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COVER NOTE

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signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
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the Council, the European Economic and Social Committee and the Committee
of the Regions - EU State Aid Modernisation (SAM)

Delegations will find attached Commission document COM(2012) 209 final.

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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

EU State Aid Modernisation (SAM)

(Text with EEA relevance)

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1. INTRODUCTION: STATE AID CONTROL IN THE PRESENT ENVIRONMENT

1. Europe 2020 is Europe's growth strategy for this decade. In a changing world, the European Commission is targeting its policies at making Europe a smart, sustainable and inclusive economy. Those three mutually reinforcing objectives should help the EU and the Member States deliver high levels of employment, productivity and social cohesion.
2. In that light, the single market is Europe's best asset for generating sustainable growth. An effective internal market requires the deployment of two instruments: first, regulation to create one integrated market without national borders and, second, competition policy including State aid control to ensure that the functioning of that internal market is not distorted by anticompetitive behaviour of companies or by Member States favouring some actors to the detriment of others. Competition is a major driver of growth; it incentivises enterprises, including new ones, to enter markets and innovate, improving productivity and competitiveness in a global context. Competition is also a cost-effective policy as it can be deployed without any public or private spending. Thus, as one of the instruments of competition policy, State aid control plays a fundamental role in defending and strengthening the single market.
3. The economic and financial crisis has threatened the integrity of the single market and increased the potential for anticompetitive reactions. At the same time, the crisis has increased the demand for a greater role of the State to protect the most vulnerable members of society and promote economic recovery. But it has also put strains on Member States' budgets, requiring fiscal consolidation and better use of scarce resources. Last but not least, it has increased the disparity in Member States' leeway to finance their policies.
4. Europe's growth potential can be increased by better focussing public expenditure and by creating appropriate conditions for recovery to take off and last. In particular, public

spending should become more efficient¹, effective and targeted at growth-promoting policies that fulfil common European objectives.

5. Some of that public spending will take the form of State aid², be it in the form of direct expenditure, tax incentives, State guarantees or other. Stronger and better targeted State aid control can encourage the design of more effective growth-enhancing policies and it can ensure that competition distortions remain limited so that the internal market remains open and contestable. It can also contribute to improving the quality of public finances. **A more focused framework will allow Member States to better contribute both to the implementation of the Europe 2020 strategy for sustainable growth as well as to budgetary consolidation.**
6. The modernisation of State aid control is needed to strengthen the quality of the Commission's scrutiny and to shape that instrument into a tool promoting a sound use of public resources for growth-oriented policies and limiting competition distortions that would undermine a level playing field in the internal market. The current complexity of the substantive rules as well as of the procedural framework, applying equally to smaller and bigger cases, are challenges to State aid control.
7. Other elements also buttress the need for a broad modernisation package for EU State aid policy as a whole: the expiry of a number of key State aid instruments before the end of 2013; the preparation of the EU Multiannual Financial Framework and of the EU Structural Funds rules for 2014-2020; and, last but not least, the strengthening of the economic and budgetary surveillance system under the EU semester.
8. The objectives of modernisation of State aid control are therefore threefold: (i) to foster sustainable, smart and inclusive growth in a competitive internal market; (ii) to focus Commission *ex ante* scrutiny on cases with the biggest impact on internal market whilst strengthening the Member States cooperation in State aid enforcement; (iii) to streamline the rules and provide for faster decisions.
9. This Communication outlines an integrated strategy for reform to achieve those objectives, which are closely interlinked and which should be seen as integrated building blocks of a single reform package.

¹ This would also imply the phasing out of subsidies leading to inefficient use of resources or environmental damage, in line with the Commission Communication "Roadmap to a Resource Efficient Europe", COM(2011)571 final, p. 10.

² An overview of the public expenditure from State aid can be found in the "State Aid Scoreboard - Report on state aid granted by the EU Member States", COM(2011) 848 final.

2. OBJECTIVES OF STATE AID MODERNISATION AND THE INSTRUMENTS TO ACHIEVE THEM

2.1. Foster growth in a strengthened, dynamic and competitive internal market

10. The Europe 2020 growth Strategy recognises the role of State aid for growth and its capacity "to actively and positively contribute to the Europe 2020 objectives by prompting and supporting initiatives for more innovative, efficient and greener technologies, while facilitating access to public support for investment, risk capital and funding for research and development"³.
11. Policies to achieve the Europe 2020 objectives can make an important contribution to ending the crisis and re-igniting sustainable growth. Member States and the Union will prioritise budgetary outlays to that effect, some of which will contain State aid.
12. Modernised State aid control should facilitate the treatment of aid which is well-designed, targeted at identified market failures and objectives of common interest, and least distortive ("good aid"). This shall ensure that public support stimulates innovation, green technologies, human capital development, avoids environmental harm and ultimately promotes growth, employment and EU competitiveness. Such aid will best contribute to growth when it targets a market failure and thereby complements, not replaces, private spending. State aid will be effective in achieving the desired public policy objective only when it has an incentive effect, i.e. it induces the aid beneficiary to undertake activities it would not have done without the aid. And State aid will have the greatest impact on growth only when it is designed in a way which limits competition distortions and keeps the internal market competitive and open. Therefore State aid control is crucial in order to improve the efficiency and effectiveness of public spending taking the form of State aid, with the overarching objective of spurring more growth in internal market, for which a necessary condition is developing competition. State aid which does not target market failures and has no incentive effect is not only a waste of public resources but it acts as a brake to growth by worsening competitive conditions in the internal market.
13. State aid control already underpins the Europe 2020 flagships. For example, the broadband guidelines provide conditions for efficient State support to broadband rollout, supporting the achievement of the objectives of "Digital agenda for Europe". Public support to develop infrastructure is also instrumental to the achievement of smart, upgraded and fully interconnected transport and energy networks as foreseen by "Resource efficient Europe". The framework for State aid to research, development and innovation facilitates the achievement of "Innovation Union" as well as "An industrial policy for the globalisation era" objectives. The enforcement of "polluter pays" principle as well as a possibility to provide aid in order to encourage companies to go beyond

³ Commission Communication "Europe 2020 – a strategy for smart, sustainable and inclusive growth", COM (2010) 2020 final, 3.3.2010, p 20.

mandatory EU environmental standards or to promote energy efficiency provided for in the Environmental aid guidelines are one of the tools to implement "Resource efficient Europe" flagship. The possibility to support training with State funds contributes to the goals of "An agenda for new skills and jobs". Rescue and restructuring aid guidelines allow State aid to ailing companies only under strict conditions and if it results in their return to long-term viability, encouraging thereby exit of inefficient firms and bracing the companies for global competition, contributing to "An industrial policy for a globalised era". The link between the Europe 2020 objectives and flagship initiatives on the one hand, and State aid rules on the other, should be further developed to streamline the Commission's instruments and to encourage Member States to direct scarce public resources to common priorities.

14. By putting an emphasis on the quality and the efficiency of public support, State aid control can also help Member States to strengthen budgetary discipline and improve the quality of public finances – resulting in a better use of taxpayers' money. It is particularly important in order to achieve smart fiscal consolidation, reconciling the role of targeted public spending in generating growth with the need to bring budgets under control. There is therefore also a need to embed State aid control and more general competition concerns in the EU Semester procedure.
15. **Robust State aid control is also essential to ensure a well functioning single market.** Such robust control goes hand in hand with the effective implementation of EU internal market rules and is of particular relevance in markets that have only recently been opened and where large incumbents aided by the State still play a major role, such as transport, postal services or, in more limited cases, energy. State aid modernisation can improve the functioning of the internal market through a more effective policy aimed at limiting distortions of competition, preserving a level playing field and combating protectionism. This role of State aid becomes more important now as we need to mobilise the full potential of the internal market for growth.
16. The global environment creates challenges and opportunities for European companies. Different systems of competition rules exist worldwide. By comparison, EU State aid rules offer a more transparent, coherent and growth-oriented framework, while allowing comparable levels of aid⁴. The increasing focus of the modernised EU State aid framework on growth-enhancing goals, while ensuring a proper functioning of the internal market should improve the competitiveness of EU companies, including outside the EU.

⁴ A comparative study carried out by WTO in 2006 suggests that the level of aid granted by EU Member States is comparable to the levels granted by the EU's main trading partners (subsidies as a percentage of GDP). See World Trade Organization Report 2006 "Exploring the links between subsidies, trade and the WTO." http://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report06_e.pdf. See Section II "Subsidies, Trade and the WTO", Chapter E "The incidence of Subsidies".

17. In the specific circumstances when subsidies granted by a third country would lead to a distortion of competition, WTO rules provide a basic framework to remedy specific consequences of unlawful foreign subsidies for EU operators. In addition, bilateral Free Trade Agreements concluded by the EU with third countries may include also rules on subsidies to deal with specific issues not covered by the WTO framework (e.g. Free Trade Agreement with Korea). Trade policy instruments can be used to implement those disciplines.
18. The proposals of the State aid modernisations contributing to the growth objective are:
- (a) Identification and definition of **common principles** applicable to the assessment of compatibility of all the aid measures carried out by the Commission; such horizontal principles would clarify how the Commission would assess common features that are presently not treated in the same manner across the different guidelines and frameworks; those principles would have to be as operational as possible and could deal with the definition and assessment of genuine market failures, the incentive effect and the negative effects of public interventions, including, potentially, considerations on the overall impact of the aid.
 - (b) **Revision and streamlining of State aid guidelines**, to make them consistent with those common principles. The revision will follow a general approach based on strengthening the internal market, promoting more effectiveness in public spending (use of State aid only where it represents a real added-value); a clearer definition of the market failures that need to be addressed and greater scrutiny of the incentive effect will play an important role in that context to ensure value for money and avoid distortions. A more systematic assessment of the potential negative effects of State aid - notably in terms of distortions of allocative and dynamic efficiency, subsidy races and market power - will also need to be pursued. Thus, for example, revised Rescue and Restructuring Guidelines for non-financial firms will become a very important instrument for controlling that very distortive type of aid in order to ensure that the market process of exit is interrupted by State intervention only when truly justified. Similarly, when market conditions permit, a new set of rules for rescuing and restructuring financial institutions will be put in place for the post-crisis environment, consistent with the future proposals for EU crisis management and resolution. Finally, the identification of best practices with regard to Europe 2020 spending priorities should allow for rapid clearance of cost-effective and growth enhancing aid. As for the streamlining, in a first stage, several guidelines, including guidelines for Regional Aid, Research & Development & Innovation, Environmental aid, Risk Capital and Broadband (types of aid which account for more than two-thirds of aid granted in the EU), could be aligned and possibly consolidated with the common principles by the end of 2013. This could also allow seeking synergies between different aid regimes and satisfying multiple objectives. The individual adoption of each of the guidelines will take place progressively and without delay during this period. Other guidelines will then be progressively aligned and consolidated.

2.2. Focusing enforcement on cases with the biggest impact on internal market

19. The drive towards more efficient spending should not translate into micro control of all public expenditure but rather **into prioritisation and stronger scrutiny of the aid with a significant impact on the single market**, such as those measures covering large and potentially distortive aid, including fiscal aid. In parallel, the analysis of cases of a more local nature and with little effect on trade should be simplified. That outcome could be achieved by defining more proportionate and differentiated rules and by modernising State aid control procedures, with increased responsibility of Member States in designing and implementing support measures. It will require a clearer definition of the rules and an enhanced *ex post* monitoring by the Commission to ensure adequate compliance. It will also lower administrative burden for public authorities and for beneficiaries when smaller amounts of aid are involved.
20. The proposals of the State aid modernisation contributing to the prioritisation objective are:
- (a) a possible review of the ***de minimis* Regulation**, on the basis of a detailed impact assessment, taking into account the situation in all Member States and in the internal market taken as a whole, as well as the budgetary implications of such a review, in order to examine whether the current threshold still corresponds to market conditions;
 - (b) possible changes to the Council **Enabling Regulation** to allow the Commission to declare that certain categories of aid are compatible with the internal market and are therefore exempted from *ex ante* notification. It would in turn permit an increase of types of aid that, based on Commission's experience, could benefit from such simplified control, without weakening efficient supervision by the Commission and *ex post* monitoring. Those new types of aid which could be covered by the Enabling Regulation could include for instance: aid granted to culture; aid to make good the damage caused by natural disasters; aid to (partly) EU-funded projects such as JESSICA; and others.
 - (c) a revision and possible extension of the **General Block Exemption Regulation**, for the categories of aid covered by the revised Enabling Regulation, in order to contribute to better channel public resources towards certain well-established objectives while simplifying the administrative treatment of well designed measures with relatively low amounts of aid.
21. Should the Commission decide to increase the size and scope of aid measures exempt from notification obligation, **responsibilities of Member States for ensuring the correct enforcement of State aid rules would increase**. With more measures exempt from the notification requirement, Member States will have to ensure the *ex ante* compliance with State aid rules of *de minimis* measures and block-exempted schemes and cases, in strict coordination with the Commission which will continue to exercise *ex post* control of such measures. The Commission will expect better cooperation from Member States in terms of quality and timeliness of submission of information and

notifications' preparation, as well as effective national systems (including private enforcement) to ensure that State aid measures exempt from *ex ante* notification obligation comply with Union law. A lower administrative burden through less notification obligations can only be envisaged if it is accompanied by increased commitment and delivery on the part of the national authorities in terms of compliance. Consequently, *ex post* control by the Commission will have to be increased, also because the current results of the monitoring of the implementation of block exempted measures by Member States reveal frequent lack of compliance with State aid rules. In such a way, effectiveness of enforcement can be ensured.

2.3. Streamlined rules and faster decisions

22. Over time, State aid rules have developed into a complex legal framework. There is scope to clarify and simplify the rules, enhance consistency and streamline the assessment process. There is a need to better explain State aid concepts and to consolidate our horizontal and substantive rules.

23. The Commission is obliged to examine all allegations concerning potential aid without in practice being able to set priorities for complains handling. In addition the Commission is not always in a position to obtain complete and correct information from parties, which may prolong procedures. There is a need to streamline and reform procedures in order to deliver decisions within business-relevant timelines, in close cooperation with Member States. Elements of the package contributing to that objective are:

- (a) clarification and better explanation of the **notion of State aid**: the notion of aid is an objective concept defined directly by the Treaty in Article 107 as any measure that results from an intervention by the State or through State resources, that is liable to affect trade between Member States, that confers an advantage on the recipient and distorts or threatens to distort competition. The Commission's role in that respect is limited to providing clarification as to how it understands and applies the provisions of the Treaty, as interpreted by the Court of Justice. Within those limits, the Commission will provide further clarification on the key concepts relating to the notion of aid with a view to contributing to an easier implementation;
- (b) A modernisation of the **State aid Procedural Regulation** with regards to complaint-handling and market information tools, in order to enable the Commission to better focus its action on cases which are most relevant for internal market. It requires enabling the Commission to set priorities for complaints handling, in order to prioritise allegations of potential aid with a large impact on competition and trade in internal market. In parallel, in order for the Commission to be able to effectively investigate cases of aid with significant impact, it should be endowed with more efficient tools to obtain all the necessary information from market participants and in good time so as to deliver decisions within business-relevant timelines. Such modernisation of procedures would also allow the Commission to undertake more *ex officio* investigations into significant distortions

of competition hampering internal market. It should also permit a quick verification of market effects of aid measures which would enable quicker decision-taking.

3. THE WAY FORWARD

24. State aid modernisation as outlined above should result in a clearer and more coherent architecture of State aid control. The various potential measures outlined above constitute integrated building blocks of a single reform package.
25. The potential measures outlined above, therefore, work together to achieve the high level objectives – they are mutually supportive and interdependent. For instance, the possible procedural measures suggested above would allow faster decision-making and would allow the Commission to focus its enforcement on what matters most at the EU level. A similar logic applies to the extension of the scope of the General Block Exemption Regulation through a modification of the Enabling Regulation.
26. In view of that interdependence between objectives and elements of the package, and in order to maximise the results of the State aid modernisation, it is also desirable that the main elements of the reform enter into force at the same time. The different processes will therefore start as from the adoption of the present Communication, and the main instruments of the package, including the Council acts, should be adopted by the end of 2013.
27. To meet this target, Commission proposals for the Procedural and Enabling Regulations should be adopted in autumn 2012. The Commission will aim at developing the rest of the package over the next months with a view to progressively achieving the revision and streamlining of the main Commission acts and guidelines by the end of 2013. The Commission intends to consult Member States and engage in an open dialogue with the European Parliament and other stakeholders, with a view to gathering input for a debate on the State aid modernisation proposals.