

T.C.
MARMARA ÜNİVERSİTESİ
AVRUPA TOPLULUĐU ENSTİTÜSÜ
AVRUPA BİRLİĐİ HUKUKU ANABİLİM DALI

STATE AID POLICY
IN THE EU ACCESSION PROCESS

YÜKSEK LİSANS TEZİ

DENİZ TAYLAN UYSAL

İstanbul, 2006

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ABSTRACT

This study aims to provide grounds for an urgent need to harmonize the Turkish state aid system with the EU acquis. While the negotiation process continues, it became incontestable that the framework law on state aid should be ratified and the relevant authority should become operative at once. It is also important to bear in mind that an authority, which is not refrained from political influence and pressure, would not find acceptance by the European Commission.

Harmonizing the Turkish state aid system with the EU acquis shall bring uniform application of state aids, not only state aids shall be granted in a transparent way but also the competition environment shall improve. In addition, alignment with state aid rules shall substantiate the Customs Union between the EU and Turkey on a more solid ground.

European Union's previous enlargement processes show that state aid is one of most difficult fields of the accession negotiations. Considering that Turkey has a long way to go in this field of EU acquis, it would be adequate to multiply academic studies in this area. Especially, comparative studies relating to past accession processes would be of higher benefit.

In this present study, I first attempt to explain the EU state aid rules and the Turkish incentive system in broad terms. In the following chapters, I analyse the Turkish system within the framework of harmonization work. Finally, I concentrate on the past accession negotiations on state aid from a comparative perspective with a view to draw conclusions regarding the Turkish case.

ÖZET

Bu çalışma, Türk teşvik sistemi ile Avrupa Birliği'nin devlet yardımları müktesebatının ivedi olarak uyumlaştırılması gerekliliğine ilişkin gerekçeleri sunmayı amaçlamaktadır. Müzakere süreci devam ederken, devlet yardımlarına ilişkin çerçeve yasanın yürürlüğe koyulması ve ilgili kurumun faaliyete geçmesi gerekliliği ilgili tüm kesimlerin malumu olmuştur. Ayrıca, bu kurumun siyasi etki ve baskılardan uzak olmaması durumunda AB tarafından kabul görmeyeceği de bilinmektedir.

Türk teşvik sistemi ile AB müktesebatının uyumlaştırılması devlet yardımlarının yeknesak, şeffaf ve rekabeti bozmayacak şekilde verilmesini sağlayacaktır. Bunun yanısıra, Türkiye ile AB arasındaki Gümrük Birliği güçlenerek daha somut bir temele oturacaktır.

Avrupa Birliği'nin önceki genişleme süreçleri devlet yardımlarının katılım müzakerelerinin en zor alanlarından olduğunu göstermektedir. Türkiye'nin bu alanda alması gereken uzun bir yol olduğu düşünüldüğünde, devlet yardımları konusundaki akademik çalışmaların artırılması, özellikle de geçmiş genişleme süreçlerine ilişkin karşılaştırmalı çalışmalar yapılması sürece önemli katkı sağlayacaktır.

Bu çalışmada, öncelikle AB devlet yardımları müktesebatını ve Türkiye'de uygulanan teşvik sistemini ayrıntılarına girmeden anlatmaya çalışacağız. Ardından konuyu, Türk teşvik sistemini AB müktesebatı ile uyumlaştırma çalışmaları ışığında ele alacağız. Son bölümde ise, devlet yardımları alanında gerçekleşmiş katılım müzakereleri üzerinde yoğunlaşarak karşılaştırmalı sonuçlara ulaşmaya gayret edeceğiz.

ABBREVIATIONS

EC: European Community

ECJ: European Court of Justice

ECSC: European Coal and Steel Community

EEC: European Economic Community

EU: European Union

DTM: Undersecretariat of the Prime Ministry for Foreign Trade

GATT: General Agreement on Trade and Tariffs

GDP: Gross Domestic Product

İGEME: Center of Export Developing

KOSGEB: Small and Medium Industry Development Organization

KÖY: Prioritised Provinces in Development

NUTS: Nomenclature of Territorial Units for Statistics

OJ: Official Journal

R&D: Research and Development

SME: Small and Medium Sized Enterprise

TTGV: Turkey Technology Development Foundation

TUBİTAK: Scientific and Technological Research Council of Turkey

VAT: Value Added Tax

WTO: World Trade Organization

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I. INTRODUCTION

1.1. Definition of State Aid

The European Court of Justice defined state aid as “*advantages granted directly or indirectly through state resources or constituting an additional charge for the state or for bodies designated or established by the state for that purpose*”¹. In other words, state aid is any contribution granted directly or indirectly by state to undertakings. State aids may have several aims such as promoting investment, protecting environment, increasing employment, export promotion, rescuing firms in difficulty, etc.

In Turkey, the term “incentive” is traditionally used instead of “state aid”. On the other hand, we recognize that in the foreign trade it is “subvention” that is used instead of “state aid” term. As the European Union accession process progress, the use of “state aid” term has spread over in Turkey.

The European Court of Justice has already held that the concept of aid is wider than subsidy because it embraces not only positive contributions, such as subsidies themselves, but also measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, without therefore being subsidies in the strict meaning of the word, are similar in character and have the same effect².

Where markets fail to deliver efficient outcomes, state intervention, including the provision of state aid can improve welfare. Although state aid is one of the main tools of states when intervening to the economy and may be very beneficial if used in the right place, its contribution to the economic welfare stays generally low in the long term. Therefore, state aid may be useful to correct market situations but it may not be systematically used as a means of economic development.

¹ Joined Cases C-52/97 to C-54/97 *Viscido and Others* [1998] ECR I-2629, paragraph 13.

² Case C-387/92 *Banco Exterior de España* [1994] ECR I-877, paragraph 13, and Case C-295/97 *Piaggio* [1999] ECR I-3735, paragraph 34.

1.2. EU-Turkey Relations

Turkey, struggling to proceed in a long road for more than four decades, has started the accession negotiations with EU in 3 October 2005. After taking the first step for the membership in 1959, Turkey has passed through several inconvenient situations such as military coups and economic crisis. In 1980's, Turkey has strngthened its free market economy and has applied for the membership. Turkey accomplished the second phase of the Customs Union with the EU in 1995 in accordance with the Ankara Agreement (1963).

Turkey's obtention of candidate status in 1999 was a real turning point in EU-Turkey relations. Since then, Turkey has accalaterated its political reform process and made quickly all the necessary arrangements to accomplish the harmonization process related to the Copenhagen Criteria. Evaluating all these improvements in Turkey, European Council has decided to open accession negotiations with Turkey in 17 December 2004.

Turkey has assumed to adopt the EU state aid rules when signing the decision 1/95 building the Customs Union in the Association Council. However, there has been no concrete progress since then regarding state aid rules. Meanwhile, EU has declared that it will not open negotiations in the respective chapters unless Turkey accomplishes its obligations due to Customs Union.

The accession negotiations are ongoing nowadays; "Science and Research" has been opened and provisionnaly closed at the same day (12 June 2006) as the first chapter on negotiations, and "Education and Culture" is on the way. The European Commission recently recommended the opening of negotiations on the "Public Procurement" and the "Competition Policy" chapters, if the opening benchmarks are met by Turkey.

1.3. WTO Rules

On the other hand, Turkey has signed the Agreement on Subsidies and Countervailing Measures in the framework of World Trade Organisation (WTO). Turkey is also bound with those WTO rules on subsidies. As indicated in the first Article of this Agreement; a subsidy shall be deemed to exist if there is a financial contribution by a government or any public body where:

- (i) a government practice involves a direct transfer of funds,
- (ii) a government revenue that is otherwise due is foregone or not collected,
- (iii) a government provides goods or services other than general infrastructure or purchases goods,
- (iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated above, which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by government, a benefit is thereby conferred³.

Except for the agricultural goods⁴, the Agreement has prohibited any subsidies granted upon export performance for the industrial goods. This standard is met when the facts demonstrate that the granting of a subsidy is in fact tied to actual or anticipated exportation or to the use of domestic over imported goods. Within the meaning of this provision, the mere fact that a subsidy is granted to exporting enterprises shall not for that reason alone be considered to be an export subsidy⁵.

According to Article 2, where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific therefore unlawful. Specificity shall not exist where the granting authority or the legislation establishes objective criteria or conditions governing the eligibility for a subsidy, provided that the eligibility is automatic. Objective criteria or conditions mean criteria or conditions which are neutral, which do not favour certain

³http://www.wto.org/english/res_e/booksp_e/analytic_index_e/subsidies_01_e.htm#article1A

⁴ Subsidies on agricultural goods are regulated separately in the "Agreement on Agriculture".

⁵ Ibid.

enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise, costs of personel, costs of instruments, equipment, land and buildings, costs of consultancy, assistance to disadvantaged regions, assistance to promote adaptation of existing facilities to new environmental requirements, etc⁶. These rules are in line with the EU acquis and Turkey has adopted them into its national legislation⁷.

⁶ Ibid.

⁷ <http://www.dtm.gov.tr/ihr/dvyardim/dvyardim.htm>

II. STATE AID IN THE EUROPEAN UNION

The main economic objective of the European Union is to build an Internal Market free of any form of barriers between Member States. Competition rules have been one of the most effective tools to achieve this objective. Competition in Internal Market can be distorted not only by the acts of undertakings but also by those of states. By favouring certain firms or products to the detriment of other firms or products, state aid seriously disrupts normal competitive forces.

2.1. Legislation, Institutions, Procedures Related to State Aid

European Union has adopted severe rules for the state aid control. From the point of view of the European Commission, neither the beneficiaries of state aid nor their competitors prosper in the long term. Very often, all public subsidies delay inevitable restructuring operations without actually helping the recipient to ameliorate its competitiveness. Unsubsidised firms who must compete with those receiving public support may ultimately run into difficulties, causing loss of competitiveness and endangering the jobs of their employees. Ultimately, the entire market will suffer from state aid, and the general competitiveness of the European economy would be imperilled. For this reason, the main principle in the European Union state aid control system is to “ban” state aids. Article 87 of the EC Treaty prohibits any aid granted by a member state or through state’s resources in any form whatsoever which distorts or threatens to distort competition by favouring certain firms or the production of certain goods.

State aid doesn’t have a clear definition in the EC Treaty. In order to prevent any narrowing of the concept, no precise and strict definition is attributed to state aid. To date, whether a state aid is unlawful or not has been stated mostly by European Commission and European Court of Justice decisions rather than pre-existing legislation.

The decision as to whether or not an aid granted by a member state is compatible with the Internal Market can be taken only by a supranational and independent authority. Therefore under Article 88, the Commission is given the task to control state aid. Community’s state aid control system is based on ex-ante authorisation. This Article also requires member

states to inform the Commission in advance of any plan to grant state aid. The Commission's role is to monitor proposed and existing state aid measures by member states to ensure that they are compatible with EU state aid legislation and do not distort intra-community competition. Any aid, which is granted in absence of Commission approval, is automatically classified as unlawful aid. The Commission has the power to require the immediate repayment by recipients of the aid, granted by a member state and incompatible with the Internal Market, to the public authorities which granted it.

Community state aid rules apply only to measures that satisfy all of the following criteria⁸:

1- Transfer of state resources: State aid rules cover only measures involving a transfer of state resources (including national, regional or local authorities, public banks and foundations, etc.). The aid does not necessarily need to be granted by the state itself. It may also be granted by a private or public intermediate body appointed by the state. Financial transfers that constitute aid can take many forms: not just grants or interest rate rebates, but also loan guarantees, capital injections, etc.

2- Economic advantage: The aid should constitute an economic advantage that the undertaking could not have received in the normal business conditions.

3- Selectivity: State aid must be selective and affect the balance between firms and their competitors. Selectivity is what differentiates state aid from general measures (measures which apply without distinction to all firms in all economic sectors in a member state, like nation-wide fiscal measures). A scheme is considered selective, if the authorities administering the scheme enjoy a degree of discretionary power. The selectivity criterion is also applicable if the scheme applies to regional and sectoral aid schemes.

4- Effect on competition and trade: Aid must have a potential effect on competition and trade between member states. It is sufficient if the beneficiary is involved in an economic activity. The nature of the beneficiary is not relevant in this context; even a non-profit organisation can engage in economic activities.

⁸ Community Rules on State Aid, European Commission, 2003.

According to Article 87(1), aid measures that satisfy all the criteria outlined above are, in principle, incompatible with the common market. However, Articles 87(2) and 87(3) of the Treaty specify a number of cases in which state aid could be considered acceptable. Article 88 gives the Commission the power to decide whether the proposed aid measure qualifies for exemption or whether the state concerned should abolish or alter aid. The most relevant exemption clauses are:

- Article 87(3)(a) which covers aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment,
- Article 87(3)(c) which refers to aid to facilitate the development of certain economic activities or certain economic areas, where such aid does not adversely affect trading conditions contrary to the common interest⁹.

If the Commission decides not to raise any objection, as a result of the examination, the aid measure concerned can be implemented. The Commission initiates proceedings if it has doubts about the notified aid measure. In such cases, the Commission opens a formal investigation. It publishes a description of the aid in the Official Journal of the Communities and invites the member state concerned and interested parties to comment. At the end of the enquiry, the Commission adopts a final decision. This may be either positive (aid can be implemented), negative (aid can not be implemented) or positive, but subject to stated conditions (aid can be implemented if certain conditions are met). The indicative maximum time-limit foreseen for such an enquiry is 18 months.

The Commission has a limited judicial discretion when deciding a state aid is or not compatible with the acquis. In exercising its powers, the Commission has developed specific approaches depending on the size of the firm, its location, the industry concerned, the purpose of the aid, etc. Because its power under Article 87(3) is discretionary, the Commission publicise its approach in order to ensure that its discretion is exercised with proper openness and that authorities and businesses are clear about their legal position. These publications have taken the form of regulations, communications, notices, frameworks, guidelines and letters to member states.

⁹ Treaty on European Union (1992), Official Journal C 191 of 29 July 1992.

It is the member state concerned, which must notify planned aid measures. The increase in the budget of an authorised aid scheme not exceeding 20%, as for the individual aid granted in the framework of an approved general aid scheme shall not be notified. Time limit for the notification of the state aid is 10 years, after this time period concerned aid shall be assumed as existing aid. Along with the obligation to notify all new aids, member states are required to submit annual reports to the Commission on all existing aid schemes or individual aid granted.

In the early days of the Rome Treaty, state aids were banned and aids were granted in very exceptional circumstances. However, after the 1970's the EU started giving exemptions to the state aids and pursued a more flexible state aid policy¹⁰.

It is a very frequent situation that member states grant unlawful state aids. The Commission has been informed usually by complainants who are directly harmed by the aid. In this case, the Commission opens an investigation immediately. The Commission may also conduct audits at the premises of the concerned firms if necessary. In 2004, of all aids that have been investigated by the Commission, a proportion of 12% has been found unlawful¹¹.

The Commission can declare certain categories of state aid compatible with the Treaty if they fulfill certain conditions, thus exempting them from the requirement of prior notification and approval. At present, the Commission has adopted four block exemption regulations. Three of these regulations create exemptions for aid to small and medium-sized enterprises¹², employment aid¹³ and training aid¹⁴. A fourth regulation regulates the application of the "de minimis" rule¹⁵. Without prejudice to the exemption, member states shall provide the information regarding aid to small and medium-sized enterprises and

¹⁰ Doruk Tuncer, A Critical Approach of the State Aids Policy in the European Union, MA thesis, Marmara University EC Institute, Istanbul, 2005, p.1.

¹¹ State Aid Scoreboard Autumn 2005, COM(2005)624 final, 9.12.2005, Brussels.

¹² Commission regulation No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to state aid to small and medium sized enterprises, OJ L 10 of 13.01.2001.

¹³ Commission regulation No. 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to state aid for employment, OJ L 337/3 of 13.12.2002.

¹⁴ Commission regulation No. 68/2001 of 12 January 2001 specifies the rules on the application of Articles 87 and 88 of the EC Treaty to training aid, OJ C 56/38 of 5.3.2005.

¹⁵ Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the Treaty to de minimis aid, *OJ L 1 of 13.01.2001*.

training aid to the Commission, within a period of 20 working days, for the informational purposes.

Along with these block exemptions regulations, Commission has also adopted;

- A regulation regarding financial transfers to public undertakings,
- Guidelines¹⁶ on regional aids, on state aid for environmental protection and on state aid for rescuing and restructuring firms in difficulty,
- Frameworks on research and development, on regional aid for large investment projects, and on state aid to shipbuilding.

Other subjects are regulated by notices and communications from the Commission. The Commission has also published some explanatory notes and letters to member states.

Along with the Commission, the Council also has the power to grant exemptions in particular cases upon request from member states. In the past, the Council used this procedure for some agricultural aids.

Having the ECSC Treaty expired on 23 July 2002, special state aid rules governing coal and steel industry has been replaced by general provision of the EC Treaty¹⁷.

The jurisprudence on state aid is composed of the Commission decisions, decisions of the European Court of Justice and the Court of First Instance. All decisions of the Commission are subject to review by the European Court of Justice under Article 230 of the EC Treaty. It is the responsibility of the Court of Justice to ensure that the law is observed in the interpretation and application of the EC Treaty and of the provisions laid down by the competent Community institutions. The Court has the competence to rule on applications for annulment or actions for failure to act brought by a member state or an institution, actions against member states for failure to fulfill obligations, references for a preliminary ruling and appeals against decisions of the Court of First Instance¹⁸.

¹⁶ Guidelines are published to further inform interested parties, without being binding for third parties; the Commission must consider these guidelines in its decisions.

¹⁷ Protocol on the financial consequences of the expiry of the ECSC Treaty and on the research fund for coal and steel, OJ C 325 , 24 December 2002,
http://europa.eu.int/eur-lex/en/treaties/dat/C_2002325EN.018201.html

¹⁸ http://en.wikipedia.org/wiki/European_Court_of_Justice

Commission decisions may be considered as the primary source of jurisprudence, while the decisions of Court of Justice play a crucial role in the development of the state aid rules. The Court of Justice has broadened the scope of Treaty articles relating to state aids with its judgements. The Court has been creating legislation with its decisions, and doesn't refrain to use the powers delegated by the Treaty.

As an example, in its "Altmark"¹⁹ judgement (2003), the Court stated that a state measure is not caught by Article 87(1) of the Treaty where it must be regarded as a compensation for the services provided by the recipient undertakings in order to discharge public service obligations. However, the recipient undertaking must actually have public service obligations and the obligations must be clearly defined, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner. The Court also stated that the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations. As it might be seen in this decision, the Court has broadly interpreted related articles of the Treaty. As a result of this decision, the Commission adopted new rules for small aids granted for public service obligations and exempted them from notification process.

Even if the Court of Justice approves most of the decisions of the Commission, there is an inherent conflict between these institutions' interpretation of the state aid law; the former gives predominance to economic analysis (increasingly so in recent years) while the latter strictly limits its analysis within legal reasoning²⁰.

Competition authorities and national courts of the member states must also respect the Community rules when applying domestic law. All member states have a national authority responsible of monitoring state aids. This authority is generally the national competition authority or the ministry of finance. National authorities are responsible of:

- the monitoring of state aids,
- the notification to the Commission,

¹⁹ Altmark Trans decision of the European Court of Justice, OJ C-280/00, 24.7.2003.

²⁰ Evren Güldoğan, A Conditional Restriction of the Member States; State Aid Policy of the European Union, MA thesis, Marmara University EC Institute, Istanbul, 2005, p.55.

- ensuring that aid are not granted until approved,
- ensuring that aid is granted as approved by the Commission.

The Commission, in order to provide a complete, transparent and publicly accessible source of information in the Union, has launched a “State Aid Scoreboard” in July 2001. Published twice a year, scoreboard is also an instrument of comparative analysis of the state aid situation among member states²¹.

In some cases, even if the state aid granted are not against the rules, the total amount of the state aid granted could affect the trade between member states and the competition in the Internal Market. Hence, the total amount of state aid is gradually diminished in the EU, while the aids are more and more targeted to horizontal areas.

Reduction of the amount of the state aid is a declared political priority in the EU. The Lisbon, Stockholm and Barcelona European Councils respectively in 2000, 2001 and 2002 strongly advised the member states to reduce state aids and emphasized the importance of the state aid policy in maintaining an effective competition²².

Member states’ answer to the Council’s call for “less and better targeted aid” was “no” to less aid but “yes” to better targeted aid. After the considerable fall in the level of aid at the end of the nineties, the underlying trend over the last five years has been stable rather than downward. The vast majority of member states do however appear to be shifting the emphasis from supporting individual companies or sectors towards tackling horizontal objectives²³.

In the Autumn 2005 Scoreboard, the total amount of state aid granted by 25 member states was estimated at some 62 billion Euro in 2004 (0.60% of EU GDP). Germany granted most aid (17 billion) followed by France (9 billion) and Italy (7 billion). While some member states have reduced the overall level of aid, the Lisbon objective of less aid has not yet been met in the EU. By sector, around 40 billion Euros of aid was granted for

²¹ http://www.europa.eu.int/comm/competition/state_aid/scoreboard/

²² Doruk Tuncer, A Critical Approach of the State Aids Policy in the European Union, MA thesis, Marmara University EC Institute, Istanbul, 2005, p.3.

²³ State Aid Scoreboard Autumn 2005, COM(2005)624 final, 9.12.2005, Brussels.

manufacturing and services, 15 billion Euros for agriculture and fisheries, 5.5 billion Euros for coal and a little over 1 billion Euros for transport (excluding railways)²⁴.

In the context of reducing the overall volume of state aid, the Commission has been examining to what extent alternative instruments can be used in place of distortive state aid measures. One of the best ways to reduce the level of state aid is to make better use of alternative measures such as general and regulatory measures²⁵.

In line with the commitments undertaken at successive European Councils, member states have continued to redirect aid towards horizontal objectives. Over the period 2000-2002 and 2002-2004, the share of total aid for horizontal objectives increased by 4%. By 2004, the share of horizontal aid had risen to 76% of the total amount of aid, with member states favouring the environment, regional economic development, research and development and small and medium-sized enterprises in particular²⁶.

The remaining 24% was aid directed at specific sectors (mainly coal) including aid to rescue and restructure ailing firms. The Scoreboard also reports on the state of play with regard to the recovery of illegal aid. Of the 9.4 billion Euro of aid to be recovered under decisions adopted since 2000, some 5.9 billion Euros (plus 2 billion Euro interest) had been recovered by the end of June 2005²⁷.

New measures on the anti-trust policy have been put into practice simultaneously with the fifth enlargement realised in May 2004. The EU summit of March 2004 decided to initiate a comprehensive reform of state aid rules in the framework of the Lisbon Strategy.

The Commission published its State Aid Action Plan in June 2005. The document outlined the guiding principles for a comprehensive reform of state aid rules over the next five years. The document set out, in particular, how the Commission intends to use state aid rules to encourage member states to contribute to the Strategy for Growth and Jobs by focusing aid on improving the competitiveness of EU industry, creating sustainable jobs,

²⁴ Press release of the Commission, 9 December 2005, IP/05/1558.

²⁵ State Aid Scoreboard Autumn 2005, COM(2005)624 final, 9.12.2005, Brussels.

²⁶ Ibid.

²⁷ Ibid.

ensuring social and regional cohesion and improving public services. The Commission also made proposals to further develop the economic approach in state aid policy, to simplify and rationalise the current rules, and to reduce the administrative burden so that aids are better targeted, less aid has to be notified and decision-making is accelerated²⁸.

In the framework of State Aid Action Plan, first step has been taken; new measures on services of general economic interest was adopted in July 2005 and new regional aid guidelines for 2007-2013 were adopted in December 2005. The Commission, nowadays, aims to publish new guidelines for risk capital, research and development, and new regulations regarding de minimis aid²⁹.

According to another point of view, the state aid policy should be simplified to return to its original days. In other words, it should become a negative policy giving exemptions only in cases of de minimis and extraordinary situations such as natural disasters. In order to serve the other purposes of European integration, member states should not be allowed to give out national subsidies. The funds for these subsidies should be transferred to Brussels, to the central budget of the EU and redistributed to serve these other purposes in a way that would not harm the competitive conditions in different EU member states³⁰.

2.2. Classification of State Aids

There are various types of state aid. We shall be analysing state aids in categories and sub-categories. Each category of aid has its own specific, and often very complicated, rules. For the purposes and the limits of our study, we shall mention only the essential aspects of those aids, without undertaking a more detailed presentation and analysis. In this respect, we can distinguish, at the first place, six aid categories in the EU:

- | | |
|--------------------------|--|
| <i>1. Horizontal Aid</i> | <i>4. Financial Aid</i> |
| <i>2. Sectoral Aid</i> | <i>5. De Minimis Aid</i> |
| <i>3. Regional Aid</i> | <i>6. Services of General Interest</i> |

²⁸ Press release of the Commission, 9 February 2006, IP/06/144.

²⁹ http://europa.eu.int/comm/competition/state_aid/others/action_plan/saap_en.pdf

³⁰ Doruk Tuncer, A Critical Approach of the State Aids Policy in the European Union, MA thesis, Marmara University EC Institute, Istanbul, 2005, abstract.

2.2.1. Horizontal Aid

- *Aid for small and medium sized enterprises*: Small and medium sized enterprises have a crucial role in the job creation; therefore they contribute to the social welfare and the economic performance of the EU. Commission considers small and medium sized enterprises as the driving force of the EU economy. Commission regulation No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to state aid to small and medium sized enterprises³¹ specifies state aid rules for the small and medium sized enterprises. There are also separate Commission regulations for small and medium sized enterprises in the agriculture and the fisheries sectors.

- *Aid for research and development*: State aid rules for research and development are formulated by the Commission Regulation No 364/2004 of 25 February 2004³². Commission has a positive approach on the state aids for research and development. The main reason underlying this fact is not only that research and development contributes to the competitiveness of the Union, but also that those investments are highly costly. One crucial point is that these aids cannot be granted for operating expenditure, but it is not always easy to make a distinction between the two types of aid. Cumulation of aids is also possible in this category.

- *Aid for environmental protection*: Commission's guidelines No. 2001/C 37/03 dating 3.2.2001³³ specify the rules for environmental protection. Under Article 6 of the EC Treaty, environmental policy objectives must be integrated into Commission's policy on state aid control in the environmental sector, in particular with a view to promote sustainable development. The Commission carries out the "polluter pays" principle regarding the environmental protection. This means that the costs of measures to deal with pollution should be borne by the polluter who causes the pollution. Commission also states that all costs associated with the protection of the environment should be included in firms' production costs. In this way, competition in the Internal Market would not be restricted by state aids.

³¹ OJ L 10 of 13.01.2001.

³² Commission Regulation (EC) No 364/2004 of 25 February 2004 amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development, OJ L 63 of 28.02.2004.

³³ Community guidelines on State aid for environmental protection, OJ C 37/3 of 3.2.2001.

- *Aid for the rescue and restructuring of firms in difficulty*: The Commission's guidelines on state aid for rescuing and restructuring firms in difficulty No. 2004/C 244/02 dating 1.10.2004³⁴ specifies the rules in this area. A firm is considered in difficulty when, without outside intervention by the public authorities, it will almost certainly go out of business in the short or medium term. This new guideline is stricter than the previous one. The Commission argues that in most cases, granting state aid to firms in difficulty doesn't help to resolve structural problems in the economy. Commission's approach to the rescue and restructuring aid is that state aid should be granted only if insolvency of the firm is more harmful than the distortion of the state aid on the competition. It is not justified to keep a firm artificially alive in a sector with long-term structural overcapacity or when it can only survive as a result of repeated state interventions. Hence, rescue aid should be granted only once. There should also be a detailed business plan for the restructuring aid.

- *Aid for employment*: One of the main challenges of the Union is the unemployment. The promotion of employment is a central aim for the economic and social policies of the Community and of its member states. This is the main reason of the notification exemption brought by the Commission regulation No. 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to state aid for employment³⁵. Member states may grant incentives to enterprises to increase their levels of employment, in particular for workers from disadvantaged categories. However, the Commission urges member states to apply general measures to decrease labour costs instead of granting state aid. Employment aid for the transportation sector and export oriented aid fall outside the scope of the regulation.

- *Training aid*: Commission regulation No. 68/2001 of 12 January 2001 specifies the rules on the application of Articles 87 and 88 of the EC Treaty to training aid³⁶. Operating aid falls outside the scope of the regulation.

- *Risk capital*: Risk capital aims to promote entrepreneurs who have new and creative ideas without having sufficient financial resources. Risk capital is granted to new enterprises (generally SMEs) operating in innovative sectors such as information technology. These

³⁴ OJ C244 of 1 October 2004.

³⁵ OJ L 337/3 of 13.12.2002.

³⁶ OJ L 10 of 13.1.2001.

enterprises often have a low income but are supposed to have a high potential to grow. Legal arrangement is the Commission Communication No. 2001/C 235/03 of 21.8.2001 on state aid and risk capital³⁷.

2.2.2. Sectoral Aid

In accordance with the special Treaty provisions (Article 36 on agriculture, Article 73 on transportation, and Article 86 on services of general interest), some sectors in the EU are exempted from the application of general state aid rules. The Commission has also adopted industry-specific or sectoral rules defining its approach to state aid in particular industries. Those industries are defined particular either because they are sensitive and vulnerable to the competition or they are, traditionally, industries who attract large amounts of state aid.

- *Sensitive sectors*: Over the years, special rules have been adopted for a number of sectors which have experienced particularly severe economic problems and which were therefore considered to be sensitive. At present, the sectors concerned are the steel industry³⁸, postal sector³⁹, shipbuilding⁴⁰, public service broadcasting⁴¹, audiovisual sector⁴² and electricity⁴³. The rules for sensitive sectors are altered in 2004. There are no longer special arrangements for the coal, synthetic fibres and motor vehicles sectors (transition periods are foreseen in the coal industry⁴⁴ for the member states). At present, special rules in those sectors are regulated by the multisectoral framework on regional aid for large investment projects No. 2002/C 70/04 of 19.3.2002.

- *Agriculture and fisheries*: The general state aid rules do not apply or apply only to a limited extent in the sectors involved in the production and marketing of products of

³⁷ OJ C235/3 of 21.8.2001.

³⁸ Communication from the Commission concerning certain aspects of the treatment of competition cases resulting from the expiry of the ECSC Treaty 2002/C 152/03 of 26.6.2002.

³⁹ Notice from the Commission on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services 98/C 39/02 of 6.2. 1998.

⁴⁰ Framework on state aid to shipbuilding 2003/C 317/06 of 30.12.2003.

⁴¹ Communication from the Commission on the application of state aid rules to public service broadcasting 2001/C 320/04 of 15.11.2001.

⁴² Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects relating to cinematographic and other audiovisual Works 2002/C 43/04 of 16.2.2002.

⁴³ Commission Communication relating to the methodology for analysing State aid linked to stranded costs, Adopted by the Commission on 26.07.2001, Commission letter SG (2001) D/290869 of 6.8.2001.

⁴⁴ Council Regulation No 1407/2002 of 23 July 2002 on State aid to the coal industry.

agriculture and fisheries. Article 36 of the Treaty provides that provisions relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the Council. The Council may, in particular, authorise the granting of aid (i) for the protection of enterprises handicapped by structural or natural conditions (ii) within the framework of economic development programmes.

The European Agricultural Guidance and Guarantee Fund⁴⁵ (EAGGF), set up for the financing of the common agricultural policy, consumes a large part of the general budget of the EU. The Fund's Guarantee Section finances, in particular, expenditure on the agricultural market organisations while the Guidance Section finances the rural development measures. Those aids are not covered by the general state aid rules. Detailed rules applying to these sectors are laid down in the guidelines and regulations⁴⁶. De minimis rule does not apply to agriculture and fisheries sectors.

- *Transport*: In the road transport sector, most general state aid rules apply, although there are a number of exceptions (transport equipment is not eligible for state aid and de minimis regulation does not apply). General state aid rules do not apply in other transport sectors (rail, air, inland waterways and maritime transport). According to Article 73 of the Treaty *“aids shall be compatible with this Treaty if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service”*. In Article 76, state aid for one or more particular undertakings or industries is prohibited, unless authorised by the Commission. Detailed rules applying to these sectors are laid down in the Commission regulations and communications⁴⁷.

⁴⁵ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy.

⁴⁶ Community guidelines for state aid in the agriculture sector (2000/C 28/02),
- Guidelines for the examination of state aid to fisheries and aquaculture (2004/C 229/03),
- Commission regulation No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid in the agriculture and fisheries sectors,
- Commission regulation No 1/2004 of 23 December 2003 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of agricultural products,
- Commission regulation No 1595/2004 of 8 September 2004 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products.

⁴⁷ **Air transport:**

- Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes, Official Journal L 240 , 24/08/1992 P. 0008 – 0014,

2.2.3. Regional Aid

In the EU, regional aids are distributed according to socio-economic criteria such as GDP per capita, gross added value, structural unemployment, trend of employment, rate of emigration, geographical features. As a general rule, member states cannot grant regional aid to reduce the production costs of undertakings. If we put aside incentives given to the agriculture, regional aids take the largest share of state aids granted in the EU.

Regional aid is also closely linked to the regional policy and the coordination of structural instruments. Regional aids are mostly given in the framework of regional policy. Another significant point is that important firms mainly negotiate with member states upon their investment plans, and the increase of promises of regional aid given to these firms by member states threatens the functioning of the Internal Market.

Article 87(3)(a) and (c) of the Treaty both provide a basis for the acceptance of state aid measures aimed at tackling regional problems. Article 87(3)(a) applies to state aid to promote the development of areas where the standard of living is abnormally low or where there is serious underemployment. Article 87(3)(a) status is granted to NUTS II regions

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- Application of Articles 92 and 93 [now 87 and 88] of the EC treaty and Article 61 of the EEA agreement to State aids in the aviation sector,
 - Commission Communication C(2005) 312 - Community guidelines on financing of airports and start-up aid to airlines departing from regional airports, Official Journal C 312, 09/12/2005, p. 0001.

Maritime Transport:

- Council Regulation (CEE) N° 3577/92 of 7 December 1992, applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), Official Journal L 364 , 12/12/1992 P. 0007 – 0010,
- Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries Official Journal L 378 , 31/12/1986 P. 0001 – 0003,
- Commission Communication C(2004) 43 - Community guidelines on State aid to maritime transport, Official Journal C 013 , 17/01/2004 P. 0003 – 0012.

Inland Transport:

- Council Regulation (EC) No 1356/96 of 8 July 1996 on common rules applicable to the transport of goods or passengers by inland waterway between Member States with a view to establishing freedom to provide such transport services, Official Journal L 175 , 13/07/1996 p. 0007 – 0008,
- Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways, Official Journal L 075 , 15/03/2001 P. 0001 – 0025,
- Council Regulation (EC) No 11/98 of 11 December 1997 amending Regulation (EEC) No 684/92 on common rules for the international carriage of passengers by coach and bus, Official Journal L 004 , 08/01/1998 P. 0001 – 0009,
- Council Regulation (EC) No 12/98 of 11 December 1997 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State, Official Journal L 004 , 08/01/1998 p. 0010 – 0014.

with a GDP per capita lower than 75% of the EU average. Nearly all regions eligible for Objective 1 also have Article 87(3)(a) status (sparsely populated areas are the only exception).

Article 87(3)(c) covers aid to facilitate the development of certain economic areas. This Article gives member states the possibility to assist disadvantaged regions compared to the national average. The list of regions qualifying for this exemption is also decided by the Commission, but on a proposal by member states. Aids granted in accordance with the Article 87(3)(c) and Objective 2 areas must be coherent.

The criteria used for the assessment of regional aid are brought together in two documents: the Guidelines on National Regional Aid⁴⁸ and the Multisectoral Framework on Regional Aid for Large Investment Projects⁴⁹.

2.2.4. De Minimis Aid

The current Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the Treaty to de minimis aid⁵⁰ establishes that aid to an enterprise that is below the threshold of 100.000 Euros over a period of three years and that respects certain conditions, does not constitute state aid in the sense of Article 87(1) of the Treaty, since it is deemed not to affect trade or distort competition. Therefore, such aid does not need to be notified. The only exception is export incentives.

The Commission has issued a new proposal⁵¹ to exempt more small subsidies from the notification obligation as a part of the State Aid Action Plan. The Commission proposes raising the ceiling of the current de minimis regulation from 100.000 to 150.000 Euro. The Commission declared that the increase of the ceiling takes into account the inflation and

⁴⁸ - Guidelines on national regional aid Official Journal C 74, 10.03.1998, pages 9-31,
- Commission communication, review of the guidelines on national regional aid for the period after 1 January 2007, Official Journal C 110, 08.05.2003, page 24.

⁴⁹ Communication from the Commission - Multisectoral framework on regional aid for large investment projects (notified under document No C(2002) 315), Official Journal C 70, 19.03.2002, pages 8-20.

⁵⁰ *OJ L 1 of 13.01.2001.*

⁵¹ http://www.europa.eu.int/comm/competition/state_aid/others/action_plan/dm_en.pdf

GDP growth in the EU. The current proposal also extends the scope of application to the marketing and processing of agricultural products.

2.2.5. Financial Aid

Member states may also grant state aid by giving financial advantages to firms. There are six financial transfer types that the Commission determined as state aid and therefore have to be notified.

*Government capital injections*⁵²: Capital injections from public authorities to enterprises may be evaluated as state aids. The state acquires a share in the enterprise by providing a capital injection. Public holding means a direct holding of central, regional or local government, or a direct holding of financial institutions or other national, regional or industrial agencies which are funded from state resources or over which central, regional or local government exercises a dominant influence.

*Financial transfers to public enterprises*⁵³: Commission considers financial transfers to public enterprises as state aid because the Treaty establishes the principle of impartiality with regard to the system of property ownership (Article 222) and principle of equality between public and private undertakings (Article 87). When assessing whether a financial transfer constitute a state aid, the criteria is to evaluate if the financial advantage is obtained in better conditions than the normal financial market conditions.

*State guarantees*⁵⁴: The state guarantee enables the borrower to obtain better financial terms for a loan than those normally available on the financial markets. Therefore, state guarantees are considered as state aid. Even if no payments are made by the state under a

⁵² Application of Articles 92 and 93 [now 87 and 88] of the EEC Treaty to public authorities' holdings (Bulletin EC 9-1984).

⁵³ - Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings,

- Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings, Official Journal L 193, 29.07.2000, pages 75-78,

- Commission communication to the Member States: Application of Articles 92 and 93 [now 87 and 88] of the EEC Treaty and of Article 5 of the Commission Directive 80/723/EEC to public undertakings in the manufacturing sector, OJ C 307, 13.11.1993, p.3-14.

⁵⁴ Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, Official Journal C 71, 11.03.2000, pages 14-18.

guarantee, there may nevertheless be a state aid under Article 87(1). The aid is granted at the moment when the guarantee is given, and not the moment at which the guarantee is invoked or the moment at which payments are made under the terms of the guarantee.

*Public land sales*⁵⁵: The fact that a member state doesn't respect competition rules in public land sales to private undertakings may affect trade between member states. Therefore, Commission controls all sort of public land and building sales. Commission allows sales advertised over a reasonably long period, without an unconditional bidding procedure, and whose price are formulated within market dynamics.

*Export credit insurance*⁵⁶: Export incentives are strictly restricted within the Internal Market because they distort competition between member states. In some cases, even export incentives given for trade with third countries could be against state aid rules if the Internal Market is affected. Export oriented state aid rules are not dealt only by state aid related articles of the Treaty, but also within Articles 131, 132 and 133 related to foreign trade. Member states should also respect WTO rules.

*Fiscal aid - Direct business taxation*⁵⁷: Fiscal policy is an important tool of granting state aid. If the fiscal advantage is due to the legislation and if there is a general implementation, this is not considered as state aid. Nevertheless, any undertaking should benefit from these advantages equally. Member states can also adopt technical arrangements as an exception to this general ban. Fiscal aids are also considered as state aids. Those aids could be granted as a tax exemption, postponement of payment or payment with an installment plan.

⁵⁵ Commission communication concerning aid elements in land sales by public authorities, (OJ C 209 of 10.7.1997, p.3-5).

⁵⁶ Communication of the Commission to Member States amending the communication pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance, Official Journal C 217, 02.08.2001, pages 2-3.

⁵⁷ Commission notice on the application of the State aid rules to measures relating to direct business taxation, Official Journal C 384, 10.12.1998, pages 3-9.

2.2.6. Services of General Interest

Article 16 of the Treaty which was added with the Amsterdam Treaty, confirms that services of general interest are a key element in the EU, due to their role in promoting social and territorial cohesion. Those services also contribute to the overall competitiveness of the European economy. In certain circumstances, especially when market forces alone do not result in a satisfactory provision of services, public authorities may entrust certain operators of services with obligations of general interest and, where necessary, grant them special or exclusive rights.

Along with Article 16, Article 86(2) of the Treaty states that “*undertakings entrusted with the operation of services of general economic interest or having the character of a revenue producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them*”. The European Court of Justice has also a wide jurisprudence on the subject.

The Commission set three criteria for the compatibility with those rules in its communication on the services of general interest⁵⁸:

- *Neutrality with regard to the public or private ownership of companies,*
- *Member states' freedom to define services of general interest, subject to control for manifest error,*
- *Proportionality requiring that restrictions of competition and limitations of the freedoms of the single market do not exceed what is necessary to guarantee effective fulfilment of the mission.*

Commission issued a decision⁵⁹ in 15 July 2005 on some services of general interest in the framework of State Aid Action Plan. According to this decision, payments of up to 30 million Euros are not to be considered as state aid when they are granted to private companies taking over services of general interest. Member states will be able to grant

⁵⁸ Communication from the Commission - Services of general interest in Europe, Official Journal C 17, 19.01.2001, pages 4-23.

⁵⁹ Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (2005/842/EC).

compensation to small-scale public services, hospitals and social housing without notifying the Commission. The new principles are of particular importance for local governments. Commission, has also adopted a White Paper on services of general interest⁶⁰ on 12 May 2004.

⁶⁰ White Paper on services of general interest, COM(2004) 374 final.

III. STATE AIDS IN TURKEY

3.1. Development of State Aid System

The grassroots of the aid system which is applied in Turkey go back to the 19th century. The aid mechanism has been an important tool to develop the country, particularly during the early years of the Republic, in an economic situation where the lack of capital formation and entrepreneur mindset, as well as infrastructural deficiencies along with post-war migrated qualified labor force were being experienced⁶¹. In Turkey, state aids can be granted by state authorities like Undersecretariat of the Prime Ministry for Foreign Trade, Treasury, Ministry of Finance and state owned banks.

As regards to the development of state aids, it is observed that the state aid practices have been undertaken by various state authorities until they were handed over to State Planning Organisation in 1967. They, then were included under the domain of Ministry of Trade. Following a division which was made in 1972, “investment aids” were attached to the Ministry of Industry whereas “aids related to export” were to the Ministry of Trade. However, in 1980, these two institutions were brought under one single umbrella that led the state aids being attached to the State Planning Organisation again.

Several aid policies were implemented in Turkey, a country of which until 1980, import substitution related and development strategy based policies, and since then export based policies were carried out. In 1994, relevant bodies related to state aid were again divided following being detached from State Planning Organisation and then handed over to the Undersecretariat of Treasury and Foreign Trade in 1991. According to the new organizational structure, export related bodies were attached to the Directorate General of Export at the Undersecretariat of the Prime Ministry for Foreign Trade, whereas investment related ones were attached to the Directorate General of Incentives and Measures at the Turkish Treasury. The reason of this change is both the establishment of

⁶¹ The Development of Turkish Industry and Incentives, İsmail Çiloğlu, Treasury Bulletin, December 2003, p.125.

WTO in 1995 and the necessity of allocating state aids in a new legal framework following the completion of Customs Union between European Union and Turkey⁶².

Currently, there is no institutional structure which would monitor and bring a uniform application of state aids.

3.2. Classification of State Aids in Turkey

State aids in Turkey are classified in two main categories, namely (i) state aid for investment; (ii) export oriented state aid.

3.2.1. State Aid for Investment

The legislation in force concerning investment aid is two-folded; general practices covering the investments throughout the country and practices related to SMEs. Investment aids are regulated by Directorate General of Incentives and Measures of Turkish Treasury. A letter of investment aid should be issued in order to be a beneficiary of investment aid. Firms which have issued the letter in question are exempted from customs duties as well as VAT for the raw materials, intermediate goods and operating supplies that they will import. In addition, tax exception can be applied changing as to the nature, sector and region of the investment.

General aid legislation consists of the “Decision Concerning State Aid in Investments and the Regulation No 2002/1 Related to the Implementation of the Decision Concerning State Aid in Investments”, dated 10.6.2002, numbered 2002/4367. The firms which file an application in this respect can make use of the aids mentioned below:

- Exception for customs duty and Collective Housing Fund,
- VAT exception,
- From the budget;
 - investments for research and development,
 - investments related to environment,

⁶² State Aid Policy in the EU and State Aid Practices in Turkey, Bülent Ferik, Foreign Trade Bulletin, no 31, April 2004, p.17.

- preferential technology investments which are set out by High Council for Science and Technology or the Scientific and Technological Research Council of Turkey (TÜBİTAK),
- investments made to Technology Development Regions,
- allocation of investment credit for the investments to be made to the provinces within the sphere of regional development investments, to the prioritised provinces in development and to the special purposed regions,
- allocation of investment and operational credit for the manufacturing industry, agricultural industry and mining investments which are to be made in the priority regions in development.

Pursuant to the Decision of the Council of Ministers, dated 21.12.2000 and numbered 2000/1822, a separate aid mechanism has been established for SMEs. Loans which were given for obtaining land and inexpensive energy as well as for significant investments are also included in the investment aids.

Measures taken under the aid legislation in Turkey is generally classified under the tax legislation in most developed countries⁶³.

SME related state aid

SMEs are made use of the investment aids in more advantageous terms in comparison to large scale business enterprises. Different incentive provider bodies in Turkey classify SMEs as below:

Institution	Employment			Fixed investment	Other criteria
	Micro	Small	Medium		
KOSGEB	≤50	≤ 150			For manufacturing industry
Treasury	<10	<50	≤250	≤ 950.000 YTL	Capital ratio of large scale business enterprises ≤ %25
People's Bank			≤ 250	≤600.000 YTL	For production and repair work activities

⁶³ Competition Policy of the EU and the Compliance of Turkey, Gert Verhellen-Tunay Köksal, İKV, April 2002, İstanbul, p.96.

The supports given by Small and Medium Industry Development Organization (KOSGEB) are as below:

- Support for skilled-worker employment,
- Support for machine-equipment for common use purposed,
- Support for technology research and development,
- Support for using of computer software,
- Support for SMEs' education,
- Support for test/analysis (including CE mark related ones),
- Support for patent, utility model, industrial design,
- Support for research local economy,
- Support for new entrepreneurs,
- Support for Business Development Center (İŞGEM),
- Support for attending KOSGEB's regional fairs.

People's Bank (Halk Bankası), Foundations Bank (Vakıflar Bankası), Industrial Development Bank (Sinai Kalkınma Bankası) and European Investment Bank also secure inexpensive loans to SMEs⁶⁴.

Regional aid

Less-developed provinces are the regions where energy distress and infrastructural deficiencies, along with many social problems are intensely experienced. Various aids are granted in these regions for better economic and social stability as well as to maintain economic vitality.

A classification system in compliance with EU Regional Statistics System (NUTS) should be established so as to harmonize with EU acquis in the sphere of regional as well as competition policy. Community aids will be allocated to Turkey both in pre-accession period and after becoming EU member according to NUTS system.

⁶⁴ Report of Special Expertise Committee on State Aid Assessment, State Planning Organisation, May 2004, pp. 33-61.

In Turkey, NUTS system has been adopted by the decision of the Council of Ministers, dated 22 September 2002, No 2002/4720. Turkey has established a system for its own regional aids (although with some deficiencies) alike to EU's regional aid system. According to this system, Turkey is divided into three regions:

- Developed provinces (İstanbul and Kocaeli province borders, Ankara, İzmir, Adana, Antalya and Bursa municipality borders),
- Prioritised provinces in development (*Kalkınmada Öncelikli Yöreler*): 49 less-developed provinces where the GDP per capita is less than 1.500 USD.
- Regular provinces;
 - Provinces within the industrial areas,
 - Provinces outside the industrial areas.

The undertakings in Turkey are granted, according to the region they invest in, incentives with different amounts as well as tax and similar cost exceptions. Along with that, the conditions regarding the issuing of incentive letter can also be subject to simplification. Investment and enterprise credit can be issued for the investments flowing from developed provinces to prioritised provinces in development (KÖY) in order to remedy the imbalances between the regions. The contribution of the state is highest in prioritised provinces in development whereas it remains lowest in developed provinces⁶⁵.

Research and development aid

State aid executed by Turkish Treasury: Pursuant to Decision Concerning State Aids in Investments, research and development (R&D) aids are defined as “*the investments made for developing a new product; for improving both the quality and the standard of a product; for R&D studies with the aim of conforming a new technology -which reduces costs and improves standards- into the exclusive conditions of the country; and for the R&D studies of which their activity results can be translated into utility models, equipments, products and various product, method and production technics and of which improves the existing ones technology-wise and finally of which are carried out in scientific terms and on a certain schedule so as to adopt technology*”. It is obligatory to

⁶⁵ State Aid in Investments, <http://www.gap.gov.tr/Turkish/Osektor/ydyardim.pdf>

take the opinion of the Scientific and Technological Research Council of Turkey (TÜBİTAK) for R&D aids⁶⁶.

State aid executed by Undersecretariat of the Prime Ministry for Foreign Trade: Technology development projects which are carried out by industry enterprises and software companies are given financial support by Turkey Technology Development Foundation (Türkiye Teknoloji Geliştirme Vakfı-TTGV). TTGV also serves in the establishment of Technopark and Technology Centers. Furthermore, aid given by TÜBİTAK aim at making contribution to the industry's R&D capacity-building.

State aid executed by the Ministry of Finance: The aim of this support is to boost the R&D activities related to new technology seeking.

Environmental aid

Pursuant to Decision Concerning State Aid in Investments, investments related to environmental protection are defined as; *“The investments for the technologies that involve bringing together, recycling, purifying, destroying all kind of solid, liquid, gas, dangerous waste product in the country which does not require an importation of raw materials for production, including the relieving of the environmental pollution needing urgent precaution determined as hot point by the Ministry of Environment and in addition to that, the investments for the technologies compatible with the environment such as the clean production technologies intended for avoiding situations that may cause an environmental pollution and for the rational usage of natural sources; the technologies that produce clean products; the biotechnology; the clean energy technologies and the sustainable agricultural technologies”*⁶⁷. Furthermore, European Investment Bank provides credit for preventing industrial pollution to the enterprises.

⁶⁶ Report of Special Expertise Committee on State Aid Assessment, State Planning Organisation, May 2004, p.81.

⁶⁷ Ibid., p.121.

Guarantees

It is given through either grants or issuing treasury guarantee so as to achieve progress in various sectors as well as to cover the financial need.⁶⁸

3.2.2. Export Oriented State Aid

The main purpose of exports related incentives is to support the activities of enterprises, primarily SMEs, with respect to exports both at the production and marketing phase, to assist them for solving the problems they encounter in international markets, and to facilitate their competitiveness. On the other hand, Directorate General of Export of the Undersecretariat of the Prime Ministry for Foreign Trade is responsible for the management of exports for the benefit of country economy in compliance with the principles, targets and policies in both the development plans and annual programmes; to take the necessary measures for supporting and orientating the exports; and to follow up and to assess the implementation and alike.

As a result of both Turkey's WTO membership and the harmonization of laws due to Turkey's inclusion in the EU's Customs Union, there has been a change in the state aid system of which used to be based on export performing and domestic product use. Following these developments, some aid practices were ended and the practices which falls under "horizontal aids" within the scope of EU state aid acquis, started to be more emphasized.

Export related aid

Export related aids are as below⁶⁹:

1) Aid for opening an office or a warehouse abroad: (Undersecretariat for Foreign Trade-DTM/General Secretariat of Exporting Unions): It is compatible with EU/WTO rules.

⁶⁸ Ibid., p.123.

⁶⁹ Ibid., p. 165-233;

Undersecretariat of the Prime Ministry for Foreign Trade,
(<http://www.dtm.gov.tr/IHR/dvyardim/dvyardim.htm>);
KOSGEB,
(<http://www.kosgeb.gov.tr/Destekler>).

- 2) *Aid for education* (DTM/İGEME): It is compatible with EU/WTO rules.
- 3) *Aid for employment* (DTM): It is compatible with EU/WTO rules.
- 4) *Aid for market survey* (DTM/İGEME): It is compatible with EU/WTO rules.
- 5) *Aid for environmental costs* (DTM): It is compatible with EU/WTO rules.
- 6) *Aid for R &D:* (DTM): It is compatible with EU/WTO rules.
- 7) *Aid for branding of Turkish products and for creating an image of Turkish product:* (DTM/ General Secretariat of Exporting Unions): It is compatible with EU/WTO rules.
- 8) *Aid for trademark orientations* (KOSGEB): It is compatible with EU/WTO rules.
- 9) *Aid for participation to exports-purposed international business trips* (KOSGEB): It is compatible with EU/WTO rules.
- 10) *Aid for international fairs* (DTM/ General Secretariat of Exporting Unions): It is compatible with EU/WTO rules.
- 11) *Aid for national participation in domestic fairs* (DTM/KOSGEB): It is compatible with EU/WTO rules.
- 12) *Aid for participation in international fairs other than national participation* (KOSGEB): It is compatible with EU/WTO rules.
- 13) *Aid for participation in international industry-specialised fairs organized in home country* (KOSGEB): It is compatible with EU/WTO rules.
- 14) *Exports refund on agricultural products* (DTM)
- 15) *Twinnings aids* (KOSGEB)

Exemptions from tax, duty and charge

The measures taken as tax, duty and charges exemption aim at increasing exports, developing export markets and facilitating competitiveness in international markets for export products through decreasing the costs of exporting firms. The supporting instruments for the functioning of this programme are exemptions from tax, duty and charges whereas the implementing bodies are customs offices, Central Bank, General Secretariat of Exporting Unions, banks, notaries, private finance bodies, factoring and insurance companies⁷⁰.

⁷⁰ Report of Special Expertise Committee on State Aid Assessment, State Planning Organisation, May 2004, p.239.

Inward Processing Regime

Inward Processing Regime (*Dahilde İşleme Rejimi*), which allows processing of raw material that were imported without having been subject to customs duty and trade policy safeguards as well as exporting of processed products to the thirds countries, is put in force within the scope of Decision on Inward Processing Regime numbered 95/7615.

Aid is granted to increase the level of exports through obtaining raw material over world market price. The instrument which is used for the implementation of aid programme is tax exemption (VAT and all sorts of tax, duty and charge exemption). The implementing bodies of the programme are Directorate General of Export of the Undersecreteriat of the Prime Ministry for Foreign Trade and Directorate General of Customs.

New customs legislation is compatible with EU acquis to large extent, though some comments have been made in the Commission's last Progress Report, notably on the lack of effective implementation as well as the existence of some conflicting rules which hinder the legislation. On the other hand, Prime Ministry Undersecreteriat of Customs carries out technical harmonization process in this area.

Free Trade Zones

Free Trade Zones⁷¹ (*Serbest Ticaret Bölgeleri*) can be defined as one or more areas of a country where tariffs and quotas are eliminated and bureaucratic as well as legal requirements on trade and financial areas are lifted or lowered in order to attract companies by raising the incentives for doing industrial and commercial activity there.

The instrument that is used as an incentive is tax exemption (corporate tax, income tax, VAT and all sorts of tax, duty and charge exemption). The competent body is Directorate General of Free Trade Zones of the Undersecreteriat of the Prime Ministry for Foreign Trade.

⁷¹ As of 30.05.2005, there are 3930 firms conducting activity and 33.378 people employed in free trade zones in Turkey. Trade volume of these zones is 17 billions USD in 2003 whereas this increased to 22 billions USD in 2004.

It is observed that incentives of tax exemptions which are granted in the free trade zones are compatible with WTO norms since these incentives do not include the sales restrictions with the purpose of isolating the country market (it brings no restriction on imports to the country) and that they are applied to all importing as well as exporting firms on a non-discriminatory manner.

In the new customs legislation, the provisions which are conform to the ones regulating EU Customs Code have been adopted. According to that legislation, the income obtained by the production-oriented firms through the sales of the products that they have manufactured will not be subject to corporate and income tax until the end of Turkey's entry year to the EU and this rule will apply to the enterprises in question irrespective of their licence date⁷².

In the EU Commission's Progress Report, in regards to the free trade zones, it is underlined that there are still some outstanding issues, with the exception of customs code, concerning harmonization level. It is furthermore stated that the legislation concerning customs-free areas should also be improved for better implementing of the customs provisions, although the new Tax Law, which was adopted in January 2004 fostered progress in tax auditing on the enterprises established in the free trade zones. The fact that the EU Commission does not put serious pressure on lifting tax exemptions in the free trade zones can be justified by the likewise practices, which allow tax exemptions to the free trade zones in the EU⁷³.

Finance of export

It is observed that a demand regarding the finance of exportation occurs due to the structural problems of financial markets and of real sector in developing countries. The production as well as the exportation sectors are negatively affected by the fact that the vast majority of firms in Turkey consists of SMEs, that the firms are lacking the equity

⁷² Free Trade Zones Reality, Levent Gençyürek;
http://www.alomaliye.com/levent_gencyurek_serbest_bolgeler_gercegi.htm

⁷³Report of Special Expertise Committee on State Aid Assessment, State Planning Organisation, May 2004, p.256.

capital, and the financial markets experience difficulties while making conversion to the real sector.

Eximbank gives loans with advantageous terms in respect of market conditions (short-term export loans, specialised loans, loans within the scope of services with currency gain, loan for finance of exports mediation, loans of Islam Development Bank). Eximbank has also country loan/guarantee programmes and insurance programmes⁷⁴.

3.3. Compliance of State Aid with the EU Acquis

3.3.1. State Aid under the Customs Union

Following the Decision 1/95 of the EC-Turkey Association Council⁷⁵, Turkey committed to harmonize its competition legislation with the EU acquis in the scope of Customs Union. Rules regarding the acts of undertakings that infringe competition have entered into force by Law No. 4054 Concerning the Protection of Competition whereas rules regarding the monitoring of state aids have not yet been adopted.

Article 32 of the Decision 1/95 which defines the competition rules on state aid is similar to the Article 87 of the Founding Treaty. In this context, aids;

- *which are allocated from state resources,*
- *which apply advantageous conditions to certain enterprises or encouraging the production of certain goods,*
- *which have as their object or effect the prevention, restriction or distortion of competition,*
- *affecting the trade between EU and Turkey are considered incompatible with the Customs Union.*

Exemption rules, likewise, put similar conditions to the Founding Treaty. In this regard, state aids are divided into two-folds as; (i) aids that can be granted exemption directly, (ii) aids that can be granted exemption following the assessment of the Association Council.

⁷⁴ Ibid., p.266-282.

⁷⁵ Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union (96/142/EC).

Differently from the Founding Treaty, “aids granted for the economic development of the less-developed regions of Turkey” are included to the aids fully compatible with the functioning of the Customs Union, provided that they do not adversely affect trading conditions between the EU and Turkey and that the duration of their application is only limited to a period of five years after the entry into force of the Customs Union. Such an Article is still in force with respect to the Federal Republic of Germany in the Founding Treaty and it is also included in the Decision 1/95. Such aids actually, are among the aids which are “exemption grantable” following the assessment of the Commission within the scope of Article 87(3)(a) of the Treaty. Therefore, the fact that aids granted for regional development are directly exempted is in favor of Turkey. It has been anticipated that this five years limit can be prolonged by the Association Council.

As regards the aids which can be considered compatible with the functioning of the Customs Union, there exists a difference between the Decision of the Association Council and the Founding Treaty. Aids which are “*to facilitate the development of certain economic regions or of certain economic activities*” as defined in Article 87(3)(c) of the Founding Treaty are translated in Decision 1/95 as “*aids aiming at accomplishing structural adjustment necessitated by the establishment of the Customs Union*”. It is also stated that this Article will be valid for a period of five years after the entry into force of this Decision and that the Association Council shall review the application of that clause after the aforesaid period. Since there has not been any development in this regard, the Association Council did not issue such a decision.

In Article 37 of the Decision of the Association Council, it is stated that all aids granted in textile and clothing sectors before the entry date of the Customs Union, as well as all state aids granted within two years following the entry into force of the Customs Union must be harmonized in conformity with EU rules and that the Commission should be informed afterwards. Similarly, aids over 12 millions Euros which are planned for granting should also be notified to the Commission.

In the Decision, it is also stated that there should be a mutual information exchange between the relevant bodies of both parties. Following this mutual information exchange, not only EU as regards any aid in Turkey but also Turkey as regards the one in the EU,

they both reserve the right to raise objection in case they consider this aid contrary to the EU acquis. In case any dispute arises in the former, parties shall refer the dispute to the arbitration⁷⁶ if they fail to settle it within 30 days. If the latter applies, Turkey will call the Association Council for a meeting and in case the dispute continues, the Association Council can bring the dispute before the ECJ. Furthermore, pursuant to Article 36, in case parties consider that a particular practice is incompatible with the state aid rules of the Decision 1/95 and,

- state aid authority cannot be established,
- such practice causes or threatens to cause serious prejudice to the interest of the EU or Turkey and material injury to their domestic industry,
- such practice cannot be assessed under the GATT system,
- no resolution can be achieved after consultation within the Joint Customs Union Committee,

then party which claims prejudice to its own interest may take appropriate measures that will least disturb the functioning of the Customs Union, within 45 working days. It is also mentioned that the EU case law can be used in the considerations within the scope of the Customs Union.

In Article 35, it is stated that the Association Council shall, within two years following the entry into force of the Customs Union, adopt a decision to specify the role of each competition authority. Until the adoption of such a decision, the provisions of the GATT Subsidies Code shall be applied as the rules for the implementation. However, this decision has not yet been taken since neither the relevant authority has been established nor the compliance with the acquis has been completed. Due to the lack of this decision, disputes concerning state aid that affect trade between Turkey and the EU as well as that impede competition may only be settled at the WTO. Therefore, above mentioned state aid rules

⁷⁶ Decision 1/95 Article 60:

1. If a dispute has been referred to arbitration there shall be three arbitrators.
2. The two parties to the dispute shall each appoint one arbitrator within 30 days.
3. The two arbitrators so designated shall nominate by common agreement one umpire who shall not be a national of either party. If they cannot agree within two months of their appointment, the umpire shall be chosen by them from seven persons on a list established by the Association Council. The Association Council shall establish and review this list in accordance with its rules of procedure.
4. The arbitration tribunal shall sit in Brussels. Unless the parties decide otherwise, it shall adopt its rules of procedure. It shall take its decisions by majority.

are not yet implemented. In addition, it is observed that some articles have been subject to lapse of time even before the Association Council could take the implementation decision (e.g. five years exemption clause that can be prolonged).

Settlements at the WTO are based on different criteria from EU's state aid acquis. One of its main reasons is that GATT allows the injured party to take retaliatory measures and to apply sanctions; whereas the EU, on the contrary, settles such disputes before the ECJ⁷⁷.

In Article 42 of Decision 1/95 which defines "Trade Defence Instruments", it is stated that the Association Council may decide to suspend the application of trade defence instruments, provided that Turkey has implemented competition, state aid control and other relevant parts of the *acquis communautaire* which are related to the Internal Market and has ensured their effective enforcement. Since this decision is not yet taken, EU can still apply trade defence measures to Turkey like anti-subsidy taxes for the aids incompatible with the *acquis*, regardless of the Customs Union relation.

3.3.2. Current Harmonization Level

Pursuant to Decision 1/95, Turkey committed to align its competition and state aid legislation with the EU *acquis*. In this regard, Turkey should undertake its obligation to establish a "State Aid Monitoring Authority". In 2001, a working committee, consisting of the representatives of relevant bodies, was set up under the coordination of the General Secretariat of EU Affairs, for preparing the founding law of this authority. Following this, a draft law was prepared in the beginning of 2002.

On the other hand, control of state aid and relevant legislation to align with has been listed in the first Accession Partnership Agreement⁷⁸, which was adopted by the EU Council in 8 March 2001. In this Agreement, securing transparency in the state aid practice as well as regular monitoring of state aid is defined as a short-term priority.

⁷⁷ State Aid Control in the EU and Turkey, Mustafa Mehmet Özkaraüber, Competition Authority, no. 47, Ankara, 2003, p.60.

⁷⁸ Council Decision of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey (2001/235/EC).

In 2002, a twinning project with a 1 million Euros budget has been accepted for assisting the harmonization and implementation works on state aid. Project could not be carried out since the draft law has not yet been adopted.

In a document prepared by Turkey in the end of 2002, namely “Emergency Action Plan”⁷⁹, it is envisaged to establish a “Directorate General of State Aids” under the domain of State Planning Organisation for the monitoring of state aid, and a new law (with small changes) has been drafted thereafter.

However, as the relevant authority is not yet established, “aligning with the EU Acquis and establishing a national state aid authority” are included once again as a short-term priority in the Revised Accession Partnership Agreement⁸⁰ of 19 May 2003. Differently from the former Accession Partnership Agreement, the necessity of establishing a state aid authority is separately and explicitly mentioned in addition to the alignment of legislation, in the Revised Accession Partnership. During the whole process, EU nevertheless has continued its persistent comments on the issue in the Commission’s Progress Reports as well as in the other important documents.

In National Programmes of 2001⁸¹ and 2003⁸², which were prepared by Turkey as a respond to the Accession Partnership Agreements, it is also anticipated that an alignment with the EU acquis should be achieved; state aids should be monitored and a state aid monitoring authority for submitting the necessary notifications to the EU Commission should be established. In National Programme of 2003, it was planned that the “Law Concerning Monitoring and Control of State Aids” shall enter into force in 2003 and the alignment with the acquis is to be completed within six months after the establishment of the relevant authority. However, it failed to comply with this schedule.

⁷⁹ Emergency Action Plan of the 58. Government of the Republic of Turkey, 3 January 2003, <http://ekutup.dpt.gov.tr/plan/aep.doc>

⁸⁰ Council Decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Turkey (2003/398/EC).

⁸¹ National Programme for the Adoption of the Acquis 2001, http://ec.europa.eu/comm/enlargement/turkey/pdf/npaa_full.pdf

⁸² National Programme for the Adoption of the Acquis 2003, http://ec.europa.eu/comm/enlargement/turkey/npaa_2003.htm
<http://www.abgs.gov.tr/up2003/up.htm>

In this respect, under the competition policy chapter of the Commission's 2004 Progress Report⁸³, it is underlined that *“no progress has been made on the adoption of state aid legislation; Turkey is committed under the Customs Union and the ECSC Turkey Trade Agreement to align with the EU acquis in the state aid sector; the aids granted result in potential distortions of competition in markets; the legislation has not yet adopted nor an operationally independent state aid monitoring authority has been established and this delays the adoption of an Association Council decision on the implementation of competition rules.”*

EU Commission has also emphasized that the aids granted in the electrics, coal and iron-steel sector should be aligned with the EU acquis. Pursuant to 1996 ECSC Turkey Trade Agreement⁸⁴, regarding steel, Turkey requested the prolongation of the period in which restructuring aid may be granted to the steel industry, the Turkish authorities have also been called to submit an acceptable national restructuring programme for the steel sector providing appropriately detailed information and individual business plans for all companies involved in the restructuring process. The technical work of the national restructuring programme has been concluded in June 2005 but the programme has not yet been adopted⁸⁵. The EU had provided technical assistance for the national restructuring programme⁸⁶. The first and only state aid notification was also made to the European Commission by Turkey in connection with the restructuring programme in 2001.

State Planning Organization, as a competent authority on state aid, published a comprehensive report in May 2004 by its Special Expertise Committee⁸⁷.

The European Commission, in its 2005 Progress Report⁸⁸ states again that no new developments can be reported with regard to the adoption of state aid legislation or the establishment of an operationally independent state aid monitoring authority. Commission

⁸³ Regular Report on Turkey's progress towards accession COM(2004) 656 final, Brussels, 6.10.2004.

⁸⁴ ECSC Turkey Trade Agreement 1996,
http://www.gelirler.gov.tr/gelir2.nsf/akctsta_metin?OpenPage

⁸⁵ See; <http://www.dtm.gov.tr/AB/akctweb/yy%20projesi.htm>

⁸⁶ State Aid Scoreboard Spring 2006, COM(2006) 130 final, 27.3.2006, Brussels.

⁸⁷ Report of Special Expertise Committee on State Aid Assessment, State Planning Organisation, May 2004,
<http://ekutup.dpt.gov.tr/ekonomi/politika/devletya.pdf>

⁸⁸ Turkey 2005 Progress Report COM (2005) 561 final, Brussels, 9 November 2005,
http://ec.europa.eu/comm/enlargement/report_2005/pdf/package/sec_1426_final_en_progress_report_tr.pdf

argued that this hinders the implementation of a state aid control regime and results in distortions of competition in markets via the allocation of public aid, and decreases the transparency of financial transactions made between the state and undertakings.

According to the Commission, regarding the steel sector, even though a law related to investment allowance has been notified in April 2005 and limited progress has been achieved as regards the draw up of the national steel restructuring programme, the Turkish authorities have not ensured a satisfactory level of transparency on state aid granted to the sector as envisaged in the 1996 ECSC-Turkey Free Trade Agreement.

Currently, the works undertaken for the monitoring and control of state aids as well as for alignment with the EU acquis and the establishment of a state aid monitoring authority in this regard have been completed and the draft law has been sent to the Prime Ministry. However, it should be emphasized that these preparations aim the opening of the accession negotiations on the competition policy chapter, but that the adoption of the secondary legislation and the effective implementation of the acquis along with the administrative capacity building remain as forthcoming challenges.

The Turkish Government declared in April 2006 that the 10. Reform Package which is expected to come into force before the Commission's 2006 Progress Report on Turkey, includes along with other economy related laws, the new law on state aid. The draft law is restricted to the public so it is still unpublished.

IV. STATE AID IN THE FRAMEWORK OF ACCESSION NEGOTIATIONS

The last enlargement of the Union to 10 countries of Central and Eastern Europe and the Mediterranean, namely; Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia and Slovenia was realised in May 2004. The accession of Romania and Bulgaria, as expected in 1 January 2007, will complete the fifth enlargement of the EU. For these ten countries, the accession negotiations on competition policy chapter, which include state aid, was opened in May 1999 and closed in December 2002⁸⁹. For Bulgaria it was opened in March 2001 and closed in December 2004. For Romania it was opened in November 2000 and closed in December 2004.

Previous enlargement processes show that state aid control is one of the most difficult fields of the accession negotiations with the EU. Turkey is not an exception, furthermore there is much more to do if we consider the greater population, weak economy and wide range of incentives given. Moreover, unlike the anti-trust rules where a successful implementation was realised, Turkey made nearly no preparation for the adoption of state aid rules. In order to illustrate how state aid rules can play a critical role in the negotiation process; we may evoke that in the Accession Treaty for Romania and Bulgaria it has been stated that accession of Romania in 1 January 2007 could be postponed for one year (nevermore which is not the case for the moment) if they did not fulfill their obligations in the state aid area alongside some other deficiencies⁹⁰.

Enlargement presents a challenge both from the procedural and substantive point of view. In terms of substance, it is needed to ensure the application of state aid rules in the economies which are, in some respects, still different from those of the current member states, and which have not always yet fully completed the process of transition from centrally planned to market-based economies⁹¹.

In terms of procedure, the Commission has to deal with additional workload created by examining state aid measure in ten new member states, working in new Community

⁸⁹ See; Annex 1.

⁹⁰ Accession Treaty 2005 – Accession Protocol, Article 39.

⁹¹ Ayşegül Baybars, Harmonization of Turkish State Aid System with the European Union Rules Towards EU Membership, MA thesis, Marmara University EC Institute, Istanbul, 2005, p.28.

languages alongside the existing workload. Rough estimates suggest that enlargement increases state aid workload by about 40% and although the budgetary authority makes some additional resources available⁹².

In the fifth enlargement Estonia, Latvia, Lithuania, Bulgaria and Romania did not request any transition period in the accession process under this chapter, while the other seven countries, namely S.Cyprus, Czech Republic, Hungary, Malta, Poland, Slovenia and Slovakia requested transition periods in state aid acquis.

The Accession Treaty of fifth enlargement (2003) granted some transition periods in the state aid rules for SME's, regional aid and restructuring of sensitive sectors. In the negotiation process while it is possible that candidate countries may withdraw their demands, it is also possible countries that do not request any transition period in their position papers, obtain it at the end. We recognise that all sectors earning a transition period have a particular importance for the candidate country's economy. Usually, restructuring of those sectors is very costly.

However, it is not appropriate to argue that EU has a flexible approach on the state aid policy by the fact that candidate countries may have transition periods. It is well known that Commission strictly implements state aid rules and by no means allows competition in Internal Market being distorted by unlawfull state aids. Transition periods indicated in the Accession Treaty are definitive and can only be extended by a new negotiation. Implementation of those transitional arrangements is also strictly monitored by the Commission. New member states are also not allowed to abuse those transitional arrangements in a way to create a competition advantage vis-à-vis other member states.

A new system for monitoring and control of state aid is established in the fifth enlargement. This system aims to monitor existing state aids granted by new member states and to control new state aid schemes. It is applied to all aids with the exception of agriculture and transport sectors. State aids are classified in two categories as existing aid and new aid. The fact that an aid is classified as existing or new aid engenders important consequences. New aid must be notified to the Commission and can be subject, if found

⁹² Ibid, "Mario Monti, New Challenges for State Aid Policy, June 2003".

unlawful, to the recovery procedure. On the other side, existing aid is only subject to future regulation. Existing aid is all aid that was put into effect before, and is still applicable after, the entry into force of the EC Treaty in a new member state. However, the Accession Treaty provides further, narrower criteria as follows: aid that has been granted in the new member states prior to accession and that is still applicable after accession, is only deemed to be existing aid if one of the following criteria is met:

- the aid measure was put into effect before 10 December 1994,
- the aid measure is explicitly mentioned in an appendix to the Accession Treaty,
- the aid is notified to the national state aid authority and approved by this authority and no objection has been raised by the Commission within three months.

Only in the transport sector, state aids granted before accession have been recognised as existing aid until May 2007, provided that they are notified to the Commission before accession.

4.1. Candidate Countries in the Fifth Enlargement⁹³

We believe that it is crucial to analyse in detail Accession Treaties and the position papers of the candidate countries to deduce conclusions about what Turkey should do as preparation to the negotiation process and to predict what Turkey can get as compromise from the Union regarding the implementation of the state aid rules.

Czech Republic

Negotiations in the competition policy chapter with the Czech Republic were opened in May 1999 and closed in October 2002. Czech Republic, in his first position paper⁹⁴ for the negotiations, declared that it accepts and will be ready to implement the *acquis* concerning competition policy including state aid.

⁹³ All information mentioned in this chapter have been taken from the Accession Treaty 2003 (<http://europa.eu.int/eur-lex/lex/JOhtml.do?textfield2=236&year=2003&Submit=Search&serie=L>), Accession Treaty 2005

(http://ec.europa.eu/comm/enlargement/negotiations_eu10_bg_ro/treaty_of_accession_2005/pdf/Treaty_of_Accession_Bulgaria_Romania.pdf),

and respective position papers of the candidate countries (some of them unpublished).

⁹⁴ Negotiation Position of Czech Republic in the Competition Policy chapter; <http://www.euroskop.cz/eng/Article.asp?id=41650&cat=5193&ts=8ec91>

In its position paper, the Czech Republic did not request any transition period in the competition policy chapter and has stated that all institutional bodies necessary for the implementation and enforcement of the EC legislation in this area would be in place and operational before accession. However, while requesting no transition periods, it finds it necessary, in the first years of membership, to take into account, with the application of these provisions, the specificities of the post-transformation period of the Czech economy and to sign a special protocol with the Union.

This is more like a demand of favour from the Commission than a formal request. The motive behind this request is that the negotiation process in fact does not imply “real” negotiations between candidate countries and the Union, only the time and method of harmonization being discussing. Czech Republic, knowing that a flexible approach from the Commission would create controversies between member states and may raise complaints, and therefore expecting that the Commission would reject such a demand, preferred rather to act this way. We also witness the same request on the other candidate countries’ position papers. This leads us to suppose that negotiating countries have had serious concerns about the consequences of implementation of state aid rules on the new born market economies of the Middle and Eastern Europe. Candidate countries tried to overcome this weakness by implementing restructuring programmes for sectors in difficulty.

The above request did not find acceptance by the Union. In the Accession Treaty 2003, there is only a protocol on the restructuring of Czech steel industry. It is not surprising to witness such a tolerance for the Czech Republic, as the latter has an important steel and motor vehicle production.

Protocol No 2 on the Restructuring of the Czech Steel Industry provides that state aids granted by the Czech Republic for restructuring purposes to the Czech steel industry from 1997 to 2006 (no state aid shall be given after the date of accession) shall be deemed to be compatible with the common market. Only companies listed in the Accession Treaty are eligible for state aid in the framework of the restructuring programme. Restructuring of the industry is made in accordance with individual business plans. The aid shall only be granted once and no further state aid shall be granted by the Czech Republic for

restructuring purposes to the Czech steel industry. The total restructuring aid is limited to a maximum amount. Protocol also provides specific clauses regarding privatisation issues, capacity reduction of firms, the coal market and environmental protection.

The Commission and the Council shall monitor the restructuring on annual basis. The Czech Republic shall supply the Commission with six monthly reports concerning the restructuring of the benefiting companies. Commission may require the Czech Republic to take appropriate measures to reinforce the restructuring measures of the benefiting companies concerned. If the conditions for the transitional arrangements contained in the Protocol have not been fulfilled, the transitional arrangements contained in the Protocol shall not have effect and Commission shall take appropriate steps requiring any company concerned to reimburse any aid granted in breach of the conditions laid down in the Protocol.

As it might be observed, the Protocol implies very constraining conditions against the Czech Republic.

S.Cyprus

Negotiations in the competition policy chapter with the S.Cyprus opened in May 1999 and closed in June 2002. S.Cyprus did not request transition periods but added a note in its position paper⁹⁵ stating that *“the subject of enterprises owned by non-residents and directing their business activities outside S.Cyprus, will be discussed in a comprehensive manner within the context of the acquis screening for taxation policy”*.

In the Accession Treaty 2003, a transition period of six months is foreseen for off-shore enterprises. Under the agriculture policy, S.Cyprus may also provide state aids during a period of 5 years from the date of accession to ensure that the average family income in certain deprived areas does not fall below 80% of the national average. This aid shall be provided only to farmers participating in rural development schemes other than the European Guidance and Guarantee Fund.

⁹⁵ Negotiation Position of S.Cyprus on the Competition Policy chapter;
<http://www.eu-coordinator.gov.cy/harmonization/harmonization.nsf/All/B0C69E51DB2DC751C2256E83003609D3?OpenDocument>

Hungary

Negotiations in the competition policy chapter with Hungary opened in May 1999 but could not be provisionally closed because of the delay in the negotiations, consequently closed with the signature of the Accession Treaty in 2003.

In its position paper, Hungary made a reference to Article 87(3)(a) of the Treaty, namely “*aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment*” and expressed its will of being eligible under Objective 1 of Structural Funds as the whole country as well as its regions. This shows the close link between state aid and regional policy.

For the control of state aid which will be implemented by the Commission following accession, Hungary took a step further from Czech Republic’s above-mentioned request. The wording used in the position paper also merits attention: “*The Hungarian Government is aware that in spite of the growing preciseness of the Community competition acquis, the European Commission still has a certain degree of discretion or at least some room of interpretation or assessment when deciding whether an aid scheme or a specific aid is compatible or incompatible with the common market. Although Hungary does not request any exemption from the application of the Community rules, it will expect a treatment under which due account is taken of the level of economic development of the country and the need to remedy the regional and social difficulties that may continue to exist or may emerge after accession. Hungary requests the confirmation in an appropriate way that this expectation will be met.*”

We have mentioned that accession negotiation process with the Union is not a real negotiation in the literal meaning of the word, and thus is getting more and more strict in every enlargement (especially in the case of Turkey), nevermore, Hungary argues the “*degree of discretion or at least some room of interpretation or assessment of the Commission*” and moreover expects a “confirmation” from the Commission that it will be tolerated. This is probably the most demanding request made by candidate countries in the fifth enlargement negotiation process for the competition policy chapter.

In the Accession Treaty 2003, many transitional arrangements are foreseen for Hungary. Corporate tax exemption for small and medium-sized enterprises is allowed until the end of 2011. Regarding state aids for regional investments, the aid amount could not exceed a maximum of 75% of the eligible investment costs if the undertaking started its investment under the scheme prior to 1 January 2000 and if the undertaking started its investment during the years 2000-2002, the total investment aid could not exceed a maximum of 50% of costs. Furthermore, if the undertaking is active in the motor vehicle sector, those rates are limited respectively by 30% and 20% of the eligible investment costs. Hungary may apply corporate tax reductions granted before 2003 until 2006 and local authority fiscal aid until 2008. Hungary is bound to supply to the Commission information on the fulfilment of the conditions on transitional arrangements.

Malta

Negotiations in the competition policy chapter with Malta opened in November 2000 and closed in October 2002. Malta requested a transition period of seven years for aid to shipbuilding and shiprepair sector. Moreover, a transition period of eighteen months in order to phase out the support scheme of tour operators and a transition period for aid granted by virtue of the Industrial Development Act and the Malta Freeport Act to allow these enterprises to continue to benefit from state aids until their legitimate rights expire⁹⁶.

In the Accession Treaty 2003, Malta is allowed to maintain operating aid granted under the fiscal schemes until 2009 with some conditions. Malta may also apply corporate tax exemptions granted up until 30 November 2000 for small and medium-sized enterprises operating on free trade ports until 2012. Regarding state aids for regional investments, the aid amount could not exceed a maximum of 75% of the eligible investment costs if the undertaking started its investment under the scheme prior to 1 January 2000 and if the undertaking started its investment during the year 2000, the total investment aid could not exceed a maximum of 50% of costs. Malta is allowed to grant restructuring aid to the shipbuilding and shiprepair sectors until 2009. Restructuring aid for those sectors which are crucial for the Maltese economy has been granted only to indicated firms and in the framework of detailed business plans. In the Accession Treaty, there are similar

⁹⁶ Negotiation Position of Malta on the Competition Policy chapter;
http://www.mic.org.mt/Malta-EU/position_papers/chap_06.htm

transitional arrangements foreseen for Hungary, Malta and Poland although with particularities and different rates.

Poland

Negotiations in the competition policy chapter with Poland opened in May 1999 but could not be provisionally closed because of the delay in the negotiations, consequently closed with the signature of the Accession Treaty 2003.

Poland, in its position paper⁹⁷ declared that it will not request derogations or transition periods with the exception of state aid granted to entrepreneurs in Special Economic Zones where it requests a transition period until the end of 2017. However, the position paper implies some disguised transition period requests in several areas, namely:

- State aid for environmental protection,
- Regional aid,
- State aid for rescuing and restructuring undertakings in difficulty.

Poland introduced the same reasoning with the Hungary regarding the general economic weakness and underdevelopment. Poland pointed out the fact that after accession, its level of economic development will be below EU average and as a consequence the whole territory of Poland will meet the conditions defined in the Article 87(3)(a) of the Treaty. Hence, it expected an appropriate clause to be included as a protocol to the Accession Treaty.

In the environmental protection area, Poland stated that the adoption of the Community rules in a relatively short period would engender financial burdens far exceeding capacities of Polish entrepreneurs; therefore it requested to maintain the possibility of granting aid exceeding thresholds provided by the Community guidelines.

Poland argued that in the transition period, businesses will be threatened with going into liquidation before the restructuring programmes to rescue them have been developed and implemented, hence demanded to continue granting state aid for rescuing firms in

⁹⁷ Negotiation Position of Poland on the Competition Policy chapter;
<http://www.negocjacje.gov.pl/neg/stne/pdf/stne6en.pdf>

difficulty. Poland also requested a right to use aid to rescue businesses in the form of six months maturity postponements and one-off rescheduling of their liabilities into instalments.

Poland demanded to use those state aids until it will met the Maastricht economic criteria relating to interest rates, when loan guarantees and loans at market interest rates will become a cheaper and more commonly available aid instrument. Poland argued that under such economic conditions, taking advantage of rescue aid in the form of maturity postponement or repayments in instalments will cease to be necessary.

Poland also retained the right to request permission to use more flexible measures in the scope of regional policy. In this respect, Poland applied for admissibility to grant “*operational and export aid, exemptions from the principle of aid cumulating, aid ceilings and restrictions ensuing from principles for granting aid to the motor vehicles sector*” for businesses active in the existing Special Economic Zones until the end of 2017. Poland’s justification for this request is the obligation of payments of indemnities to investors who have invested in the zones therein. Poland also declared that it will not establish any new Special Economic Zones. State aid to the Polish steel industry had been subject to separate talks with the EU.

Poland is the country who obtained most transition periods in the Accession Treaty 2003. Corporate tax exemption for medium-sized enterprises is allowed until 2011 and for small enterprises until 2012. Regarding state aids for regional investments, the aid amount could not exceed a maximum of 75% of the eligible investment costs if the undertaking obtained its Special Economic Zone permit before 1 January 2000 and if the undertaking obtained its permit during the years 2000, the total investment aid could not exceed a maximum of 50% of costs. Furthermore, if the undertaking is active in the motor vehicle sector, the total aid shall not exceed a maximum of 30% of the eligible investment costs. Poland is bound to supply to the Commission information on the fulfilment of the conditions on transitional arrangements.

According to the Accession Treaty, Poland may also grant state aid for environmental protection for investments aiming to adopt EU standards until the end of 2007, provided

that the aid intensity is limited to the applicable regional aid ceiling. In the case of small and medium-sized enterprises, intensity can be raised by 15%. The aid ceiling is limited by 30% of the eligible investment costs for existing installations. The aid ceiling is 50% for the large combustion installations which require more investment.

A protocol on the restructuring of Polish steel industry (Protocol No 8) was also included in the Accession Treaty 2003. This protocol implies similar conditions with the one made for Czech steel industry explained above.

Slovakia

Negotiations in the competition policy chapter with Slovakia opened in May 2000 and closed in January 2002. Slovak Republic did not request any derogation or transition period for the implementation of legislation on state aid rules. However, there is a few transition periods foreseen in the Accession Treaty 2003. As a consequence, we recognise that in the negotiation process parties may change their positions.

Slovakia obtained the right to apply the corporate income tax exemption to one beneficiary in the motor vehicle industry until the end of 2008, provided that the total aid does not exceed 30% of the eligible investment costs or until the aid reaches the maximum admissible level. Slovakia shall provide the reports regarding the restructuring programme. Similar conditions also applied for one beneficiary in the steel industry, until the end of 2009 with the condition that the aid beneficiary would cap its production and sales of flat products in the EU. The total aid granted to the beneficiary would not exceed a total of 500 million USD. Slovakia is required to supply detailed production and sales reports to the Commission. The aim of the aid is indicated as “to support reducing the manpower surplus in a rational way”.

In the Accession Treaty 2003, a transition period of six months is also foreseen under the agriculture policy; Slovakia may until the end of 2006 continue to grant state aid in order to ensure the functioning of the warehouse receipt and goods receipt system. Slovakia shall submit an annual report to the Commission on the implementation of this aid measure, indicating the form and the amounts of the aid.

Slovenia

Negotiations in the competition policy chapter with Slovenia opened in May 1999 and closed in November 2001. Slovenia did not request any transition period on state aid rules. Nevertheless, for the application of the state aid rules, Slovenia, claiming that it is still undergoing a very demanding process of transition to a developed market economy, expressed its expectation that its special circumstances and needs are properly considered and that it shall be allowed to use state aids for solving pressing problems of economic restructuring. Especially, labour intensive sectors (textile and footwear manufacture) and steel industry are shown as the sectors having the most serious restructuring problems. Hence Slovenia, in line with the other candidate countries, expected a flexible implementation of state aid rules to narrow the lag of the country behind the EU Member States in the level of economic development⁹⁸.

There is no clause regarding this request in the Accession Treaty 2003. Anyway, Slovenia obtained a transition period for five years under the agriculture policy from the date of accession to grant state aid for the production of oil pumpkins applying the following rates: 100% for the first three years, 80% for the fourth year, 50% for the fifth year. Slovenia is bound to submit an annual report to the Commission on the implementation of the aids, indicating the form and the amount of the aid.

Bulgaria

In its position paper⁹⁹ (dated 29 May 2000), Bulgaria did not request transition periods for the competition policy chapter. Anyway, Bulgaria requested to be treated as an area, identical to the areas of the Community described under Article 87(3)(a), claiming that it needs a special treatment because of economic disparities between Bulgaria and EU.

Hence, the Accession Treaty 2005 does not include any transitional arrangement for Bulgaria.

⁹⁸ Negotiation Position of Slovenia in the Competition Policy chapter;
<http://www.sigov.si/ops/ang/index.html>

⁹⁹ Negotiation Position of Bulgaria in the Competition Policy chapter;
http://www.minfin.government.bg/docs/CONF_BG%2029_00.pdf

Romania

Romania did not request transition periods in its negotiation position¹⁰⁰ (dated 1 August 2000), however it became one of the candidate countries which obtained more transition periods than the others in the fifth enlargement. Romania stated in its negotiation position that it is necessary to grant state aids to the sensitive sectors of the economy and the deprived areas due to the difficulties confronting the Romanian economy during the transition to a market economy. Romania also claimed that after accession, Romania's development level will not exceed the EU average, and, consequently, the whole territory of Romania will comply with the conditions laid down in Article 87(3) of the EC Treaty.

The Accession Treaty 2005 provides those transitional arrangements: *“Phase-out of incompatible fiscal aid by the end of 2011 under the Law on Free Trade Areas for undertakings, which signed commercial contracts before 1 July 2002. Phase-out of incompatible fiscal aid on Deprived Areas for the undertakings by the end of 2010, which were given before 1 July 2003. Those aids are granted for regional investments and net intensity must not exceed 50% net grant equivalent (up to 65% for SMEs provided that the total net aid intensity does not exceed 75%). For both aid, the total aid shall not exceed a maximum of 30% of the eligible investments costs in the motor vehicle sector.”*

The Accession Treaty contains a safeguard clause in the area of Internal Market as well as a specific safeguard that will allow postponing the envisaged date of accession by one year to January 2008. For Romania, any serious shortcomings observed in the 2005 Commission's report in the area of Competition Policy, especially as regards the state aid enforcement record, could activate either of the safeguard clauses. The use of the postponement safeguard clause should require a decision by the Council acting by qualified majority on the basis of a Commission recommendation if it is based on shortcomings in Romania's fulfilment of specific conditions in the competition area. In addition, the Accession Treaty provides a mechanism whereby the state aid granted before accession and after 1 September 2004 will be reviewed after accession and, if found to be

¹⁰⁰ Negotiation Position of Romania in the Competition Policy chapter; <http://www.infoeuropa.ro/jsp/page.jsp?cid=194&lid=2&id=216>

illegal, impose reimbursement, for the case that Romania does not sufficiently improve the state aid enforcement record¹⁰¹.

Romania, at the conclusion of the accession negotiations (14 December 2004) made specific commitments on state aid policy¹⁰²:

- *To ensure effective control by the Competition Council of any potential state aid, including in relation to state aid foreseen by means of deferrals of payments to the state budget of fiscal or social liabilities or deferrals of liabilities related to energy supply.*
- *To strengthen the state aid enforcement record without delay and to ensure a satisfactory enforcement record in the areas of both anti-trust and state aid thereafter.*
- *To submit to the Commission by mid-December 2004 a revised steel restructuring plan and to fully respect the commitment not to grant or pay any state aid to the steel mills.*
- *To continue devoting adequate financial means and sufficient and adequately qualified human resources to the Competition Council.*

The 2005 European Commission Monitoring Report on the state of preparedness for EU membership of Romania¹⁰³ states that increased efforts are needed in the state aid control and steel restructuring programmes implementation. Nevertheless, postponement of the accession does not seem to be a probable option for the moment as it is not recommended by the Commission.

4.2. Assessment of the Fifth Enlargement

If we compare and assess transitional arrangement requests made by candidate countries, the first point to draw attention is the common request made by Czech Republic, Hungary and Slovenia regarding the general economic weakness and underdevelopment. The fact that this is not a concrete request makes it also difficult to assess its consequences. In the Accession Treaty, this request is not mentioned, so the Council did not agree with candidate countries. However, we cannot certify if the Commission overlooked or allowed some margin in the regional, sectoral or other types of state aids granted by those countries

¹⁰¹ www.eu.int/comm/enlargement/negotiations/chapters/chap6/index.htm

¹⁰² The Accession Treaty 2005, Annex IX.

¹⁰³ European Commission Monitoring Report on the state of preparedness for EU membership of Bulgaria and Romania, COM(2006) 214 final, 16.5.2006.

after accession. Despite being in a far more difficult position than these countries both economically and in the framework of state aid rules enforcement, Romania did not use such a wording.

Candidate countries attached an important role to regional aids. Nine of twelve candidate countries have requested that all regions and their country as a whole to be considered as disadvantaged regions, hence within the Objective 1, under the negotiations on regional policy. The main reason of this request is the candidate countries' bidding to attract foreign investments to these regions which can benefit more easily of regional aids. Consequently, with the exception of S.Cyprus, and the cities of Prague and Bratislava which qualify for assistance under Article 87(3)(c) of the Treaty, the entire territories of the ten new member states declared eligible at Article 87(3)(a) level.

When we evaluate together the negotiation positions of candidate countries on competition policy and on regional policy, it seems very clear that Article 87(3)(a) and (c) are of crucial importance in order to obtain exemptions from state aid rules for economic reasons. For competition policy, state aid schemes to be allowed by the Commission and for regional policy structural funds to be delivered are determined within the context of this Article.

One of the main challenges after the accession of fifth enlargement countries to the EU in May 2004, has been the necessity to redefine the regional aid policy. There were fierce discussions on the distribution of regional aids by the structural funds and on the competition rules applied on regional aids granted by member states. EU-15 claimed that their poorer regions still have to be eligible for most of the regional aids and by this virtue, could continue to attract foreign investments. On the contrary, new member states argued that old member states should not benefit from these aids because their economic development is sufficiently high on the country base even if they have poorer regions. Even the strongest member states such as Germany or France are concerned about the loss of competitiveness vis-a-vis the new member states.

Nevertheless, regional aids in the EU are generally diminishing continuously. In EU-15, only 7.6 billion Euros (one fifth of the total aids) are granted for "less-developed regions"

within the context of Article 87(3)(a) during 2003, while this amount was 28 billions in 1993 and 9 billions in 2000.

Meanwhile, the Commission expresses that the overall level of aid granted for the least developed regions has increased significantly with enlargement. For the Union as a whole, an estimated 12.3 billion Euros of aid was granted exclusively for assisted Article 87(3)(a) regions in 2004. This represents 27% of total aid (less agriculture, fisheries and transport for which a regional breakdown is not available)¹⁰⁴.

Another type of aid which is largely tolerated in the accession negotiations is the restructuring aid, particularly for sensitive sectors. Steel industry had been subject to separate talks with EU because of its economic importance as a heavy industry, and because of large amounts of aid granted to the sector. Motor vehicle production which is also a leading sector like steel industry obtained some privileges. Restructuring aid differs from other type of aids because it is granted only once and within a detailed business plan. Candidate countries are also obliged to report the Commission on the use of restructuring aid.

We witness that all restructuring aid or tax exemption obtained are crucial for these sectors, which are also crucial for the candidate country's economy. As an example, having an important commercial fleet and shipbuilding and repair sector, Malta requested and obtained a transition period for these sectors. However, S.Cyprus which is also one of the leading countries in those sectors, did not request nor obtain a similar transition period. On the other hand, S.Cyprus in its turn requested and obtained a short transition period for tax exemption for non-resident off-shore firms which derive an important income to its economy.

It is not surprising to observe that SMEs, which are highly supported in the Community's economic policies, obtained privileges in the accession negotiations. Under the agricultural policy some transition periods related to the competition policy are also foreseen for deprived areas. Free trade zones, which are as important for the member states as they are for the candidate countries have benefited from long transition periods.

¹⁰⁴ State Aid Scoreboard Autumn 2005, COM(2005)624 final, 9.12.2005, Brussels.

The new member states have gained considerable success on the implementation of the state aid policies of the Union since their accession. We can use two indicators to assess the level of improvement of the new member states' state aid policies: (i) decrease of state aid volume in general, (ii) orientation of state aids to horizontal objectives. These are the two main state aid objectives of the Union.

The new member states pumped significantly more money in the form of state aid into their businesses than the EU-15 prior to accession. On average, state aid in the new member states amounted to 1.42% of GDP in 2000-2003, while the EU-15 average was 0.4%. Poland tops the list with an average 2.4 billion Euros per year, followed by the Czech Republic (1.9 billion Euros) and Hungary (0.6 billion Euros). Together they account for 86% of total state aid in the EU-10. The overall level of aid relative to GDP after accession has fallen sharply in Cyprus, Czech Republic and Malta due largely to the phasing out of pre-accession measures¹⁰⁵.

In the Spring 2005 State Aid Scoreboard¹⁰⁶, horizontal aid rate granted by the new member states before accession is indicated as 24% in comparison to the total aid granted. This rate is very limited compared to 79% in EU-15 in 2003. Commission argued that this limited rate is partially due to privatisations and restructuring aid granted in order to increase competitiveness in the new member states (especially for financial, coal and steel sectors). In the Autumn 2005 State Aid Scoreboard, we recognise that state aid granted by all 25 EU member states to horizontal objectives accounts for 76% of total aids. This demonstrates the improvement in the new member states in order to attain the horizontal objective. Lithuania and Estonia have granted %100 of the state aids to horizontal objectives in 2004¹⁰⁷.

¹⁰⁵ State Aid Scoreboard Autumn 2005.

¹⁰⁶ State Aid Scoreboard Spring 2005, COM(2005) 147 final, 20.04.2005, Brussels.

¹⁰⁷ State Aid Scoreboard Autumn 2005.

4.3. Obligations of Turkey during the Accession Process

Like all the other candidate countries, Turkey must align with the EU legislation on state aid on the accession date. State aids which are incompatible with the EU acquis are not allowed to remain in force thereafter. Only a limited number of state aids can benefit from transition periods.

4.3.1. Official Documents of the EU

In the Commission's document "Issues Arising from Turkey's Membership Perspective"¹⁰⁸ of 6 October 2004, it is underlined that "*in order to ensure a level playing field in the internal market, Turkey would need to start complying with its state aid control obligations, which will present an important challenge to the Turkish economy*". This approach of the Commission differs from the classical EU approach regarding the subject, as the Commission points out the economic and administrative burden that the adoption of the state aid legislation will bring to Turkey. In all the essential enlargement documents since the 2000 Progress Report and especially in the past one year, the EU has pointed out the obligations of Turkey regarding state aids, as we shall explain in the following paragraphs.

The Commission stated in its Enlargement Strategy Paper 2005¹⁰⁹, "*In the area of competition policy, provisions concerning undertakings are satisfactorily aligned and implemented by the competition authority. On the other hand, on state aids, no progress can be reported as regards alignment or enforcement. Therefore alignment remains very limited, despite specific bilateral commitments. Particular attention should be devoted to state aids control in the steel sector.*"

In its turn, the Council specifies, in the last Accession Partnership¹¹⁰ document, the short-term priorities of Turkey as the following:

¹⁰⁸ Issues Arising from Turkey's Membership Perspective, European Commission, COM(2004) 656 final, 6.10.2004, Brussels.

¹⁰⁹ Enlargement Strategy Paper 2005, Communication From The Commission, COM (2005) 561 final, 9.11.2005, Brussels.

¹¹⁰ Council Decision on the principles, priorities and conditions contained in the Accession Partnership with Turkey 2006/35/EC, 23 January 2006, Brussels.

- *Align with the acquis concerning state aids, including in sensitive sectors such as steel, establish a national state aid monitoring authority and ensure a strict control of state aids.*
- *Ensure transparency and continuous exchange of information in the competition and state aid field.*

The Council listed the medium-term priorities as the following:

- *Consolidate enforcement in the anti-trust and state aid field with special attention to monopolies and undertakings with special and exclusive rights.*
- *Pursue the restructuring of the steel sector in the framework of an agreed comprehensive sectoral programme.*
- *Increase awareness of the anti-trust and state aid rules among all market participants and aid grantors.*

While the entire demands related to the competition chapter in the Accession Partnership 2003 were classified under the short-term priorities, the Council has foreseen a gradual progress in the Accession Partnership 2005, as the strengthening of the competition policy extended to the medium-term priorities. There are also two new medium-term priorities related to state aid which were not mentioned in the former Accession Partnership; (i) restructuring of the steel sector, (ii) increasing awareness.

In the Negotiation Framework¹¹¹ for Turkey issued in 3 October 2005, it has been stated that “*in addition to legislative alignment, accession implies timely and effective implementation of the acquis*”. The emphasis put on the “effective” implementation, which is also binding for the other candidate country the Croatia, without being an unexpected claim, gives us the clue that the forthcoming accession process shall be stricter than the fifth enlargement. Moreover, this can be depicted throughout the Negotiation Framework. Negotiation Framework also states that “*in all areas of the acquis, Turkey must bring its institutions, management capacity and administrative and judicial systems up to Union standards, both at national and regional level, with a view to implementing the acquis*”.

<http://europa.eu.int/cgi-bin/eur-lex/udl.pl?REQUEST=Seek-Deliver&COLLECTION=lif&SERVICE=all&LANGUAGE=en&DOCID=306D0035>

¹¹¹ Negotiation Framework for Turkey, 3 October 2005, Luxembourg, http://ec.europa.eu/comm/enlargement/docs/pdf/negotiating_framework_turkey.pdf

effectively or, as the case may be, being able to implement it effectively in good time before accession”.

Another sensitive issue is that the Council, acting by unanimity on a proposal by the Commission, will lay down benchmarks for the provisional closure and, where appropriate, for the opening of each chapter. Where relevant, benchmarks will also include the fulfilment of commitments under the Association Agreement, in particular those pertaining to the EU-Turkey Customs Union. Furthermore, any provision of the Association Agreement which departs from the *acquis* cannot be considered as precedents in the accession negotiations. This means that the provisions of the Association Agreement may be subject to new negotiations.

When the Commission recommends the opening of negotiations at one chapter, it shall assess Turkey’s position in relation to the *acquis* and its progress for effective and efficient implementation of the important points of the *acquis*. As to the state aid policy, this means that the establishment of a state aid monitoring authority is a must for the opening of the negotiations on the competition policy chapter and the effective functioning of this institution along with the effective implementation of the state aid *acquis* shall be a must for the provisional closure. On the other hand, it should be kept in mind that Turkey has completed, to a large extent, the harmonization work as well as the implementation regarding the competition rules for undertakings.

The Commission has recently declared benchmarks on the competition policy chapter, thus recommending the opening of the fourth chapter on negotiations:

- Ensure transparency in the area of state aid by providing a comprehensive inventory of all state aid measures covered by the Association Council Decision No 1/95 on implementing the final phase of the Customs Union.*
- In the case of state aid given to the steel sector, Turkey shall provide detailed information on the evolution of capacity and the state aid given to each company since 2001.*
- Adopt and have enter into force a state aid law setting out general conditions and rules for the authorisation of, for monitoring the implementation of, and for the*

recovery of state aid for the purpose of implementing the obligations resulting from existing bilateral agreements between Turkey and the EU.

- Set up an operationally independent state aid authority with the powers necessary for the full application of the state aid rules resulting from existing bilateral agreements. This authority should have the power to authorise state aid schemes and individual aid grants, as well as the power to order the recovery of state aid that has been unlawfully granted. Until then, and in line with the requirements of the Customs Union Agreement, avoid the adoption of new aid schemes or the extension of existing ones, which raise doubts for the Commission as to their being clearly compatible with EU rules.

- Present an action plan, accepted by the Commission, with a clear timetable for the alignment of all remaining aid schemes or equivalent measures identified as incompatible with the obligations resulting from existing bilateral agreements between Turkey and the EU.

- Adopt all necessary measures to ensure that no steel company benefits from state aid given in breach of the Agreement between the ECSC and Turkey on trade in coal and steel products. Such state aids given since 2001 could be accepted by the Council under strict conditions to be embodied in a national restructuring programme; any such restructuring programme should, in order to better meet those strict conditions, be adopted before 1st of September 2006.

4.3.2. Establishment of the Relevant Authority

In Turkey, state aids are granted by several instances under different legislations. Incentives given by those public bodies are mostly in the form of tax exemptions. As indicated in the Commission's Progress Reports, a transparent inventory of state aids does not exist. There is no authority empowered to control state aids granted by those public bodies varying from ministries to public banks.

Another serious concern is the cumulation of state aids because of the excessive number of "state aid granting bodies" and the "lack of inventory". Contrary to the EU practice of predetermining the cumulation ratio for each type of state aid, enterprises in Turkey may cumulate incentives through legal as well as administrative loopholes.

As a result, the effectiveness of the state aids can not be evaluated. Furthermore, these deficiencies weaken the incentive system against the corruption. These are the main problems of the state aid system in Turkey.

In the draft law, which has been hanging on for four years at the Prime Ministry, it is foreseen that the relevant authority shall be under the domain of State Planning Organization as a “Directorate General”. This department shall be autonomous in the meantime. The main reason why this mandate has been accorded to the State Planning Organisation is that this institution has dealt with this issue since 1967 (although with intervals). The anticipated authority, namely “State Aids Monitoring and Auditing Authority”, to be established, is going to be in charge of assessing the compliance of state aid measures with the criteria laid down in the EU acquis; so that the Commission may pursue its monitoring duty through addressing this authority. Once Turkey becomes a member of the EU, this authority shall transfer its mandate to the Commission, which has the exclusive competence on this area in the EU.

The EU has a wide range of legislation on state aid consisting of the Founding Treaties, the secondary law and the case law. Therefore, monitoring and auditing of state aids need technical expertise. State Planning Organisation must develop a sufficient technical infrastructure as well as an expert staff in a short time. It should be also beared in mind that this institution shall transfer its duty of control of the state aids to the Commission with the accession and will only be responsible of monitoring and reporting. Therefore, the organization and the capacity of the institution should be configured taking this aspect into consideration. However, it should also be taken into account that the accession process for Turkey could be long enough; therefore the institution must have sufficient capacity during the accession process.

This authority should be refrained from political influences and pressures so as to make an independent and transparent monitoring and control of state aids. Furthermore, this authority should not involve in the process of granting state aids¹¹². This is a delicate issue as the State Planning Organization is the institution, which is solely responsible of

¹¹² Harmonization of State Aids in the EU Accession Process; Ali Urkan, State Aids in the EU Acquis and Turkey’s Alignment, Akdeniz University Economic Research Center for Mediterranean Countries, Antalya, 2004, p.144.

planning the aid schemes to be emphasised from a strategical point of view and is also directly responsible of the granting of regional aids. Furthermore, this institution is under the domain of the Prime Ministry, so it is very dependant to the Government. The European Commission also uttered its concerns on the subject.

Additionally, different legislations regulating aids on the same areas should be compiled together, and it should be maintained that the aid measures are coherent as well as complementary to each other. As Turkey designated (even if it is not an officially declared date) the target to join the Union in 2014, the anti-trust policy and state aid policy should also be planned and implemented in coordination and coherence in order to shorten the accession process.

The ongoing bureaucratic conflict among three institutions in Turkey, namely State Planning Organization, the Competition Authority and the Ministry of Finance aspiring to assume the mandat on state aid control, as well as the Government's incertitude and latitude on the subject are blocking, even at this very moment, the negotiation process in the competition policy chapter. The Competition Authority, which has proved its competence successfully on the anti-trust policy with its nine years experience and has a valuable experience as well as administrative capacity and trained staff, appears as the most adequate candidate, although the current Government has rather a tendency towards the State Planning Organization. The designation of the Competition Authority as the body responsible of the control of the state aids would also resolve the afore-mentioned problem of coordination between anti-trust and state aid policies.

Other EU candidate countries, Croatia and Macedonia have adopted national legislation on state aid and established national state aid monitoring authorities. Furthermore, as regards potential candidate countries, Serbia and Montenegro established state aid monitoring structures within their Ministry of Finance in 2005 and Albania established a new department in the Ministry of Economy in 2004¹¹³.

¹¹³ State Aid Scoreboard Spring 2006, COM(2006) 130 final, 27.3.2006, Brussels.

4.3.3. Obligations and Challenges Related to Harmonization Work

In the Negotiation Framework for Turkey, the Union has drawn a strict framework for the transitional arrangements: *“The Union may agree to requests from Turkey for transitional measures provided they are limited in time and scope, and accompanied by a plan with clearly defined stages for application of the acquis. For areas linked to the extension of the internal market, regulatory measures should be implemented quickly and transition periods should be short and few; where considerable adaptations are necessary requiring substantial effort including large financial outlays, appropriate transitional arrangements can be envisaged as part of an ongoing, detailed and budgeted plan for alignment. In any case, transitional arrangements must not involve amendments to the rules or policies of the Union, disrupt their proper functioning, or lead to significant distortions of competition. In this connection, account must be taken of the interests of the Union and of Turkey. Transitional arrangements or safeguards should be reviewed regarding their impact on competition or the functioning of the internal market.”*

Turkey shall have to go for some changes in its current aid schemes and to give an end to some of them during the EU accession process. It should also be taking into account, in advance, that EU acquis on state aid could undergo changes (apart from anticipated reform process).

It is observed that the state aid system in Turkey promotes SMEs in many ways. In comparison to the large-scale enterprises, SMEs can be granted more exemptions due to their employment-boosted and innovative nature. Therefore, all sort of aid allocated to the SMEs, apart from the export incentives, may remain in force even after the implementation of the EU acquis.

State aid measures in Turkey promote investments in the prioritised provinces in development as well as in the industry regions. It can be said that the incentives, which are granted in purpose of promoting regional development and some certain industrial investments, are in compliance with the EU’s competition and regional policy. The whole country shall be entitled to benefit from the regional aids as it falls under the areas where the standard of living is abnormally low or where there is serious underemployment within

the scope Article 87(3)(a) of the Treaty and according to the current regional policy definitions of the EU. The regions whose income level remains 75% under the EU level benefit from the EU cohesion funds most. The income per capita in Turkey is approximately only one fourth of the EU, even after the fifth enlargement. However, it should not be expected for Turkey to be allocated structural aids proportionate to its size in the pre-accession period¹¹⁴.

Turkey shall have the right to benefit from all structural funds upon accession. In this situation, Turkey (no matter that the new members are rather the most beneficiary parties) should contribute to the budget either. Another important issue is that the pre-accession funds for the candidate countries can only be allocated through the establishment of a relevant authority, namely Regional Development Agencies under the domain of the State Planning Organization. Therefore, Turkey must promptly complete its administrative structure and the harmonization works with respect to the alignment with NUTS system in order to be entitled to benefit from those aids.

Exports incentives are the primary aid measures, which should be transformed drastically during the accession period. The export made to the EU and to the third countries should be evaluated differently. The incentives given for the exports to the EU should be abolished. The reason is that the benefits expected from the completion of Customs Union or Internal Market might not be achieved until the state aids, which adversely affect trade and distort competition cease to exist. The Commission holds a rigid stand towards the export incentives that would be given in the Internal Market. State aids granted for the exports to third countries shall remain as being subject to the WTO rules as before¹¹⁵.

Tax incentives should be re-arranged to cover all investments as general measures. Horizontal aids and regional aids should be supported by more intensive and rational

¹¹⁴ The 2005 pre-accession financial assistance programme for Turkey consists of a national programme and associated expenditure on multi-country programmes, communication and management, bringing the overall total to 300 million Euro in 2005 and 500 million in 2006.

¹¹⁵ State Aid Control in the EU and Turkey, Mustafa Mehmet Özkaraüber, Competition Authority, no. 47, Ankara, 2003, p.58.

incentive instruments¹¹⁶. As anticipated recently, free trade zones in Turkey will maintain their current situation until the end of Turkey's entry year to the EU.

As regards to sectoral aids; it would be beneficial for Turkey to make exceptional arrangements for certain sectors during the accession process -even if these sectors have not been subject to exceptional rules in the EU- in order to facilitate the transition period.

Whereas, full compliance with the EU acquis must be accomplished at the time of accession. Candidate countries in the fifth enlargement struggled to prolong granting state aids as much as possible. Harmonizing state aids with the EU acquis could weaken enterprises in the short term, especially the small ones (considering that 99% of enterprises in Turkey are SMEs). However, in the long term, harmonization shall bring economic benefits through increasing financial discipline.

All public bodies should make arrangements to minimise the effects of aids on competition through conducting cost/benefit or impact analysis on the state aid schemes that they will implement¹¹⁷, especially in the sensitive sectors (steel, textile, shipbuilding, automotive, cement, food, agriculture, fisheries, shoemaking, tanning, supply industry, etc.).

The very controversial issue of the reconstruction of steel industry should be resolved at once (according to the Commission; before 1st of September), as it is declared one of the opening benchmarks of the negotiations on the competition policy chapter. The National Restructuring Programme, depending on the political decision in order to be implemented, is supposed to cost around one billion USD according to the Turkish press; nonetheless, if it's not implemented, the European Commission may impose anti-subsidy measures to Turkish steel sector.

¹¹⁶ The Development of Turkish Industry and Incentives, İsmail Çiloğlu, 136-137, Treasury Journal, Special Issue for the 80. Anniversary of the Republic, December 2003.

¹¹⁷ Assessing the Development of State Aids System in Turkey, Saadet Deniz, State Aids in the EU Acquis and Turkey's Alignment, Akdeniz University Economic Research Center for Mediterranean Countries, Antalya, 2004, p.165.

Special Expertise Committee of the State Planning Organisation, in the conclusion part of its report on state aid, published in May 2004, makes the following recommendations relating the harmonization work¹¹⁸:

- *Regional re-classification according to the NUTS criteria should be made,*
- *Priority list regarding the investments and/or enterprises to be supported should be made,*
- *Sensibility on environment and environmental awareness should be considered as obligatory,*
- *Family firms should be institutionalised,*
- *Technological infrastructure and production management of the firms should be restructured for boosting their competitiveness,*
- *Bureaucracy on the state aid practice should be reduced,*
- *The aid should be defined in line with the objective and the target group and the sustainability of the investment and/or enterprise should be maintained,*
- *The incentives should be easily applicable and varied (converting of technology database, production for the world markets, establishing foreign partnerships on technology share, settling in the less developed and economically, socially, geopolitically important regions),*
- *SMEs should be improved, R&D initiatives should be supported, less developed regions should be improved and technological and competitive sectors instead of traditional sectors should be supported,*
- *Organised industrial regions, industrial regions and technology development regions should be made attractive for investments.*

¹¹⁸ Report of Special Expertise Committee on State Aid Assessment, State Planning Organisation, May 2004, p.160.

V. CONCLUSION

While the Commission assesses whether or not the candidate countries could comply with the EU acquis on competition, and resist the pressure of competition within the Internal Market after membership; it takes into consideration if the enterprises in the candidate countries are used to conduct activities in a similar environment to the Internal Market. After experiencing the Customs Union for eleven years, Turkish economy has proved that it can resist the pressure of competition of the Internal Market. Turkey must harmonize its state aid legislation with the EU acquis so as to fully accommodate itself with the competition conditions of the Internal Market.

Once the relevant law is adopted and an autonomous “State Aid Monitoring and Auditing Authority” is established, the secondary law on the state aid acquis must be transposed into national law and its effective implementation must be achieved. The former is the benchmark for the opening of negotiations and the latter is the benchmark for the provisional closure.

State aid rules applied in the EU tend to increase the level of productivity; the purpose is both granting less aid and maintaining more effective use of aids granted. Upon completion of the new legal framework and establishment of the relevant authority that shall bring uniform application, not only state aids shall be granted in a transparent way but also the competition environment in Turkey shall improve. In addition, following the fulfillment of obligations in the state aid area, upon a decision taken by the EU-Turkey Association Council, EU shall not be able to impose anti-dumping or anti-subsidy measures against Turkey. Furthermore, alignment with state aid rules shall substantiate the Customs Union between EU and Turkey on a more solid ground.

State aids are widely used in the EU and its member states. Today, the most important problem encountered on the state aid issue in Turkey is not, in fact, the principles or the instruments which are taken into account, but the lack of financial resources¹¹⁹. As Turkey has smaller enterprises compared to the EU, most enterprises in Turkey shall be able to

¹¹⁹Undersecretariat of the Prime Ministry for Foreign Trade,
<http://www.dtm.gov.tr/SORULAR/AB/Devlet.htm>

benefit from incentives since they fall under the scope of SMEs. Moreover, regarding the income level, it is observed that the whole country is in the scope of less developed regions under the definition of Article 87(3)(a) of the Treaty, so that regional aids granted could easily be exempted. Therefore, it would be possible to provide as much aid as the actual situation after the accession, only the nature of some aids shall have to change.

The accession negotiations on the competition policy chapter shall mainly consist of transition period requests on state aids. Turkey has already harmonized its incentive system at an important degree due to its WTO and Customs Union obligations. Considering that anti-trust policy is well implemented in Turkey, the negotiations on the competition policy chapter could be concluded in a short time¹²⁰, if conducted with a wise strategy and sufficient political will.

¹²⁰ After the relevant law shall be put into force, the administrative capacity building and the training of the expert staff could take two years according to the Commission's officials. As the accession negotiations on the competition policy chapter in the fifth enlargement took between 2-3 years, Turkey is able to conclude negotiations on this chapter as timely as 2009, if it complies with the opening benchmarks before the end of 2006.

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ANNEXES

ANNEX 1: NEGOTIATION SCHEDULE ON COMPETITION POLICY IN THE FIFTH ENLARGEMENT

	Opening Decision	Screening	Opening	Temporary Closing	Closing
Czech Republic	December 1997	April 1998 / July 1999	May 1999	January 2002	December 2002
Estonia	December 1997	April 1998 / Autumn 1999	May 1999	November 2001	December 2002
S.Cyprus	December 1997	April 1998 / Autumn 1999	May 1999	January 2002	December 2002
Latvia	December 1999	April 1998 / end of 1999 – beginning of 2000	May 2000	November 2001	December 2002
Litvania	December 1999	April 1998 / November 1999	May 2000	November 2001	December 2002
Hungary	December 1997	April 1998 / July 1999	May 1999	-	December 2002
Malta	December 1999	May 1999 / January 2000	November 2000	-	December 2002
Poland	December 1997	April 1998 / November 1999	May 1999	-	December 2002
Slovakia	December 1999	April 1998 / February 2000	May 2000	January 2002	December 2002
Slovenia	December 1997	April 1998 / September 1999	May 1999	November 2001	December 2002
Bulgaria			March 2001	June 2004	December 2004
Romania			November 2000	-	December 2004

ANNEX 2: STATE AID SCOREBOARD AUTUMN 2005

State aid awarded in the Member States, 2004

	Total state aid less railways in billion euros	Total state aid less agriculture, fisheries and transport in billion euros	Total aid less railways as % of GDP	Total aid less agriculture, fisheries and transport as % of GDP
EU-25	61.6	45.5	0.60	0.44
EU-15	56.4	42.0	0.57	0.43
10 new MS	5.2	3.4	1.09	0.70
BE	1.0	0.7	0.34	0.24
CZ	0.4	0.2	0.41	0.19
DK	1.4	1.0	0.71	0.52
DE	17.2	15.1	0.78	0.69
EE	0.0	0.0	0.39	0.09
GR	0.5	0.3	0.29	0.20
ES	4.0	3.1	0.47	0.37
FR	8.9	6.3	0.54	0.39
IE	1.0	0.4	0.65	0.27
IT	7.0	5.4	0.52	0.40
CY	0.2	0.1	1.48	1.06
LV	0.0	0.0	0.39	0.16
LT	0.1	0.0	0.68	0.13
LU	0.1	0.0	0.31	0.17
HU	1.0	0.7	1.26	0.87
MT	0.1	0.1	3.10	2.71
NL	1.8	0.9	0.39	0.18
AT	1.4	0.5	0.61	0.22
PL	2.9	2.0	1.47	1.01
PT	1.5	1.1	1.09	0.83
SI	0.2	0.1	0.96	0.53
SK	0.2	0.2	0.64	0.63
FI	2.5	0.6	1.66	0.38
SE	2.7	2.2	0.99	0.80
UK	5.4	4.2	0.32	0.25

Trend in the level of state aid in the EU Member States, 1994-2004

	EU-25		EU-15			
	Total state aid less agriculture, fisheries and transport in billion euros	as % of GDP	Total state aid less railways in billion euros	as % of GDP	Total state aid less agriculture fisheries and transport in billion euros	as % of GDP
1994			77.5	1.08	58.9	0.82
1995			77.0	0.98	57.0	0.73
1996			75.5	0.95	56.7	0.71
1997			95.5	1.14	76.2	0.91
1998			64.3	0.74	48.8	0.56
1999			54.8	0.61	38.5	0.43
2000	46.0	0.46	56.6	0.60	40.9	0.43
2001	47.0	0.47	58.0	0.61	42.5	0.45
2002	52.7	0.52	63.5	0.66	46.8	0.48
2003	48.8	0.49	55.3	0.58	39.4	0.41
2004	45.5	0.44	56.4	0.57	42.0	0.43
Annual average 2000-02	48.5	0.48	59.4	0.62	43.4	0.45
Annual average 2002-04	49.0	0.48	58.4	0.60	42.9	0.44

Sectoral distribution of aid by Member State, 2004

	% of total							Million euro
	Manu- facturing	Services (including tourism, financial, media and culture)	Agri- culture	Fisheries	Coal	Transport excluding railways	Other non- manu- facturing	Total
EU-25	59	5	23	1	9	2	1	61617
BE	65	4	26	0	0	2	2	972
CZ	37	5	47	6	4	0	0	352
DK	71	2	20	1	0	6	0	1375
DE	66	4	12	0	18	0	0	17236
EE	24	0	76	0	0	0	0	35
EL	66	3	28	2	0	0	1	473
ES	49	1	18	3	28	0	0	3975
FR	54	7	26	1	10	2	0	8915
IE	33	8	58	0	0	0	0	951
IT	72	5	16	2	0	6	0	7037
CY	35	24	29	0	0	0	12	184
LV	25	15	60	0	0	0	0	44
LT	16	0	81	1	0	0	3	122
LU	48	8	45	0	0	0	0	78
HU	63	1	31	0	5	0	0	1015
MT	87	0	13	0	0	0	0	134
NL	47	0	45	0	0	8	0	1813
AT	32	4	63	0	0	0	0	1427
PL	51	0	31	0	17	0	1	2873
PT	13	61	24	1	0	0	2	1475
SI	46	1	45	0	6	0	2	250
SK	98	0	2	0	0	0	0	212
FI	22	1	74	0	0	3	0	2483
SE	75	4	12	0	0	7	2	2745
UK	71	0	18	2	1	2	6	5442

ANNEX 3: STATE AID REFORM IN THE EU (2005-2009)

Current	Future														
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Guidelines, frameworks, etc.</td> </tr> <tr> <td>R&D</td> </tr> <tr> <td>Regional</td> </tr> <tr> <td>Environnement</td> </tr> <tr> <td>Risk capital</td> </tr> <tr> <td>Large investments</td> </tr> <tr> <td>Rescue and restructuring</td> </tr> </table>	Guidelines, frameworks, etc.	R&D	Regional	Environnement	Risk capital	Large investments	Rescue and restructuring	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Guidelines, frameworks, etc.</td> </tr> <tr> <td>R&D</td> </tr> <tr> <td>Regional</td> </tr> <tr> <td>Environnement</td> </tr> <tr> <td>Risk capital</td> </tr> <tr> <td>Rescue and restructuring</td> </tr> <tr> <td>Services of general economic interest</td> </tr> </table>	Guidelines, frameworks, etc.	R&D	Regional	Environnement	Risk capital	Rescue and restructuring	Services of general economic interest
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Rescue and restructuring															
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Source: Competition Policy Newsletter, European Commission, No.2, Summer, 2005, p.16.