines and concerns at the probable changes required by enlargement, notably the 'statistical effect' on Article 87(3)(a). In the period between the initial consultation and the publication of the Working Paper, Commission thinking had moved on. The prospect of (albeit reduced) Article 87(3)(c) areas chosen on the basis of national criteria, which the Member States might have presumed would continue, was no longer on DG Competition's agenda. Instead, a much more radical approach has been adopted, largely eliminating the scope to provide investment aid to large firms in the EU15. While DG Competition proposes to abolish the main plank of regional aid policy in the form of support in Article 87(3)(c) areas, the Working Paper is carefully crafted to reflect many of the concerns raised in the initial feedback. In particular, the need for special treatment of regions losing Article 87(3)(a) status, sparsely-populated areas and the outermost regions expressed by various Member States all find resonance in the Working Paper.

The Working Paper represents the first, and preferred, of Philip Lowe's two scenarios for the future of regional aid control (see section 3.2). The second scenario involved building on a simplification of the 1998 Guidelines, adding further Article 87(3)(c) areas to the 'earmarked' regions, but subject to an overall ceiling of 50 percent of the EU25 population. An obvious way forward for the Member States with reservations about the Working Paper is to pursue the development of this second scenario. This offers the possibility of designating a further 15 percent of the EU25 population, while remaining within the global ceiling of 50 percent. A key difficulty is to find a mechanism for distributing this population among the Member States: should it be used to satisfy the demand for special treatment of islands, border regions, special cases and transitional arrangements or should it simply be distributed among Member States for Article 87(3)(c) areas to be selected on the basis of national criteria? What method of allocating that population might be deemed equitable? Might a hybrid approach best satisfy all demands?

An important issue in trying to establish a consensus is that the Member State responses analysed in this paper display limited evidence of a commonality of interests. Some are supportive of the stance on Article 87(3)(c) areas; others are opposed. Equally, while almost all countries are affected by the proposals, the impact is by no means uniform. In addition, several countries put forward alternative proposals on different aspects of policy. The single feature of the proposals on which there is unanimity concerns the size of the award rate disparities. However, it is important to note that the responses discussed here are not a representative sample. In particular, there is no feedback available from the three poorest EU15 Member States, Greece, Portugal and Spain, which would doubtless have a particular perspective on the proposals. Similarly, the views of the new Member States are unknown. In short, national feedback is characterised by a degree of diversity and self-interest that is likely to complicate coalition-building across a majority of countries. This in turn will facilitate the capacity of DG Competition to exploit the divisions between Member States and pursue its own agenda.