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Information and Notices

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[1] Text with EEA relevance

[2] Text with EEA relevance, except for products falling under Annex I to the Treaty

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PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

European Commission

EN

[1] Text with EEA relevance

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Authorisation for State aid pursuant to Articles 107 and 108 of the TFEU

Cases where the Commission raises no objections

(Text with EEA relevance)

(2014/C 69/01)

Date of adoption of the decision	6.11.2013	
Reference number of State Aid	SA.34453 (13/N)	
Member State	Netherlands	
Region	ZUIDWEST-DRENTHE	—
Title (and/or name of the beneficiary)	Subsidie en een achtergestelde lening ten behoeve van de investering in de duurzame verwarming van een woonwijk in Meppel (NL).	
Legal basis	— Subsidie: middelen afkomstig van de provincie Drenthe: besluit in het kader van Klimaatcontract gemeente Meppel en provincie Drenthe. De gemeente Meppel verleent deze subsidie aan LDEB op grond van de Algemene Subsidieverordening van de gemeente Meppel — Achtergestelde lening (middelen van de provincie Drenthe die worden beheerd door de Stichting Drentse Energie Organisatie) wordt door middel van een overeenkomst met LDEB ter beschikking gesteld.	
Type of measure	Ad hoc aid	MeppelEnergie B.V. (50/50 joint venture van Rendo LDEB Holding B.V. en gemeente Meppel). In de notificatietekst wordt ook soms de werknaam LDEB gehanteerd.
Objective	Environmental protection, Energy saving	
Form of aid	Soft loan , Direct grant	
Budget	Overall budget: EUR 0,71 (in millions)	
Intensity	4,26 %	
Duration (period)	until 31.12.2016	

Economic sectors	Distribution of gaseous fuels through mains, Steam and air conditioning supply, Production of electricity
Name and address of the granting authority	provincie Drenthe Westerbrink 1, 9405 BJ Assen gemeente Meppel Grote Oever 26, 7941 BJ Meppel
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	20.11.2013	
Reference number of State Aid	SA.34719 (13/N)	
Member State	Netherlands	
Region	GROOT-AMSTERDAM	—
Title (and/or name of the beneficiary)	Elektrisch vervoer Amsterdam	
Legal basis	Subsidieverordening met betrekking tot de aanschaf van elektrische auto's door veelrijders van 16 januari 2012; Bijzondere subsidieverordening voor de realisatie van oplaadpunten buiten de openbare ruimte voor elektrische voertuigen van 1 oktober 2011	
Type of measure	Scheme	—
Objective	Environmental protection	
Form of aid	Direct grant	
Budget	Overall budget: EUR 9,1 (in millions)	
Intensity	70 %	
Duration (period)	until 31.12.2015	
Economic sectors	Urban and suburban passenger land transport, Other passenger land transport n.e.c., Taxi operation, Freight transport by road, Removal services, Service activities incidental to land transportation, Other postal and courier activities	
Name and address of the granting authority	Gemeente Amsterdam Amstel 1, 1011 PN, Amsterdam	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	3.6.2013	
Reference number of State Aid	SA.34738 (13/N)	
Member State	Estonia	
Region	—	—
Title (and/or name of the beneficiary)	Keskkonnaprogrammist saastunud alade puhastamiseks antava abi tingimused	
Legal basis	1) Keskkonnatasude seadus; 2) Keskkonnaministri 17. veebruari 2006. a määrus nr 13 („Keskkonnakaitse valdkondade rahastamiseks esitatud projektitaotluste hindamise tingimused ja kord, taotluste hindamise kriteeriumid, otsuse tegemise kord, lepingu täitmise üle kontrolli teostamise kord ning aruandluse kord"); 3) Keskkonnaprogrammi finantseerimise kord; 4) Keskkonnaprogrammist saastunud alade puhastamiseks antava abi tingimused	
Type of measure	Scheme	—
Objective	Environmental protection	
Form of aid	Direct grant	
Budget	Overall budget: EUR 25 (in millions) Annual budget: EUR 4,17 (in millions)	
Intensity	100 %	
Duration (period)	until 31.12.2018	
Economic sectors	All economic sectors eligible to receive aid	
Name and address of the granting authority	Sihtasutus Keskkonnainvesteeringute Keskus (KIK) Narva mnt 7A Tallinn 10117 Estonia	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	16.10.2013	
Reference number of State Aid	SA.35073 (13/NN)	
Member State	Belgium	
Region	—	—
Title (and/or name of the beneficiary)	Aanvraag tot verlenging van de steunmaatregel nr. N 334/2005 betreffende de verlaging van het accijnstarief voor biobrandstoffen / Demande de prolongation du régime d'aides N° 334/2005 relatif à la réduction d'accises pour les biocarburants	

Legal basis	Loi du 10 juin 2006 concernant les biocarburants, article 419 de la loi-programme du 27 décembre 2004 et arrêté d'exécution, ainsi que lois et arrêtés modifiant lesdites dispositions / Wet van 10 juni 2006 betreffende de biobrandstoffen, artikel 419 van de programmawet van 27 december 2004 en de uitvoerende koninklijke besluiten alsmede de wetten en besluiten die deze bepalingen hebben gewijzigd	
Type of measure	Scheme	Biochim, Biowanze, Tereos Syral Belgium, Oleon Biodiesel, Bioro, Proviron Fine Chemicals, Alco Bio Fuel
Objective	Environmental protection	
Form of aid	Tax rate reduction	
Budget	Overall budget: EUR 120 (in millions) Annual budget: EUR 120 (in millions)	
Intensity	100 %	
Duration (period)	1.10.2013-30.9.2014	
Economic sectors	MANUFACTURING OF BIOFUELS	
Name and address of the granting authority	Ministre des Finances et du Développement durable / Minister van Financiën en Duurzame Ontwikkeling 12 Rue de la Loi/Wetstraat 12 1000 Bruxelles/Brussel	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	4.12.2013	
Reference number of State Aid	SA.35753 (13/N)	
Member State	United Kingdom	
Region	SURREY	—
Title (and/or name of the beneficiary)	Surrey Satellite Technology Limited	
Legal basis	Science and Technology Act 1965 (Section 5) Grant Offer Letter — See Annex F Para 4(a)	
Type of measure	Individual aid	Surrey Satellite Technology Limited
Objective	Research and development	
Form of aid	Direct grant	
Budget	Overall budget: GBP 21 (in millions)	
Intensity	37 %	

Duration (period)	—
Economic sectors	Manufacture of air and spacecraft and related machinery
Name and address of the granting authority	UK Space Agency Polaris House, North Star Avenue, Swindon, Wiltshire, SN2 1SZ, Uk
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	28.5.2013	
Reference number of State Aid	SA.35764 (12/N)	
Member State	Finland	
Region	POHJOIS-POHJANMAA	—
Title (and/or name of the beneficiary)	Northern Start-up Fund	
Legal basis	— Laki valtionavustuksesta yritystoiminnan kehittämiseksi (1336/2006) — Valtioneuvoston asetus valtionavustuksesta yritystoiminnan kehittämiseksi (675/2007)	
Type of measure	Scheme	—
Objective	Risk capital	
Form of aid	Provision of risk capital	
Budget	Overall budget: EUR 18 (in millions)	
Intensity	70 %	
Duration (period)	1.6.2013-1.6.2023	
Economic sectors	All economic sectors eligible to receive aid	
Name and address of the granting authority	City of Oulu PL 27, 90015 Oulun kaupunki Centre for Economic Development, Transport and the Environment for North Ostrobothnia (ELY-Centre for North Ostrobothnia) PL 86, 90101 Oulu, Finland	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	9.12.2013	
Reference number of State Aid	SA.35766 (13/N)	
Member State	United Kingdom	
Region	—	—
Title (and/or name of the beneficiary)	The Renewable Heat Incentive	
Legal basis	Section 100 of the Energy Act 2008. The Renewable Heat Incentive Regulations 2011.	
Type of measure	Scheme	—
Objective	Environmental protection	
Form of aid	Direct grant	
Budget	Overall budget: GBP 3,96 (in millions)	
Intensity	0 %	
Duration (period)	—	
Economic sectors	All economic sectors eligible to receive aid	
Name and address of the granting authority	Department of Energy and Climate Change 3, Whitehall Place, London, SW1A 2AW	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	22.1.2014	
Reference number of State Aid	SA.36428 (13/N)	
Member State	United Kingdom	
Region	—	—
Title (and/or name of the beneficiary)	Enterprise Capital Funds	
Legal basis	Section 8 of the Industrial Development Assistance Act 1982, under Part III	
Type of measure	Scheme	—
Objective	Risk capital, SMEs	
Form of aid	Provision of risk capital	
Budget	Overall budget: GBP 300 (in millions) Annual budget: GBP 75 (in millions)	
Intensity	0 %	
Duration (period)	1.1.2014-1.1.2024	

Economic sectors	All economic sectors eligible to receive aid
Name and address of the granting authority	Capital for Enterprise Foundry House, 3 Millsands, Sheffield S3 8NH, UK
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	4.12.2013	
Reference number of State Aid	SA.36560 (13/N)	
Member State	Finland	
Region	PIRKANMAA	—
Title (and/or name of the beneficiary)	Tampere-Pirkkalan lentoaseman terminaalin 2 lentoasemainfrastruktuurin rahoittaminen Finansiering av flygplatsinfrastruktur vid Tammerfors-Birkala flygplats T2	
Legal basis	Laki valtionavustuslaki 688/2001 Lag om statsunderstödslagen 688/2001 Valtion talousarviossa 1186/2010 Statsbudgeten 1186/2010	
Type of measure	Individual aid	FINAVIA — P.O. Box 50, 01531 Vantaa, Suomi
Objective	Regional development	
Form of aid	Direct grant	
Budget	Overall budget: EUR 2,2 (in millions)	
Intensity	64 %	
Duration (period)	—	
Economic sectors	Passenger air transport, Freight air transport	
Name and address of the granting authority	Tempereen kaupunki Tampere Stad P.O. Box 487, 33101 Tampere, Suomi Liikenne- ja viestintäministeriö Kommunikationsministeriet PO Box 31, FI-00023 Hallitus, Suomi	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	2.7.2013	
Reference number of State Aid	SA.36561 (13/N)	
Member State	Finland	
Region	POHJANMAA	—
Title (and/or name of the beneficiary)	Vaasan lentoaseman lentoasemainfrastruktuurin rahoittaminen Finansiering av flygplatsinfrastruktur vid Vasa flygplats	
Legal basis	Päätös kaupungin hallituksen 11. kesäkuuta 2012. Beslutet av stadens styrelse den 11 juni 2012. Päätös kaupunginvaltuuston 18. kesäkuuta 2012. Beslutet i kommunfullmäktige den 18 juni 2012.	
Type of measure	Individual aid	FINAVIA — P.O.Box 50, 01531 Vantaa, Suomi
Objective	Regional development	
Form of aid	Direct grant	
Budget	Overall budget: EUR 0,33 (in millions)	
Intensity	30 %	
Duration (period)	—	
Economic sectors	Passenger air transport, Freight air transport	
Name and address of the granting authority	Vaasan kaupunki Vasa stad P.O.B 3, 65101 Vaasa, Suomi	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	22.1.2014	
Reference number of State Aid	SA.36593 (13/N)	
Member State	Italy	
Region	FRIULI-VENEZIA GIULIA	—
Title (and/or name of the beneficiary)	Regolamento recante criteri e modalità per la concessione di indennizzi a favore delle imprese ittiche che hanno subito danni dalle avversità atmosferiche e meteomarine di carattere eccezionale verificatesi dal 30.1.2012 al 20.2.2012 in attuazione dell'art. 1, comma 3 bis, comma 3 ter e comma 9, della lr 22/2002 (Istituzione del fondo regionale per la gestione delle emergenze in agricoltura).	

Legal basis	Legge regionale 13 agosto 2002, n. 22 (istituzione del fondo regionale per la gestione delle emergenze in agricoltura). Delibera di Giunta regionale n. 476 del 21 marzo 2013 (approvazione preliminare del regolamento recante criteri e modalità per la concessione di indennizzi a favore delle imprese ittiche che hanno subito danni dalle avversità atmosferiche e meteomarine di carattere eccezionale verificatesi dal 30.1.2012 al 20.2.2012).	
Type of measure	Scheme	—
Objective	Adverse weather conditions	
Form of aid	Direct grant	
Budget	Overall budget: EUR 0,25 (in millions)	
Intensity	50 %	
Duration (period)	until 31.12.2014	
Economic sectors	Fishing and aquaculture	
Name and address of the granting authority	Direzione centrale risorse rurali, agroalimentari e forestali via Sabbadini, 31 — 33100 UDINE (I)	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	18.12.2013	
Reference number of State Aid	SA.36621 (13/N)	
Member State	Italy	
Region	SICILIA	Article 107(3)(a)
Title (and/or name of the beneficiary)	Port of Capo D'Orlando	
Legal basis	Decisione n. C(2007) 4249 del 7 settembre 2007 Decisione n. C (2012) 8405 del 15 novembre 2012 Decreto del 19 dicembre 2006 n.1947/S5/TUR	
Type of measure	Ad hoc aid	Società Porto Turistico di Capo D'Orlando SpA
Objective	Sectoral development, Regional development	
Form of aid	Direct grant	
Budget	Overall budget: EUR 20,02 (in millions)	
Intensity	—	
Duration (period)	1.6.2013-1.6.2015	
Economic sectors	Sea and coastal passenger water transport	

Name and address of the granting authority	Regione Sicilia, Assessorato regionale infrastrutture e mobilità, Dipartimento Infrastrutture mobilità e trasporti Via Leonardo da Vinci, 161 — 90141 — Palermo
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	22.1.2014	
Reference number of State Aid	SA.36855 (13/N)	
Member State	Italy	
Region	SASSARI	—
Title (and/or name of the beneficiary)	Declaratoria della eccezionalità della moria causata da una virosi da OsHV — 1 µvar che ha interessato l'allevamento di ostriche della specie Crassostrea gigas dello Stagno di San Teodoro a partire dal mese di maggio 2012.	
Legal basis	Legge regionale 3/2006; Decreto dell'Assessore dell'Agricoltura e riforma agro-pastorale 85/2011 «Criteri e modalità per l'attuazione e la gestione del Fondo di Solidarietà Regionale della Pesca (art. 11, Legge Regionale 14 aprile 2006, n. 3, escluso comma 4)». DECRETO N. 736/DecA/39 DEL 28.5.2013	
Type of measure	Individual aid	Compagnia Ostricola Mediterranea scarl
Objective	Compensation of damages caused by natural disaster, Natural disasters or exceptional occurrences	
Form of aid	Direct grant	
Budget	Overall budget: EUR 0,2434 (in millions)	
Intensity	100 %	
Duration (period)	—	
Economic sectors	Aquaculture	
Name and address of the granting authority	Regione Autonoma della Sardegna — Ass.to dell'Agricoltura e riforma agro-pastorale — Servizio pesca e acquacoltura via Pessagno 4 09126 Cagliari	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	6.1.2014	
Reference number of State Aid	SA.36875 (13/N)	
Member State	Sweden	
Region	—	—
Title (and/or name of the beneficiary)	Automatiskt förhandsstöd för filmproduktion	
Legal basis	2013 års filmavtal. EU-kommissionens beslut från den 18.12.2012 — SA.35578 (2012/N) The Swedish scheme for the funding of film productionand film related activities	
Type of measure	Scheme	—
Objective	Culture, Heritage conservation	
Form of aid	Direct grant	
Budget	Overall budget: SEK 36 000 000	
Intensity	30 %	
Duration (period)	until 31.12.2015	
Economic sectors	ARTS, ENTERTAINMENT AND RECREATION	
Name and address of the granting authority	Filminstitutet Box 271 26, 10252 Stockholm, Sweden	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	14.10.2013	
Reference number of State Aid	SA.36879 (13/N)	
Member State	Hungary	
Region	—	Mixed
Title (and/or name of the beneficiary)	Magyarország 2007-2013-as időszakra vonatkozó regionális támogatási térképének meghosszabbítása 2014. június 30-ig	
Legal basis	Az európai uniós versenyjogi értelemben vett állami támogatásokkal kapcsolatos eljárásról és a regionális támogatási térképről szóló 37/2011. (III. 22) Korm. rendelet 25.§	
Type of measure	Scheme	—
Objective	Regional development	
Form of aid	Other — The notification refers to the prolongation of the existing regional aid map. All forms of aid are possible.	

Budget	—
Intensity	—
Duration (period)	1.1.2014-30.6.2014
Economic sectors	All economic sectors eligible to receive aid
Name and address of the granting authority	—
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	18.12.2013	
Reference number of State Aid	SA.36975 (13/N)	
Member State	Germany	
Region	—	—
Title (and/or name of the beneficiary)	Förderrichtlinie Nationaler Radverkehrsplan — NRVP	
Legal basis	§§ 23, 44 Bundeshaushaltsordnung, Entwurf der Förderrichtlinie	
Type of measure	Scheme	—
Objective	Other	
Form of aid	Direct grant	
Budget	Overall budget: EUR 9 (in millions) Annual budget: EUR 3 (in millions)	
Intensity	80 %	
Duration (period)	until 31.12.2016	
Economic sectors	Other passenger land transport n.e.c.	
Name and address of the granting authority	BMVBS Invalidenstraße 44, D-10115 Berlin	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	27.11.2013	
Reference number of State Aid	SA.37029 (13/N)	
Member State	France	
Region	—	—
Title (and/or name of the beneficiary)	Aide à la liquidation ordonnée du Crédit Immobilier de France	
Legal basis	Article 108 de la loi n. 2012-1509 du 29 décembre 2012 de finances pour 2013	
Type of measure	Ad hoc aid	Groupe Crédit immobilier de France
Objective	Remedy for a serious disturbance in the economy	
Form of aid	Guarantee	
Budget	Overall budget: EUR 28 000 (in millions)	
Intensity	—	
Duration (period)	29.11.2013-31.12.2035	
Economic sectors	FINANCIAL AND INSURANCE ACTIVITIES	
Name and address of the granting authority	Ministère de l'Economie et des Finances 139 rue de Bercy 75572 Paris Cedex 12 France	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	20.11.2013	
Reference number of State Aid	SA.37109 (13/N)	
Member State	Belgium	
Region	—	Article 107(3)(c)
Title (and/or name of the beneficiary)	Realisatie van multifunctionele voetbalstadions met een maatschappelijke return	
Legal basis	Beslissing van de Vlaamse Regering op 19 juli 2013 voor een Projectoproep voor de realisatie van multifunctionele voetbalstadions met een maatschappelijke return	
Type of measure	Scheme	—
Objective	Sectoral development	

Form of aid	Direct grant
Budget	Overall budget: EUR 8 (in millions)
Intensity	70 %
Duration (period)	1.1.2014-31.12.2019
Economic sectors	Sports activities
Name and address of the granting authority	Departement Cultuur, Jeugd, Sport en Media Arenbergstraat 9, 1000 Brussel
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	20.11.2013	
Reference number of State Aid	SA.37125 (13/NN)	
Member State	France	
Region	PAYS DE LA LOIRE	—
Title (and/or name of the beneficiary)	Opération de financement de la construction de l'aéroport du Grand Ouest (Notre-Dame des Landes)	
Legal basis	Décret du Conseil d'Etat n° 2010-1699 du 29 décembre 2010 Décret n° 2012-458 du 5 avril 2012 Arrêté préfectoral n° 2011175-0002 du 24 juin 2011 Concession de Travaux Publics 2008/S 172-229694 Code des transports Code de l'aviation civile	
Type of measure	Individual aid	Société Aéroports du Grand Ouest (filiale du groupe Vinci)
Objective	—	
Form of aid	Direct grant	
Budget	Overall budget: EUR 150 (in millions)	
Intensity	23,2 %	
Duration (period)	1.5.2011-1.12.2017	
Economic sectors	Air transport	

Name and address of the granting authority	Direction Générale de l'Aviation Civile — DGAC 50, Rue Henry Farman, F-75015 PARIS
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	15.1.2014	
Reference number of State Aid	SA.37367 (13/N)	
Member State	Spain	
Region	—	—
Title (and/or name of the beneficiary)	Seguridad de los atuneros vascos en el Océano Índico	
Legal basis	Acuerdo de Consejo de Gobierno por la que se concede a Echebastar Fleet, Atunsa, Pevasa, Inpesca y Albacora una subvención directa para contribuir a garantizar la seguridad de los atuneros congeladores con base en la Comunidad Autónoma del País Vasco	
Type of measure	Scheme	—
Objective	Other	
Form of aid	Other	
Budget	Overall budget: EUR 1,3961 (in millions) Annual budget: EUR 1,3961 (in millions)	
Intensity	25 %	
Duration (period)	until 31.12.2013	
Economic sectors	Fishing	
Name and address of the granting authority	GOBIERNO VASCO — DEPARTAMENTO DE DESARROLLO ECONÓMICO Y COMPETITIVIDAD C/ Donostia 1, VITORIA 01010	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	15.1.2014
Reference number of State Aid	SA.37435 (13/N)
Member State	Spain

Region	GALICIA	—
Title (and/or name of the beneficiary)	Convenio entre la Xunta de Galicia y la Compañía Europea De Túnidos, S.L., para la seguridad del atunero-congelador «Albacora Cuatro», con puerto base en la Comunidad Autónoma de Galicia.	
Legal basis	— Real Decreto 803/2011, de 10 de junio, por el que se regula la concesión directa de subvenciones para la contratación de seguridad privada a bordo en los buques atuneros congeladores que actualmente operan en el Oceano Índico. — Convenio entre la Xunta de Galicia (Consejería del Medio Rural y del Mar) y la Compañía Europea De Túnidos, S.L., para contribuir a la seguridad del atunero-congelador «Albacora Cuatro», con puerto base en la Comunidad Autónoma de Galicia	
Type of measure	Individual aid	Compañía Europea De Túnidos, S.L.,
Objective	Natural disasters or exceptional occurrences, (None)	
Form of aid	Direct grant	
Budget	Overall budget: EUR 0,1 (in millions)	
Intensity	25 %	
Duration (period)	until 31.12.2013	
Economic sectors	Fishing and aquaculture	
Name and address of the granting authority	Consejera de Medio Rural y del Mar Calle San Caetano S/N, bloque 5, 2ª planta. 15781 Santiago De Compostela (A Coruña)	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	14.11.2013	
Reference number of State Aid	SA.37521 (13/N)	
Member State	Finland	
Region	SUOMI/FINLAND	Mixed
Title (and/or name of the beneficiary)	Suomen aluetukikartan 2007–2013 voimassaolon jatkaminen 30. kesäkuuta 2014 saakka Förlängning till och med den 30 juni 2014 av Finlands regionalstödskarta för 2007–2013	
Legal basis	Luonnos: valtioneuvoston asetus kehitysalueesta ja sen tukialueista alueiden kehittämislain (602/2002) 38 §:n 2 momentin nojalla Förslag till statsrådsförordning om utvecklingsområdet och dess stödområden, baserat på paragraf 38 andra stycket i Regionutvecklingslagen (602/2002)	
Type of measure	Scheme	—
Objective	Regional development	

Form of aid	Other — The notification refers to the prolongation of the exisiting regional aid map. All forms are possible.
Budget	—
Intensity	—
Duration (period)	1.1.2014-30.6.2014
Economic sectors	All economic sectors eligible to receive aid
Name and address of the granting authority	Työ- ja elinkeinoministeriö Arbets- och näringsministeriet PL 32, 00023 VALTIONEUVOSTO PB 32, 00023 STATSRÅDET Elinkeino-, liikenne- ja ympäristökeskus Närings-, trafik- och miljöcentralen www.ely-keskus.fi/en
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	20.1.2014	
Reference number of State Aid	SA.37639 (13/N)	
Member State	Germany	
Region	—	—
Title (and/or name of the beneficiary)	FuEuI-Beihilferegelung für Forschungseinrichtungen und KMU — Deutschland (Hamburg)	
Legal basis	— §§ 23 und 44 der Haushaltsordnung der Freien und Hansestadt Hamburg und die dazu erlassenen Verwaltungsvorschriften sowie deren Anlagen. — Hamburgisches Verwaltungsverfahrensgesetz (HmbVwVfG); — Richtlinie zur Förderung von Forschungs- und Entwicklungsvorhaben Hamburger Forschungseinrichtungen, von Prozess- und Betriebsinnovationen im Dienstleistungssektor, von Innovationsberatungsdiensten und innovationsunterstützenden Dienstleistungen sowie von Netzwerken und Clustern.	
Type of measure	Scheme	—
Objective	Research and development	
Form of aid	Direct grant	
Budget	Overall budget: EUR 72 (in millions)	
Intensity	80 %	
Duration (period)	until 31.12.2015	
Economic sectors	All economic sectors eligible to receive aid	

Name and address of the granting authority	Behörde für Wirtschaft, Verkehr und Innovation Alter Steinweg 4, 20459 Hamburg
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	18.12.2013	
Reference number of State Aid	SA.37642 (13/N)	
Member State	Slovenia	
Region	—	—
Title (and/or name of the beneficiary)	Orderly winding down of Probanka d.d.	
Legal basis	Liquidation program of Probanka d.d.	
Type of measure	Individual aid	Probanka d.d.
Objective	Remedy for a serious disturbance in the economy	
Form of aid	Other — Capital increase and liquidity measures	
Budget	Overall budget: EUR 561 (in millions)	
Intensity	—	
Duration (period)	From 18.12.2013	
Economic sectors	FINANCIAL AND INSURANCE ACTIVITIES	
Name and address of the granting authority	Ministry of finance Župančičeva 3 SI-1000 Ljubljana Slovenia	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	18.12.2013	
Reference number of State Aid	SA.37643 (13/N)	
Member State	Slovenia	
Region	—	—
Title (and/or name of the beneficiary)	Orderly winding down of Factor banka d.d.	

Legal basis	Liquidation program of Factor banka d.d.	
Type of measure	Individual aid	Factor banka d.d.
Objective	Remedy for a serious disturbance in the economy	
Form of aid	Other — Capital increase and liquidity measures	
Budget	Overall budget: EUR 685 (in millions)	
Intensity	—	
Duration (period)	From 18.12.2013	
Economic sectors	FINANCIAL AND INSURANCE ACTIVITIES	
Name and address of the granting authority	Ministry of finance Župančičeva 3 SI-1000 Ljubljana Slovenia	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	9.1.2014	
Reference number of State Aid	SA.37651 (13/N)	
Member State	Germany	
Region	—	—
Title (and/or name of the beneficiary)	Richtlinie zur Förderung von Personal in Forschung und Entwicklung	
Legal basis	1. Thüringer Landeshaushaltsordnung (ThürLHO) einschl. der hierzu erlassen Verwaltungsvorschriften 2. Thüringer Verwaltungsverfahrensgesetz (ThürVwVfG) sowie 3. die für Subventionen allgemein geltenden Rechtsvorschriften (z. B. Strafgesetzbuch, Thüringer Subventionsgesetz, Subventionsgesetz)	
Type of measure	Scheme	—
Objective	Research and development	
Form of aid	Direct grant	
Budget	Overall budget: EUR 38 (in millions)	
Intensity	100 %	
Duration (period)	1.1.2014-31.12.2014	
Economic sectors	All economic sectors eligible to receive aid	

Name and address of the granting authority	Thüringer Aufbaubank Gorkistraße 9, D99084 Erfurt
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	13.1.2014	
Reference number of State Aid	SA.37679 (13/N)	
Member State	Austria	
Region	—	—
Title (and/or name of the beneficiary)	Österreichische Filmförderungsregelung (Filmstandort Österreich) — Verlängerung der Laufzeit	
Legal basis	Filmstandort Österreich — Förderungsrichtlinien des Bundesministeriums für Wirtschaft, Familie und Jugend im Einvernehmen mit dem Bundesministerium für Finanzen	
Type of measure	Scheme	—
Objective	Culture	
Form of aid	Direct grant	
Budget	Overall budget: EUR 7,5 (in millions) Annual budget: EUR 7,5 (in millions)	
Intensity	80 %	
Duration (period)	1.1.2014-31.12.2014	
Economic sectors	Motion picture, video and television programme activities	
Name and address of the granting authority	Bundesministerium für Wirtschaft, Familie und Jugend, Abteilung ÖA Stubenring 1 1010 Wien Österreich	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	16.1.2014	
Reference number of State Aid	SA.37682 (13/N)	
Member State	Germany	
Region	BRANDENBURG	Article 107(3)(c)

Title (and/or name of the beneficiary)	Umsetzung des Entwicklungskonzepts Brandenburg Glasfaser 2020 III	
Legal basis	Landeshaushaltsordnung (LHO) mit den dazugehörigen Verwaltungsvorschriften (VV-LHO) in der Fassung der Bekanntmachung vom 21. April 1999	
Type of measure	Scheme	—
Objective	Sectoral development	
Form of aid	Direct grant	
Budget	Overall budget: EUR 94 (in millions)	
Intensity	75 %	
Duration (period)	until 31.12.2020	
Economic sectors	Telecommunications	
Name and address of the granting authority	Investitionsbank des Landes Brandenburg (ILB) Steinstraße 104-106, 14480 Potsdam	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	13.12.2013	
Reference number of State Aid	SA.37702 (13/N)	
Member State	Germany	
Region	—	—
Title (and/or name of the beneficiary)	German Innovation aid scheme for Shipbuilding	
Legal basis	Richtlinie des Bundesministeriums für Wirtschaft und Technologie zum Förderprogramm „Innovativer Schiffbau sichert wettbewerbsfähige Arbeitsplätze“, §§ 23, 44 Bundeshaushaltsordnung und Landeshaushaltsordnungen	
Type of measure	Scheme	—
Objective	Innovation	
Form of aid	Direct grant	
Budget	Overall budget: EUR 30 (in millions)	
Intensity	30 %	
Duration (period)	1.1.2014-30.6.2014	
Economic sectors	Building of ships and floating structures	

Name and address of the granting authority	Bundesministerium für Wirtschaft und Technologie Scharnhorststr. 34-37, 10115 Berlin
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	9.12.2013	
Reference number of State Aid	SA.37722 (13/N)	
Member State	Finland	
Region	—	—
Title (and/or name of the beneficiary)	Aid Scheme to cinema in Finland	
Legal basis	Guidelines of the Finnish Film Foundation.	
Type of measure	Scheme	—
Objective	Culture	
Form of aid	Direct grant	
Budget	Overall budget: EUR 26 (in millions) Annual budget: EUR 26 (in millions)	
Intensity	50 %	
Duration (period)	1.1.2014-31.12.2014	
Economic sectors	All economic sectors eligible to receive aid	
Name and address of the granting authority	opetus- ja kulttuuriministeriö PL 29; 00023 Valtioneuvosto	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	16.1.2014	
Reference number of State Aid	SA.37731 (13/N)	
Member State	Finland	
Region	—	—
Title (and/or name of the beneficiary)	T&K-projektien tukiohjelman (N 356/2007) jatkaminen/Förlängning av FoU-stödordningen (N 356/2007)	

Legal basis	— Valtionavustuslaki 688/2001/Statsunderstödslagen (688/2001) — Laki yritystuen yleisistä ehdoista 786/1997/Lagen om allmänna villkor för företagsstöd (786/1997)	
Type of measure	Scheme	—
Objective	Research and development	
Form of aid	Soft loan , Direct grant	
Budget	Overall budget: EUR 1 800 (in millions) Annual budget: EUR 300 (in millions)	
Intensity	80 %	
Duration (period)	until 31.12.2014	
Economic sectors	All economic sectors eligible to receive aid	
Name and address of the granting authority	Tekes P.O.Box 69, FI-00101 Helsinki	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	16.1.2014	
Reference number of State Aid	SA.37732 (13/N)	
Member State	Finland	
Region	—	—
Title (and/or name of the beneficiary)	Nuorten innovatiivisten yritysten tukiohjelman (N 309/2007) jatkaminen/Förlängning av stödordningen för nystartade innovativa företag (N 309/2007)	
Legal basis	— Valtionavustuslaki 688/2001/Statsunderstödslagen (688/2001) — Laki yritystuen yleisistä ehdoista 786/1997/Lagen om allmänna villkor för företagsstöd (786/1997)	
Type of measure	Scheme	—
Objective	Research and development, Risk capital	
Form of aid	Direct grant, Provision of risk capital, Soft loan	
Budget	Overall budget: EUR 240 (in millions) Annual budget: EUR 40 (in millions)	
Intensity	100 %	
Duration (period)	until 31.12.2014	
Economic sectors	All economic sectors eligible to receive aid	

Name and address of the granting authority	Tekes P.O.Box 69, FI-00101 Helsinki
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	16.1.2014	
Reference number of State Aid	SA.37733 (13/N)	
Member State	Finland	
Region	—	—
Title (and/or name of the beneficiary)	Pk-yritysten innovaatiotoiminnan neuvontapalveluiden ja innovaatiotoimintaa tukevien palveluiden tukiohjelman (N 308/2007) jatkaminen/Förlängning av stödordningen för innovationsrådgivningstjänster och innovationsstödjande tjänster för små och medelstora företag (N 308/2007)	
Legal basis	— Valtionavustuslaki 688/2001/Statsunderstödslagen (688/2001) — Laki yritystuen yleisistä ehdoista 786/1997/Lagen om allmänna villkor för företagsstöd (786/1997)	
Type of measure	Scheme	—
Objective	Innovation, SMEs	
Form of aid	Direct grant	
Budget	Overall budget: EUR 120 (in millions) Annual budget: EUR 20 (in millions)	
Intensity	100 %	
Duration (period)	until 31.12.2014	
Economic sectors	All economic sectors eligible to receive aid	
Name and address of the granting authority	Tekes P.O.Box 69, FI-00101 Helsinki	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	18.12.2013
Reference number of State Aid	SA.37751 (13/N)
Member State	Germany

Region	—	—
Title (and/or name of the beneficiary)	Verlängerung der Richtlinie für das CIRR Zinsausgleichssystem im Schiffbausektor	
Legal basis	Richtlinie für das CIRR-Zinsausgleichssystem im Schiffbausektor	
Type of measure	Scheme	—
Objective	Promotion of export and internationalisation	
Form of aid	Interest subsidy	
Budget	Overall budget: EUR 1,3 (in millions) Annual budget: EUR 1,3 (in millions)	
Intensity	—	
Duration (period)	1.1.2014-30.6.2014	
Economic sectors	Building of ships and floating structures	
Name and address of the granting authority	Bundesministerium für Wirtschaft und Technologie Scharnhorststr. 34 — 37, 10115 Berlin	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	9.1.2014	
Reference number of State Aid	SA.37752 (13/N)	
Member State	Germany	
Region	—	—
Title (and/or name of the beneficiary)	FET-Richtlinie	
Legal basis	Richtlinie für die Gewährung von Zuwendungen zur Förderung von Forschung, Entwicklung Technologietransfer (FET-Richtlinie)	
Type of measure	Scheme	—
Objective	Research and development	
Form of aid	Direct grant	
Budget	Overall budget: EUR 132,71 (in millions) Annual budget: EUR 22 (in millions)	
Intensity	80 %	
Duration (period)	1.1.2008-30.6.2014	
Economic sectors	All economic sectors eligible to receive aid	

Name and address of the granting authority	MWAVT Düsternbrooker Weg 94, 24105 Kiel
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	17.12.2013	
Reference number of State Aid	SA.37830 (13/N)	
Member State	United Kingdom	
Region	—	—
Title (and/or name of the beneficiary)	Support for Land Remediation — prolongation	
Legal basis	Regional Development Agencies Act (1998); The Greater London Authority Act 1999; The Enterprise and New Towns (Scotland) Act 1990; The Leasehold Reform, Housing and Urban Development Act 1993; The Local Government Act 2000; The Local Government in Scotland Act 2003; The Government of Wales Act (1998); The Welsh Development Agency Act (1975)	
Type of measure	Scheme	—
Objective	Environmental protection	
Form of aid	Direct grant	
Budget	—	
Intensity	100 %	
Duration (period)	1.1.2014-30.6.2014	
Economic sectors	All economic sectors eligible to receive aid	
Name and address of the granting authority	Department for Communities and Local Government Eland House, Bressenden Place, London SW1E 5DU	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	27.1.2014
Reference number of State Aid	SA.37897 (13/N)
Member State	Sweden

Region	—	—
Title (and/or name of the beneficiary)	Stödordning för forskning, utveckling och innovation (Vinnova N560/2007)	
Legal basis	Förordning (2008:762) om statligt stöd till forskning och utveckling samt innovation	
Type of measure	Scheme	—
Objective	Research and development, Innovation	
Form of aid	Soft loan , Repayable advances, Direct grant	
Budget	Overall budget: SEK 1 300 (in millions) Annual budget: SEK 1 300 (in millions)	
Intensity	80 %	
Duration (period)	until 31.12.2014	
Economic sectors	All economic sectors eligible to receive aid	
Name and address of the granting authority	Verket för innovationssystem, Vinnova 111 21 STOCKHOLM	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	27.1.2014	
Reference number of State Aid	SA.37915 (13/N)	
Member State	Sweden	
Region	—	—
Title (and/or name of the beneficiary)	Förlängning av stödordning för forskning, utveckling och innovation inom energiområdet (STEM, N 561/2007)	
Legal basis	Förordning (2008:761) om statligt stöd till forskning och utveckling samt innovation inom energiområdet	
Type of measure	Scheme	—
Objective	Research and development, Innovation	
Form of aid	Direct grant, Repayable advances, Soft loan	
Budget	Overall budget: SEK 700 (in millions) Annual budget: SEK 700 (in millions)	
Intensity	80 %	
Duration (period)	until 31.12.2014	
Economic sectors	All economic sectors eligible to receive aid	

Name and address of the granting authority	Statens Energimyndighet Kungsgatan 43 Box 310, 631 04 ESKILSTUNA
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	16.1.2014	
Reference number of State Aid	SA.37984 (13/N)	
Member State	Ireland	
Region	—	—
Title (and/or name of the beneficiary)	Prolongation of the Credit Union Resolution Scheme H1 2014	
Legal basis	Central Bank and Credit Institutions (Resolutions) Act 2011	
Type of measure	Scheme	—
Objective	Remedy for a serious disturbance in the economy	
Form of aid	Direct grant, Guarantee	
Budget	Overall budget: EUR 500 (in millions)	
Intensity	—	
Duration (period)	until 30.6.2014	
Economic sectors	FINANCIAL AND INSURANCE ACTIVITIES	
Name and address of the granting authority	Minister for Finance Government Buildings Upper Merrion Street Dublin 2 Ireland	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Decisions in the context of the monitoring of the implementation of decisions regarding restructuring and liquidation aid for financial institutions

(Text with EEA relevance)

(2014/C 69/02)

Date of adoption of the decision	19.7.2013
Reference number of the aid	SA.32745 (11/MC)
Member State	Austria
Title (and/or name of the beneficiary)	State support for the run-off of Kommunalkredit Austria AG
Type of decision	New decision related to the following Commission decision: SA.32745 (11/NN)
Content	Other adaptation
Other information	Approval of additional aid

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Authorisation for State aid pursuant to Articles 107 and 108 of the TFEU

Cases where the Commission raises no objections

(Text with EEA relevance, except for products falling under Annex I to the Treaty)

(2014/C 69/03)

Date of adoption of the decision	19.12.2013	
Reference number of State Aid	SA.36991 (13/N)	
Member State	Netherlands	
Region	NEDERLAND	—
Title (and/or name of the beneficiary)	Flexibele afschrijving milieu-investeringen (VAMIL)/duurzame stallen vleesvee en geiten	
Legal basis	Wet inkomstenbelasting 2001, artikelen 3.30a, eerste lid, en 3.31. Aanwijzingsregeling willekeurige afschrijving en investeringsaftrek milieu-investeringen 2009, artikel 1 en bijlage. De wet en de aanwijzingsregeling zijn vindbaar via www.wetten.nl	
Type of measure	Scheme	—
Objective	Environmental protection	
Form of aid	Tax base reduction, Tax deferment	
Budget	Overall budget: EUR 0,22 (in millions) Annual budget: EUR 0,22 (in millions)	
Intensity	15,08 %	
Duration (period)	1.1.2014-31.12.2014	
Economic sectors	AGRICULTURE, FORESTRY AND FISHING	
Name and address of the granting authority	Ministerie van Financiën Postbus 20201, 2500 EE Den Haag	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	17.12.2013	
Reference number of State Aid	SA.37251 (13/N)	
Member State	Netherlands	
Region	NEDERLAND	—
Title (and/or name of the beneficiary)	Garantstelling landbouwondernemingen	
Legal basis	Kaderwet LNV-subsidies Regeling LNV-subsidies, artikelen 2:70-2:80 www.wetten.nl	

Type of measure	Scheme	—
Objective	Investment (AGRI)	
Form of aid	Guarantee	
Budget	Overall budget: EUR 39,16 (in millions) Annual budget: EUR 5,59 (in millions)	
Intensity	7,17 %	
Duration (period)	until 31.12.2020	
Economic sectors	AGRICULTURE, FORESTRY AND FISHING	
Name and address of the granting authority	Minister van Economische Zaken Bezuidenhoutseweg 73 Den Haag	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	20.11.2013	
Reference number of State Aid	SA.37462 (13/N)	
Member State	France	
Region	—	—
Title (and/or name of the beneficiary)	Aide à la réinsertation professionnelle	
Legal basis	Art 33 de la loi d'orientation agricole 2006-11 du 5 janvier 2006 Décret 2006-1628 du 18 décembre 2006 Articles D. 352-15 à D. 352-21 du code rural et de la pêche maritime	
Type of measure	Scheme	—
Objective	Closing capacity	
Form of aid	Direct grant	
Budget	Overall budget: EUR 35 (in millions) Annual budget: EUR 5 (in millions)	
Intensity	%	
Duration (period)	1.1.2014-31.12.2020	
Economic sectors	AGRICULTURE, FORESTRY AND FISHING	
Name and address of the granting authority	Ministère de l'agriculture, de l'agroalimentaire et de la forêt 3 rue Barbet de Jouy 75349 Paris 07	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	18.12.2013	
Reference number of State Aid	SA.37556 (13/N)	
Member State	Romania	
Region	—	—
Title (and/or name of the beneficiary)	Modificarea și completarea schemei de ajutor de stat privind acordarea unui ajutor de stat producătorilor de cartofi afectați de organismele de carantină dăunătoare cartofului	
Legal basis	Proiect de Hotărâre pentru modificarea și completarea Hotărârii Guvernului nr. 299/2012 cu privire la normele metodologice privind modul de acordare a ajutoarelor de stat producătorilor agricoli afectați de organisme de carantină dăunătoare culturii cartofului: HOTĂRÂRE nr. 299 din 11 aprilie 2012 cu privire la normele metodologice privind modul de acordare a ajutoarelor de stat producătorilor de cartofi afectați de organismele de carantină dăunătoare culturii cartofului.	
Type of measure	Scheme	—
Objective	Plant diseases	
Form of aid	Direct grant	
Budget	—	
Intensity	100 %	
Duration (period)	until 31.12.2014	
Economic sectors	Crop and animal production, hunting and related service activities	
Name and address of the granting authority	Ministerul Agriculturii și Dezvoltării Rurale Blvd. Carol I; nr. 24; Sector 3, București	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	18.12.2013	
Reference number of State Aid	SA.37603 (13/N)	
Member State	Lithuania	
Region	—	—
Title (and/or name of the beneficiary)	Compensation of losses caused by transmissible animal diseases	
Legal basis	1) Lietuvos Respublikos žemės ūkio ir kaimo plėtros įstatymas (Žin., 2002, Nr. 72-3009, 2008, Nr. 81-3174); 2) Lietuvos Respublikos veterinarijos įstatymas (Žin., 1992, Nr. 2-15, 2010, Nr. 148-7563); 3) Lietuvos Respublikos Vyriausybės 2006 m. spalio 11 d. nutarimas Nr. 987 „Dėl valstybės institucijų, savivaldybių ir kitų juridinių asmenų, atsakingų už Europos žemės ūkio garantijų fondo priemonių įgyvendinimą, paskyrimo“ (Žin., 2006, Nr. 110-4171, 2013, Nr. 93-4646);	

Type of measure	Scheme	—
Objective	Animal diseases	
Form of aid	Direct grant, Subsidized services	
Budget	Overall budget: LTL 138,2 (in millions)	
Intensity	100 %	
Duration (period)	1.1.2014-31.12.2014	
Economic sectors	AGRICULTURE, FORESTRY AND FISHING	
Name and address of the granting authority	Lietuvos Respublikos žemės ūkio ministerija Gedimino pr. 19, LT – 01103 Vilnius	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	19.12.2013	
Reference number of State Aid	SA.37693 (13/N)	
Member State	Latvia	
Region	—	—
Title (and/or name of the beneficiary)	Conservation of genetic resources of agricultural animals	
Legal basis	Ministru kabineta 2010. gada 23. marta noteikumi Nr. 295 "Noteikumi par valsts un Eiropas Savienības lauku attīstības atbalsta piešķiršanu, administrēšanu un uzraudzību vides un lauku ainavas uzlabošanai"	
Type of measure	Scheme	—
Objective	Agri-environmental commitments	
Form of aid	Direct grant	
Budget	Overall budget: LVL 1,5 (in millions) Annual budget: LVL 0,33 (in millions)	
Intensity	100 %	
Duration (period)	1.1.2014-30.12.2019	
Economic sectors	AGRICULTURE, FORESTRY AND FISHING	
Name and address of the granting authority	Lauku atbalsta dienests Republikas laukums 2 LV-1981	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	9.12.2013	
Reference number of State Aid	SA.37695 (13/N)	
Member State	Latvia	
Region	—	—
Title (and/or name of the beneficiary)	Aid to producers and processors of agricultural goods and foodstuffs for their involvement in food quality schemes	
Legal basis	Ministru kabineta noteikumu projekts "Noteikumi par valsts atbalstu lauksaimniecībai un tā piešķiršanas kārtību"	
Type of measure	Scheme	—
Objective	Encouraging quality products	
Form of aid	Direct grant	
Budget	—	
Intensity	100 %	
Duration (period)	1.1.2014-30.12.2019	
Economic sectors	AGRICULTURE, FORESTRY AND FISHING	
Name and address of the granting authority	Lauku atbalsta dienests Republikas laukums 2 LV-1981	
Other information	—	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	16.12.2013	
Reference number of State Aid	SA.37696 (13/N)	
Member State	Latvia	
Region	—	—
Title (and/or name of the beneficiary)	Aid to compensate losses that have arisen as a result of fireblight in orchards	
Legal basis	Ministru kabineta 2009. gada 24. februāra noteikumi Nr. 178 "Kartiba, kada pieškir kompensaciju par fitosanitaro pasakumu izpildi"	
Type of measure	Scheme	—
Objective	Plant diseases	
Form of aid	Direct grant, Subsidized services	
Budget	—	
Intensity	100 %	
Duration (period)	1.1.2014-30.12.2019	

Economic sectors	AGRICULTURE, FORESTRY AND FISHING
Name and address of the granting authority	Lauku atbalsta dienests Republikas laukums 2 LV-1981
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

IV

(Notices)

NOTICES FROM MEMBER STATES

Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 800/2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation)

(Text with EEA relevance)

(2014/C 69/04)

Reference number of the State Aid	SA.37130 (13/X)	
Member State	Netherlands	
Member State reference number	—	
Name of the Region (NUTS)	Non-assisted areas	
Granting authority	Ministerie van Economische Zaken Postbus 20401 2500 EK Den Haag Nederland www.rijksoverheid.nl/ministeries/ez	
Title of the aid measure	Green Deal Noord Nederland; subsidieverlening acht Energy College projecten als onderdeel van de Energy Academy Europe	
National legal basis (Reference to the relevant national official publication)	Kaderwet EZ subsidies Subsidiebeschikking met verplichtingen	
Type of measure	Ad hoc aid	
Amendment of an existing aid measure	—	
Duration	From 15.7.2013	
Economic sector(s) concerned	EDUCATION	
Type of beneficiary	SME — Rijksuniversiteit Groningenin het kader van Executive MBA Natural ResourcesArtikel 39 opleidingssteun (maximaal steunbedrag 100 000,- Euro (1 ton)	
Annual overall amount of the budget planned under the scheme	EUR 100 000 (in millions)	
For guarantees	—	
Aid Instrument (Article 5)	Direct grant	
Reference to the Commission Decision	—	
If co-financed by Community funds	—	
Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
Specific training (Art. 38(1))	25 %	0 %

Web link to the full text of the aid measure:

http://applicaties.agentschapnl.nl/content/energy-college-initiatieven-noord-nederland

Reference number of the State Aid	SA.37211 (13/X)
Member State	Italy
Member State reference number	—
Name of the Region (NUTS)	LOMBARDIA Non-assisted areas
Granting authority	REGIONE LOMBARDIA — DG ATTIVITA' PRODUTTIVE, RICERCA ED INNOVAZIONE; dirigente Cristina De Ponti PIAZZA CITTA' DI LOMBARDIA, 1 — 20124 MILANO www.regione.lombardia.it
Title of the aid measure	BANDO PER INTERVENTI DI R&S FINALIZZATI AL POTENZIAMENTO DI CENTRI DI COMPETENZA DI RILIEVO REGIONALE
National legal basis (Reference to the relevant national official publication)	L.r. 1/2007 «Strumenti di competitività per le imprese e per il territorio della Lombardia» — POR FESR 2007-2013 Regione Lombardia approvato con Decisione della Commissione Europea C(2007) 3784 dello 1.8.2007 — D.G.R. n. IX/4321 del 26.10.2012 di integrazione delle Linee Guida di Attuazione dell'Asse 1 del POR FESR 2007-2013 (DGR VIII/8298 del 29 ottobre 2008 — Decreto 4 febbraio 2013 n.734 — Decreto 19.7.2013 n. 6855
Type of measure	Scheme
Amendment of an existing aid measure	—
Duration	2.9.2013-31.12.2015
Economic sector(s) concerned	All economic sectors eligible to receive aid
Type of beneficiary	SME,large enterprise
Annual overall amount of the budget planned under the scheme	EUR 3 (in millions)
For guarantees	—
Aid Instrument (Article 5)	Direct grant
Reference to the Commission Decision	—
If co-financed by Community funds	POR FESR 2007-2013 Regione Lombardia approvato con Decisione della Commissione Europea C(2007) 3784 dello 1.8.2007 — EUR 1,20 (in millions)

Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
Industrial research (Art. 31(2)(b))	40 %	0 %
Experimental development (Art. 31(2)(c))	40 %	0 %

Web link to the full text of the aid measure:

http://www.ue.regione.lombardia.it/cs/Satellite?c=Attivita&childpagename=ProgrammazioneComunitaria%2FWrapperBandiLayout&cid=1213619786126&p=1213619786126&packedargs=PO%3DPO%2BCompetitivit%2526agrave%253B%253AFESR%26locale%3D1194453881584%26menu-to-render%3D1213301217281%26po%3DPO%2BCompetitivit%25C3%25A0&pagename=PROCOMWrapper&tipologia=Bandi

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Reference number of the State Aid	SA.37611 (13/X)
Member State	Croatia
Member State reference number	HR
Name of the Region (NUTS)	HRVATSKA Article 107(3)(a)
Granting authority	Ministarstvo gospodarstva Ulica Grada Vukovara 78, 10000 Zagreb, Croatia www.mingo.hr
Title of the aid measure	Operativni Program regionalnih potpora za ulaganje u opremu za 2013.
National legal basis (Reference to the relevant national official publication)	— Strategija regionalnog razvoja Republike Hrvatske 2011.-2013. — Program Vlade Republike Hrvatske za mandat 2011.-2015. — Strateški plan Ministarstva gospodarstva za razdoblje 2013.-2015.
Type of measure	Scheme
Amendment of an existing aid measure	—
Duration	10.10.2013-31.12.2013
Economic sector(s) concerned	All economic sectors eligible to receive aid
Type of beneficiary	SME,large enterprise
Annual overall amount of the budget planned under the scheme	HRK 120 (in millions)
For guarantees	—
Aid Instrument (Article 5)	Direct grant
Reference to the Commission Decision	—
If co-financed by Community funds	—

Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
Regional aid — scheme (art. 13)	40 %	20,2 %

Web link to the full text of the aid measure:

http://www.mingo.hr/default.aspx?id=12

Reference number of the State Aid	SA.37857 (13/X)
Member State	Italy
Member State reference number	—
Name of the Region (NUTS)	FRIULI-VENEZIA GIULIA Mixed
Granting authority	DIREZIONE CENTRALE LAVORO FORMAZIONE COMMERCIO E PARI OPPORTUNITA' VIA S. FRANCESCO 37 34131 TRIESTE www.regione.fvg.it
Title of the aid measure	AVVISO DI PROCEDURA PUBBLICA PER LA SELEZIONE DI PROGETTI FORMATIVI AZIENDALI (LEGGE 236/1993 ARTICOLO 9, COMMI 3 E 7) — STANZIAMENTO 2013
National legal basis (Reference to the relevant national official publication)	LEGGE 236 DEL 19 LUGLIO 1993 ARTICOLO 9 COMMI 3 E 7 DECRETO N. 3200/LAVOR.FP/2013 DEL 3 LUGLIO 2013
Type of measure	Scheme
Amendment of an existing aid measure	—
Duration	1.10.2013-31.12.2014
Economic sector(s) concerned	All economic sectors eligible to receive aid
Type of beneficiary	SME,large enterprise
Annual overall amount of the budget planned under the scheme	EUR 1,2435 (in millions)
For guarantees	—
Aid Instrument (Article 5)	Direct grant
Reference to the Commission Decision	—
If co-financed by Community funds	—

Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
Specific training (Art. 38(1))	25 %	20,2 %
General training (Art. 38(2))	60 %	20,2 %

Web link to the full text of the aid measure:

http://bandiformazione.regione.fvg.it/fop2011/Bandi/Dettaglio.aspx?Id=2481

Reference number of the State Aid	SA.37875 (13/X)
Member State	Italy
Member State reference number	—

Name of the Region (NUTS)	BASILICATA Article 107(3)(a)
Granting authority	REGIONE BASILICATA DIPARTIMENTO ATTIVITA' PRODUTTIVE POLITICHE DELL'IMPRESA INNOVAZIONE TECNOLOGICA VIA VINCENZO VERRASTRO, 8 — 85100 POTENZA (PZ) http://www.basilicatanet.it
Title of the aid measure	PROCEDURA VALUTATIVA A SPORTELLO PER LA CONCESSIONE DI AGEVOLAZIONI PER LO SVILUPPO E LA QUALIFICAZIONE DELLA FILIERA TURISTICA — PIOT «BASILICATA NATURACULTURA»
National legal basis (Reference to the relevant national official publication)	DELIBERAZIONE DI GIUNTA REGIONALE N. 708 DEL 18.6.2013 PUBBLICATA SUL BOLLETTINO UFFICIALE DELLA REGIONE BASILICATA N. 22 DEL 1.7.2013
Type of measure	Scheme
Amendment of an existing aid measure	—
Duration	1.7.2013-31.12.2013
Economic sector(s) concerned	ACCOMMODATION AND FOOD SERVICE ACTIVITIES, ADMINISTRATIVE AND SUPPORT SERVICE ACTIVITIES, ARTS, ENTERTAINMENT AND RECREATION
Type of beneficiary	SME
Annual overall amount of the budget planned under the scheme	EUR 1,941 (in millions)
For guarantees	—
Aid Instrument (Article 5)	Direct grant
Reference to the Commission Decision	—
If co-financed by Community funds	P.O. FESR BASILICATA 2007/2013 — LINEA DI INTERVENTO IV.1.1.B — EUR 0,62 (in millions)

Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
Regional aid — scheme (art. 13)	30 %	20,2 %

Web link to the full text of the aid measure:

http://www.regione.basilicata.it/giunta/site/giunta/department.jsp?dep=100055&area=108284&otype=1058&id=2773753

Reference number of the State Aid	SA.37899 (13/X)
Member State	Sweden
Member State reference number	N2013/5589/MK
Name of the Region (NUTS)	SVERIGE Mixed

Granting authority	Kammarkollegiet Birger Jarlsgatan 16 103 15, Stockholm www.kammarkollegiet.se
Title of the aid measure	Kapitaltillskott för idébanker, till holdingbolag knutna till universitet och högskolor
National legal basis (Reference to the relevant national official publication)	Regleringsbrev för budgetåret 2012 avseende anslag 3:13 Särskilda utgifter för forskningsändamål (prop. 2011/12:1 utg.omr. 16, bet. 2011/12:UbU, rskr. 2011/12:98). Regleringsbrev för budgetåret 2013 avseende anslag 3:13 Särskilda utgifter för forskningsändamål (prop. 2012/13:1 utg.omr. 16, bet. 2012/13:UbU1, rskr. 2012/13:113).
Type of measure	Ad hoc aid
Amendment of an existing aid measure	—
Duration	From 28.6.2012
Economic sector(s) concerned	Scientific research and development
Type of beneficiary	SME — MIUN Holding AB, GU Holding AB, SLU Holding AB, KTH Holding AB, Linköpings universitet Holding AB,LTU Holding AB,SU Holding AB
Annual overall amount of the budget planned under the scheme	SEK 28,725 (in millions)
For guarantees	—
Aid Instrument (Article 5)	Direct grant
Reference to the Commission Decision	—
If co-financed by Community funds	—

Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
Aid for innovation advisory services and for innovation support services (Art. 36)	7 181 250 SEK	—
Aid for industrial property rights costs for SMEs (Art. 33)	75 %	—

Web link to the full text of the aid measure:

http://www.esv.se/sv/Verktyg--stod/Statsliggaren/Regleringsbrev/?RBID=13841

http://www.esv.se/sv/Verktyg--stod/Statsliggaren/Regleringsbrev/?RBID=14619

Reference number of the State Aid	SA.37930 (13/X)
Member State	Poland
Member State reference number	PL
Name of the Region (NUTS)	Poland Article 107(3)(a)
Granting authority	Zał. Organy udzielające pomocy właściwy dla danego podmiotu właściwa dla danego podmiotu

Title of the aid measure	Ulgi w spłacie zobowiązań podatkowych stanowiących pomoc publiczną na zatrudnienie pracowników znajdujących się w szczególnie niekorzystnej sytuacji i na zatrudnienie pracowników niepełnosprawnych
National legal basis (Reference to the relevant national official publication)	art. 67a i art. 67b § 1 pkt 3 lit. g ustawy z dnia 29 sierpnia 1997 r. – Ordynacja podatkowa (Dz. U. z 2005 r. Nr 8, poz. 60, z późn. zm.)
Type of measure	Scheme
Amendment of an existing aid measure	—
Duration	17.11.2009-30.6.2014
Economic sector(s) concerned	All economic sectors eligible to receive aid
Type of beneficiary	SME,large enterprise
Annual overall amount of the budget planned under the scheme	PLN 20 (in millions)
For guarantees	—
Aid Instrument (Article 5)	Other form of tax advantage
Reference to the Commission Decision	—
If co-financed by Community funds	—

Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
Aid for the recruitment of disadvantaged workers in the form of wage subsidies (Art. 40)	50 %	—
Aid for the employment of disabled workers in the form of wage subsidies (Art. 41)	75 %	—

Web link to the full text of the aid measure:

http://www.mf.gov.pl/documents/764034/1002119/Dz.U.+2009+nr+183+poz.+1426

Reference number of the State Aid	SA.37937 (13/X)
Member State	Germany
Member State reference number	—
Name of the Region (NUTS)	DEUTSCHLAND Non-assisted areas
Granting authority	Bundesanstalt für Straßenwesen Brüderstraße 53 51427 Bergisch Gladbach www.bast.de
Title of the aid measure	Innovationsprogramm Straße — Förderschwerpunkt „Innovationen im Straßenbau — Entwicklung innovativer Verfahren zur Optimierung der Oberflächengestaltung von Verkehrsflächen in Asphaltbauweise“

National legal basis (Reference to the relevant national official publication)	Gesetz über die Feststellung des Bundeshaushaltsplans für das Haushaltsjahr 2013 (Haushaltsgesetz 2013) vom 20. Dezember 2012 (BGBl. I S. 2757)
Type of measure	Scheme
Amendment of an existing aid measure	—
Duration	18.11.2013-31.5.2017
Economic sector(s) concerned	Other research and experimental development on natural sciences and engineering
Type of beneficiary	SME,large enterprise
Annual overall amount of the budget planned under the scheme	EUR 0,9 (in millions)
For guarantees	—
Aid Instrument (Article 5)	Direct grant
Reference to the Commission Decision	—
If co-financed by Community funds	—

Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
Industrial research (Art. 31(2)(b))	50 %	20,2 %
Experimental development (Art. 31(2)(c))	25 %	20,2 %

Web link to the full text of the aid measure:

http://www.bast.de/cln_030/nn_510152/DE/Forschung/Forschungsfoerderung/Downloads/inno-foerdergrundsaetze-6-veroeffentlichung,templateId=raw,property=publicationFile.pdf/inno-foerdergrundsaetze-6-veroeffentlichung.pdf

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Reference number of the State Aid	SA.37943 (13/X)
Member State	Belgium
Member State reference number	—
Name of the Region (NUTS)	WEST-VLAANDEREN Non-assisted areas
Granting authority	Provincie West-Vlaanderen Koning Leopold III-laan 41 8200 Sint-Andries Brugge www.west-vlaanderen.be
Title of the aid measure	jaardotatie aan Inagro vzw (nominatieve toelage)
National legal basis (Reference to the relevant national official publication)	Besluit van de provincieraad van West-Vlaanderen van 5.12.2013 tot goedkeuring van de samenwerkings- en gebruiksoveerenkomst tussen de Provincie West-Vlaanderen en Inagro vzw
Type of measure	Scheme

Amendment of an existing aid measure	—
Duration	1.1.2014-31.12.2019
Economic sector(s) concerned	AGRICULTURE, FORESTRY AND FISHING
Type of beneficiary	SME
Annual overall amount of the budget planned under the scheme	EUR 6 (in millions)
For guarantees	—
Aid Instrument (Article 5)	Direct grant
Reference to the Commission Decision	—
If co-financed by Community funds	—

Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
Aid for research and development in the agricultural and fisheries sectors (Art. 34)	90 %	—

Web link to the full text of the aid measure:

http://www.west-vlaanderen.be/ONDERNEMEN/ECONOMIE_START/Pages/StaatssteunLandbouw.aspx

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Reference number of the State Aid	SA.37959 (13/X)
Member State	Estonia
Member State reference number	—
Name of the Region (NUTS)	Estonia Article 107(3)(a)
Granting authority	SA Keskkonnainvesteeringute Keskus Narva mnt 7A, Tallinn 10117 http://www.kik.ee
Title of the aid measure	Jäätmete kogumise, sortimise ja taaskasutusse suunamise arendamine
National legal basis (Reference to the relevant national official publication)	1) Keskkonnaministri 3. augusti 2009. a määrus nr 47 „Meetme „Jäätmete kogumise, sortimise ja taaskasutusse suunamise arendamine" tingimused" (RTL, 7.8.2009, 65, 968; RT I, 29.11.2013, 19) 2) Perioodi 2007-2013 struktuuritoetuse seadus (RT I 2006, 59, 440; RT I, 3.2.2011, 3)
Type of measure	Scheme
Amendment of an existing aid measure	SA.32949
Duration	2.12.2013-30.6.2014
Economic sector(s) concerned	All economic sectors eligible to receive aid

Type of beneficiary	SME, large enterprise	
Annual overall amount of the budget planned under the scheme	EUR 3,056 (in millions)	
For guarantees	—	
Aid Instrument (Article 5)	Direct grant	
Reference to the Commission Decision	—	
If co-financed by Community funds	Ühtekuuluvusfond — EUR 3,06 (in millions)	
Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
Regional aid — scheme (art. 13)	50 %	0 %
Aid for consultancy in favour of SMEs (Art. 26)	50 %	—

Web link to the full text of the aid measure:

https://www.riigiteataja.ee/akt/129112013019?leiaKehtiv

Reference number of the State Aid	SA.37968 (13/X)
Member State	Belgium
Member State reference number	—
Name of the Region (NUTS)	VLAAMS GEWEST Non-assisted areas
Granting authority	Vlaams Energieagentschap Koning Albert II-laan 20 bus 17 1000 Brussel http://www.energiesparen.be/milieuvriendelijke/steunregeling
Title of the aid measure	Steunregeling voor nuttige groene warmte. Steunregeling voor restwarmte. Steunregeling voor injectie van biomethaan.
National legal basis (Reference to the relevant national official publication)	13 SEPTEMBER 2013. — Besluit van de Vlaamse Regering tot wijziging van het besluit van de Vlaamse Regering van 19 november 2010 houdende algemene bepalingen over het energiebeleid, wat betreft de invoering van een steunregeling voor restwarmte
Type of measure	Scheme
Amendment of an existing aid measure	—
Duration	5.12.2013-5.2.2014
Economic sector(s) concerned	All economic sectors eligible to receive aid
Type of beneficiary	SME,large enterprise
Annual overall amount of the budget planned under the scheme	EUR 6,712 (in millions)

For guarantees	—	
Aid Instrument (Article 5)	Direct grant	
Reference to the Commission Decision	—	
If co-financed by Community funds	—	
Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
Environmental investment aid for energy saving measures (Art. 21)	20 %	20,2 %
Environmental investment aid for the promotion of energy from renewable energy sources (Art. 23)	45 %	20,2 %

Web link to the full text of the aid measure:

http://codex.vlaanderen.be/Portals/Codex/documenten/1023387.html

http://codex.vlaanderen.be/Portals/Codex/documenten/1023389.html

http://codex.vlaanderen.be/Portals/Codex/documenten/1023388.html

Reference number of the State Aid	SA.37971 (13/X)
Member State	Netherlands
Member State reference number	NL:
Name of the Region (NUTS)	GRONINGEN Mixed
Granting authority	Provincie Groningen Postbus 610, 9700 AP Groningen www.provinciegroningen.nl
Title of the aid measure	Uitvoeringskader Ruimtelijk Economisch Programma ZZL Regionaal deel — Groningen, hoofdstuk 3A Subsidie voor opleidingsprojecten
National legal basis (Reference to the relevant national official publication)	Kaderverordening subsidies provincie Groningen 1998
Type of measure	Scheme
Amendment of an existing aid measure	—
Duration	11.12.2013-31.12.2020
Economic sector(s) concerned	All economic sectors eligible to receive aid
Type of beneficiary	SME,large enterprise
Annual overall amount of the budget planned under the scheme	EUR 10 (in millions)
For guarantees	—
Aid Instrument (Article 5)	Direct grant

Reference to the Commission Decision	—	
If co-financed by Community funds	—	
Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
General training (Art. 38(2))	50 %	0 %
Specific training (Art. 38(1))	25 %	20,2 %

Web link to the full text of the aid measure:

http://www.provinciegroningen.nl/fileadmin/user_upload/Documenten/Brief/2010-02143bijlage.pdf

http://www.provinciegroningen.nl/fileadmin/user_upload/Documenten/Provinciaal_blad/provinciaalblad201357.pdf

Reference number of the State Aid	SA.37982 (13/X)
Member State	Germany
Member State reference number	—
Name of the Region (NUTS)	HESSEN Mixed
Granting authority	Hessisches Ministerium für Wissenschaft und Kunst Rheinstraße 23-25 65185 Wiesbaden www.hmwk.hessen.de
Title of the aid measure	Richtlinie zur Förderung von Forschung und Entwicklung „Elektromobilität in hessischen Kommunen“, Abschnitt 5.2.1: Förderzweck Fahrzeugbeschaffung, Absatz „Antragsteller: Kommunale Unternehmen“
National legal basis (Reference to the relevant national official publication)	Richtlinie zur Förderung von Forschung und Entwicklung „Elektromobilität in hessischen Kommunen“ Staatsanzeiger für das Land Hessen vom 18. Februar 2013, S. 341
Type of measure	Scheme
Amendment of an existing aid measure	—
Duration	1.2.2014-31.12.2016
Economic sector(s) concerned	TRANSPORTATION AND STORAGE
Type of beneficiary	SME,large enterprise
Annual overall amount of the budget planned under the scheme	EUR 0,125 (in millions)
For guarantees	—
Aid Instrument (Article 5)	Direct grant

Reference to the Commission Decision	—	
If co-financed by Community funds	—	
Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
Aid for the acquisition of new transport vehicles which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards (Art. 19)	35 %	0 %

Web link to the full text of the aid measure:

http://stanz.ms-visucom.de/anwendungen/ms-visucom/bilder/firma80/2013_public/Ausgabe_08_2013.pdf

Reference number of the State Aid	SA.37983 (13/X)	
Member State	Germany	
Member State reference number	—	
Name of the Region (NUTS)	DEUTSCHLAND Mixed	
Granting authority	Bundesministerium für Wirtschaft und Technologie Scharnhorststr. 34-37 10115 Berlin http://www.bmwi.de	
Title of the aid measure	Entwicklung konvergenter Informations- und Kommunikationstechnik (IKT)	
National legal basis (Reference to the relevant national official publication)	Bundesanzeiger AT 10.12.2013 B1	
Type of measure	Scheme	
Amendment of an existing aid measure	—	
Duration	1.1.2014-31.12.2017	
Economic sector(s) concerned	Scientific research and development	
Type of beneficiary	SME,large enterprise	
Annual overall amount of the budget planned under the scheme	EUR 150 (in millions)	
For guarantees	—	
Aid Instrument (Article 5)	Direct grant	
Reference to the Commission Decision	—	
If co-financed by Community funds	—	
Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
Experimental development (Art. 31(2)(c))	25 %	20,2 %

Aid for technical feasibility studies (Art. 32)	75 %	—
Fundamental research (Art. 31(2)(a))	100 %	—
Industrial research (Art. 31(2)(b))	50 %	20,2 %

Web link to the full text of the aid measure:

http://www.bmwi.de/BMWi/Redaktion/PDF/B/bekanntmachung-bundesanzeiger-verlaengerung-foerderschwerpunkt-konv-ikt,property=pdf,bereich=bmwi2012,sprache=de,rwb=true.pdf

Startseite > Themen > Digitale Welt > Internet der Zukunft > Internet der Dinge > Bekanntmachungen

http://www.bmwi.de/BMWi/Redaktion/PDF/B/bekanntmachung-bundesanzeiger-verlaengerung-foerderschwerpunkt-konv-ikt,property=pdf,bereich=bmwi2012,sprache=de,rwb=true.pdf

Startseite > Themen > Digitale Welt > Internet der Zukunft > Internet der Dienste > Bekanntmachungen

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Reference number of the State Aid	SA.38015 (13/X)
Member State	Belgium
Member State reference number	—
Name of the Region (NUTS)	VLAAMS BRABANT Non-assisted areas
Granting authority	Provincie Vlaams-Brabant Provincieplein 1 3010 Leuven www.vlaamsbrabant.be
Title of the aid measure	Nominatieve subsidie aan het Koninklijk Belgisch Instituut tot Verbetering van de Biet vzw.
National legal basis (Reference to the relevant national official publication)	— provinciedecreet, vnl. artikel 154 t.e.m. 158 — wet van 14 november 1983 betreffende het reglement van de modaliteiten inzake de toekenning van subsidies en de controle op het gebruik ervan; — KB van 2 juni 1999 betreffende de algemene regeling van de provincieboekhouding en vnl. het artikel 54, 5°-b; — provinciaal reglement van 18 februari 1997 betreffende subsidiëring en toestaan van reservevorming door subsidietrekkers; — 101LAN01/001/001/6490 van het provinciale budget 2014.
Type of measure	Scheme
Amendment of an existing aid measure	—
Duration	1.1.2014-31.12.2014
Economic sector(s) concerned	AGRICULTURE, FORESTRY AND FISHING
Type of beneficiary	SME
Annual overall amount of the budget planned under the scheme	EUR 0,025 (in millions)
For guarantees	—
Aid Instrument (Article 5)	Direct grant

Reference to the Commission Decision	—	
If co-financed by Community funds	—	
Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
Aid for research and development in the agricultural and fisheries sectors (Art. 34)	100 %	—

Web link to the full text of the aid measure:

https://drive.google.com/file/d/0B_wjQwsc3gUhQlp0ZnYwaXc4dDQ/edit?usp=sharing

Reference number of the State Aid	SA.38017 (13/X)
Member State	Belgium
Member State reference number	—
Name of the Region (NUTS)	VLAAMS BRABANT Non-assisted areas
Granting authority	Provincie Vlaams-Brabant Provincieplein 1 3010 Leuven www.vlaamsbrabant.be
Title of the aid measure	Nominatieve subsidie aan het Vlaams Centrum voor de Bewaring van Tuinbouwproducten.
National legal basis (Reference to the relevant national official publication)	— provinciedecreet, vnl. artikel 154 t.e.m. 158 — wet van 14 november 1983 betreffende het reglement van de modaliteiten inzake de toekenning van subsidies en de controle op het gebruik ervan; — KB van 2 juni 1999 betreffende de algemene regeling van de provincieboekhouding en vnl. het artikel 54, 5°-b; — provinciaal reglement van 18 februari 1997 betreffende subsidiëring en toestaan van reservevorming door subsidietrekkers; — 101LAN01/001/001/6490 van het provinciale budget 2014.
Type of measure	Scheme
Amendment of an existing aid measure	—
Duration	1.1.2014-31.12.2014
Economic sector(s) concerned	AGRICULTURE, FORESTRY AND FISHING
Type of beneficiary	SME
Annual overall amount of the budget planned under the scheme	EUR 0,025 (in millions)
For guarantees	—
Aid Instrument (Article 5)	Direct grant
Reference to the Commission Decision	—

If co-financed by Community funds	—	
Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
Aid for research and development in the agricultural and fisheries sectors (Art. 34)	100 %	—

Web link to the full text of the aid measure:

https://drive.google.com/file/d/0B_wjQwsc3gUhQlp0ZnYwaXc4dDQ/edit?usp=sharing

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Reference number of the State Aid	SA.38020 (13/X)	
Member State	Spain	
Member State reference number	—	
Name of the Region (NUTS)	ESPANA, PAIS VASCO Non-assisted areas	
Granting authority	GOBIERNO VASCO — DEPARTAMENTO DE DESARROLLO ECONOMICO Y COMPETITIVIDAD C/ Donostia 1 01010-Vitoria http://www.nasdap.ejgv.euskadi.net/r50-2397/es/	
Title of the aid measure	Ayudas a la investigación, desarrollo e innovación de los sectores agrario, alimentario y pesquero de la Comunidad Autónoma del País Vasco	
National legal basis (Reference to the relevant national official publication)	DECRETO 423/2013, de 7 de octubre, de ayudas a la investigación, desarrollo e innovación de los sectores agrario, alimentario y pesquero de la Comunidad Autónoma del País Vasco (Programa Berriker). Capítulos II, III y IV	
Type of measure	Scheme	
Amendment of an existing aid measure	Modification X 388/2010	
Duration	26.11.2013-31.12.2015	
Economic sector(s) concerned	AGRICULTURE, FORESTRY AND FISHING, Manufacture of food products, Manufacture of beverages	
Type of beneficiary	SME,large enterprise	
Annual overall amount of the budget planned under the scheme	EUR 1,4 (in millions)	
For guarantees	—	
Aid Instrument (Article 5)	Direct grant	
Reference to the Commission Decision	—	
If co-financed by Community funds	—	
Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
Aid for technical feasibility studies (Art. 32)	65 %	—

Aid to young innovative enterprises (Art. 35)	EUR 1 000 000	—
Industrial research (Art. 31(2)(b))	50 %	10,1 %
Fundamental research (Art. 31(2)(a))	100 %	—
Experimental development (Art. 31(2)(c))	25 %	10,1 %

Web link to the full text of the aid measure:

https://www.euskadi.net/bopv2/datos/2013/11/1305125a.pdf

Reference number of the State Aid	SA.38027 (13/X)
Member State	Italy
Member State reference number	—
Name of the Region (NUTS)	VENETO Non-assisted areas
Granting authority	Regione del Veneto Dorsoduro 3494/A 30123 Venezia Italia www.regione.veneto.it
Title of the aid measure	Contributi per il finanziamento di progetti di ricerca industriale e sviluppo sperimentale, a carattere interregionale
National legal basis (Reference to the relevant national official publication)	Programma Operativo Regionale per la Competitività Regionale e Occupazione per il Veneto, parte FESR 2007 — 2013. Delibera della Giunta regionale 2054 del 19.11.2013 pubblicata nel Bollettino ufficiale della regione del Veneto n. 102 del 29.11.2013.
Type of measure	Scheme
Amendment of an existing aid measure	—
Duration	16.12.2013-30.6.2015
Economic sector(s) concerned	MANUFACTURING, ELECTRICITY, GAS, STEAM AND AIR CONDITIONING SUPPLY, WATER SUPPLY; SEWERAGE, WASTE MANAGEMENT AND REMEDIATION ACTIVITIES, CONSTRUCTION, TRANSPORTATION AND STORAGE, INFORMATION AND COMMUNICATION, PROFESSIONAL, SCIENTIFIC AND TECHNICAL ACTIVITIES
Type of beneficiary	SME,large enterprise
Annual overall amount of the budget planned under the scheme	EUR 2,9534 (in millions)
For guarantees	—
Aid Instrument (Article 5)	Other — contributi a fondo perduto ai sensi del regolamento (CE) n. 800/2008
Reference to the Commission Decision	—

If co-financed by Community funds	POr CRO Veneto FESR 2007 — 2013 approvato con Decisione della Commissione Europea C(2007) n. 4247, modificata con Decisione della Commissione Europea C(2012) n. 9310 e Decisione della Commissione Europea C(2013)3526 . CCI2007IT162 P0015 — EUR 1,36 (in millions)	
Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
Industrial research (Art. 31(2)(b))	50 %	20,2 %
Experimental development (Art. 31(2)(c))	25 %	20,2 %

Web link to the full text of the aid measure:

http://www.regione.veneto.it/web/programmi-comunitari/azione-511

Aprire il file denominato «DGR n. 2054 del 19.11.2013»

http://bur.regione.veneto.it/BurvServices/pubblica/SommarioSingoloBur.aspx?cod=9&num=102&date=29/11/2013

cercare la Deliberazione di Giunta regionale n. 2054 del 19.11.2013

http://www.regione.veneto.it/web/bandi-avvisi-concorsi/dettaglio-bando?_spp_detailId=2617289

a fondo pagina aprire il file denominato «Bando — Allegato A».

Reference number of the State Aid	SA.38029 (13/X)
Member State	Italy
Member State reference number	—
Name of the Region (NUTS)	VENETO Article 107(3)(c)
Granting authority	REGIONE DEL VENETO PALAZZO BALBI DORSODURO 3901 30123 VENEZIA www.regione.veneto.it
Title of the aid measure	RILANCIARE L'IMPRESA VENETA — Progetti di innovazione e di sviluppo — Modalità a sportello — anno 2013
National legal basis (Reference to the relevant national official publication)	LR 10/90 «ORDINAMENTO SISTEMA DI FORMAZIONE PROFESSIONALE E ORGANIZZAZIONE DELLE POLITICHE REGIONALI DEL LAVORO. DGR N. 1566/2009 "POLITICHE ATTIVE PER IL CONTRASTO ALLA CRISI OCCUPAZIONALE". DGR 1675/2011 "PIANO DELLE POLITICHE ATTIVE PER IL CONTRASTO ALLA CRISI VALORIZZAZIONE DEL CAPITALE UMANO — POLITICHE PER L'OCCUPAZIONE E L'OCCUPABILITA"» — DGR 869 DEL 4.6.2013 — DDR N. 1076 DEL 16.12.2013 — 9º SPORTELLO
Type of measure	Scheme
Amendment of an existing aid measure	—
Duration	16.12.2013-31.12.2013
Economic sector(s) concerned	MANUFACTURING, ACCOMMODATION AND FOOD SERVICE ACTIVITIES
Type of beneficiary	SME

Annual overall amount of the budget planned under the scheme	EUR 0,116 (in millions)
For guarantees	—
Aid Instrument (Article 5)	Direct grant
Reference to the Commission Decision	—
If co-financed by Community funds	DGR 869 DEL 4.6.2013 — DDR N. 1076 DEL 16.12.2013 — 9º SPORTELLO — EUR 0,12 (in millions)

Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
General training (Art. 38(2))	70 %	0 %

Web link to the full text of the aid measure:

http://www.regione.veneto.it/web/formazione/moduli-fse

Rilanciare l'impresa veneta — Progetti innovazione e sviluppo

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Reference number of the State Aid	SA.38030 (13/X)
Member State	Italy
Member State reference number	—
Name of the Region (NUTS)	VENETO Article 107(3)(c)
Granting authority	REGIONE DEL VENETO PALAZZO BALBI DORSODURO 3901 30123 VENEZIA www.regione.veneto.it
Title of the aid measure	RILANCIARE L'IMPRESA VENETA — Progetti di innovazione e di sviluppo — Modalità a sportello — anno 2013
National legal basis (Reference to the relevant national official publication)	LR 10/90 «ORDINAMENTO SISTEMA DI FORMAZIONE PROFESSIONALE E ORGANIZZAZIONE DELLE POLITICHE REGIONALI DEL LAVORO. DGR N. 1566/2009 "POLITICHE ATTIVE PER IL CONTRASTO ALLA CRISI OCCUPAZIONALE". DGR 1675/2011 "PIANO DELLE POLITICHE ATTIVE PER IL CONTRASTO ALLA CRISI VALORIZZAZIONE DEL CAPITALE UMANO — POLITICHE PER L'OCCUPAZIONE E L'OCCUPABILITA"» — DGR 869 DEL 4.6.2013 — DDR N. 1044 DEL 2.12.2013 — 8º SPORTELLO
Type of measure	Scheme
Amendment of an existing aid measure	—
Duration	2.12.2013-31.12.2013
Economic sector(s) concerned	MANUFACTURING
Type of beneficiary	SME,large enterprise
Annual overall amount of the budget planned under the scheme	EUR 0,099 (in millions)

For guarantees	—	
Aid Instrument (Article 5)	Direct grant	
Reference to the Commission Decision	—	
If co-financed by Community funds	DGR 869 DEL 4.6.2013 — DDR N. 1044 DEL 2.12.2013 — 8º SPORTELLO — EUR 0,10 (in millions)	
Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
General training (Art. 38(2))	70 %	0 %

Web link to the full text of the aid measure:

http://www.regione.veneto.it/web/formazione/moduli-fse

Rilanciare l'impresa veneta — Progetti innovazione e sviluppo

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Reference number of the State Aid	SA.38068 (13/X)
Member State	Netherlands
Member State reference number	—
Name of the Region (NUTS)	OVERIJSSEL, NOORD-OVERIJSSEL, ZUIDWEST-OVERIJSSEL, TWENTE Non-assisted areas
Granting authority	Provincie Overijssel Luttenberstraat 2, 8011 EE Zwolle www.overijssel.nl
Title of the aid measure	Paragraaf 8.14 MKB energielening COMP
National legal basis (Reference to the relevant national official publication)	Uitvoeringsbesluit subsidies Overijssel 2011, paragraaf 8.14 MKB energielening
Type of measure	Scheme
Amendment of an existing aid measure	—
Duration	22.11.2013-31.12.2015
Economic sector(s) concerned	All economic sectors eligible to receive aid
Type of beneficiary	SME
Annual overall amount of the budget planned under the scheme	EUR 1 (in millions)
For guarantees	—
Aid Instrument (Article 5)	Interest subsidy
Reference to the Commission Decision	—
If co-financed by Community funds	—

Objectives	Maximum aid intensity in % or Maximum aid amount in national currency	SME-bonuses in %
Environmental investment aid for energy saving measures (Art. 21)	11,2 %	0 %
Environmental investment aid for the promotion of energy from renewable energy sources (Art. 23)	11,2 %	0 %

Web link to the full text of the aid measure:

http://www.overijssel.nl/loket/provinciale/uitvoeringsbesluit_subsidies_overijssel_2011

www.overijssel.nl, kies loket, kies subsidies, kies wet en regelgeving, kies uitvoeringsbesluit subsidies Overijssel 2011, kies paragraaf 8.14 MKB energielening

Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 1857/2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001

(2014/C 69/05)

Aid No: SA.38064 (13/XA)

Member State: Netherlands

Region: FRIESLAND

Title of aid scheme or name of company receiving an individual aid: Subsidie agrarische bedrijfsverplaatsing en daaraan gerelateerde investeringskosten

Legal basis:

Kaderverordening PMJP Fryslân 2009

Subsidieverordening PMJP Fryslân 2009 hoofdstuk 1.1.3 subsidie agrarische bedrijfsverplaatsing

Artikel 3.54 en artikel 3.64 Wet inkomstenbelasting 2001 juncto artikel 12a, onderdeel b, Uitvoeringsbesluit Inkomstenbelasting 2001

Annual expenditure planned under the scheme or overall amount of individual aid granted to the company: Annual overall amount of the budget planned under the scheme: EUR 1,6 (in millions)

Maximum aid intensity: 100 %

Duration of scheme or individual aid award: 22.2.2014-31.12.2015

Objective of aid: Investment in agricultural holdings (Art. 4 of Reg. (EC) No 1857/2006), Relocation of farm buildings in the public interest (Art. 6 of Reg. (EC) No 1857/2006)

Sector(s) concerned: AGRICULTURE, FORESTRY AND FISHING

Name and address of the granting authority:

provincie Fryslân
Tweebaksmarkt 52, 8911 KZ Leeuwarden

Website:

http://wetten.overheid.nl/BWBR0012066/geldigheidsdatum_03-05-2012#Hoofdstuk3_Artikel12a

http://www.fryslan.nl/4025/subsidieverordening-pmjp-fryslan-2009/

Other information: —

Aid No: SA.38329 (14/XA)

Member State: Italy

Region: SARDEGNA

Title of aid scheme or name of company receiving an individual aid: Legge regionale 12 settembre 2013, n. 25, art. 2, lett. a). Interventi urgenti a favore degli allevatori per fronteggiare la febbre catarrale degli ovini (Blue tongue).

Legal basis:

Legge regionale 12 settembre 2013, n.25 (Interventi urgenti a favore degli allevatori per fronteggiare la febbre catarrale degli ovini (Blue Tongue)

Deliberazione n. 54/7 del 30 dicembre 2013 (Legge regionale 12 settembre 2013, n. 25, art. 2, lett. a). Interventi urgenti a favore degli allevatori per fronteggiare la febbre catarrale degli ovini)

Annual expenditure planned under the scheme or overall amount of individual aid granted to the company: Annual overall amount of the budget planned under the scheme: EUR 8 (in millions)

Maximum aid intensity: 100 %

Duration of scheme or individual aid award: 3.3.2014-3.3.2020

Objective of aid: Animal diseases (Art. 10 of Reg. (EC) No 1857/2006), Livestock sector (Art. 16 of Reg. (EC) No 1857/2006), Technical support (Art. 15 of Reg. (EC) No 1857/2006)

Sector(s) concerned: Raising of sheep and goats

Name and address of the granting authority:

ASSESSORATO AGRICOLTURA E RIFORMA AGRO PASTORALE
VIA PESSAGNO — 09125 CAGLIARI

Website:

http://www.regione.sardegna.it/documenti/1_274_20140114162405.pdf

http://www.regione.sardegna.it/j/v/1270?s=244289&v=2&c=&t=1&anno=

http://www.regione.sardegna.it/documenti/1_274_20140114162342.pdf

Other information: —

Aid No: SA.38352 (14/XA)

Member State: Italy

Region: SARDEGNA

Title of aid scheme or name of company receiving an individual aid: ulteriore stanziamento a favore dell'art 1, LR 25/2013, blue tongue

Legal basis:

LR 25/2013 del 12.9.2013, art 1

delibera di giunta regionale n. 4/26 del 5.2.2013

regime SA. 37754 (13/XA)

Annual expenditure planned under the scheme or overall amount of individual aid granted to the company: Overall amount of the ad hoc aid awarded to the undertaking: EUR 5 (in millions)

Maximum aid intensity: 100 %

Duration of scheme or individual aid award: 28.2.2014-28.2.2019

Objective of aid: Plant diseases — pest infestations (Art. 10 of Reg. (EC) No 1857/2006)

Sector(s) concerned: AGRICULTURE, FORESTRY AND FISHING

Name and address of the granting authority:

Regione Autnoma della Sardegna,. assessorato agricoltura e riforma pastorale
via Pessagno 4,
0196 Cagliari

Website:

http://www.regione.sardegna.it/j/v/1270?s=244289&v=2&c=&t=1&anno=

http://www.regione.sardegna.it/j/v/66?s=1&v=9&c=27&c1=&id=40997

Other information: —

Aid No: SA.38354 (14/XA)

Member State: United Kingdom

Region: SCOTLAND

Title of aid scheme or name of company receiving an individual aid: The Scottish Farm Business Advice and Skills Service 2014

Legal basis: Board of Agriculture Act 1889 (Section 2)

Annual expenditure planned under the scheme or overall amount of individual aid granted to the company: Annual overall amount of the budget planned under the scheme: GBP 1,1 (in millions)

Maximum aid intensity: 100 %

Duration of scheme or individual aid award: 1.4.2014-31.12.2015

Objective of aid: Technical support (Art. 15 of Reg. (EC) No 1857/2006)

Sector(s) concerned: Animal production, Mixed farming, Support activities to agriculture and post-harvest crop activities

Name and address of the granting authority:

The Scottish Government
Directorate for Agriculture, Food and Rural Communities
Agriculture and Rural Development Division
Saughton House (D Spur)
Broomhouse Drive
Edinburgh
EH11 3XD

Website:

http://ec.europa.eu/agriculture/stateaid/exemption/2012/sa35506_en.pdf

http://www.scotland.gov.uk/topics/farmingrural/rural/business/advice

Other information: —

Aid No: SA.38368 (14/XA)

Member State: Germany

Region: DEUTSCHLAND

Title of aid scheme or name of company receiving an individual aid: Bund: Gesundheit und Robustheit landwirtschaftlicher Nutztiere

Legal basis:

GAK-Gesetz;

Rahmenplan der Gemeinschaftsaufgabe „Verbesserung der Agrarstruktur und des Küstenschutzes“

Annual expenditure planned under the scheme or overall amount of individual aid granted to the company: Annual overall amount of the budget planned under the scheme: EUR 20 (in millions)

Maximum aid intensity: 60 %

Duration of scheme or individual aid award: 1.3.2014-31.12.2014

Objective of aid: Livestock sector (Art. 16 of Reg. (EC) No 1857/2006)

Sector(s) concerned: AGRICULTURE, FORESTRY AND FISHING

Name and address of the granting authority:

Die Beihilfegewährung erfolgt durch die zuständigen Länderbehörden

Die Beihilfegewährung erfolgt durch die zuständigen Länderbehörden (Anschriften siehe Formblatt)

Website:

http://www.bmel.de/SharedDocs/Downloads/Landwirtschaft/Foerderung/GAK-Foerderungsgrundsaetze/2014neu/Foerderbereich6.pdf?__blob=publicationFile

Other information: —

V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

STATE AID — UK

State aid SA.34947 (2013/C) (ex 2013/N) — Investment Contract (early Contract for Difference) for the Hinkley Point C New Nuclear Power Station

Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union

(Text with EEA relevance)

(2014/C 69/06)

By means of the letter dated 18 December 2013 reproduced in the authentic language on the pages following this summary, the Commission notified the UK of its decision to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union concerning the above-mentioned measure.

Interested parties may submit their comments within one month of the date of publication of this summary and the following letter, to:

European Commission
Directorate-General for Competition
State aid Registry
Rue de la Loi/Wetstraat 200
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Fax No: (32-2) 296 12 42
E-mail: stateaidgreffe@ec.europa.eu

These comments will be communicated to the UK. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

Description of the measure in respect of which the Commission is initiating the procedure

The UK intends to provide certainty of revenues and a credit guarantee to a private investor in a new nuclear plant to be built at Hinkley Point C. The measure is based on a private contract between the UK government and the investor, NNBG, which is a company fully owned by Electricité de France. The agreement is in a preliminary form and will be followed by a detailed contract. The measures included in the agreement, and in particular the Contract for Difference ('CfD') which is used to provide certainty of revenues to NNBG, are based on an instrument which is included in the draft Energy Bill which was published on 29 November 2012 and is currently going through Parliamentary debate in the UK. The draft Energy Bill includes provisions to enact subordinate legislation, which at a later stage will be used to establish the CfD regime. Any subordinate legislation will only be enacted after Royal Assent of the Energy Bill, which is expected by the end of 2013. The UK confirmed that any payments under individual Investment Contracts, which might notified to the Commission in the future, will be conditional on Commission approval, provided that they involve State aid.

The granting authority is the UK government, and in particular the Secretary of State for Energy and Climate Change.

The aid comes in two forms. First, under the Investment Contract, which is the early for of CfD, NNBG will receive a fixed amount of revenues for the output it produces, for which it will receive a fixed price level, the 'Strike Price.' NNBG will receive difference payments based on its metered output, up to a maximum which will be set in the Investment Contract. The electricity produced by NNBG will be sold into the market. When the reference price at which the electricity is sold is lower than the Strike Price, the Secretary of State will pay the difference between the Strike Price and the reference price, ensuring that NNBG will ultimately receive a fixed level of revenues based on the Strike Price and its level of output. Conversely, when the reference price is higher than the Strike Price, NNBG will be obliged to pay the difference to the Secretary of State. Also in this case, therefore, NNBG will receive a fixed level of revenues, based on the Strike Price and its level of output.

The Investment Contract will turn into a CfD as soon as the UK will have put the secondary legislation into place. The Investment Contract and the CfD will last for 35 years from the initial day of operation of the nuclear plant. NNBG will receive a Strike Price of GBP 92.50 per MWh, indexed to the Consumer Price Inflation, and entailing a rate of return of 9.87 per cent in post-tax, nominal terms.

The UK claims that it is pursuing three objectives: security of supply, since it believes that future supply levels are being compromised by the closure of old plants and the transition to low-carbon generation; decarbonisation, as nuclear plants can produce baseload electricity at low carbon emissions; and diversification of electricity sources. In addition, the UK believes that the measure is in line with the Euratom Treaty.

The overall amount of aid depends on the assumptions behind the future wholesale prices and the discount rate, and can range between zero and GBP 17.6 billion.

Assessment of the measure

The Commission believes that the measure involves State aid within the meaning of Article 107 (1) of the TFEU, since the measure does not involve a genuine Service of General Economic Interest and favours an undertaking selectively, threatening to distort competition and affect trade between Member States.

The Commission has serious doubts on whether the measure can be deemed to pursue the common objective of security of supply, and that it can pursue decarbonisation. The Commission also has serious doubts on the need for State aid in relation to nuclear energy, and the fact that the combination of credit guarantee and CfDs are an appropriate instrument.

Also, based on the assessment conducted, the Commission has serious doubts on whether the combination of aid measures, and in particular of a CfD with inflation indexation and a credit guarantee, is proportional to the potential benefits of the aid. Finally, the Commission believes that the measure has the potential to seriously distort competition and trade between Member States.

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests the United Kingdom to submit its comments and to provide all such information as may help to assess the measure.

TEXT OF LETTER

'The Commission wishes to inform the United Kingdom that, having examined the notification supplied by your authorities on the measure referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union in respect of the notified measure.

1. PROCEDURE

(1) Following pre-notification contacts, the UK notified its proposed measure on 22 October 2013 by electronic notification, registered by the Commission on the same day.

2. DESCRIPTION OF THE CONTEXT

2.1. Background and objectives

(2) Under the umbrella of the Electricity Market Reform ('EMR'), the UK government envisages implementing a diverse range of measures with three explicit objectives: (i) decarbonising the electricity sector by 2050; (ii) safeguarding security of supply; and (iii) ensuring diversity and affordability of electricity supply.

(3) The EMR is a plan to restructure the UK energy sector, which aims to assist with the switch to low-carbon electricity generation, decrease reliance on fossil fuels and ensure adequate supply of electricity.

(4) The notified measures are part of a government initiative to facilitate investment in new nuclear energy plants in the UK, in particular by implementing Contracts for Difference ('CfDs'), i.e. a mechanism similar to a feed-in tariff allowing for payments to generators to guarantee them a fixed level of revenues. The UK intends to set CfDs to support a range of electricity-generating technologies, notably nuclear energy and renewable energy sources. The notification relates to an early form of a Contract for Difference (the "Investment Contract", see also Section 3.1) and to a credit guarantee by HM Treasury under its UK Infrastructure Guarantees scheme.

(5) The economic and business reality in which the EMR situates itself is complex. Like many other Member States, the UK is going through a challenging transition from a carbon-intensive to a low-carbon economy, among other things by adopting policies in support of renewable energy sources.

(6) The UK electricity sector is currently reliant on a high-carbon energy mix. There are around 100GW of installed electricity generation capacity. Of these and in 2011, 40 per cent comprise installations using gas and 30 per cent installations using coal.

(7) About 8.1 GW of current capacity is scheduled to close by 2020, including 3.9GW of nuclear-produced electricity. By the end of 2023 all but one of the existing nuclear power stations (i.e. Sizewell B) are due to close. About 4.2 GW of mainly coal-produced electricity are due to retire by 2015.

(8) The difficulty of this transition is compounded, from the UK government's point of view, by the trend volatility of energy fuel prices, and has led over time to shrinking levels of supplied capacity. Private investors are currently not deploying enough generation installations to cope with predicted demand at the same time when older, carbon-intensive power stations are due to be phased out.

(9) This means that the UK is forecasting that its margin of excess supply of electricity, for which before liberalisation a level in excess of 20 per cent would have been considered common, might decrease to below 10 per cent in 2022 in a base case scenario. [1] Some forecasts are considerably more pessimistic. The de-rated capacity margin, i.e. the average excess of available supply over winter peak demand, is forecast by the Office of Gas and Electricity Markets ('Ofgem') to decrease to below 5 per cent in 2015. [2]

(10) Modelling undertaken by the UK government's Department for Energy and Climate Change ('DECC') points to the fact that new nuclear plants would not be an attractive commercial proposition in the absence of government intervention before 2027 or 2030, depending on the model used. [3] It also shows that capacity margins would be likely to stay at lower levels than those the UK government considers acceptable, while most of the new investment in electricity generation would be in gas-fired plants, and in particular Combined Cycle Gas Turbines ('CCGT').

(11) The UK's plan to facilitate investment in nuclear energy is therefore partly aimed at addressing a perceived generation adequacy problem, while also aiming to reduce carbon emissions, given that nuclear power plants are characterised by very low carbon emissions. [4]

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[1] See in particular Department of Energy and Climate Change, *Energy Security Strategy*, November 2012, available at the following address: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/65643/7101-energy-security-strategy.pdf

[2] See Ofgem, *Electricity Capacity Assessment Report 2013*, 27 June 2013, available at the following address: https://www.ofgem.gov.uk/ofgem-publications/75232/electricity-capacity-assessment-report-2013.pdf

[3] The UK government has relied on two different models to inform its decisions on the EMR. The first model was put together by specialist consultancy Redpoint and was used to model investment in Great Britain's electricity market until 2030 for the purposes of the EMR consultation and the White Paper (respectively published in July 2010 and July 2011, see Section 2.3 below). Subsequently, DECC used its own in-house dynamic dispatch model for the EMR Impact Assessment, published in July 2013. See Redpoint Energy, Electricity Market Reform – Analysis of policy options, December 2010, Figure 3, p. 25, available at the following address: http://www.redpointenergy.co.uk/images/uploads/EMR_Policy_Options_-_Redpoint_v1.0.pdf
See Department of Energy and Climate Change, *Electricity Market Reform Impact Assessment*, July 2013, paragraph 188 and footnote 148, p. 73, available at the following address: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226020/emr_delivery_plan_ia.pdf

[4] See Nuclear Energy Agency, *The Role of Nuclear Energy in a Low-carbon Energy Future*, OECD, 2012. According to figures presented in this report, the entire nuclear energy cycle would produce a level of greenhouse gas emissions which is among the lowest of existing fuels sources, together with hydroelectric and wind power generation. The report is available at the following address: http://www.oecd-nea.org/nsd/reports/2012/nea6887-role-nuclear-low-carbon.pdf

2.2. **Old and new nuclear in the UK**

(12) There are currently nine nuclear power stations in England, Scotland and Wales, with combined generation capacity of around 9.2 GW. In 2011, nuclear power accounted for 19 per cent of all electricity generated in the UK.

(13) Nuclear power in the UK started with the Magnox stations during the decade starting in 1950, almost all of which have been closed after their 40 year design life (one reactor at Wylfa remains but is due to close by 2014). The next generation of nuclear was the Advanced Gas-cooled Reactor, of which 8 stations were built between 1966 and 1988 with an operational life of 35 years. The last nuclear plant was built at Sizewell based on the Pressurised Water Reactor design, with construction starting before the privatisation of the UK electricity market and ending in 1995.

(14) All of the nuclear power stations still operating in the UK were developed by the Central Electricity Generating Board within the framework of a nationalised industry. The Board was broken into four separate companies in the 1990s, two of which were subsequently merged into a new private company founded in 1996 and named British Energy. British Energy is now a subsidiary of EDF Energy Holding Limited, following the latter's acquisition of the former in 2008 and named EDF Energy.

(15) Successive UK governments have publicly consulted on their plans to both consider nuclear energy and provide support for it. The consultation process assessed, among other things, the lifetime carbon emissions, costs, and characteristics of new nuclear power stations, as well as an assessment of the potential environmental costs linked to nuclear energy.

(16) In particular, the UK government undertook a consultation in May 2007, setting out the case for a policy framework considering the full range of low-carbon options, including nuclear energy. The conclusions of the consultation, following consideration of the responses to it, were published in January 2008, and stated the UK government's view that nuclear energy should play a role in the future low-carbon economy, and that the absence of nuclear energy would increase the costs of achieving the policy objectives mentioned above.

(17) The following 2008 Nuclear White Paper reiterated this view, setting out the UK government's position that decarbonisation and security of supply would require investment in new nuclear power stations. ([5])

(18) The need for new nuclear was further examined and subjected to public consultation and parliamentary consideration in the development of national policy plans relating to energy in 2009. The outcome of that consultation was the 2011 Final Over-arching Energy National Policy Statement, which established that "new nuclear power therefore forms one of the three key elements of the UK Government's strategy for moving towards a decarbonised, diverse electricity sector by 2050: (i) renewable; (ii) fossil fuels with CCS; and (iii) new nuclear". ([6])

2.3. **National consultations**

(19) The UK government publicly consulted also in relation to the broader issues of what energy policies would be necessary to achieve decarbonisation and meet rising demand levels in the coming decades.

(20) In particular, DECC put to public consultation in July 2010 a paper outlining different paths to decarbonisation up to 2050. ([7]) The options considered included demand-side management and the provision of interconnection capacity. However the UK government concluded that the range of options considered would be unlikely to allow Great Britain to meet forecast demand levels due to the increase in the use of electricity for domestic and industrial heating. ([8])

(21) The UK government subsequently consulted on the main provisions of the EMR, which includes CfDs for different types of low-carbon generation, and in particular those in support of nuclear energy. ([9]) A White Paper was published on 12 July 2011, which sets out in more detail how the different instruments would be designed, and provided further information on CfDs and a proposal to set up a capacity mechanism in the UK. ([10]) The CfD was chosen as an instrument over the alternatives because, in the UK authorities' view, it would be more cost-effective.

([5]) Department for Business Enterprise and Regulatory Reform, A White Paper on Nuclear Power, January 2008, available at the following address: http://webarchive.nationalarchives.gov.uk/20100512172052/http://www.decc.gov.uk/media/viewfile.ashx?filepath=what%20we%20do/uk%20energy%20supply/energy%20mix/nuclear/whitepaper08/file43006.pdf&filetype=4

([6]) Department of Energy and Climate Change, *Overarching National Policy Statement for Energy (EN-1)*, July 2011, paragraph 3.5.6, p. 29, available at the following address: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/47854/1938-overarching-nps-for-energy-en1.pdf

([7]) Department of Energy and Climate Change, *2050 Pathway Analysis*, July 2010, available at the following address: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/68816/216-2050-pathways-analysis-report.pdf

([8]) Department of Energy and Climate Change, *Overarching National Policy Statement for Energy (EN-1)*, July 2011, paragraphs 3.3.25 and onwards, p. 23.

([9]) Department of Energy and Climate Change, *Electricity Market Report: Consultation Document*, December 2010, available at the following address: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/42636/1041-electricity-market-reform-condoc.pdf

([10]) Department of Energy and Climate Change, *Planning our electric future: a White Paper for secure, affordable and low-carbon electricity*, July 2011, available at the following address: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48129/2176-emr-white-paper.pdf

(22) A Technical Update to the White Paper was published on 15 December 2011 and invited prospective investors to enter in discussions with the UK government with a view to investing in CfDs in low-carbon electricity generation. ([11]) The UK confirmed that this invitation to discuss did not consist in a formal tender, in particular in relation to prospective investors interested in negotiating CfDs. The UK considers that a tender would not be appropriate as there is not sufficient competitive pressure to make it effective. This is however a position which the UK links also to the timeframe chosen to bring forward investment in new nuclear energy.

2.4. **Hinkley Point C**

(23) The nuclear power plant which is the object of this decision would be located at Hinkley Point C (throughout this decision, 'HPC' will be used to refer to the plant).

(24) HPC is an EPR (European Pressurised Reactor, a design developed mainly by Framatome, now Areva NP, and Electricité de France in France, and Siemens AG in Germany, based on the Pressurised Water Reactor design), two-reactor plant producing a total of 3.2 GWh, or 1.6 GWh per reactor. During its operational lifetime of 60 years it is expected to produce around 26TWh per year of electricity supply, or about 7 per cent of Great Britain's electricity demand as forecast in the 2020s.

(25) There is currently no EPR plant in operation anywhere in the world. The first two projects, Olkiluoto in Finland and Flamanville in France, the construction of which started in 2005 and 2007 respectively, have faced construction delays and cost overruns. Construction of two more EPR plants has started in China at Taishan in 2009 and 2010, where Areva is working with China Guangdong Nuclear Power Company (the latter will operate the plant).

(26) The UK believes that failure to bring forward HPC might translate into a complete lack of investment in new nuclear plants, as it might undermine the confidence of potential investors and industry about the feasibility of carrying out a project of such a financial scale.

(27) HPC is one of eight sites in the UK that has been identified as suitable for new nuclear power stations. It is located at 12km from the town of Bridgewater in Somerset, comprises a development site of about 175 hectares, and is next to the two existing nuclear power stations of Hinkley Point A and B.

(28) The new nuclear power station is to comprise two EPR reactor units (Units 1 and 2) and shared infrastructure and facilities. Heat generated from the reactors would be used to generate steam which will power turbines directly connected to a generator. The generator is designed to be capable of producing approximately 1,630 MW of electrical power per reactor, giving a total site capacity of up to 3,260 MW. The power station would have a permanent workforce of around 900 staff.

(29) Each reactor would have an estimated operational life of 60 years, with the decommissioning period forecast to start in the 2080s and estimated to last for 20 years. Construction is expected to take place over approximately 10 years. Unit 2 would be completed 12 to 18 months after completion of Unit 1. Assuming the Investment Contract is concluded in 2013, the two reactors are expected to become operational between 2023 and 2025 according to the proposed timeline.

2.5. **Legal basis**

(30) The draft Energy Bill was published on 29 November 2012 ([12]) and is at the time of writing going through Parliamentary debate. It passed the third reading in the House of Commons on 31 July 2013 and is now under discussion in the House of Lords.

(31) The draft Energy Bill includes provisions to enact subordinate legislation, which at a later stage will be used to establish the CfD regime. In particular, Schedule 2 of the Bill relates to investment contracts and Chapter 2 of Part 2 relates to CfDs.

(32) Any subordinate legislation will only be enacted after Royal Assent of the Energy Bill, which is expected by the end of 2013.

(33) The UK confirmed that any payments under individual Investment Contracts, which might be notified to the Commission in the future, will be conditional on Commission approval, provided that they involve State aid.

2.6. **The beneficiary**

(34) The notified measures concern an Investent Contract to be entered into with NNBG and a credit guarantee to be provided to NNBG.

(35) NNBG, or NNB Generation Company Limited, was incorporated in 2009 as a private limited company. NNBG is a wholly-owned subsidiary of NNB Holding Company Limited. Until February 2013 NNB Holding Company Limited was a joint venture between EDF Energy Holdings Limited (which owned 80 per cent of the equity) and Centrica plc through its subsidiary, GB Gas Holdings Limited (which owned the remaining 20 per cent).

(36) In February 2013 Centrica announced that it no longer wished to pursue its investment in HPC and sold its stake to NNB Holding Company Limited, which is therefore now a wholly owned subsidiary of EDF Energy Holdings Limited.

([11]) Department of Energy and Climate Change, *Planning our electric future: technical update*, December 2011, available at the following address:
http://www.decc.gov.uk/assets/decc/11/mæting-energy-demand/energy-markets/3884-planning-electric-future-technical-update.pdf

([12]) Available at the following address:
http://services.parliament.uk/bills/2012-13/energy.html

(37) EDF Energy Holdings Limited ('EDF') is a fully owned subsidiary of EDF Energy, which in turn is a subsidiary of EDF International SA, a company fully owned by Electricité de France SA.

(38) The UK government and EDF have announced that they expect other investors to join the joint venture and that NNBG's equity would be shared between the EDF Group, Areva, China General Nuclear Corporation, China National Nuclear Corporation and potentially other investors. In particular, EDF announced on 21 October 2013 that it expects NNBG's equity to be composed as follows: EDF: 45 to 50 per cent; Areva: 10 per cent; China General Nuclear Corporation and China National Nuclear Corporation: 30 to 40 per cent; other investors: up to 15 per cent.

(39) NNBG is structured to have sole responsibility for licensed and permitted activities relating to the control of design, construction, commissioning, operation and eventual decommissioning of NNBG nuclear power plants.

(40) In addition to the HPC nuclear power plant, the UK government indicated that NNBG plans to build and operate a further EPR plant in the UK, in particular in Somerset. NNBG is also carrying out preliminary work to consider the development of further twin units at Sizewell, in Suffolk.

(41) In November 2012 the Office for Nuclear Regulation granted NNBG the Nuclear Site Licence needed to operate the HPC plant, and the Office together with the Environment Agency issued final design acceptances for the EDF/Areva EPR reactor on 13 December 2012. The Secretary of State granted planning permission for the HPC plant on 19 March 2013.

(42) It is intended that the UK fleet of EPRs will use the same technology as the rest of the EDF Group international EPR fleet. The nuclear plants under construction in Flamanville, France and Taishan, China will be used as the base design. The EPR plants in Taishan are being built by a joint venture between the EDF Group and China General Nuclear Corporation.

3. DESCRIPTION OF THE MEASURE

3.1. Investment Contract and ancillary agreements

(43) The notified measure consists of an Investment Contract, defined as an early form of CfD, as well as ancillary agreements.

(44) The Investment Contract is a private law agreement between the Secretary of State, hence the UK government, and a private investor in nuclear energy. The investor in nuclear energy is an entity called NNBG in the notified case.

(45) Under the Investment Contract, NNBG will receive a fixed amount of revenues for the output it produces, for which it will receive a fixed price level, the 'Strike Price.' The Commission understands that NNBG will be obliged to maintain a level of performance which can be considered standard for this type of plant and is not committed to produce a pre-determined output level. NNBG will receive difference payments based on its metered output, up to a maximum level of output ('cap'), which will be set in the Investment Contract. No payments will be made for the output sold on the market above the cap. The electricity produced by NNBG will be sold into the market.

(46) When the reference price at which the electricity is sold is lower than the Strike Price, the Secretary of State will pay the difference between the Strike Price and the reference price, ensuring that NNBG will ultimately receive a fixed level of revenues based on the Strike Price and its level of output. Conversely, when the reference price is higher than the Strike Price, NNBG will be obliged to pay the difference to the Secretary of State. Also in this case, therefore, NNBG will receive a fixed level of revenues, based on the Strike Price and its level of output.

(47) The Investment Contract will be accompanied by a Secretary of State Agreement which will include provisions to deal with the eventuality that the nuclear power plant is shut down as a result of a political decision and not related to health, safety, security, environmental, transport or safeguards concerns, or other specified circumstances. In such circumstances, the counterparties will have options: the Secretary of State will have a 'call' option requiring the shares in NNBG (which now owns the HPC site) to be transferred to it (or its nominee); and Holdco, i.e. the holding company which owns NNBG, will have a 'put' option requiring the shares in NNBG to be transferred to the Secretary of State (or its nominee).

(48) Under those circumstances, NNBG's owners will be entitled to a level of compensation […] (*). The level and the exact scope of circumstances of compensation for such a shutdown are currently being negotiated and are not yet fully known.

(49) The Investment Contract will be accompanied by lender direct agreements. These are agreements between the counterparty (the Secretary of State in the first instance) and lenders to NNBG. These agreements will provide that, in the event NNBG defaults on its obligations under the Investment Contract, the counterparty will not terminate the Investment Contract without first observing a period in which the lenders have an opportunity to cure the default. Such agreements are a standard feature of financing arrangements for infrastructure projects.

3.2. Credit guarantee

(50) The HPC project, and NNBG, will not only benefit from an Investment Contract, but also from the provision of a guarantee by the UK Treasury under the UK Guarantees scheme.

(*) Business Secret

(51) Details of the guarantee have not yet been set. It however seems that the guarantee would be linked to the level of credit actually obtained by NNBG. However NNBG has not yet structured its financing needs and the UK government indicated that it would expect it to do so in the period immediately after the agreement with the UK government and before taking a final investment decision. The final investment decision is expected to be taken by […] at the latest.

(52) The UK government refers to discussion with EDF Energy which would point to the possibility that NNBG's equity will be shared between EDF Energy, Areva, China General Nuclear Corporation and China National Nuclear Corporation (see paragraph 2.6 above). However, both the equity structure and the potential recourse to debt in addition to equity have not been decided upon yet.

3.3. **Overall functioning of the CfD mechanism**

(53) While in the notified measure the counterparty to the Investment Contract is the Secretary of State, the current intention of the UK government is for all CfDs, including the CfD for nuclear, to develop into a contract between two counterparties, of which one is the investor in nuclear energy, and the other is an entity which would be funded through a statutory obligation on all of the licensed suppliers collectively.

(54) Under this framework, the UK government would envisage licensed suppliers to be liable collectively for any obligations arising from the contract, and the counterparty to the contract to be liable only to the extent that funds have been transferred to it from licensed suppliers, or from the UK government. Each supplier would be liable based on its share of the market, defined by metered electricity use. Under this framework, in case of non-compliance with payment obligations, the Secretary of State would designate a different counterparty, collect payments from other suppliers, or pay generators directly. Some form of mutualisation of potential losses, due for example to non-payment by suppliers, is also being considered. Further regulations are expected to clarify more in detail how the mechanism would work, for example in the event of a shortfall in payments from licensed suppliers.

(55) Therefore the UK government mentions that it intends to transfer the contract with NNBG to a counterparty to be designated as soon as CfD regulations and supplier obligations have been established.

(56) The counterparty in the future CfD framework will be a UK government-owned private company. The role of the counterparty will be to enter into contracts with low-carbon generation operators (including NNBG) and administer the payment scheme.

(57) Separately, the counterparty will entrust a Settlement Agent with revenue raising power (i.e. the power of collecting payments from suppliers) on the one hand, and the obligation to make payments to, and receiving payments from, generation operators on the other hand. The UK government intends to designate a subsidiary of Elexon as the Settlement Agent.

(58) Elexon ([13]) is currently the settlement agent for the GB electricity system, i.e. the administrator of the balancing and settlement code, which is a fully owned subsidiary of UK's Transmission System Operator ('TSO') National Grid. National Grid also fully owns the electricity System Operator, National Grid Electricity Transmission, which under the Electricity Act 1989 is entrusted with the obligation to develop and maintain an efficient, coordinated and economical system of electricity transmission, balancing supply and demand and ensuring that supply meets demand at all times. National Grid Electricity Transmission is regulated by Ofgem, the UK National Regulatory Authority for electricity, in particular through a five-year price control which limits its maximum revenues and provides the cost methodology to set the price of access to, and use of, the electricity transmission and distribution systems.

(59) The UK government intends to entrust National Grid with the administration of all CfD schemes, including for example also those supporting renewable energy. The UK authorities believe that National Grid is best placed to fulfil this role, based on its current remit as TSO, which includes estimating and assessing overall capacity levels and running balancing services for short-term needs through competitive tenders.

(60) The counterparty to the generation operator under the CfD will be enabled to take decisions and exercise discretion, for example by deciding that a generation operator is fulfilling its obligations, or needs to post collateral to guarantee its payments under the scheme, or waive certain requirements, depending on the specific market conditions. The UK government intends to provide further guidance on the parameters which might limit the discretion of the counterparty to take decisions in relation to the CfD operation.

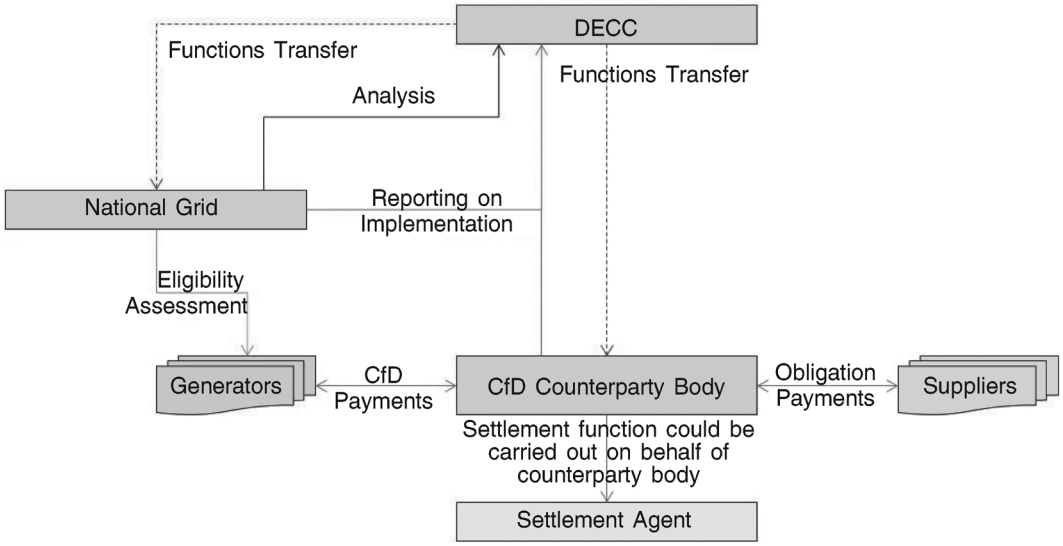
(61) The Energy Bill will set the framework for the designation of the counterparty. The detailed arrangements for the supplier obligation are expected to be set in secondary legislation. The counterparty's constitutional documents will include Articles of Association, and the body will be subject to UK company law. The company's articles would not be amended without the Secretary of State's consent. The UK government intends to appoint the minority of the counterparty's Board (the Chair and Senior Independent Director) and set out the process for appointing the remainder of the board.

(62) Figure 1 explains what the respective roles are for each of the agents envisaged in the functioning of the CfD system.

([13]) See the following address: http://www.elexon.co.uk/

Figure 1

Roles and responsibilities in the operation of the CfD



Source: UK authorities.

3.4. **Bilateral negotiations**

(63) The UK government published an Expression of Interest to select an undertaking to enter into an Investment Contract (in particular, to enable the final investment decision by the undertaking) in March 2012, after several months of informal contacts. Following NNBG's submission, the UK Government has been in discussions with NNBG on an Investment Contract for the HPC project. Formal negotiations on the terms of the Investment Contract commenced in February 2013.

(64) Both the selection of the undertaking and the definition of the terms to be used in the Investment Contract have been based on bilateral negotiations between the UK government and NNBG. The negotiation focused in particular on the terms of the agreement which would have been acceptable to the parties, including, and especially, the level of the Strike Price and the duration of the contract.

(65) The UK government claims that the negotiating process allows it to maintain a competitive tension in setting the terms of the agreement, by making use of various benchmarks and comparisons which enables it to identify acceptable values for the key terms of the agreement. The UK authorities have consistently claimed that they were not prepared to offer an Investment Contract at any price.

(66) During the negotiations, the UK government made use of expert external technical and financial advisers to provide reports on the detailed costs of the project and the likely returns to NNBG, as well as in-house expertise. The purpose of the advisory work was, the UK government claims, to provide a final recommendation on whether it would be reasonable for the Secretary of State to conclude that NNBG's return on its investment in the HPC project is reasonable from a financial point of view. Evidence of such work undertaken by KPMG and Lazard has been provided to the Commission.

(67) The UK government and EDF announced on 22 October 2013 that they had reached an agreement on the key commercial terms of the Investment Contract, including the Strike Price, the rate of return and the duration of the contract. The UK authorities notified the measure object of this decision on the same day.

(68) The agreement, as well as the notification, relate to the key parameters of the Investment Contract (a Head of Terms agreement), as opposed to a final Investment Contract. The Investment Contract itself, as well as the detailed and final structure of the measure, including the financing structure of NNBG, are to be finalised in the course of 2014. The agreement reached is not legally binding.

3.5. **Terms of the agreement**

3.5.1. *Strike Price and net present value*

(69) The purpose of the Investment Contract is to provide a high degree of certainty over the level of revenues that the HPC plant will achieve over the duration of the contract, subject to the plant achieving its forecast level of output. A summary of the terms of the agreement can be found in Annex 1.

(70) The Strike Price is set at GBP 92.50 per MWh (as an average of the 2012 price), which would become GBP 89.50 per MWh if EDF undertakes to build a second nuclear power plant at Sizewell C using the same

design. The Strike Price will be fully indexed to the Consumer Price Index from the date of signature of the contract. Based on current assumptions, this would translate into a nominal Strike Price of GBP 279 per MWh in 2058, the last year of application of the CfD scheme.

(71) The Strike Price has been derived by using a financial model, where the Strike Price is the main output of the model subject to a number of other project parameters being set and assumptions being made, including assumptions on the macroeconomic context. The Strike Price is the result of the negotiation between the UK government and EDF. Several of the assumptions being made, and in particular a large part of the construction and operation cost base, is based on information provided by EDF. The Strike Price of GBP 92.50 per MWh corresponds to a (post-tax and nominal) rate of return of [9.75 to 10.25] per cent for the HPC project as a whole, i.e. taking into account the lifetime of the installation.

(72) The net present value ('NPV') of total revenues is GBP […]bn, while the NPV of the difference payments, i.e. the difference between the Strike Price and the reference price, is calculated to vary between GBP 3.5bn and GBP 9.0bn, depending on whether the carbon price in the UK is higher (lower NPV of the differences) or lower (higher NPV of the differences).

3.5.2. *Rate of return*

(73) The UK claims that the rate of return implied by the measure is consistent with a range of analyses carried out to inform the government's decision. In particular, the assessments described in Table 1 were carried out. The resulting rate of return, as specified above, is [9.75 to 10.25] per cent in post-tax and nominal terms.

Table 1

Assessments of rate of return of the HPC project

[…]

Source: UK authorities

(74) The UK authorities claim that in the absence of an Investment Contract, the rate of return required by the investor would be substantially higher, and potentially well above 10 per cent, based on work undertaken by consultancy KPMG and commissioned by DECC. Such a high rate of return would however not be realistic and the project would not go ahead. An Investment Contract would allow the HPC project to meet returns which are more comparable to those of a regulated utility in the UK government's view.

3.5.3. *Costs*

(75) The project costs are based on a review undertaken with the support of two external advisers commissioned by the UK government: KPMG and LeighFisher. The consultants were asked to provide technical advice (on assessing construction, operation and decommissioning information), and financial and economic knowledge.

(76) The UK authorities submitted to the Commission a financial model of the HPC project, which is the result of discussions with NNBG and takes account of an agreed cost base. While the notified measure is based on the cost base underpinned by the financial model, which the UK government considers reasonable, it also states that the full costs of the projects will be subject to revision at the time of the signature of the final Investment Contract.

(77) The construction costs will total about GBP […]bn, with yearly operating costs of about GBP […]. ([14]) This assumes a 91 per cent capacity availability rate after […] years of operations. Under the agreement, NNBG has […] years to complete construction starting from the commissioning date, and a further period of […] years before the counterparty, i.e. the UK government during an initial period, has the right, but not the obligation, to terminate the contract. This implies an […]-year window for NNBG to complete the construction, after which it will expose itself to the risk of termination of the contract.

3.5.4. *Duration*

(78) The duration of the contract is 35 years for each of the two reactors of the HPC plant. The UK government considers this duration reasonable to ensure that the project can find adequate financing funds, given the uncertainties surrounding future electricity prices. It states that their own estimates show a great deal of uncertainty over the long-term trends of wholesale electricity prices, which at least in part depend also on uncertainties on the price of carbon, either under the ETS or under the UK carbon price floor.

(79) The UK government also believes that any duration shorter than 60 years, which is the operational lifetime of the plant, exposes NNBG to market risks. For this reason, NNBG is reported as having a preference for a […]-year contract. In particular, the UK government argues that NNBG would not be able to achieve adequate revenues to cover the cost of servicing the debt and maintain an A rating with less than 30 years of stable revenues. ([15])

(80) NNBG is expected to seek a substantial level of debt-financing from the market, subject to the UK credit guarantee, although the UK government could not yet specify the definitive financing structure. EDF is reported as seeking to raise as much as […] per cent of financing needs through debt, with the remaining […] per cent being equity, possibly to be shared with EDF's partners as specified in paragraph (38).

(81) According to the UK authorities, this level of debt would require an Investment Contract duration of at least […] years for the debt to maintain A rating to ensure a more favourable level of interest repayments. The required duration becomes longer if a 'tail', or a safety buffer

([14]) Figures in 2010 prices.

([15]) In order to determine the credit rating of NNBG the UK government relied, among others, on the debt service cover ratio, or the ratio of cash available to service the debt to the debt principal and interest repayments, which is a financial metric used to determine the credit rating of a project.

period, is required by funds providers. Advisors to the UK government indicated that a 30- to 35-year Investment Contract providing certain and stable revenues would be needed to secure a leverage ratio, i.e. the ratio of equity to debt, of between 50 and 65 per cent, assuming a 5-year tail is also required.

(82) The UK also highlights that there is a trade-off between the level of the Strike Price and the duration of the contract, as NNBG would require a higher Strike Price if the Investment Contract had a shorter duration, in order to achieve similar financial results.

(83) The UK government compares the duration of the Investment Contract with NNBG to similar contracts, in particular CfDs, which are considered for wind farms. Such contracts are being considered for a duration of 15 years, to be compared with an operational lifetime of between 20 and 25 years. The UK mentions that payments in support of renewable energy sources are allowed by the Environmental Aid Guidelines ([16]) ('EAG') until the plant has been fully depreciated according to normal accounting rules, which for the HPC project would take 60 years.

(84) The UK government also believes that the obligation on NNBG to set aside funds for decommissioning the plant to comply with the Funded Decommissioning Programme ([17]) would require stable revenues for 35 years.

(85) In particular, the UK Energy Act 2008 ([18]) obliges operators of new nuclear power stations to have secured financing arrangements in place to meet the full costs of decommissioning and their full share of waste management and disposal costs. The Funded Decommissioning Programme must be approved by the Secretary of State before construction of a new nuclear power station begins. NNBG has submitted a draft Funded Decommissioning Programme in March 2012. The definitive Programme has not been approved yet by the UK government.

3.5.5. *Other items*

(86) The […]-year commissioning window will start on the target commissioning date, which is proposed by NNBG and will be agreed with the UK government in the Investment Contract. As mentioned above, the UK government will have the right to terminate the contract without penalties or obligations after a further […]-year period, starting on the last day of the commissioning window. However NNBG will be entitled to difference payments under the CfD regime only within the commissioning window. A 2-year delay after the end of the commissioning window will therefore shorten the duration of the contract by 2 years.

(87) The UK government is discussing with NNBG the possibility to include cost re-opener provisions and gain-shares in the final agreement. The cost re-openers would make it possible to adjust some of the costs to better reflect their levels at specific points in time, in particular in relation to operating costs.

(88) The Investment Contract is also expected to include a 'gain share' mechanism, whereby in case the construction costs were lower than the amount agreed, the implicit gains from it would be shared between NNBG and the UK government […]. Other 'gain share' mechanisms might be put in place, in particular in relation to financing and operational costs.

(89) However, cost re-openers and gain-share mechanisms have not been finalised at the time of writing and are not part of the notified measure.

4. **UK POSITION ON THE STATE AID ASSESSMENT OF THE NOTIFIED MEASURE**

(90) The UK claims that the notified measure does not constitute aid according to Art 107(1) TFEU, in particular since the intervention would not confer an advantage to an undertaking based on the 'Altmark' criteria.

(91) Alternatively, the UK claims that the aid fulfils the conditions of the SGEI Framework.

(92) At the very least, the UK claims that the aid is compatible with Article 107(3)(c) TFEU.

5. **ASSESSMENT OF THE MEASURE: GENERAL CONSIDERATIONS**

(93) The Commission will consider in turn each of the legal bases to which the UK government refers in each of the sections below.

6. **EXISTENCE OF AID WITHIN THE MEANING OF ART 107(1) TFEU**

(94) Article 107(1) TFEU provides that "any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, shall, in so far as it affects trade between Member States, be incompatible with the common market." The cumulative conditions set out therein are examined below.

6.1. **The Investment Contract: Existence of an advantage**

(95) The UK claims that the notified measure does not constitute aid according to Art 107(1) TFEU, in particular since the intervention would not confer an advantage to an undertaking based on the 'Altmark' criteria.

([16]) Community Guidelines on State aid for environmental protection, OJ C 82/1 of 1 April 2008.

([17]) The obligation on operators of nuclear power plants to set aside funds for both decommissioning and the management and disposal of nuclear waste are enshrined in Commission Recommendation 851/2006/Euratom. See Commission Recommendation of 24 October 2006 on the management of financial resources for the decommissioning of nuclear installations, spent fuel and radioactive waste, OJ L 330/31 of 28 November 2006. More information on the UK Funded Decommissioning Programme are available at the following address: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/70214/guidance-funded-decommissioning-programme-consult.pdf

([18]) Available at the following address: http://www.legislation.gov.uk/ukpga/2008/32/contents

(96) The 'Altmark' criteria have been set out by the Court of Justice to clarify under what circumstances a compensation provided by a public authority for the performance of a Service of General Economic Interest ('SGEI') qualifies as State aid under Art 107(1) TFEU. ([19])

(97) In particular, the Court stated that four criteria must all be met for compensation provided for a SGEI not to constitute State aid. Those conditions are cumulative, and in particular they are the following ones.

(i) The recipient undertaking must actually have public service obligations to discharge and the obligations must be clearly defined;

(ii) The parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner, to avoid it conferring an economic advantage which may favour the recipient undertaking over competing undertakings;

(iii) 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; and

(iv) Where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with the necessary means, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

(98) The Commission has further clarified the conditions under which public service compensation is to be regarded as State aid in its Communication on the European Union framework for State aid in the form of public service compensation ('the SGEI Compensation Communication'). ([20])

6.2. **Existence of a SGEI**

(99) The UK believes that the first criterion is met, in particular since the service to be provided by NNBG would be clearly defined and would not be provided by the market.

(100) The Service to be provided would be the construction of Hinkley Point C, within a specified time schedule, and operating Hinkley Point C within the framework of the Investment Contract. The UK submits that this service is required to achieve the combined general economic interest objectives of i) security of supply, ii) diversity of generation, iii) decarbonisation and iv) electricity price stability/affordability.

(101) In this regard, the UK notes that public service obligations ('PSOs') in the general economic interest are often used in the electricity sector and are explicitly allowed for security of supply reasons under Art 3(2) of Directive 2009/72/EC ('the Electricity Directive'). ([21])

(102) The Commission does not question the possibility of Member States to entrust SGEIs in the electricity sector: It has accepted such entrustment at different times in the past, however in very specific circumstances. ([22]) Nor does it intend to question the legitimate interests of a Member State to implement measure to pursue security of its electricity supply, which as the UK recalls is a duty under the Electricity Directive.

(103) However, the Commission considers that specific undertakings can be seen as being entrusted with the operation of a SGEI if they are entrusted with "a particular task", i.e. the supply of services which, if they were considering their own commercial interest, undertakings would not assume or would not assume to the same extent or under the same conditions. The Commission thus considers that it would not be appropriate to attach specific public service obligations to an activity which is already provided or can be provided satisfactorily and under conditions, such as price, objective quality characteristics, continuity and access to the service, consistent with the public interest, as defined by the State, by undertakings operating under normal market conditions.

(104) It is true that in its decision on case N 475/2003, ([23]) the Commission has accepted a measure which involved the provision of contracts to generators for the purpose of providing a certain level of reserve capacity to be used to meet peaks in demand in a situation where capacity was forecast to be scarce and during the first stages of liberalisation, hence for a security of supply objective. However in that case the service was precisely defined not as the provision of electricity but as the provision of reserve capacity. Reserve capacity is a well-defined type of electricity supply which can only be used under particular demand and supply conditions, and which would not necessarily be provided by the market.

(105) The case being assessed in this decision seems to be very different. NNBG will produce and deliver baseload electricity, that is, electricity which is provided continuously and without interruption – also based on the fact that

([19]) Case C-280/00, Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH, paragraphs 87 to 93.

([20]) Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest, 2012/C 8/02, OJ C 8/4 of 11 January 2012.

([21]) 441. Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211/55 of 14 August 2009.

([22]) See for example the Commission decision of 16 December 2003 on case N 475/2003 – Ireland, public service obligations in respect of new electricity generation capacity for security of supply, OJ C 34/5 of 7 February 2004, or Commission decision of 29 September 2010 on case N 178/2010 – Spain, public service compensation linked to a preferential dispatch mechanism for indigenous coal power plants, OJ C 312/1 of 17 November 2010.

([23]) See footnote 21.

nuclear power plants cannot be easily switched on and off. The electricity provided by NNBG cannot, and will not, be used as reserve capacity or to cover peaks in demand levels.

(106) In particular, also based on the terms of the contract, NNBG will participate in the market and sell electricity through the standard exchange arrangements used to allow buyers and sellers to conclude spot contracts.

(107) The Commission notes, in this respect, that not only electricity generation is normally considered a commercial activity and a market in which competition takes place, but also and in particular nuclear technology has and can generally be considered a viable commercial activity. This appears to be confirmed by the fact NNBG will compete also against nuclear plants which are operated commercially, seven of which are owned by EDF itself. It is therefore at the very last unclear why the market would not invest in the HPC plant, even if it uses a different technology than existing nuclear plants, under normal market dynamics. This is all the more so since, according to the UK's own assessment, the opposite seems to be true, as private investors are forecast by both Redpoint and by DECC to invest in nuclear energy by 2027 and by 2030 respectively in the absence of CfDs or Investment Contracts. ([24]) In addition, life extensions of existing plants might take place on a commercial basis.

(108) It would therefore appear that the UK's main argument to claim the existence of a SGEI is that the Investment Contract will provide incentives for NNBG to build the nuclear plant under a specified timeline.

(109) In particular, it appears difficult to argue that the measure can help the UK achieve security of supply, given that the plant will not be operational before 2023 (assuming the Investment Contract is concluded in 2013 and no delay occurs in the construction,) and that capacity levels are forecast by Ofgem to be relatively low before 2020. ([25]) On this point, see also Section 8.1.1.2.

(110) The measure is argued to contribute to the objective of decarbonisation, but it would merely do so on a different time scale compared to the one which would be provided by the market according to DECC's own forecasts – which are based, among other things, on a government-set price of carbon, which could therefore, and in principle, be an equally effective, and more market-oriented, instrument to achieve the same result, as discussed further in Section 8.1.

(111) The measure, moreover, could hardly be argued to contribute to affordability – at least at current prices, when it will instead and most likely contribute to an increase in retail prices, as discussed in Section 8.1. The notified measure would seem to be able to contribute to affordable prices only under very specific conditions which can only materialise far away in the future. The contribution to higher prices, however, would be very much in the short and medium term.

([24]) See footnote 3.

([25]) See Ofgem, *Electricity Capacity Assessment Report 2013*, 27 June 2013

6.3. **Entrustment act**

(112) The first Altmark criterion requires that the undertaking has a public service obligation to discharge. Accordingly, in order to comply with the Altmark case-law, a public service assignment is necessary that defines the obligations of the undertakings in question and of the authority.

(113) The public service task must be assigned by way of an act that, depending on the legislation in Member States, may take the form of a legislative or regulatory instrument or a contract. It may also be laid down in several acts. Based on the approach taken by the Commission in such cases, the act or series of acts must at least specify:

(i) The content and duration of the public service obligations;

(ii) The undertaking and, where applicable, the territory concerned;

(iii) The nature of any exclusive or special rights assigned to the undertaking by the authority in question;

(iv) The parameters for calculating, controlling and reviewing the compensation; and

(v) The arrangements for avoiding and recovering any overcompensation.

(114) The Commission doubts that in this case NNBG has been entrusted with specific public service obligations to discharge.

(115) The UK submits that NNBG would have been entrusted with discharging the following obligations:

(i) If certain milestones in the construction of the plant are not met by certain dates, NNBG risks losing the CfD, and if the project is delayed by more than […] years, the payment period will be reduced accordingly.

(ii) In particular, NNBG is required to achieve the 'Start Date' for each Reactor by meeting the Conditions Precedent within the 'Target Commissioning Window' for that Reactor in order to receive the full benefit of the CfD. If the 'Start Date' is achieved after the 'Target Commissioning Window' closes, then the payment period for that reactor decreases by an amount which is equal to the length of time between the 'Target Commissioning Window' and the 'Start Date.' If the 'Start Date' is not achieved by the 'Long Stop Date,' the UK government can terminate the contract.

(iii) NNBG can benefit from the differences payments only to the extent that it generates and delivers to the GB transmission system low-carbon, baseload electricity from nuclear generation.

(iv) The Investment Contract would oblige NNBG to pay the difference between the Strike Price and the reference price to a counterparty in case the reference price is above the Strike Price.

(v) For the duration of the investment contract, all electricity generated by Hinkley Point C, up to the contracted capacity, will be subject to the difference payment mechanism (including the obligation to make payments back to the counterparty where the reference price is above the Strike Price). NNBG will not be able to sell that electricity outside of the terms of the Investment Contract.

(116) The UK authorities add that, without the Investment Contract, NNBG would be free to sell electricity into the market and retain any profits in case electricity prices are above the Strike Price. In other words, the service would not be provided in the same manner by the market, and "[w]ithout the Investment Contract NNBG would be free to sell electricity into the market and retain any profits in case electricity prices are above the Strike Price ([26])." However no demonstration is provided to the effect that these results would not otherwise be provided by the market.

(117) The Commission doubts, however, that these conditions can be viewed as public service obligations or as demonstrating that NNBG would be entrusted with a SGEI.

(118) First, the UK explained that the nuclear plant would be constructed under market conditions at a later stage, while the UK wishes to incentivise its construction at an earlier stage. It would appear to be only sensible, if this is the logic behind of the UK measure, to shorten the period of payments. Indeed, the closer the date of effective construction of the nuclear plant to the date when it would have been constructed anyway, the more limited the incentive effect and the necessity of the aid.

(119) Moreover, making the realisation of the project subject to a certain end date is rather typical for the granting of investment aid or structural funds.

(120) Second, the aid will be disbursed only insofar as NNBG supplies electricity. This again shows that while the CfD aims at incentivising the deployment of nuclear within a certain time frame, payments under the CfD are not conceived as a form of compensation for the timely construction of the nuclear plant. The timely construction is a necessary but not sufficient condition for the granting of aid.

(121) Third, requiring NNBG to pay back the difference between the Strike Price and the reference price is the system devised by the UK to ensure that the aid is limited to a certain amount. It does not amount to an SGEI obligation. The same can be said of the limit to a maximum contracted capacity. Again, this condition ensures that the amount of the aid is limited. It does not prevent NNBG from selling electricity on the market at market price.

(122) Finally, the Commission notes that NNBG is not obliged to enter into the Investment Contract and can actually withdraw from it without particular penalties. NNBG is actually not obliged to build the nuclear plant, nor is it obliged to build it by a certain date. The UK authorities cannot enforce any obligation in this respect, they can only terminate the contract.

(123) The UK authorities have referred in this respect to case T-17/02 of 2005 ([27]) (Fred Olsen), submitting that it is not required that the act assigning the tasks be a law or regulation, the only determining factor being the desire of the UK authorities to entrust a task to NNBG.

(124) However, while in that case the SGEI might have been entrusted upon Fred Olsen at his instigation, this does not alter the fact that the company had certain service obligations to discharge. Those obligations were enforceable and the State might have enforced them. In this case, to the contrary and as explained above, NNBG does not have any such obligation.

(125) On the basis of the information provided, the Commission considers at this stage that the Investment Contract does not represent a sufficiently specified entrustment act, given that many of the most important terms have not yet been agreed between NNBG and the UK government – including on timing and on the obligations to which NNBG commits.

6.4. **Assessment of the second 'Altmark' criterion: Parameters used to set the compensation level**

(126) The UK believes that the second criterion is met, since the parameters based on which the compensation for the SGEI provision is paid are established in advance and in an objective and transparent manner.

(127) The Commission notes that some of the terms being offered to NNBG are still unclear and the parameters have not all been set. This is in particular true about the nature of the CfD mechanism, and especially the terms based on which the difference will be calculated, notably a reference for the market price.

(128) The UK claims that a 'reference price' will be used to calculate differences. At this juncture it is still unclear what the reference price will be, with the UK authorities pointing out that "[t]he manner in which the Reference Price against which difference payments are to be calculated is to be determined remains to be agreed according to the principles outlined in the Heads of Terms". Also, potential adjustments to the Strike Price, which are still being negotiated, have not yet been finalised.

(129) Provided that these parameters are ultimately established in the final Investment Contract and before such contract enters into force, the condition that those parameters are set in advance could be fulfilled. However, as those elements have not been established yet and will be subject to further negotiation, the Commission is not yet in a position to verify that the negotiated parameters will be established in an objective and transparent manner so as to avoid conferring an economic advantage which may favour the recipient undertaking over competing undertakings.

(130) The UK authorities have also indicated that the Strike Price will determine a reasonable profit. It is not known, however, whether the Entrustment Act will

([26]) UK notification document, paragraph 456, page 142.

([27]) Case T-17/02 Fred Olsen [2005] ECR II-2031.

establish the criteria for calculating that profit. In particular, as will be argued more extensively in Section 8, the profitability of the project is subject to uncertainty.

6.5. **Assessment of the third 'Altmark' criterion: No overcompensation**

(131) 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.

(132) The UK states that the CfD mechanism does not allow for overcompensation, since NNBG will receive no more and no less than the Strike Price, and the Strike Price is set at a level which ensures only the recovery of costs plus a reasonable profit.

(133) As indicated above, it is doubtful that NNBG has been entrusted with any particular PSO. Even if there were any PSO involved, the specific obligation would have to be the obligation to construct the nuclear plant at HPC by a certain date, i.e. in advance of what the market would deliver.

(134) In order to prevent that compensation exceeds what is necessary to cover all or part of the costs incurred in the discharge of PSOs, it should be limited to the costs resulting from building and operating the HPC plant, or from supplying a set amount of electricity.

(135) However, the UK authorities have not indicated what the costs resulting from the alleged PSO would be. Nor have the UK authorities demonstrated that the total compensation resulting from the differences between Strike Price and reference prices over the period of the Investment Contract would not go beyond these costs.

(136) In addition, as to the reasonable level of profit that the UK authorities took into account, the Commission notes that the level of profit was negotiated with NNBG and it doubts that the profit was established by reference to the rate of return on capital that would be required by a typical undertaking considering whether or not to provide the alleged SGEI.

(137) In addition, nothing in the Investment Contract seems to ensure that the compensation would be limited to that level of profit over the lifetime of the project. Depending on the evolution of wholesale electricity prices in the post-CfD period, NNBG's profits might be substantially higher than those resulting from the negotiated rate of return.

(138) The Commission notes in this respect that while the Investment Contract will last for 35 years and should in principle cap NNBG's revenues to a certain level, this leaves 25 years of operational life where NNBG will be receiving revenues corresponding to the price which it is able to earn from the market, without any correction. It is impossible to forecast what levels of revenues, and hence of profits, NNBG will be able to make based on the HPC project as a whole, including the CfD and post-CfD period. As a result, the CfD, should it be considered as a SGEI compensation mechanism, does not ensure that the compensation will not exceed a reasonable rate of return.

(139) The CfD scheme allows NNBG to finance and build a nuclear plant, since most of the costs which can be quantified and are relevant for the initial part of the operating life of the plant will be covered. Also, potential creditors are likely to look essentially at the first period of the life of the plant when deciding whether to provide funds or not, thereby allowing NNBG to overcome the large initial difficulties of constructing the plant and commence operations using a technology, nuclear energy, which is characterised by very high fixed and upfront costs.

(140) However NNBG will also then be able to reap any benefits from the continuous operation of the plant in the post-CfD period. Such benefits might be very large, or indeed might not exist at all, depending on the market conditions in the post-CfD period. Precisely because of this uncertainty, it would appear to be impossible to determine at this stage whether NNBG will be overcompensated or not. The terms of the Investment Contract communicated to the Commission do not contain a correction mechanism that would take account of the effect of developments after the end of the CfD in order to ensure that no overcompensation has taken place overall.

(141) While the Commission acknowledges that the assessment of overcompensation needs to be carried out in particular taking into account the duration of the scheme, ([28]) it also must note that, due to the technological characteristics of nuclear energy generation and of the costs involved, in this case limiting the assessment to the duration of the CfD would seem inappropriate. In fact, if it were accepted that NNBG has been entrusted with a SGEI task consisting of constructing a nuclear plant at HPC in advance of market delivery, it must then be considered that the entrustment ends with the timely construction of the nuclear plant but the payment of the compensation is made in instalments over a 35-year period.

(142) The Investment Contract allows the plant to be built, however the profitability of the project is based on the entire operational life of the plant. Given the low level of the variable costs, the possibility exists that once the plant has been built and is operational, NNBG might be allowed to realise a super-normal rate of return when considering the entire life of the project – something which would be allowed through State aid.

(143) The second uncertainty is related to the discounting of fixed costs. The nature of nuclear production, which requires very high levels of capital for the investment in the construction and hence before revenues can be generated, while also being characterised by a relatively low level of operating costs once the plant has been built, has few, if any, equivalents in commercial activities. As will be discussed in Section 8.1.2 below, this feature of nuclear technology might in itself represent a form of market failure.

([28]) See the SGEI Compensation Communication, paragraph 61.

(144) However this also means that any assessment of the costs and revenues, and hence of the profitability, of the project crucially depends on the view that it is taken on the discount rate used to put a value to future cash flows.

(145) The UK claims that the discount rate used in NNBG's Financial Model, of [9.75 to 10.25] per cent in post-tax and nominal terms, which is their estimate of the weighted average cost of capital ('WACC') of the plant, is a reasonable value to assess the project. For the reasons set out in Section 8.1.6 below, the Commission doubts whether such a value can be deemed to be the most appropriate one. While a range of values are likely to be deemed to be reasonable when assessing a project such as HPC, the Commission notes that even a small variation in the rate used bring about very large changes in the project results. As the Investment Contract does not contain any correction mechanism, it does not account for that uncertainty and does not ensure that the even for the duration of the Investment Contract, the project will not yield more than a reasonable rate of return on capital.

(146) Finally, the Commission notes that NNBG will also obtain a State credit guarantee. Such guarantee is bound to lower the costs of financing the plant, hence the discount rate, which links back to the uncertainty highlighted above. It is however unclear, at this juncture, what the impact of the guarantee will be, since the financing structure of NNBG is not complete and the amount of debt, the amount of the guarantee and the rate paid are not yet known.

(147) The UK claims that NNBG will pay a commercial rate for the guarantee, however this cannot be verified at the moment, because no data are available on the guarantee, and because it is not clear that a definite benchmark exists for the type of financing needs which the plant will need.

6.6. **Assessment of the fourth 'Altmark' criterion**

(148) Where the undertaking which is to discharge PSOs, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with the necessary means, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

(149) The UK authorities do not contest that NNBG was not chosen pursuant to a public procurement procedure. They consider, however, that the level of compensation was determined on the basis of an analysis of the costs which a typical undertaking, according to the Altmark criterion, would have incurred. In particular, the UK claims that NNBG is well-run and that the rate of return used in the Investment Contract is reasonable. Also, they stress that the Strike Price was calculated on the basis of NNBG's costs of construction and operation, including a reasonable profit and that all costs were substantiated and verified.

(150) Where a generally accepted market remuneration exists for a given service, it provides the best benchmark for the compensation in the absence of a tender. The Strike Price, however, will – according to projections – in general be higher than the estimated average market price, i.e. the reference price.

(151) The reference price however, will, according to the UK authorities, be too low, at least in the coming years and would not have attracted the investment within the timeline targeted by the UK.

(152) It could therefore be appropriate to determine the amount of compensation by reference to an analysis of the costs that a typical undertaking would have incurred in discharging those obligations.

(153) The reference to the costs of a 'typical' undertaking in the sector under consideration implies that there are a sufficient number of undertakings whose costs may be taken into account. Those undertakings may be located in the same Member State or in other Member States – for example, in the present case the Flamanville an Olikiluoto plants might be used as references. ([29]) However, the Commission takes the view that reference cannot be made to the costs of an undertaking that enjoys a monopoly position or receives public service compensation granted on conditions that do not comply with Union law, as in both cases the cost level may be higher than normal. The costs to be taken into consideration are all the costs relating to the SGEI, that is to say, the direct costs necessary to discharge the SGEI and an appropriate contribution to the indirect costs common to both the SGEI and other activities.

(154) If the Member State can show that the cost structure of the undertaking entrusted with the operation of the SGEI corresponds to the average cost structure of efficient and comparable undertakings in the sector under consideration, the amount of compensation that will allow the undertaking to cover its costs, including a reasonable profit, is deemed to comply with the fourth 'Altmark' criterion.

(155) The Commission notes that in this case, the Strike Price has been determined so as to enable NNBG to recover the project investment costs and deliver NNBG's target rate of return for the HPC project.

(156) The UK authorities have commissioned experts to verify NNBG's cost estimates for the construction, operation and decommissioning of the HPC plant.

(157) While the studies reveal that NNBG's cost estimates might be reasonable and within the range of benchmark data and while the benchmark data seems to have taken into account costs from other nuclear plants of EDF and others, the study also concludes that NNBG's development cost estimates are towards the upper end of the cost range. ([30]) As to the operating costs, it is only concluded that they are broadly consistent with those of equivalent benchmark plants and thus reasonable.

([29]) Communication from the Commission on the European Union framework for State aid in the form of public service compensation, 2012/C 8/03, OJ C 8/15 of 11 January 2012, paragraph 74.

([30]) See, Notification, annex C – Cost verification process, p. 206.

(158) It thus appears that while the verification undertaken by the UK authorities might ensure that NNBG cost estimates are reasonable, they do not ensure that the Strike Price does not exceed the average cost structure of efficient and comparable undertakings in the sector under consideration and do not ensure that the service is provided at the least cost for the community.

(159) In the study on reasonableness of cost estimates, it is observed that NNBG costs are towards the upper end of the benchmark cost range because the HPC plant is the first project of a kind in the UK. Indeed, NNBG has chosen a technology for HPC that is not yet operational anywhere in the world. However, as it does not appear that this technology was chosen at the request of the UK authorities to discharge the alleged SGEI, it is questionable whether the higher costs linked to that technology can be taken into account to justify – under the Fourth Altmark criteria – a compensation that is higher than what would be necessary.

(160) Finally, as already indicated above, the Commission doubts that the level of profit used to set the Strike Price corresponds to the rate of return of a typical company considering whether or not to provide the SGEI for the whole duration of the period of entrustment, taking into account the level of risk.

(161) On the basis of those elements, the Commission concludes that the information provided by the UK authorities is not sufficient to demonstrate that the fourth Altmark criteria is complied with.

6.7. **Conclusion of the assessment under Art 107(1) TFEU based on the 'Altmark' criteria**

(162) On the basis of the arguments set out in Sections 6.2, 6.3, 6.4, 6.5 and 6.6above, and of the information provided to the Commission, the 'Altmark' criteria do not seem to be fulfilled for the notified measure. Therefore the Commission cannot exclude that the Investment Contract will provide NNBG with a selective advantage.

6.8. **Investment Contract, State resources and imputability to the State**

(163) As the whole Investment Contract and the establishment of the Strike Price is due to the State, the advantage under the Investment Contract is imputable to the State. In addition, the Investment Contract will initially be entered into by the Secretary of State.

(164) For advantages to be capable of being categorised as aid within the meaning of Article 107 TFEU, they must be granted directly or indirectly through State resources. This means that both advantages which are granted directly by the State and those granted by a public or private body designated or established by the State are included in the concept of State resources within the meaning of Article 107(1) TFEU. ([31]) In this sense, Article 107(1) TFEU covers all the financial means by which the public authorities may actually support undertakings, irrespective of whether or not those means are permanent assets of the public sector. ([32])

(165) The UK authorities do not contest that the Investment Contract is financed from resources under the control of the State.

(166) The Commission considers, based on the elements explained below, that the advantage granted under the Investment Contract will be financed directly by the State during an initial period and then by a public or private body designated by the State.

(167) Indeed, the Investment Contract will initially be entered into between the Secretary of State and NNBG. The Secretary of State will make the payments under the Investment Contract. It will be funded through a levy on suppliers and /or through normal UK Government funding mechanisms. Under such circumstances it must be concluded that any advantages paid under the Investment Contract are imputable to the State and are also financed from State resources.

(168) Also after the transfer of the Investment Contract, the Commission considers that the advantage under the Investment Contract will be financed from resources under the control of the State for the following reasons.

(169) First, the Strike price and the levy will be established by the State.

(170) Second, the counterparty will in principle be a government-owned private company and will in any event be designated by the State. The counterparty's articles cannot be amended without the Secretary of State's consent.

(171) Third, the counterparty designated by the State will administer the payment scheme, which includes the collection of the levy from suppliers and the collection of payments from generators when the market price is higher than the Strike price. It will also include payments to generators and payments to suppliers in certain cases. Part of the counterparty's tasks will probably be delegated to a subsidiary of Elexon (i.e. collecting the supplier obligation and making and receiving CfD payments from generators on behalf of the counterparty).

(172) Fourth, the counterparty will be provided with revenue-raising power in the Energy Bill to enable it to collect from suppliers the funds required to make payments to CfD generators and a certain number of mechanisms will be put in place by the State to ensure certainty of payments to CfD generators in the event of a supplier not paying. These mechanisms will include the obligation for suppliers to provide collaterals, an insolvency reserve fund and the designation of a Supplier of Last Resort. The insolvency reserve fund would provide the counterparty with funding to cover a defaulting supplier's levy payments for the period from its collateral being exhausted until a replacement supplier is appointed under the Supplier of Last Resort mechanism governed by Ofgem.

([31]) Case 76/78 *Steinike & Weinlig v Germany* [1977] ECR 595, paragraph 21; Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 58.

([32]) Case C-677/11 *Doux Elevage*, not yet published, paragraph 34, Case T-139/09 *France v Commission*, not yet published, paragraph 36.

(173) Fifth, the Counterparty will report to the State on the implementation. In this connection, it is intended that the counterparty will be governed by a framework document, setting out amongst other things the relationship between the counterparty and the State, the operating principles of the counterparty, matters reserved for the shareholder, the counterparty's roles and responsibilities, management and financial responsibilities, and reporting and monitoring requirements. It will also set out the parameters within which the counterparty is to fulfil its functions in relation to CfDs.

(174) Finally, in the unlikely event that the counterparty does not exist at the time payments are required to be made to NNBG (or suppliers), the Secretary of State has powers to either set up an Investment Contract counterparty to administer and make payments under the contract, collect payments from suppliers in order to pay generators under the Investment Contract or to pay generators directly.

(175) Also, while normally the financial means to cover payments under the Investment Contracts will in principle be raise through the supplier obligation, it will remain possible that the UK Government make direct payments to the Counterparty.

(176) On the basis of those elements, it can be concluded that after the transfer of the Investment Contract, the advantage provided under the Investment Contract will be financed through contributions imposed by the State and managed and apportioned in accordance with the provisions of the legislation by an entity designated by the State and controlled by the State.

(177) It is to be noted that Elexon and the Counterparty will also obtain payments to cover the costs resulting from their tasks of collecting the supplier obligation and paying the generators. Also, Ofgem will be compensated for its tasks under the ERM.

(178) In this respect, the UK claims that these entities will not be offering goods or services on the market in performing their duties under the Investment Contract and CfDs and accordingly their ability to recover their costs in respect of those functions (or indeed to be paid by the UK government for those functions) does not confer an advantage in favour of any undertaking and therefore falls outside Article 107. The Commission agrees with this analysis.

6.9. **The credit guarantee: Existence of an advantage funded through State resources and imputable to the State**

(179) The UK claims that the credit guarantee which the UK government agreed to provide to NNBG does not constitute State aid. ([33]) In particular, the UK authorities claim that the credit guarantee will be provided on commercial terms. The UK authorities also state that the guarantee will comply with the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees ('Guarantee Notice'), ([34]) in particular in relation to its pricing terms.

(180) The Commission notes, however, that the guarantee will be provided by the UK government, and State resources can be involved to the extent that the State foregoes part of the remuneration to which it would be entitled if the guarantee price were not based on market premiums. The question of whether the State indeed foregoes revenues can only be ascertained at the moment when the guarantee is given.

(181) The guarantee has not yet been granted and there are at this juncture very little details on the structure, the level and the price of such guarantee. Hence the Commission is not in a position to exclude that State resources are involved. ([35])

(182) In addition, while the UK has indicated that it intends to provide the guarantee on commercial terms, the Commission is not convinced that the methodology proposed to determine the price of the guarantee ensures that such price would be consistent with the price which a market investor would offer.

(183) Without taking a final view on whether the formula proposed by the UK authorities to price the guarantee fee appropriately reflects the approach which a market investor would be expected to take in a similar situation, the Commission notes that market investors are not likely to derive optimal pricing levels from first order equivalences, as the UK is proposing to do. A market operator providing credit guarantees would be likely to be able to use standard benchmarks to set the price of the guarantee. Indeed, what the UK approach seems to indicate is that it would be unlikely that a market operator could be in a position to adequately price the guarantee, given the uniqueness of the investment and the lack of appropriate benchmarks.

(184) In particular, the approach taken by the UK authorities is an 'expected loss approach,' i.e. an approach which attempts to set the price of the guarantee by taking into account the probability of a loss occurring. Given the high uncertainty around expected loss and the potential for relatively high unexpected losses, it seems that the approach should at least provide some discussion about the causes and nature of unexpected losses and the potential of these occurring as well as the impact on debt guarantee fees. In this respect, the current approach seems lenient and incomplete.

(185) Also, the approach proposes that an 'appropriate' return on equity for the credit guarantor would be given by multiplying a 4 per cent risk premium with an 8 per cent notional reserve. However this proposal lacks justification, or indeed evidence that a market operator would behave in a similar way.

([33]) UK notification, paragraph 508.

([34]) Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (2008/C), OJ C 155/10 of 20 June 2008.

([35]) Guarantee Notice, Section 2.1.

(186) Moreover, the debt guarantee referred to in the Notification seems to differ from ordinary debt guarantees in that it would be drawn before equity, apart from equity already spent, ([36]) and except when the plant completes outside the 'long-stop date' and in case of cost overruns. ([37]) However market-provided guarantees are usually drawn only after equity has been wiped out in all scenarios. It would therefore appear that the credit guarantee provided by the UK might diminish the risks borne by equity holders, except in the circumstances specified above.

(187) For the reasons set out above, the Commission cannot at this stage rule out that the provision of a credit guarantee by the UK on NNBG's debt involves State aid.

6.10. **Distortion of competition and effect on trade**

(188) Both the Investment Contract and the credit guarantee have the potential to distort competition and affect trade between Member States. The Commission notes in this respect that the generation and supply of electrical power is liberalised. As in this case the notified measures will enable the development of a large level of capacity which might otherwise have been the object of private investment by other market operators using alternative technologies, from either the UK or from other Member States, the notified measures can affect trade between Member States and distort competition.

6.11. **Investment Contract and Credit Guarantee: General conclusion on the existence of aid**

(189) The Commission therefore concludes, at this stage, that the Investment Contract and the credit guarantee involve State aid within the meaning of Art 107(1) TFEU.

6.12. **Existence of aid within the meaning of Article 107(1) of the TFEU: Compensation in case of political shutdown (Secretary of State agreement)**

(190) The UK intends to grant compensation to NNBG in case the HPC plant were to be shut down for reasons not directly imputable to its operations, and in particular due to changes in government policy.

(191) The UK does not seem to consider this indemnification as aid.

(192) According to the jurisprudence of the European Court of Justice damages paid by national authorities to compensate for a damage caused public authorities to individuals do not constitute State aid within the meaning of Article107 (1) TFEU ([38]).

(193) This principle is also set out in the decision making practice of the Commission. In the decision1999/268/EG on the acquisition of land under the German Indemnification and Compensation Act, the Commission stated that compensation in kind or monetary compensation to the operator who had suffered losses as a result of expropriation or the like did not constitute an advantage in the meaning of Article 107(1) TFEU as the compensation merely reflected the legal principles common to all Member States regarding the protection of property rights. ([39])

(194) Equally the Commission has in the Akzo Nobel Decision provided that compensation for the withdrawal of the approval to produce chlorine and monochloroacetic acid does not constitute aid: "Indemnifications normally do not entail a selective advantage to the company in so far as they merely compensated for damage resulting from an official act, where the indemnification is the direct result of this official act on the basis of a general system for indemnifications that derives directly from constitutional rights of property as recognised by the judicial system. ([40])"

(195) In the light of this case law and case practice, the compensation in case of early shut down could possibly not qualify as State aid. However, before a conclusion can be reached, it is necessary that the UK authorities provide more information on whether this compensation results from a general principle and would also be available to other market operators placed in a similar situation.

6.13. **Legality of the aid**

(196) The UK authorities confirmed to the Commission that the granting of the aid is subject to the approval by the European Commission. By notifying the measure before its implementation, the UK authorities have fulfilled their obligation according to Article 108(3) TFEU.

7. **ASSESSMENT OF THE MEASURE AID UNDER ARTICLE 106(2) TFEU**

(197) The Commission notes that the notified measure cannot be assessed under Commission decision 2012/21/EU, ([41]) given that it does not fall under any of the categories included in Art 2 of that decision.

(198) The Commission has explained how it would interpret Art 106(2) TFEU, when assessing a notified measure which involves State aid and the provision of a SGEI, in its Communication on the European Union framework for State aid in the form of public service compensation ('the SGEI Framework'). ([42])

(199) In particular, the SGEI Framework points out that the following conditions need to be taken into account in order for a measure involving the provision of State and being assessed under Art 106(2) to be deemed, on balance, not to unduly affect competition and trade:

([36]) UK notification, paragraph 276.
([37]) UK notification, Annex H, pages 241 and 244.
([38]) Joined cases 106 and 120/87 Asteris and others v Hellenic Republic [1988] ECR5515, Para. 21 —23.
([39]) Commission Decision 1999/268/EG of 20 January on the acquisition of land under the German Compensation Act, OJ 1999 L 107, p. 21, 'the decision of 20 January 1999'.
([40]) Commission Decision N304/2003 of 16.6.2004 on aid in favour of Akzo Nobel in order to stop chlorine transport
([41]) Commission decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 7/3 of 11 January 2012.
([42]) Communication from the Commission on the European Union framework for State aid in the form of public service compensation, 2012/C 8/03, OJ C 8/15 of 11 January 2012.

(i) The measure should entail the provision of a genuine SGEI;

(ii) There should be an entrustment act setting out PSOs and compensation levels;

(iii) The duration should be justified;

(iv) The measure should be compliant with Directive 2006/111/EC ([43]) on the transparency of financial relations;

(v) The measure should be compliant with Union public procurement rules;

(vi) The measure should not discriminate;

(vii) Compensation should cover costs and a reasonable profit; and

(viii) The measure should not affect trade between Member States.

7.1. **The measure should entail the provision of a genuine SGEI**

(200) The UK claims that the notified measure is a genuine SGEI for the same reasons as those put forward in their claim that the measure is not aid based on the application of the first 'Altmark' criterion. However, and for the arguments set out in Section 6.2 above, it is unclear whether the measure can indeed be qualified as a genuine SGEI.

(201) In particular, the SGEI Framework specifies that "Member States cannot attach specific public service obligations to services that are already provided or can be provided satisfactorily and under conditions, such as price, objective quality characteristics, continuity and access to the service, consistent with the public interest, as defined by the State, by undertakings operating under normal market conditions ([44])."

(202) It is unclear that the market would not provide the service asked of NNBG under the potential SGEI – and in fact exactly the same product, i.e. baseload electricity at technical standards consistent with the TSO specifications, is normally provided by the market. If the SGEI encompasses both the product and the terms of the Investment Contract, the Commission would note that the market is expected to provide nuclear energy without Investment Contracts, as argued above, and that the link between the public objectives specified by the UK, i.e. security of supply, decarbonisation, diversification and affordability, would be better achieved under the terms of the notified measure than otherwise. Indeed, it would appear that the proposed SGEI would contribute to higher prices, as noted above.

(203) For the reasons set out above, the Commission doubts whether the notified measure qualifies as a genuine SGEI.

([43]) Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings, OJ L 318/17 of 17 November 2006.

([44]) See SGEI Framework, paragraph 13.

7.2. **There should be an entrustment act setting out PSOs and compensation levels**

(204) The UK claims that the entrustment act complies with condition 2.3 under the SGEI Framework for the same reasons as those put forward in their claim that the measure is not aid based on the application of the first 'Altmark' criterion.

(205) While not necessarily disputing the UK's claim on the characteristics of the alleged entrustment act, the Commission must however reiterate that several of the key features of such act are not yet final. It is therefore difficult to conclude that condition 2.3 of the SGEI Framework is met, for the reasons set out in Section 6.3 above.

(206) The Commission also notes that it is unlikely that the notified measure can be deemed to include any arrangement to avoid overcompensation, as specified in point 16(e) of the SGEI Framework. In particular, the measure not only appears to be structured in a way which excludes the possibility of overcompensation, as argued in Section 6.5 above, but also does not include any mechanism which might ensure that, if overcompensation does materialise, it can be recovered in future periods.

(207) For the reasons set out above, the Commission doubts whether the notified measure satisfies condition 2.3 of the SGEI Framework, in particular since a mechanism to prevent or avoid overcompensation is not included.

7.3. **The duration should be justified**

(208) The UK claims that the duration of the Investment Contract is justified because it ensures that investment is secured while minimising the cost to consumers, thereby complying with condition 2.4 of the SGEI Framework. The UK government argues in particular that the chosen duration is less than the depreciation period, which is claimed to be 60 years, and reconciles the need to secure the investment, by providing a 'package' of Strike Price, duration and rate of return which is acceptable to NNBG, with the objective of leaving some degree of market risk, in particular in the post-CfD period.

(209) As results from Section 6.3 above, the Commission doubts that the 35-year period can be considered as an entrustment period at all given that NNBG does not seem to have been entrusted with any obligation. The 35-year period simply seems to correspond to the period during which the aid will be paid out.

(210) In addition, even if an entrustment existed and the 35-year period were considered as the entrustment period, the Commission notes that this period does not seem to have been determined on the basis of objective criteria as required by condition 2.4 of the SGEI Framework. Based on the UK's own statements, the duration has been negotiated and is based on a range of considerations and ultimately on the contract counterparties to conclude an agreement. ([45])

([45]) Paragraphs 351 and onwards, and paragraph 491 of the UK notification.

(211) For the reasons set out above, the Commission concludes at this stage that the notified measure does not seem to comply with condition 2.4 of the SGEI Framework.

7.4. **The measure should be compliant with Directive 2006/111/EC on the transparency of financial relations**

(212) The Commission has at this stage no reason to believe that condition 2.5 of the SGEI Framework might not be met.

7.5. **The measure should be compliant with Union public procurement rules**

(213) The UK government claims that Union public procurement rules, in particular those enshrined under Directives 2004/17/EC ([46]) and 2004/18/EC, ([47]) do not apply to the notified measure, as such measure does not involve the procurement of supply, works or services for its benefit.

(214) On the basis of the available information, the Commission preliminarily believes that it is not possible to conclude that the Investment Contract concerns the acquisition of any works, services or supplies and thus qualify as public contracts or concessions.

(215) First, it is not clear whether the Investment Contract establishes any specific requirements on the supply, to the contracting authority or to third parties, of any type of services, goods or works. Those contracts seem to involve only a general commitment, by the nuclear power companies, to invest and operate new plants.

(216) Secondly, the contracts do not seem to cater for mutually binding obligations which could be enforceable before a Court. To the contrary, the contracts appear to contain just certain conditions such as several 'hold points' relating to the construction/commissioning phase of the nuclear reactors at each of which the contractor runs the risk of seeing the contract terminated if certain requirements are not met.

(217) Thirdly, there is no selectivity on the number of possible economic operators that can enter into an Investment Contract other than those resulting from the limited number of sites available for the construction of nuclear power stations. As UK authorities have highlighted, the system remains open to all potential interested parties.

(218) The Commission therefore considers that indeed, Directives 2004/17/EC and 2004/18/EC, and in fact public procurement rules do not apply. Those rules apply only when the State is proposing to enter into a public contract. A contract will constitute a public contract within the meaning of procurement rules, when the States is purchasing works or services under a mutually enforceable contract before a court.

(219) However NNBG is not under the obligation to contract the nuclear plant or provide a specific service in the sense that the State cannot enforce any obligation to construct the nuclear plant or provide a certain service in Court. For that reason, the Commission has preliminarily concluded above that NNBG has not been entrusted with any tasks and obligation of general economic interest. For the same reason, it seems appropriate to conclude that public procurement rules do not apply.

(220) By contrast, if it were to be concluded that NNBG is entrusted with the realisation of works or a service the realisation/supply of which would be enforceable before a court, public procurement rules would be applicable and should have been complied with by the UK, which on the basis of the information available at this juncture does not seem to be the case. The UK government admits that no public tender has been used to select the beneficiary. In addition, the terms of the agreement with the beneficiary have been reached through private negotiation.

(221) For the reasons set out above, if NNBG were to be considered as entrusted with SGEI obligations, the Commission would have strong doubts that the notified measure satisfies condition 2.6 of the SGEI Framework.

7.6. **The measure should not discriminate**

(222) The UK seems to imply that other operators could be entrusted with SGEIs under CfDs. As the Commission could so far not identify any clearly defined SGEI, it is also not possible at this stage to determine whether or not the alleged SGEI is discriminatory. However, the Commission notes that the Investment Contract seems to be tailor made for NNBG. The UK has acknowledged that it will contain specificities that other CFDs will not necessarily contain. Also, the terms of the Investment Contract are being negotiated with NNBG. On this basis, if NNBG were to be considered as entrusted with SGEI obligations, the Commission is at this juncture not convinced that the SGEI would not be discriminatory.

7.7. **Compensation should cover costs and a reasonable profit**

(223) The UK claims that the measure does not result in a level of compensation which exceeds what is necessary, taking into account the costs, revenues and a reasonable profit.

(224) The SGEI Framework states that the calculation of compensation levels should, where possible, be calculated by taking account of the 'net avoided cost methodology.' According to such methodology, the "net cost necessary, or expected to be necessary, to discharge the public service obligations is calculated as the difference between the net cost for the provider of operating with the public service obligation and the net cost or profit for the same provider of operating without that obligation ([48])."

([46]) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in water, energy, transport and postal services sectors, OJ L 134/1 of 30 April 2004.

([47]) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, OJ L 134/114 of 30 April 2004.

([48]) SGEI Framework, paragraph 25.

(225) The Commission believes that it is difficult to ascertain whether this methodology, which in principle would be applicable in this case, is indeed used for the notified measure. In particular, the measure does not appear to be aimed at compensating a provider for the obligation to incur higher costs than it would otherwise incur. To the contrary, the measure appears to be aimed at providing incentives for the provider to invest in the project and, ultimately, offer the product, i.e. electricity, on the market.

(226) It would therefore seem that the condition cannot be fulfilled by the notified measure. Moreover, as argued in Section 6.5 above, the level of compensation cannot be defined clearly, given the long duration of the measure, the costs involved in the project, and the uncertainties over electricity prices, based on which the differences will be calculated. Consequently, it cannot be determined whether overcompensation might take place, and whether the rate of return can be deemed to be reasonable.

(227) In particular, since the Commission believes that overcompensation constitutes incompatible State aid, ([49]) and that the notified measure cannot exclude the possibility of overcompensation, condition 2.8 of the SGEI Framework cannot be deemed to be fulfilled by the notified measure.

(228) Also, for the reasons set out in Section 8.1 below, the Commission cannot exclude that the project might earn a level of return on capital which exceeds the relevant swap rate plus 100 basis points, as envisaged in the SGEI Framework. ([50])

(229) For the reasons set out above, the Commission doubts that the notified measure entails a level of compensation limited to the net costs of the service, including a reasonable profit.

7.8. **The measure should not affect trade between Member States to an extent that is contrary to the interest of the Union**

(230) The UK believes that the notified measure does not distort trade or competition between Member States, since it has considered, and is open to, investment in additional interconnection infrastructure, and that nuclear plants would not be non-replicable infrastructure.

(231) Based on the available information, if NNBG were to be considered as being entrusted with a SGEI, the Commission would have to conclude that NNBG would be tasked with providing a SGEI in competition with similar services, in the absence of a competitive selection procedure, and in a situation where the same type of technology, i.e. nuclear production, is expected to take place in the absence of the SGEI, at least in the future.

(232) In addition, the Commission believes that the notified measure might have substantial repercussion on trade and competition (as also outlined in Section 8.1.7). In particular, NNBG will be providing a service which is difficult to distinguish from that provided by other generators of baseload electricity. The Commission refers to Section 8.1.7 for the examination of the impact of the aid on competition and trade.

(233) If NNBG were to be considered as being entrusted with a SGEI, it could therefore not be approved without a detailed assessment of the distortions as provided for in section 2.9 of the SGEI Framework and an examination of possible mitigating measures. The assessment under point 59The Commission refers to Section 8.1.7 for the examination of the impact of the Framework will include compliance with the Electricty Directive 2009/72/EU, in particular Artciles 3(2) and 8 thereof.

7.9. **Conclusions on the assessment of the measure under Art 106(2) TFEU**

(234) Based on the arguments set out in Sections 7.1, 7.2, 7.3, 7.5, 7.6, 7.7 and 7.8 above, the Commission doubts that the aid measure qualifies as a SGEI within the meaning of Art 106(2) TFEU and the SGEI Framework. In addition, even if NNBG were to be viewed as entrusted with a SGEI, the Commission doubts that the aid for the provision of a SGEI would comply with the SGEI Framework.

8. **ASSESSMENT OF THE MEASURE AID UNDER ARTICLE 107(3)(C) TFEU**

(235) The UK claims that, in the event the Commission found that the notified measure does constitute aid according to Art 107(1) TFEU based on the 'Altmark' criteria, and that it were not compatible aid under Art 106(2) TFEU, the measure would consist of compatible aid under Art 107(3)(c) TFEU.

(236) It is established Commission practice ([51]) that measures may be declared compatible directly under Article 107(3)(c) TFEU if they are necessary and proportionate and if the positive effects for the common objective outbalance the negative effects on competition and trade. In this regard, the Commission considers it appropriate to assess the following questions:

(i) Is the aid measure aimed at a well-defined objective of common interest? ([52])

(ii) Is the aid well designed to deliver the objective of common interest? In particular:

a. Is the aid measure an appropriate and necessary instrument, i.e. are there other, better-placed instruments? ([53])

([49]) SGEI Framework, paragraph 48.
([50]) SGEI Framework, paragraph 36.
([51]) Community framework for state aid for research and development and innovation OJ C 323, 30.12.2006, p. 1, point 1.3; Community guidelines on State aid for environmental protection, OJ C 82, 1.4.2008, p. 1, point 1.3.
([52]) Judgement of the court of 14 January 2009, Kronoply v. Commission (T-162/06, Rec. p. II-1; especially points 65, 66, 74, 75)
([53]) Judgement of the Court of 7 June 2001, Agrana Zucker und Stärke / Commission (T-187/99, Rec._p._II-1587) (cf. point 74); Judgement of the Court of 14 May 2002, Graphischer Maschinenbau / Commission (T-126/99, Rec._p._II-2427) (cf. points 41-43); Judgement of the Court of 15 April 2008, Nuova Agricast (C-390/06, Rec._p._I-2577) (cf. points 68-69).

b. Is there an incentive effect, i.e. does the aid change the behaviour of firms?

c. Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?

(iii) Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

8.1. **Compatibility of the aid**

The Commission preliminarily notes that the UK intends to provide operating aid to NNBG, in particular in the form of a price support mechanism to guarantee profitability. Merely based on this approach, the Commission considers at this stage that if indeed aid exists, it would in principle be incompatible under EU State aid rules. ([54])

8.1.1. *Common objective*

(237) The aid measure must aim at a well-defined objective of common interest. When an objective has been recognised by the Union as being in the common interest of EU Member States, it follows that it is an objective of common interest.

(238) The UK claims that the notified measure is aimed at three common EU objectives, namely decarbonisation, security of supply and diversity of generation, and at addressing the related market failures.

8.1.1.1. Decarbonisation

(239) The UK argues that decarbonisation is a common objective based on the Environmental Aid Guidelines, Art 191 TFEU and Directive 2003/87. ([55])

(240) The Commission notes that while Art 191 TFEU establishes that the preservation, improvement and protection of the environment must be regarded as objectives of EU policy, it is unclear whether such objective can be immediately applicable to low-carbon generation as defined by the UK. In particular, while certain generation technologies emit less carbon emissions, their impact on the environment might nonetheless be considered substantial. This seems to be particularly true of nuclear generation, due to the need to manage and store radioactive waste for very long periods of time, and the potential for accidents.

(241) In this case, it is difficult to assess the trade-off between two potential common EU objectives, namely preserving the environment through the pursuit of low-carbon electricity generation while potentially increasing risks to the environment through the use of nuclear technology.

(242) In addition to that, the Commission would question the extent to which the notified measure really contributes to the decarbonisation of the UK electricity sector, and of its economy as a whole.

(243) It is in particular unclear, based on the information provided, whether the more rapid fall in carbon emissions due to the CfD for nuclear energy can be construed as being aimed at decarbonisation in a context where the 'business as usual' scenario would lead to a similar carbon emission trajectory path, i.e. a reduction in carbon emissions to about 220 g of CO_2 per kWh in 2030 against the level of about 500 g of CO2 per kWh in 2013. ([56])

(244) Firstly, the UK argues that the emission level of 220g of CO_2 per kWh in 2030 is not in line with their objectives in terms of decarbonisation of the electricity system. However, such an objective has not yet been set. ([57]) Secondly, it might be concluded that the CfD for nuclear does not so much aim at achieving decarbonisation, but at achieving decarbonisation at a faster pace than would otherwise be the case. However, in its modelling work the UK also seems to have considered equivalent targets of decarbonisation, achieved through different instruments and the consequent trajectories.

(245) The Commission notes in this regard that a support mechanism which is specific to nuclear energy generation might crowd out alternative investments in technologies or combinations of technologies, including renewable energy sources, which may have occurred in the absence of trhe notified measure.

(246) The Commission therefore is not clear at this stage on whether the notified measure can be argued to be aimed at a common EU objective in terms of environmental protection in general, and decarbonisation in particular.

8.1.1.2. Security of supply

(247) The UK also considers that the notified measure pursue the objectives of security of supply and diversity of supply.

(248) Pursuant to Article 194 TFEU, in the context of the establishment and functioning of the internal market, the Union policy on energy shall aim *inter alia* to ensure security of energy supply in the Union. The Court has also confirmed that the objective of guaranteeing adequate investment in the electricity and gas distribution systems is designed to ensure, inter alia, security of energy supply, an objective which the Court has also recognised as being an overriding reason in the public interest. ([58])

([54]) See, among others, Case C-278/95 P Siemens v Commission [1997] ECR 1-2507, paragraph 18; Case T-459/93 Siemens v Commission [1995] ECR 11-1675 paragraph 48; Case C-288/96, Germany v Commission, [2000] ECR 1-8237.

([55]) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, OJ L 275/32 of 25 October 2003, available at the following address: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:275:0032:0032:EN:PDF

([56]) See DECC, *Electricity Market Reform – Ensuring electricity security of supply and promoting investment in low-carbon generation*, Update: May 2013, Annex C, page 68. Under the UK estimates, most of the decarbonisation under the 'business as usual' scenario takes place due to the Carbon Price Floor.

([57]) The UK government states that it intends to set a decarbonisation objective for the electricity sector in 2016, based on advice from the Committee on Climate Change.

([58]) Judgment of the Court of 22 October 2013 in Joined Cases C-105/12 to C-107/12, Staat der Nederlanden v Essent and Others, paragraph 59 and case-law cited.

(249) Diversity of supply can be seen as one of the facets of security of supply, as it contributes to the ability on the part of a Member States to withstand external shocks, and essentially to the resilience of its energy system. According to this logic, in the absence of a public intervention, the market may over-rely on a single primary fuel exposing the Member State to a strategic/systemic risk.

(250) The UK has provided extensive information on their plans to ensure generation adequacy in the future.

(251) In particular, the UK is including in its forecasts on generation adequacy complementary policy routes including additional generation, energy efficiency and interconnection. From this perspective, the UK consixers that most renewables are generally only able to generate intermittently (e.g. when the wind blows or the sun shines) and new technologies such as CCS and wave and tidal stream technologies are not sufficiently proven. While such technologies have a major role to play in a diverse low carbon energy mix, they cannot be directly substituted to baseload electricity generation such as the one provided through nuclear generation.

(252) The Commission notes that the UK has pointed to internal DECC analyses showing that if HPC's contribution to reliable generation was replaced through single technology solutions, taking into account their availability in times of system stress, then either 14 GW of onshore wind farms with around 7,000 turbines covering an area up to approximately two times the size of Greater Manchester would be required, or around 11 GW of offshore wind farms, with around 2,000 turbines covering about 440,000 to 600,000 acres.

(253) The Commission also notes that the UK is pursuing a range of energy efficiency measures, which is already taking into account in its forecasts..

(254) In particular the UK is pursuing the Green Deal and the Energy Company Obligation (ECO) as successors to the Carbon Emissions Reduction Target (CERT) and Community Energy Saving Programme (CESP) and is planning to roll out Smart Meters by 2020 in the domestic sector. In non-domestic properties, the Carbon Reduction Commitment (CRC) Energy Efficiency Scheme aims to support energy efficiency measures in organisations that consume more than 6,000 MWh per year of qualifying electricity through settled half-hourly meters. However the UK considers that gains from demand-side response which go beyond those achieved through existing policies cannot be considered certain, in particular since the demand-side response market might take time before becoming effective.

(255) The UK has also examined how the internal market, and interconnection in particular, can support its objective of security of supply.

(256) Great Britain has currently around 4 GW of interconnection, equivalent to a total of 5 per cent of installed generation capacity. The UK is considering several project which might result in over 10 GW of additional interconnection by around 2020, equivalent to around 12 per cent of installed generation capacity.

(257) The UK believes that interconnection presents both risks and opportunities, in particular given that the flows will depend on market conditions at any point in time and cannot be predicted with certainty. It also argues that interconnection capacity cannot be reserved in advance, hence it might not represent a perfect substitute for baseload generation, in particular considering the issue of having different jurisdictions.

(258) The UK also posits that interconnection to mainland Europe is expensive, as it requires high-voltage direct current undersea cables with converter stations at each end. The UK argues that even if new generating capacity could be constructed in other Member States more cheaply than in the UK, taking into account the additional costs of interconnection it would be unlikely that delivering such capacity would be overall less costly, with the possible exception of offshore wind outside UK territorial waters but where project costs already include the cost of taking electricity to the coast.

(259) The Commission notes that the UK has not taken into account future interconnection capacity in its modelling work, based on the fact that it believes that the flows will be difficult to predict. The Commission questions this approach and invites comments from third parties on the degree to which interconnection can play a role, and how its contribution to the objectives being sought by the UK can be quantified over the time scale being considered for the HPC project.

(260) The Commission also notes that the UK is considering opening its CfD schemes to generators in other Member States.

(261) However the information provided by the UK do not appear to substantially support the argument that the notified measure is aimed at improving or maintaining security of supply, either in the form of generation adequacy or in that of diversity of supply.

(262) First, the UK points out that a generation adequacy problem is forecast to take place by Ofgem before 2020, referring to the fact that capacity margins fall under a 'business as usual' scenario based on Ofgem's Electricity Capacity Assessment Report. ([59]) It is therefore unclear how a measure which is expected to support generation becoming operational only after 2020 can remedy, or address, a generation adequacy problem taking place before.

(263) Also, in terms of diversity of supply, the Commission notes that such diversity would seem to be, again, ensured also in a 'business as usual' scenario and without the introduction of CfDs for nuclear energy. The question would therefore seem to become one of how quickly such diversity should be achieved, rather than whether it is achieved at all.

8.1.1.3. Promotion of nuclear energy

(264) The Investment Contract, and at a later stage the CfD for nuclear, appear actually to be addressed specifically at

([59]) See footnote 2.

supporting nuclear technology as such, with a view to ensuring that the UK will have the energy mix that it wishes to achieve through the EMR.

(265) In this regard the Commission notes that the Euratom Treaty establishes in Art 2(c) that the Community shall "facilitate investment and ensure, particularly by encouraging ventures on the part of undertakings, the establishment of the basic installations necessary for the development of nuclear energy in the Community." Art 40 of the same Treaty envisages the Community publishing of illustrative programs "to stimulate investment, indicating production targets."

(266) Aid measures aimed at promoting nuclear energy could therefore be viewed as pursuing an objective of common interest and, at the same time, can deliver a contribution to the objectives of decarbonisation and security of supply.

(267) Article 107 TFEU obliges the Commission to investigate aid granted by Member States that distorts competition or threatens to do so. Especially in the context of liberalised and increasingly competitive markets, the role of State aid control is increasingly important in EU electricity markets. The commitment of the European Union to promote investment into nuclear must be carried out in ways which do not distort competition. The question therefore needs to be asked, whether there is a market failure in electricity in respect to the planned measure.

8.1.2. *Market failures in nuclear energy*

(268) From a conceptual point of view, the question of whether market failures exist in relation to nuclear energy is relevant at two levels: first, at the broader level of electricity generation, and second, at the level of nuclear generation specifically.

(269) The existence of certain market failures in electricity generation is not sufficient to justify state intervention to support nuclear generation. In principle, State aid should only be directed at any residual market failure, i.e. the market failure that remains unaddressed by any other policies and measures, both at EU and at national level. In particular, the ETS aims at ensuring that carbon emissions decrease by putting a price on them, thereby addressing any market failure in relation to externalities arising from the fact that those who emit carbon do not bear the full cost of the emissions they generate.

(270) Furthermore, other policies and measures are already in place in the UK and new measures are being planned precisely to address some of the market failures related to electricity generation.

(271) In this context, it is unclear how the intended measure can remedy potential failures such as carbon emission externalities, beyond sectoral regulation, mandatory pollution standards, pricing mechanisms such as the ETS and the carbon price floor. It is also unclear how the intended measure interacts with other policies and measures in place that aim at remedying the same market failure. The notification does not provide information on alternative, potentially less distortive, technology combinations which would allow the UK to achieve its objectives. ([60])

(272) It is not clear at this stage that the lack of generation adequacy and/or of diversity of supply constitute market failures. Unless other types of structural problems were to be identified, which made it difficult or impossible for private investment in generation to address demand needs, it would appear that the issues being raised by the UK are temporary. In addition to that, even if structural problems were to be identified, they might point to the need for a regulatory response rather than the provision of State aid.

(273) On the other hand, there might be market failures which are specific to nuclear energy. Such a market failure could then be effectively targeted by designing a specific response aimed at removing solely the specific market failure, in order to achieve the aims of decarbonisation and/or security of supply if they have been identified as aims of the measure, thereby leaving the operator exposed to market risk for all other aspects of its activity, and resulting in a lower level of distortion of competition.

(274) Correctly identifying the market failure might allow to separate the decision by the UK to provide State aid from the decision by the beneficiary to make the investment. While the first should rest with the State, the second should be left, as much as possible, to the market, once any market failure has been identified and removed. The current design of the Investment Contract does not seem to allow for this distinction: by providing the aid, effectively the UK is making sure that investment takes place and that NNBG will build and operate the plant, subject to the terms of the Investment Contract.

(275) However the UK has not argued that a market failure exists specifically in relation to nuclear energy.

(276) Nuclear energy is characterised by extremely high fixed, sunk costs, and by very long time periods during which such costs need to be amortised. This implies that investors considering entry into nuclear energy generation will find themselves exposed to considerable levels of financing risks. Indeed, funding for the type of investment size and duration that characterise nuclear power plants might well be considered unparalleled.

(277) This argument is credible to the extent that nuclear power plants needs funding over a longer time horizon than alternative energy sources, as seems to be generally the case. However the argument could be weakened if it were observed that similar projects are being realised using primarily private funds. At the moment this is unclear.

(278) Other factors such as extreme tail risk (e.g. low-probability, high-magnitude events, which have a small probability of occurring but also have an enormous impact in

([60]) Paragraph 66 of the notification refers to DECC's internal analysis on replacing HPC by other technology solutions. However, these alternatives are single technologies (onshore and offshore wind, and CCGT) and are not presented in sufficient detail for the Commission to assess their viability.

term of cost, welfare and/or environment if they happen), in combination with so-called catastrophic risk, are similarly unparalleled and specific to nuclear energy investments.

(279) While it is not clear whether extreme tail risk or catastrophic risks could qualify as market failures, the Commission observes that at this stage the exact cause of potential financing issues is not yet clear.

(280) However, to the extent that any such market failure arises, the Commission would in principle consider that the provision of a credit guarantee could address it, and in fact might remove altogether any existing market failure in investments in nuclear energy, in particular in the post-construction period and when the plant becomes operational.

(281) There are finally certain features of nuclear energy which distinguish it from any other electricity generating technology, or, for that reason, from any other technology. This is particularly the case with the production of radioactive material as a side-product of the energy generation process, and of the potential for nuclear accidents which might entail the leak of radioactive material.

(282) Both these issues can result in costs which can be substantial in certain cases, such as the possibility of serious nuclear accidents. However, both issues are also characterised by a high level of uncertainty, which translates into an uncertainty of the underlying costs. The current legislative framework does not appear to have fully addressed how such uncertainty should be dealt with, and how commercial activity in nuclear generation can take place in a context where some of the costs involved can be very difficult to quantify.

(283) There are three costs which are particularly uncertain, and are caused by the production of radioactive material and the possibility of nuclear accidents: costs related to the decommissioning of the nuclear plant, costs related to the management and disposal of spent fuel and nuclear waste, and costs related to liability insurance.

(284) The production of radioactive material implies the need to decommission the nuclear plant, i.e. to 'close it down' permanently, by decontaminating the site and ensure that the area can remain viable in the future. It also implies the need to manage, and dispose of, spent fuel and nuclear waste, which is a byproduct of the production process.

(285) Commission Recommendation 2006/851/Euratom of 24 October 2006 on the management of financial resources for the decommissioning of nuclear installations, spent fuel and radioactive waste states ([61]) that "[t]he polluter pays principle should be fully applied throughout the decommissioning of nuclear installations. In this regard, the primary concern of nuclear operators should be to ensure the availability of adequate financial resources for safe decommissioning by the time the respective nuclear installation is permanently shut down." ([62])

(286) The 'polluter pays principle' is therefore clearly envisaged for the decommissioning of nuclear power plants. The costs involved can be quantified to a large degree. They might however be subject to some uncertainty, in particular in relation to new technologies, such as the one which will be used in the HPC plant.

(287) Costs related to the management and disposal of spent fuel and nuclear waste are subject to a substantially larger degree of uncertainty. Storage of waste is typically temporary and on site (i.e. where the nuclear plant operates) for a certain length of time, but it then needs to be carried out on a larger scale and in specific sites which are devoted to this objective. The costs of this activity depend on choices which might be taken far ahead in the future compared to when the plant operates. Spent fuel and nuclear waste stay radioactive for thousands of years, and no country in the world has yet built permanent facilities to store them. There is therefore a disconnect between the costs which need to be borne by the operator, and the actual costs of the activity.

(288) Council Directive 2011/70/Euratom ([63]) requires Member States to establish and maintain national policies on spent fuel and radioactive waste. It also clarifies that "the costs for the management of spent fuel and radioactive waste shall be borne by those who generated those materials." ([64])

(289) The Directive establishes that Member States have ultimate responsibility for the management and disposal of spent fuel and nuclear waste, and that radioactive waste should in principle be disposed of in the Member State it is generated. The Directive however also requires Member States to ensure that adequate financial resources are available, when needed, for the implementation of national programmes, taking into due account of the responsibility of generators. ([65])

(290) The Commission has already recognised the importance of ensuring the safe and secure management and disposal

([61]) Section 3(3) of the Recommendation, OJ L 330 of 28 November 2006.

([62]) Derogations might need to be investigated if the period of operation from the start-up of a power plant until the date of its closure is too short to accumulate the needed full amount for decommissioning, nuclear waste management and disposal costs. The Commission in the past found that aid provided to cover the shortfall in funds due to the fact that the activity had ceased operation (see case SA.31860 (N 506/2010) – Partial decommissioning of two already shut down nuclear plants (A1 and V1) - Slovakia).

([63]) Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste, OJ L 199/48 of 2 August 2011.

([64]) Council Directive 2011/70/Euratom, Art 4(3)(e). Derogations to this principle are explicitly allowed for specific cases, such as installations in Lithuania, Slovakia and Bulgaria, where nuclear plants with Russian technology were closed in connection with the accession of these countries to the EU.

([65]) Council Directive 2011/70/Euratom, Art 9.

of spent fuel and nuclear waste, among others in its Decision on the State Aid which the United Kingdom is planning to implement for the establishment of the Nuclear Decommissioning Authority of 4 April 2006. ([66])

(291) In the same Decision, the Commission also acknowledged that costs linked to the treatment and disposal of spent fuel and nuclear waste are difficult to estimate, since they tend to relate to activities that will take place a long time in the future, and of which there is still little experience. ([67])

(292) Finally, costs related to liability insurance are yet more uncertain, since they relate to low-probability, high-magnitude events, which are extremely difficult to forecast and therefore quantify in terms of their cost impact.

(293) Liabilities arising from the operation of nuclear power plants are currently governed by the interaction of existing international agreements and national laws. In particular for third party liability, regimes are governed by national laws but their main principles are set forth in international conventions ratified by the vast majority of Member States. These conventions provide a common basis for rules on matters such as the liable party, minimum amount of liability, compulsory insurance and the role of the State.

(294) The legal regimes of Member States are governed by national laws. In the vast majority of Member States, their main principles have however been set forth in two international conventions, namely the 1960 Paris Convention on Nuclear Third Party Liability and the 1963 Vienna Convention on Civil Liability for Nuclear Damage. In the Member States which are not party to either of these Conventions, national common tort law rules apply to nuclear incidents.

(295) These conventions set out rules such as the strict and exclusive liability of the nuclear operator, the minimum amount of their liability and of the compulsory insurance they have to establish, and the exclusive jurisdiction of the courts of the Accident State. ([68])

(296) Article 98 of the Euratom Treaty establishes that "Member States shall take all measures necessary to facilitate the conclusion of insurance contracts covering nuclear risks." A harmonised framework is still lacking, and there are large variations in national laws for the amounts of insurance or financial security that nuclear operators have to secure.

([66]) Commission Decision 2006/643/EC, OJ L 268&37 of 27 September 2006.

([67]) Commission Decision 2006/643/EC, OJ L 268&37 of 27 September 2006, paragraph 129.

([68]) In particular, under the Vienna Convention liability costs for the operator may be limited to not less than USD 5 million, but no upper threshold is set. The Paris Convention sets a maximum liability of SDR 15 million, provided that the State may provide for a greater or lesser amount but not below SDR 5 million, taking into account the availability of insurance coverage. The Brussels Supplementary Convention establishes additional funding beyond the amount available under the Paris Convention up to a total of SDR 300 million, consisting of contributions by the installation State and contracting parties.

(297) It is not clear that the current legal framework, or the characteristics of nuclear energy, result in a market failure. For the above reasons the Commission has doubts on whether the aid addresses a market failure releated to electricity generation or to a specific market failure related to nuclear energy.

8.1.3. *Need for State aid*

(298) The existence of a common objective, or a market failure, does not in itself prove that there is need for State aid. The UK is pursuing a number of other policies which are meant to address the same problems and achieve the same objectives as those which are described for the notified measure. Some of those policies may also entail State aid. The question therefore arises of whether the notified measure necessitates State intervention.

(299) In particular, the UK is introducing a separate mechanism, the Carbon price floor, which has the potential to achieve the same objectives as the CfD, depending on the level of price of carbon which is set – a decision which ultimately rests with the UK government itself, unlike the ETS price. It is not clear to the Commission that there is any residual market failure in relation to investment in nuclear generation which is not addressed by a combination of the ETS, the Carbon price floor and possibly of the provision of a credit guarantee, for the reasons discussed in Section 8.1.2.

(300) The UK authorities point out that the Redpoint model and the DECC model are the two instruments which have been used to inform their assessment and decision in relation to the need to support nuclear technology through a CfD. ([69]) These models have been used to produce both counterfactual 'business as usual' scenarios as well as scenarios considering the introduction of the CfD. The introduction of a credit guarantee does not appear to have been modelled in any way. The results of the Redpoint modelling exercise were published in 2010, while those of the DECC dynamic dispatch model were published in the July 2013 update of the EMR Impact Assessment.

(301) While the DECC and the Redpoint model can be useful tools, one could question the appropriateness of this modelling work to gauge the changes which the notified measure would result in compared to the 'business as usual' scenario. The main reason for this is that the modelling work carried out by DECC and Redpoint does not provide separate results for support to nuclear generators as a separate form of intervention, but always considered the full extent of the EMR measures, and in particular of CfDs for several technologies and of the capacity mechanism.

(302) In particular, the DECC modelling assesses the overall effect of the EMR package with all of its instruments to all supported technologies, including CfDs for several technologies and the capacity mechanism, ([70]) and not just measures in support of nuclear generation. Also,

([69]) UK notification, paragraph 52. See footnote 3 for a brief introduction to the two models.

([70]) See DECC, Electricity Market Reform Impact Assessment (July 2013), section 2.2.1 on page 22.

the outcomes under the full EMR package are compared to two 'base case' scenarios, which aim at approximating the 'business as usual'. However, both of these 'business as usual' scenarios assume that the Government reaches the "same profile in nuclear" or new nuclear as under the EMR. The published results of the DECC model therefore provide little relevant information on what changes in outcomes can be attributed to the CfDs and/or other support measures for nuclear energy, which are the subject of this notification.

(303) The Redpoint model also carries little relevance for assessing the impact of the intended support to nuclear generation. Various policy options are assessed separately as well as some combinations of them, but all policies that are foreseen to be implemented in the EMR are not analysed in one bundle. For example, the CfD is assessed separately, as well as jointly with capacity payments, but not together with the carbon price floor and the Emissions Performance Standard. However the current EMR proposal includes both these instruments in combination with CfDs, ([71]) which are estimated to have a very strong impact on the generation mix in 2030. ([72]) The Redpoint model therefore leaves the question, of what the value added is of CfDs to nuclear once other elements of the EMR are in place, unanswered. Furthermore, the assumptions of the Redpoint model are rather different from the actual parameters of the EMR as intended to be implemented by the UK.

(304) In particular, the DECC Dynamic Dispatch model assesses the overall effect of the EMR package with all of its instruments, and the outcomes under the full EMR package are compared to two 'base case' scenarios, which are two variants of the 'business as usual' scenario. However, both of these variants are based on the premise that the same level of new nuclear investment is achieved without CfDs as that achieved under the EMR – essentially by setting a high enough carbon price floor which attracts investment in nuclear energy.

(305) The DECC model therefore does not show what would happen in the absence of the CfDs for nuclear only. It merely assesses the relative cost of reaching the same objective through two different means, based on modelling techniques which by their very nature rely on assumptions reaching out far into the future. In particular, the DECC modelling work does not attempt to forecast what energy sources would replace nuclear in the absence of a CfD for nuclear, nor do they provide information on the associated welfare effects.

(306) The Redpoint model, on the other hand, assumes that existing policies in 2010 continue forward for the purposes of its 'baseline' scenario, as well as a fixed proportion of electricity generation from renewable energy sources, i.e. 35 per cent of overall capacity. The Redpoint model assesses the introduction of CfDs separately from other EMR instruments, however it does so including CfDs to all technologies.

(307) Again, therefore, the model provides limited insight into the question of how the electricity generation market would develop in the absence of CfDs for nuclear specifically. Also, the Redpoint model appears to use assumptions for the design of the CfDs, for example including a decreasing Strike Price in real terms, which are quite distinct from the current design, where the Strike Price is indexed to the consumer price index. In the Redpoint model the Strike Price for nuclear decreases from around GBP 90 per MWh in 2014 to about GBP 60 GBP per MWh in 2030.

(308) Even assuming that the models used by the UK can adequately represent market conditions and forecast investment decisions, one of the key results from both of them is that investment in nuclear generation would take place also in the absence of CfD. As mentioned in Section 7 above, such investment would merely take place at a later point in time – 2027 for the Redpoint model and 2030 for the DECC model.

(309) It is therefore unclear why State aid would be necessary in the current context. Both the DECC and Redpoint models indicate under several scenarios that the main result of the support is to allow the investment in nuclear to take place earlier than would otherwise be the case. The UK mentions that an earlier investment in nuclear would translate, in their view, in a higher likelihood of more investment in the future and in the renaissance of the UK nuclear industry. However, these considerations appear related only to the timing of the investment and not directly linked to the objectives the UK states it is pursuing through the notified measure.

(310) It is also unclear to what extent the UK has considered developments which will take place and might impact the situation in respect of security of supply, in particular the increase of interconnection, improvement of functioning of balancing markets and demand response deployment.

(311) Also, while not disputing the potential benefits of measures aimed at ensuring generation adequacy, and while reiterating that the notified measure cannot address the potential short-term capacity shortages which the UK intended to remedy, the Commission has doubts on the extent to which a capacity problem would translate into losses of load of a magnitude comparable to the aid involved in the measure at hand.

(312) In particular, the Ofgem Electricity Capacity Assessment Report uses the Loss of Load Expectation (LOLE) to quantify generation adequacy. This is expressed as the hours per year with expected supply being less than expected demand under normal operation of the system. ([73]) The Value of Lost Load (VoLL) resulting

([71]) See DECC, *Electricity Market Reform – Policy Overview*, November 2012, pages 29-36. See also paragraph 98 of the Notification. The report is available at the following address: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/65634/7090-electricity-market-reform-policy-overview-.pdf

([72]) In particular, in their assessment as individual instruments and separate from other policy instruments, the carbon price floor and the Emission Performance Standard lead to a substantially large increase in the share of new nuclear in 2030 and to a particularly low share of coal in the capacity mix. See Redpoint, *Electricity Market Reform – Analysis of policy options*, December 2010, Figure 21 on page 55 and Figure 22 on page 56.

([73]) Ofgem, *Electricity Capacity Assessment Report*, Page 8.

from the worst case scenarios of Ofgem, for example an outage of a size equalling the total installed capacity of HPC, remains significantly below the aid amount estimated in the notification.

(313) DECC assumes a VoLL of GBP 17,000 per MWh for the UK system as a whole. By using this figure and for comparison, it is possible to calculate the VoLL which would arise if an outage of 3.2 GW, i.e. the total capacity to be provided by the HPC plant, were to take place each year for 10 years. ([74]) Such a VoLL would be GBP 2.72bn. ([75])

(314) This is a pessimistic estimate, since in reality the costs would be likely to be lower – Ofgem estimates that under its 'worst case' scenario, the annual average LOLE is around 5 hours. And yet, the VoLL calculated above is just a fraction of the post-tax nominal difference payments that would arise from the aid amount as notified by the UK, i.e. of between GBP 3.5bn GBP 9.0bn. ([76])

(315) While such estimates are by their very nature subject to a degree of uncertainty, and while the UK has an entirely legitimate interest in attempting to prevent outages of electricity, the nature of the business of providing electricity is such that such outages can only be prevented in terms of lowering their probability.

(316) It would therefore appear that the UK is considering providing State aid to lower the probability of outages at a time when it is not clear that supply levels will be constrained as they are forecast to be before 2020, and that the amount of State aid being provided through the measure is in fact substantially in excess of the economic value of an outage of unlikely high proportions which were to take place for 10 years consecutively.

(317) Finally, and more broadly, it is not clear to the Commission that nuclear technology is immature enough to warrant State aid, or that it is characterised by specific market failures or other features which make State aid in the form of revenue support, or revenue certainty, necessary. As discussed above, nuclear technology might involve such high levels of capital investments that it might face issues in raising financing. Apart from that, however, it is not clear that the technology itself warrants the provision of State aid in the form which the UK has chosen.

(318) Nuclear technology might also be argued to necessitate forms of risk hedging which are not available to it, as the UK explains in its notification. In particular, gas and coal are hedged naturally by wholesale prices, given that they normally operate as marginal plants, or typically have the ability to do so. Nuclear energy would not allow that, as it requires relatively constant and stable levels of operation, and would therefore be exposed to the volatility of wholesale prices.

(319) However this limit might be overcome through different instruments, in particular through the provision of credit guarantees, as discussed in Section 8.1.2 above and as anyway envisaged by the UK, or through the provision of hedging instruments. It is unclear to the Commission that a form of complete revenue stabilisation is necessary to make investment in nuclear possible.

(320) For the reasons set out above, the Commission questions whether the aid is necessary to achieve the objectives which the UK is pursuing, and seeks comments by third parties on this point.

8.1.4. *Use of an appropriate instrument*

(321) The UK intends to use the CfD, a feed-in tariff with a fixed Strike Price, to support nuclear energy, in addition to the provision of a credit guarantee, as discussed above. The UK claims to have considered alternative instruments before choosing the CfD as its aid vehicle of preference, but that after public consultation it decided to settle for the CfD. The notification does not provide information on alternative, potentially less distortive, technology combinations which would allow the UK to achieve its objectives. ([77])

(322) The CfD, according to the UK, would minimise costs and provide the right incentives to generators, and in particular to NNBG. However it is not clear that this is the case.

(323) First, the CfD might be able to minimise costs if it were provided over the lifetime of the project. However the UK has chosen to limit the duration of the scheme to 35 years, which is already a very long period of time. Under such circumstances, as discussed more in detail below, it is unclear that the CfD is a preferable instrument compared to alternatives.

(324) In particular, the CfD seems to provide the utmost certainty of a stable revenue stream, under rather lenient conditions – i.e. that the beneficiary carries out its normal activities as a producer of electricity and sells this electricity into the market. In other words, the CfD is conceived to entirely eliminate market risks from the commercial activity of electricity generation, for a period of time, the initial 35 years of operations of the plant. Such a period of time, moreover, would most likely be regarded as the most relevant one to a private investor when considering investment in a plant, and to providers of financing when assessing how risky the activity is, given that what happens in the post-CfD period is significantly less risky and far enough away in time not to be likely to be of particular concern. ([78])

(325) As such, the CfD is an instrument which can be regarded as effective in ensuring that investment takes place. It *de facto* eliminates any price risk that the beneficiary might face, at least during its provision.

([74]) In particular, the VoLL in a single year is given by the outage size (in MW) multiplied by the LOLE (in hours) multiplied by the VoLL for a single MW.

([75]) The value is provided in nominal terms and for an annual outage duration of 5 hours.

([76]) These values are provided in real terms.

([77]) Paragraph 66 on page 29 of the notification refers to DECC's internal analysis on replacing Hinkley Point C by other technology solutions. However, these alternatives are single technologies (onshore and offshore wind and CCGT) and are not presented in sufficient detail for the Commission to assess their viability.

([78]) In terms of the NPV of cash flows, the post-CfD period accounts for about 7.5 per cent of the overall NPV of the project based on NNBG's financial model, which was provided with the notification and which will be further discussed below.

(326) The Commission believes that such an instrument is capable of severely distorting market dynamics, precisely because it shields the beneficiary from risks which other market operators need to face. If the CfD is provided together with a credit guarantee, in addition to a compensation for political risk and the indexation of the cash flows to the consumer price index, as the UK intends to do, it can be safely concluded that the activity undertaken by the beneficiary, NNBG, is not far from being risk-free at the level of operations. NNBG is left with some of the construction risk, but as noted above it appears to have a […]-year window to complete construction, hence the risk can be considered, if not limited, at least relatively mitigated by this time window, even if the second […]-year period might entail a shortening of the CfD duration according to the terms of the preliminary agreement.

(327) In particular, the Commission questions the need to provide a credit guarantee together with an instrument providing revenue assurance. There are grounds to believe that, once any potential market failure in financing the project is removed through the provision of a credit guarantee, the need for revenue assurance is indeed limited.

(328) Alternative support mechanisms would be likely to leave a higher degree of risk to the beneficiary, hence making the instrument more market-friendly and less distortive of competition. For example, a feed-in premium, where the premium were to be fixed and paid on top of the wholesale price of electricity, would leave the beneficiary exposed to demand and supply levels and to the price risk this entails.

(329) Also, and as discussed above, alternative instruments which aim at providing the possibility of mitigating risks might be considered and might be preferable to the full revenue stabilisation which the CfD entails.

(330) From this perspective, the Commission notes that tendering for low-carbon generation sources in a technologically neutral does not appear to have been considered as a realistic alternative. While it is likely that some technologies have higher costs, such as for example offshore wind, alternatives such as large scale biomass could conceivably have competed against nuclear in a tender rather than relying on a government-led negotiation. The lack of a tender could also lead to violation of Article 8 of the Electricity Directive 2009/72/EC. The Commission would require further clarification in this respect.

(331) Finally, the Commission questions the reasons which lead the UK to deploy various instruments aimed at the same objectives. The introduction of a carbon price floor would seem to have the same effects as a direct support for a specific low-carbon technology or beneficiary, and that a credit guarantee can also be conceived as a form of support which is relatively market-friendly, taking into account the characteristics of nuclear energy generation.

(332) It is unclear to the Commission that the CfD is an appropriate instrument, especially when compared to these other instruments – which are not, as it were, alternative, but that have been deployed at the same time. It is however unclear at this stage that the balance struck by the UK in using multiple instruments is the right one, and that an alternative mix of the same instruments, or the consideration of only some of them, might be able to achieve the same objectives with less aid or distortions to competition.

(333) For these reasons, the Commission has doubts on whether the instruments chosen are appropriate, in particular when they are used together.

8.1.5. *Incentive effect*

(334) The UK states that it has entered into negotiations with NNBG on the belief that the company would not carry out the project without support. The Commission understands that this refers to the provision of both the credit guarantee and the CfD.

(335) The UK argues that EDF has a number of credible alternative investment opportunities, that the risk profile of the HPC project would be higher in the absence of support, and that in order to attract investment it was considered necessary providing long-term revenue certainty.

(336) At this stage, the Commission believes that the incentive effect of the notified measure seems plausible, at least in relation to the objective of building the plant within the time frame envisaged by the UK.

(337) However at the same time the Commission understands that the EPR technology power plants in Flamanville and Olkiluoto have been undertaken without any support. The Commission cannot at this stage explain why the HPC project should be fundamentally different from the two EPR plants currently being constructed.

(338) Also, the issues identified in relation to the DECC and Redpoint modelling of the electricity market and the potential impact of various government policies on this market, make it complex to verify whether, and to what extent, the construction of the HPC project would not have been pursued even in the absence of State aid. Furthermore, while the HPC is subject to a high degree of uncertainty, as it will be argued in the Section on proportionality below, it would appear to be difficult for the UK to provide a greater degree of certainty than the one which is object of this decision. The rate of return of [9.75 to 10.25] per cent in post-tax, nominal terms, need to be read against the background of a fixed, certain level of revenues over 35 years and the additional certainty of a credit guarantee through which to seek funds on the market.

(339) For the reasons set out above, the Commission invites interested parties to comment on the existence of an incentive effect produced by the notified measure.

8.1.6. *Proportionality of the aid*

(340) The UK states that the Strike Price agreed with NNBG involves two different levels: GBP 89.50 per MWh and GBP 92.50 per MWh, with the latter being applied in case NNBG were not to construct and operate a second nuclear plant, under similar terms. Given that at the time

of writing such a commitment has not yet been made, for the purposes of this decision a Strike Price of GBP 92.50 per MWh will be considered. However, the arguments would equally hold under the assumption of a strike price of 89.5 GBP per MWh.

(341) The assessment of the proportionality of the aid needs to relate to both the credit guarantee and the terms of the CfD. While the two instruments necessarily interact, in particular by ensuring that NNBG can attain a higher level of rate of return, the Commission will first look at the proportionality of each instrument and then consider likely combined effect of the two instruments taken together.

8.1.6.1. Credit guarantee

(342) The UK Government announced that Hinkley Point C had been pre-qualified for a UK government guarantee on debt, which would be drawn before equity. The debt guarantee would make it easier to attract the necessary funding by reducing the risks debt holders face by lending to NNBG.

(343) As mentioned in the notification, the full details of any potential guarantee of debt will not be available for some time. Given that these details are indispensable in correctly pricing debt guarantee, the Commission cannot, based on the information provided in the notification, judge whether the guarantee fees are appropriate.

(344) In particular, the Commission observes that the UK debt guarantee differs from ordinary debt guarantees in that it would be drawn before equity, apart from equity already spent. The UK mentions that equity could be exhausted in case the plant completes outside the 'long-stop date,' i.e. the end of the second time window within which NNBG can complete the second reactor, which takes place on the fourth anniversary of the target commissioning window of the second reactor, or 8 years from the commissioning date. ([79]) The UK also states that cost overruns should be covered by contingent equity. However it would appear that in most other cases, the UK Government guarantee will be drawn before equity.

(345) A debt guarantee drawn before equity will not only reduce the risk of debt holders, but also that borne by equity holders, as it will (partly) replace equity as a buffer or first-loss piece and thereby significantly both reduce the risks and distort the incentives of equity holders.

(346) The submission proposes to derive the guarantee fees by focussing on expected loss, through a formula which is derived from first principles, i.e. a series of mathematical equivalences which in part make use of the probability of different events. The approach however ignores the existence of unexpected losses, and does not include any unexpected loss as a proportion of potential overall losses, which would increase its volatility and its uncertainty.

(347) By doing so, the formula underestimates potential overall losses. This seems particularly problematic given that the debt guarantee would be drawn before equity, except for the equity already spent. The UK Guarantee could be seen as a first loss piece which will be hit first in case NNBG is unable or unwilling to repay its debt in a timely manner, with the exception of the cases referred to above.

(348) Based on the information above, the Commission cannot exclude that the credit guarantee will involve the provision of aid, and that such aid might not be proportionate to the objectives being sought. In particular, the Commission has doubts on some of the anticipated features of the credit guarantee, and specifically the fact that the guarantee can be drawn before equity. Such feature, if confirmed, would be likely to result in lower risks and higher certainty for the beneficiary, hence it might lead to overcompensation.

8.1.6.2. Investment Contract and CfD

(349) The UK authorities submitted a financial model as part of the notification. As described above, the financial model provides a relatively detailed business plan for the HPC project and is used to derive the Strike Price based on a number of assumptions and objectives.

(350) The most notable feature of the notified measure is the fact that it is subject to a very large degree of uncertainty. Such uncertainty derives not so much, or not only, from the unknown variables and parameters, such as the future trajectory of wholesale electricity prices, but especially from the fact that the results are highly dependent on the assumptions, and on some of the assumptions more than on others. In particular, changes in the discount rate have a substantial impact on the results, as it can be expected from a project which involves such long time spans and high levels of capital.

(351) This uncertainty translates directly into a relatively low degree of confidence of the results of the model. This conclusion has direct repercussions for the assessment of the proportionality of the measure. In order to understand the robustness of the financial model, the Commission considered the NNBG 'baseline' scenario as the starting point and performed multiple sensitivity analyses on the financial model, including changes in the assumptions on four of the main variables:

(i) The discount rate, in particular by considering (post-tax, nominal) discount rates of 7.3 per cent, 8.5 per cent, 9 per cent and 10 per cent;

(ii) The evolution in the (wholesale) electricity market price to approximate the reference price;

(iii) The Strike Price, in particular by using the two values provided by the UK (GBP 89.50 per MWh and GBP 92.50 per MWh); and

(iv) The duration of the CfD contract.

(352) The aim of the sensitivity analysis is in the first place to see how much the model outputs change under different input assumptions.

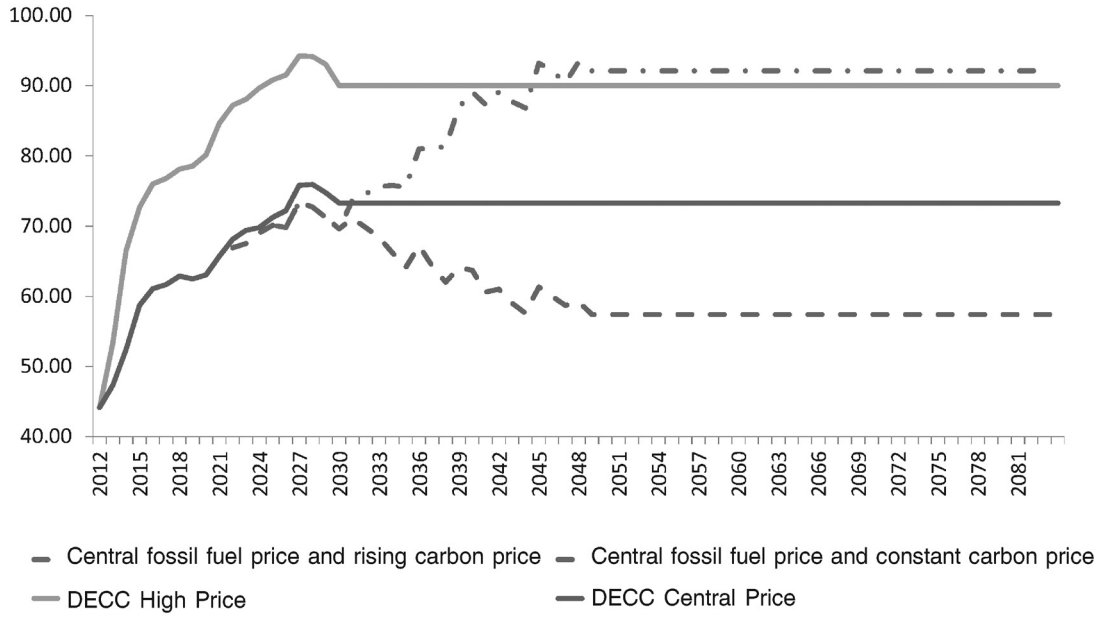
([79]) Annex H to the UK notification.

(353) NNBG's baseline scenario assumes that the reference and post-CfD market prices are equal to the agreed Strike Price. This however implies that having in place a CfD contract or not having it makes no difference for the lifetime operational results of the company, and appears to be an unrealistic assumption.

(354) In order to allow the financial model to capture difference payments, the Commission used four different series of wholesale market price forecasts in conjunction with the financial model, based on data provided as part of the notification as well as DECC publications. ([80]) These prices are shown in Figure 2.

Figure 2

Wholesale electricity prices in real terms used in the sensitivity analyses of NNBG's financial model



Source: UK authorities and DECC.

(355) The sensitivity analyses are carried out for the period 2012 to 2083, as per the UK notification, and leave all other assumptions, including the timing and financial structure of the project unchanged from NNBG's baseline scenario.

(356) The output which the Commission obtained from the sensitivity analysis exercise are the following ones:

(i) The NPV of all difference payments, by applying a discount rate of […] per cent, notified by the UK; ([81])

(ii) The NPV of cash-flows in post-tax and nominal terms;

(iii) The internal rate of return ('IRR') in post-tax and nominal terms;

(iv) The levelised cost of electricity ('LCOE') in nominal terms, both excluding as well as including corporate taxes;

(v) The CfD contract duration necessary to obtain a nil NPV at the end of the planning period; and

(vi) The break-even year, i.e. the year when the NPV of cumulated cash flows becomes nil.

([81]) Annex B to the UK notification.

(357) Annex 2 presents the results of the different scenarios. The Commission draws the following conclusions from the exercise.

(358) First, as expected, the parameters of the CfD are highly sensitive to assumptions regarding the discount rate and the market price scenarios. In particular, there are market price scenarios with discount rates slightly below the post-tax nominal rate of […] per cent used in NNBG's baseline scenario which would make the project profitable without a CfD, or with a CfD of a shorter duration. In other words, in these scenarios the CfD as currently designed would appear to provide additional profitability to the project, which might not be necessary to make the project viable. The assessment of proportionality is therefore crucially dependent on the discount rate used and the assumption of electricity market price development.

([80]) In particular, the Commission used the series labelled "Central fossil fuel price and rising carbon price," from the UK notification, Annex B, p.179; the " Central fossil fuel price and constant carbon price" series, from the UK notification, Annex B, p.180; and the "DECC high price" and "DECC central price" series, which are available until 2030, and for which we assumed constant prices in real terms after that date. The latter two series are available at the following address: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/65722/7019-annex-f-price-growth-assumptions.xls)

(359) Second, the CfD duration needed to allow EDF to break even is highly sensitive to the assumption on both the market price – and the expected volatility thereof – and the reference price. Everything else being equal and as in EDF's baseline scenario, a CfD with duration below 35 years appears to be sufficient to ensure profitability under the "Central fossil fuel price and constant carbon price" scenario. Similarly, and a CfD with a duration of less than 35 years appears to be possible also under the "DECC Central" scenario. At this stage it is therefore unclear to what extent and under which price scenarios the current strike price and contract length combination, and hence the revenues guaranteed to EDF, can be regarded as proportionate.

(360) Third, and linked to the previous point, the wholesale market price remains below the strike price throughout the period under most scenarios which can be considered realistic, as can be seen from Figure 2 above. Hence, and on average, the financial model largely works on the assumption that payments would flow from suppliers to generators, and not vice-versa.

(361) Fourth, the NPV of difference payments, which is the most direct measure of the overall amount of aid disbursed, is highly sensitive to wholesale electricity prices and discount rate assumptions. In particular, with a price of GBP 89.50 per MWh and everything else being equal to NNBG's baseline scenario, the (post-tax, nominal) NPV of difference payments is GBP 4.78 billion when using the medium prices of the UK notification forecasts and assuming rising carbon prices ("Central fossil fuel price and rising carbon price"), GBP 11.17 billion when using the medium prices of DECC's forecasts ("DECC central"), and GBP 17.62 billion when using the medium prices of the UK notification forecasts and assuming constant carbon prices ("Central fossil fuel price and constant carbon price"). In other words, the overall amount of aid can vary by as much as GBP 13 billion depending on the assumptions taken.

(362) The sensitivity analyses carried out by the Commission point out that there is a large degree of variability of outcomes in the notified measure, which depend on the assumptions chosen. It appears very difficult to assess the proportionality of the proposed measure based on the information available. While a large variability of results can be expected from projects of this size and nature, the Commission cannot at this stage conclude that the CfD is a proportionate measure.

8.1.6.3. Combined effect of credit guarantee and CfD

(363) As the credit guarantee would reduce the risk exposure of EDF significantly, the combined effect of both the credit guarantee and the CfD would result in a significant reduction of the cost of capital for EDF. The degree to which the cost of capital would need to be reduced is, in this case, impossible to derive given that the full details of the capital structure and the credit guarantee are not available to the Commission at the time of writing.

(364) The risk and hence the fees associated with the credit guarantee are strongly linked to the capital structure and the conditions under which the guarantee would be drawn upon. From the notification the Commission understands that the guarantee would be drawn before equity, except when there is cost overrun or when the plant completes outside the long-stop date. In addition to debt, the credit guarantee seems to protect equity holders to a significant degree. This would result in a further reduction of the risk of the investment for NNBG and hence the discount rate.

(365) The notification does not seem to discuss tail risk events and so-called catastrophic events which might potentially trigger payments under the credit guarantee. The Commission would like to point out that more information on tail-risk events and so-called catastrophic events and the impact on the credit guarantee is crucial in order to evaluate and draw conclusions on the risks and fees associated with the credit guarantee. The CfD and the guarantee combined seem to reduce risk exposure (including revenue risk, financing risk, inflation risk, political risk, etc) of a company in the position of NNBG to a very large degree.

(366) The activity NNBG will carry out should not be described as being risk-free, as clearly some risks remain with the company – in particular construction risks and operational risks linked to the functioning of the plant. However in most other respects, it would seem that, for the foreseeable future and for a length of time which is as long as any private investor would be probably willing to consider in its assessment of investment risk, NNBG would not seem to face substantial risks in operating the HPC plant.

(367) It seems very likely that discount rates lower than those proposed by the UK authorities are realistic. Such changes would influence the profitability of the project significantly.

(368) The Commission simulated scenarios based on a (post-tax, nominal) discount rate of 7.3 per cent, which is the maximum estimated WACC for EDF in the reports mentioned in the notified documents. With such a discount rate, the HPC project would be profitable under all price scenarios considered and in the absence of a CfD. While a 7.3 per cent discount rate should not necessarily be seen as the appropriate discount rate for the HPC project, it shows the potential impact of a further reduction in the discount rate on the profitability.

(369) Table 2 provides an overview of the extent to which different cost elements, and the cost of producing electricity with the HPC plant as a whole, would change as discount rates change.

(370) Based on the information set out above, the Commission considers that NNBG might face a lower cost of capital than the one proposed by the UK, as a result of the combined effect of the credit guarantee and the CfD.

Table 2

Levelised costs changes under different discount rate assumptions based on NNBG's financial model

[…]

Source: Commission calculations based on NNBG's financial model provided by the UK authorities

8.1.6.4. Conclusions on proportionality

(371) Nuclear energy generators are exposed to a range of risk factors, most of which are being mitigated or eliminated by a combination of aid measures in the case under assessment: the CfD, the debt guarantee, inflation indexation, and/or a compensation for plant shutdown in case of a political decision.

(372) The CfD is aimed at considerably reducing the wholesale price level and volatility risk and electricity demand risk. In addition, it covers a normal level of operational cost and risk. The guarantee eliminates the financing and re-financing risk, and the liquidity risk. The inflation risk is reduced by indexation of the strike price to the consumer price index, which appears to be novel compared to previous assessments, as those embodied in Redpoint's work, which were assuming the Strike Price would decrease in real terms.

(373) The main exposure for NNBG remains the construction risk and in particular the timing of the construction. However, as argued above, once the plant becomes operational, the generator is exposed to relatively few risks but could potentially benefit from high profits.

(374) Having analysed NNBG's financial model, the Commission concludes that the profitability indicators of the project are highly sensitive to assumptions surrounding the discount rate, the reference and wholesale market price, and other parameters of the model.

(375) It is also unclear to the Commission that a scheme lasting for the entire lifetime of the plant, as opposed to the proposed scheme which lasts for 35 years, might not better limit the scope for reaping windfall profits in the post-CfD period, when NNBG will have an operational plant which will have been largely depreciated.

(376) Based on the assessment conducted, the Commission doubts whether the combination of aid measures, and in particular of a CfD with inflation indexation and a credit guarantee, is proportional to the potential benefits of the aid. It would seem that aid measures which focus on the pre-construction or construction period, or aid measures which include automatic adjustments or some profit sharing mechanism, might result in a higher degree of proportionality.

(377) The issue of the cost of capital becomes particularly important when considering the combined effect of the measures, as argued in the previous Section. It is not clear if and to what extent the return which NNBG is allowed to make through the provision of aid is adjusted for the credit guarantee.

(378) To compare, a 2011 report by economic consultancy Oxera ([82]) (the 'Oxera 2011 report') estimates that the applicable (pre-tax, real) discount rates for new-build nuclear energy plants are in the range of 9 to 13 per cent. ([83]) These rates include a risk-free rate and a risk premium. ([84]) In the same report, the following main sources of risk are listed in connection with nuclear: Wholesale electricity price level and volatility; Carbon price and volatility; Load-factor risk; Balancing risk; and Policy and regulatory risk. ([85]) The report clearly states that the discount rate for technologies that are supported could be significantly lower.

(379) The UK's proposed measure contains provisions to mitigate many of these risks. Given the sensitivity of the financials of nuclear investment projects to the assumed discount factor, the key question arises of the extent to which the reduction of these risks boil down in a lower discount rate in the project concerned. ([86])

(380) The assessment of the required rate of return for NNBG, based on work undertaken by consultancy KPMG and commissioned by DECC estimates that the "allowable rate of return" falls within the range of 6 to 14.5 per cent. The sensitivity analyses performed by the Commission and discussed above show that the proportionality of the notified measure depends crucially on which range of this interval the discount rate falls into.

(381) The Commission's preliminary view is that the upper bound of the reported rates of returns used by KPMG may be overestimated. This applies in particular to the highest estimated hurdle rate of 14.5 per cent derived in the "Project Hurdle Rate Analysis" section of the KPMG study. To arrive at this number the KPMG report quotes broker/analyst reports arguing that "EDF has a WACC in the range of approximately 5.5 % to approximately 7.0 %." ([87]) KPMG then quotes studies claiming that "companies tended to use hurdle rates that were 5.28 % - 7.45 % higher than their own cost of capital, ([88]) though only part of this premium was attributed to compensation for unsystematic project risk." ([89]) The Commission questions whether adding 7.5 per cent based on a single study on top of the highest WACC reported by EDF could be considered reasonable.

(382) Given that the UK argues that the cost of capital of NNBG for the HPC project is reasonable based on these data, and given that it would appear not to be unrealistic that the upper bound of the WACC estimate presented might have to be lower, the conclusion is that the cost of capital which can be considered adequate for the HPC project might be lower than the one used by the UK.

([82]) Oxera, *Discount rates for low-carbon and renewable generation technologies*, April 2011, available at the following address: http://www.oxera.com/Oxera/media/Oxera/downloads/reports/Oxera-report-on-low-carbon-discount-rates.pdf?ext=.pdf

([83]) Oxera 2011 report, Table 4.1, p.21.

([84]) Oxera 2011 report, Table 4.1, p. 20.

([85]) Oxera 2011 report, Table 3.2, p.14.

([86]) See Notification, Section 2.7.4 on pages 83 to 85, for an overview of claimed risk allocation in the project.

([87]) Page 55 of KPMG, *Final Investment Decision Enabling Program*.

([88]) KPMG in particular quotes Meier and Tarhan, *Corporate investment decision practices and the hurdle rate puzzle*, 2007.

([89]) KPMG seems to rely on a single academic source for the highest value cited in the report.

(383) Given the likelihood that such lower cost of capital might lead to a higher profitability of the HPC project, the Commission cannot at this stage confirm that the notified measure is proportionate, and has doubts on the robustness of the cost of capital, the discount rate, and ultimately on the return which NNBG is allowed to make through the provision of aid.

(384) The Commission is particularly concerned that the combination of different measures, and in particular of the credit guarantee and the CfD, might be compatible with substantially lower levels of return than the one being granted to NNBG, in particular given the level of risk effectively borne by the beneficiary based on the available information, and the level of certainty on the revenues it will be able to generate.

(385) The Commission would therefore welcome views on how the possibility of windfall profits and overcompensation might be limited.

(386) Finally, the Commission notes that some of the components of NNBG's cost base, and of all nuclear plants, are subject to a high degree of uncertainty due to the intrinsic nature of the activity involved. This is particularly true of the costs of decommissioning, the management and disposal of nuclear waste, and of liability insurance, as discussed in Section 8.1.2 above.

(387) Of these costs, those of decommissioning are likely to be the ones which are easiest to estimate, given that they relate to activities which can be predicted more precisely, and the cost of which can be therefore also be quantified more rigorously. Nonetheless, there might be areas of uncertainty in relation to the nature of decommissioning activities, in particular for a nuclear technology which has not been deployed before.

(388) The costs of managing, and disposing of, nuclear waste are substantially more difficult to quantify. The UK plans to build a geological disposal facility, i.e. a facility which will allow the permanent disposal of spent fuel and nuclear waste, something which does not yet exist anywhere in the world. This project is part of the UK's set of initiatives to facilitate investment in nuclear energy, in particular given that the use of the facility will require operators of new nuclear plants to pay a price which will be subject to a maximum value, to be set in advance of construction and based on a cost model which takes into account all available information.

(389) The UK intends to notify the measure described above to the Commission, which will assess whether it involves aid and whether, if it does, such aid can be deemed to be compatible with EU rules.

(390) Finally, the costs of insuring NNBG from the liability stemming from accidents are extremely, and intrinsically, uncertain. The Commission will nonetheless have to assess whether the estimated costs which NNBG will bear to insure itself from liability can be deemed to be proportional. In relation to this cost element, it cannot be excluded *a priori* that a specific additional element of State aid might be involved in the form of implicit assurance that any 'top' risk, i.e. the portion of risk not specifically covered by NNBG or any market provider of insurance services, will be covered by the State.

8.1.7. *Potential distortions of competition and trade*

(391) The UK claims that the measure does not have undue distortive effects on competition and trade. In particular, the UK states that the measure is likely to impact on the market for the construction of nuclear energy plants, the market for electricity generation and wholesale supply, the market for the procurement of nuclear fuel, and the retail market for electricity, potentially segmented into retail and business markets.

(392) The UK claims that the notified measure does not have any major impact on any of these markets, in particular since it would not lead to crowding out of private investment, it would not keep inefficient firms afloat, it would not lead to exclusionary behaviour, and it would not have substantial impact on trade between Member States.

(393) The Commission would first note that one of the questions which are relevant for the assessment of the impact of the notified measure on competition is the question of whether other private investors would be able to operate in the electricity generation market benefiting from a Strike Price of GBP 92.50 per MWh giving rise to stable revenues over 35 years and resulting in a rate of return of [9.75 to 10.25] per cent over the same period. The Commission is preliminarily wary of accepting that competitors to NNBG might enjoy the same level of revenue certainty and the same level of risk mitigation.

(394) Also, aid to NNBG will displace both revenues, hence profits, from existing plants, as well as investment in new plants which would otherwise compete with NNBG. In particular, it may displace substantial investment into new low-carbon technologies, including renewable technologies, that would otherwise also contribute to the objectives pursued through the notified measure.

(395) Aid to NNBG is also likely to displace the exchange of large quantities of electricity between the UK and its neighbours, i.e. through the interconnectors which are in place. Aid to NNBG might also change the incentive framework which might lead to more investment in interconnection in the future.

(396) While the UK considers, in its notification, the future increase in capacity due to the construction of new interconnectors, it is unclear to what extent such plans might already internalise some of the incentives built into the EMR, including support to nuclear energy. It is also unclear to what extent the provision of capacity through interconnection which is beyond the forecast period provided by the UK, and which might take decades after the construction of the HPC plant, might be affected by the existence of the plant itself.

(397) It would therefore appear that aid to NNBG might have the potential to result in foreclosure of new capacity, provided either by new entrants, or by new investments in interconnection, part of which might be crowded out due to HPC's operations.

(398) Aid to NNBG also has the potential to decrease the incentives to invest in demand-side response measures, including storage, energy efficiency and energy saving

measures. Some of these activities, despite the current, relatively embryonic state of the technology used, are the object of investment by private operators and can be profitable. While the primary use of demand-side might be to deal with peak changes rather than baseload provision, it is unclear what impact the plant might have on commercial activities being undertaken on the demand side of the market.

(399) Substantial distortive effects then appear to be linked to the design of the CfD, as argued above. In particular, the CfD has a revenue-stabilising, hence profit-stabilising, effect for the beneficiary. It *de facto* shields the beneficiary from the demand-side of the market and from the risks which being exposed to it normally entails. This lower risk should normally translate in a lower rate of return, and it is not clear that the almost complete elimination of any price-related impact on NNBG has been properly taken into account when considering that the same company will be competing in a liberalised market against operator which cannot benefit from any similar level of protection.

(400) The CfD effectively insulates NNBG from the market. The properties of CfD aid in terms of its impact of competition from this perspective are unclear. What seems to be clear, however, is that the market insulation will take place in the years which are most crucial to improving the financial results of the beneficiary – namely, more than half of the lifetime of the installations, with a level of market insulation which ensures that the investment takes place.

(401) The Commission has asked Professor Richard Green ([90]) and Dr Iain Staffell ([91]) from Imperial College Business School in London to inform its assessment by providing a report (the 'Expert Opinion') on the likely impact of the notified measure on the competitive conditions of the UK electricity markets.

(402) While the Commission does not explicitly endorse any of the results produced by Prof Green and Dr Staffell, nor do those results necessarily reflect the Commission views, such results provided some of the elements which informed the Commission overall assessment.

(403) The Expert Opinion makes use of a dynamic investment model of the GB electricity sector. The model in particular simulates the dynamics of the GB wholesale electricity markets by modelling generators' decisions to invest in those power stations that they expect to be profitable over their working lifetimes, at regular intervals up to 2100.

(404) The model includes a dispatch module that calculates electricity wholesale prices, and hence generators' profits, on the basis of the marginal costs of the stations available in each decade, given predicted fuel prices and the level of electricity demand. Generators will add capacity as long as it is profitable to do so, in terms of covering the station's average LCOE and generating a return on investment equal to its WACC, both in the decade in which the investment is made and over the station's entire lifetime.

(405) As all simulation and forecasting models, including the ones used by Redpoint, DECC and NNBG's financial model, the one used in the Expert Opinion is based on a number of assumptions and is subject to a degree of uncertainty. The Expert Opinion uses the same (public) data which is used by DECC, to ensure maximum adherence to the assumptions made by the UK government.

(406) The Expert Opinion provides results for six scenarios:

(i) No Aid, 13 %: The market without government interventions, and a nuclear WACC of 13 %;

(ii) CfD35, 10 %; This is the policy proposed by the UK government. Up to 15 GW of nuclear stations are paid the difference between their Strike Price (£89.50 per MWh) and the annual average wholesale price during their first 35 years of operation. The nuclear WACC with this contract is 10%, equal to that agreed with NNBG;

(iii) FiP35, 10 %: This policy replaces the CfD with a Feed-in Premium. Up to 15 GW of nuclear stations sell power at the market price, and also receive a fixed premium for their first 35 years of operation. This premium is calculated to deliver the same level of support as the CfD, and assumes the same nuclear WACC as with the CfD (10 %);

(iv) CfDall, 10%: This gives every generator built in the 2020s (fossil or nuclear) a CfD for 35 years (or its expected lifetime if lower). The technology-specific strike prices are set at the same level relative to each technology's expected cost, and together deliver the same total volume of support as the CfD for nuclear. Each technology has the same WACC as in scenario 2;

(v) CfD 60, 9 %: This gives up to 15 GW of nuclear stations a 60-year CfD split into two phases. The first is as proposed by the UK government (an £89.50/MWh Strike Price for 35 years); while the second pays a lower Strike Price of £44.75/MWh for the final 25 years of each station's life. This reflects the lower ongoing costs of a station after its capital costs have been paid back to investors, while still providing a sufficient margin to remunerate any capital spending needed. The second phase limits NNBG's profitability and makes the CfD deliver benefits for consumers in later years. With more revenue certainty, the WACC is assumed to fall to 9 %.

([90]) Richard Green is Professor of Sustainable Energy Business at Imperial College Business School in London. More information on Prof Green is available at the following link: http://www.imperial.ac.uk/AP/faces/pages/read/Home.jsp?person=r.green&_adf.ctrl-state=uhbsepx8s_3&_afrRedirect=1961372871198606

([91]) More information on Dr Staffell is available at the following link: http://www.imperial.ac.uk/AP/faces/pages/read/Home.jsp?person=i.staffell&_adf.ctrl-state=uhbsepx8s_107&_afrRedirect=1961433821926606

(vi) Guarantee, 11 %: This scenario models the impact of the government providing only a credit guarantee (drawn after equity as opposed to the measure proposed in the notification) which would reduce the cost of capital for nuclear stations by 2 per cent minimal compared to scenario 1, but does not involve direct intervention in the electricity wholesale market. It should be noted that the effect of the guarantee is not modelled directly but only indirectly through a reduction in the discount rate. This scenario therefore cannot be representative of the impact of a credit guarantee drawn after equity, such as the one notified by the UK. ([92])

(407) The key results from the Expert Opinion are summarised in Table 3.

Table 3

Main results from the Expert Opinion by Prof Richard Green and Dr Iain Staffell

	SCENARIOS:		1: No Aid 13 %	2: CfD35 10 %	3: FiP35 10 %	4: CfDall, 10 %	5: CfD60, 9 %	6: Guarantee 11 %
INVESTMENTS	New nuclear capacity installed by end of decade (GW)	2020s	0	15	9.9	0	15	0
		2030s	0	15	9.9	0	15	0
		2040s	0	15	12.1	0	15	1
	New fossil capacity installed by end of decade (GW)	2020s	4	0	0	15	0	3.9
		2030s	41.1	27.1	32.2	41.9	27.1	41
		2040s	71.1	52	54.9	68.8	52	71
PRICES	Average wholesale price during decade (£/MWh)	2020s	£66.67	£51.33	£56.75	£57.97	£51.33	£66.76
		2030s	£88.15	£76.76	£80.38	£82.58	£76.76	£88.24
		2040s	£96.52	£88.05	£90.00	£92.64	£88.05	£95.22
	Average price including levelised subsidy (£/MWh)	2020s	£66.67	£64.44	£64.04	£68.13	£64.44	£66.76
		2030s	£88.15	£80.49	£86.59	£89.71	£80.49	£88.24
		2040s	£96.52	£88.43	£95.49	£94.37	£88.43	£95.22
PROFITS	Annual profits of existing stations in the 2020s (£bn)	Nuclear	£2.9	£2.0	£2.3	£2.4	£2.0	£2.9
		Fossil	£0.6	–£1.5	–£1.4	–£1.5	–£1.5	£0.6
	Annual profits of supported nuclear stations (£bn)	2020s	–	£0.1	£0.0	–	£0.9	–
		2030s	–	£0.1	£1.6	–	£0.9	–
		2040s	–	£0.1	£2.2	–	£0.9	–
WELFARE	NPV of support over duration (£bn)		£0.0	£3.5	£3.5	£3.5	£2.3	£0.0
	NPV of welfare: 2020s to 2050s (£bn)		£30.0	£28.6	£29.7	£30.1	£30.2	£29.9
	Cumulative carbon emissions: 2020s to 2050s (GT)		2.8	2.1	2.3	2.8	2.1	2.8

Source: Expert Opinion by Prof Green and Dr Staffell.

([92]) In particular, the Commission does not believe, at this stage, that a 2 per cent difference in the discount rate can approximate the value of the guarantee provided by the UK to NNBG. If the government were to guarantee a long-term senior bond equivalent to that of EDF, it would have to pay around 200 – 250 bps. The latter strongly depends on the type of bond, the seniority of the bonds, the maturity, and the priority in case of non-payments. If the guarantee were to be drawn before equity, this would significantly increase the premium that the government would have to pay.

(408) Based on the Expert Opinion, CfD policies are effective at stimulating early nuclear investment, although Feed-in Premiums also show to be relatively effective, if the objective is purely to bring forward investment in nuclear energy and depending on the assumed cost of capital. Feed-in Premiums do not shield nuclear stations from gas price risk, and so may not deliver the same reduction in the cost of capital, but precisely for this reason they would appear to be less distortive of competition.

(409) State aid to nuclear reduces wholesale electricity prices in the 2020s and beyond, although the cost of the support payments means that the impact on consumers' bills is less significant.

(410) In terms of distortions to competition, the CfD for nuclear energy significantly lowers the profitability of existing power plants, hence distorts investment patterns. By this metric, CfDs can be seen again as distortive of unaltered market dynamics.

(411) According to the Expert Opinion, and assuming that the Strike Price has been 'correctly' set and that a 1 per cent reduction in the discount rate can compensate for the benefit of having 25 years of additional revenue certainty, assumptions which might be seen as favourable to NNBG, a 60-year CfD would substantially lower the level of support needed and lead to savings for electricity consumers in terms of lower retail prices relative to the 35-year CfD, albeit mainly in the 2060s and 2070s.

(412) On the other hand, the agreed Strike Price can be considered to be at about the correct level only if all the assumptions made by the UK government are also correct, including on the trajectory of wholesale prices and the cost of capital. In particular, the Investment Contract might result in a substantial transfer of wealth from consumers to NNBG if the actual cost of capital for nuclear energy turned out to be lower than the one the UK authorities have negotiated. Given that it is not unlikely that some of these assumptions might turn out to be unfounded, the measure has the potential to be distortive.

(413) Also, and as argued above, the CfD has the effect of 'homogeneising' electricity prices, and thus also other generators' revenues – thereby resulting in a lower degree of profit dispersion. This is, again, a substantial impact on the competitive process compared to a no aid scenario.

(414) Finally, economic welfare, i.e. the sum of consumer benefits from changes in electricity prices and company profits, appears to increase as the cost of capital for nuclear stations falls. ([93]) Despite this, the proposed 35-year CfD reduces welfare compared to the no aid scenario, where the market is left without government intervention – although it also results in lower cumulative emissions compared to the market scenario. A CfD with a Strike Price which is higher than the expected price of electricity reduces the risk borne by nuclear operators but implies a transfer of wealth from electricity consumers to the nuclear generator.

([93]) However these figures ignore the cost of providing the financial guarantee that reduces the WACC.

(415) The Expert Opinion therefore confirms that the notified measure can have substantial distortive effects on competitive conditions.

(416) In addition to the results discussed above, the Commission has doubts on the structure of the CfD for nuclear which, by its design, duration and scope, has the potential for distorting competitive conditions.

(417) First, the CfD implies that there will likely be an interaction between the Strike Price and the wholesale electricity prices. The UK has provided no evidence on the potential impact which the government-set Strike Price might have on trading conditions, and ultimately on retail prices.

(418) Second, the CfD raises the possibility of strategic behaviour by beneficiaries based on its structure. In particular, the CfD works by calculating difference compared to a reference price. At this juncture it is not yet clear what the reference price will be and how it will be calculated. The UK mentions that it might be the season-ahead, moving to the year-ahead, wholesale price of baseload electricity generation, however the final definition is still the object of negotiations between the UK and NNBG.

(419) Depending on how the reference price will be calculated, the CfD might create an incentive for NNBG, or EDF, to behave strategically to influence the reference price. All other things being equal, NNBG, or more broadly EDF, will be interested in keeping the reference price low, in order to maximise the difference payments. It is unclear how it might react to incentives to direct sales towards reference markets and away from other markets.

(420) For example, if the reference price is calculated based on the daily price averaged over a longer period of time, NNBG would have an incentive not to participate to longer term markets. If it were based on the month-ahead baseload price, then NNBG would have an incentive to participate in month-ahead markets only to the extent that it can lower the average price which is formed in them.

(421) For nuclear energy, in practice this could mean selling more in the season-ahead forward market, and less on the spot market or over the counter, compared to a situation without CfDs. A related question is how EDF, as a vertically integrated operator which is active in both generation and supply, might react to such an incentive framework.

(422) While a systematic recourse to strategic sale in non-reference markets may lead to overcompensation, hence also to a problem of proportionality, the Commission is particularly concerned about the broader implications of such behaviours on competitive conditions.

(423) A third issue is related to the significant volume of baseload electricity that EDF might have access to through NNBG. The Commission is concerned that access to baseload capacity by other suppliers is not unduly impacted by NNBG's operations, which are supported by State aid. It is not clear to the Commission that EDF or NNBG will be committed to making electricity produced by the HPC plant available to suppliers competing against EDF.

(424) The total capacity supplied by HPC might, also, not be available to allow suppliers to design procurement strategies which allow for the type of hedging which they need or seek. It is unclear to the Commission at this stage whether NNBG will be obliged to make capacity available through different types of hedging and prices. However the lack of such obligations would appear to have the capability to distort market conditions.

(425) A fourth issue is the impact on retail customers. In particular, the CfD design relies on the twin premises that electricity suppliers fund difference payments to generators, which they are most likely to pass on to customers, but also that they will pass on to customers any difference payments paid by generators when the reference price is higher than the Strike Price.

(426) It is not clear to the Commission that such an arrangement might not result in larger profitability margins for suppliers. Suppliers might simply decide not to pass on lower generation prices, in the form of difference payments from generators, or they might be only willing to do so partly or with a time lag compared to the payments. In such cases, the aid provided by the UK government would indirectly benefit suppliers in addition to direct beneficiaries.

(427) Any benefit for retail customers would therefore be proportional to the willingness on the part of suppliers to translate the difference payments into lower retail prices. It would appear that the extent to which positive difference payments for suppliers might be passed on to retail customers might be, among other things, a function of the degree of competition between suppliers. The effectiveness of the CfD in this respect seems therefore to be intrinsically linked to the competitive conditions of the markets for the supply of electricity.

(428) For the reasons set out above, the Commission has doubts on the impact that the notified measure will have on electricity market and on trade.

8.2. **Commission doubts and grounds for opening the formal investigation procedure**

(429) The Commission considers at this stage that the notified measure involves State aid within the meaning of Art 107(1) TFEU.

(430) The Commission doubts that the aid might be considered as compatible aid for the provision of a SGEI under the SGEI Framework.

(431) Finally, the Commission has doubts that the notified measure can be declared compatible under Article 107(3)(c) TFEU and in particular that it effectively addresses a market failure and is appropriate. It also questions whether the notified measure can be deemed to have an incentive effect, to be proportionate, and is concerned about its distortive effects on competition.

(432) The Commission does not intend to prejudge whether State aid to nuclear energy might be appropriate. The Commission merely aims to highlight issues of concern which it has identified in the specific measures proposed by the UK, and aims to carry out a more in-depth assessment of such issues in a formal investigation.

9. **DECISION**

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests the United Kingdom to submit its comments and to provide all such information as may help to assess the measure, within one month of the date of receipt of this letter.

Your authorities are also requested to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission wishes to remind United Kingdom that Article 108(3) of the Treaty on the Functioning of the European Union has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

The Commission warns the United Kingdom that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the Official Journal of the European Union and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

ANNEX 1

Summary of the terms of the agreement between the UK government and EDF

[…]

ANNEX 2

Sensitivity Analysis Results using NNBG's Financial Model

[…]'

STATE AID — SPAIN

State aid SA.36387 (2013/C) (ex 2013/NN) — Alleged aid in favour of three Valencia football clubs

Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union

(Text with EEA relevance)

(2014/C 69/07)

By means of the letter dated 18 December 2013 reproduced in the authentic language on the pages following this summary, the Commission notified Spain of its decision to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union concerning the above-mentioned aid/measure.

Interested parties may submit their comments within one month of the date of publication of this summary and the following letter, to:

European Commission
Directorate-General for Competition
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Fax No: +32 2 2961242
E-mail: stateaidgreffe@ec.europa.eu

These comments will be communicated to Spain. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

1. **Description of the aid**

In 2009, 2010 and 2013, the Spanish Instituto Valenciano de Finanzas ("IVF") provided three guarantees for bank loans of totally EUR 107 million to Fundación Valencia Club de Fútbol ("Fundacion Valencia", EUR 75 million), Fundación Hercules de Alicante ("Fundacion Hercules", EUR 18 million) and Fundación Elche Club de Fútbol ("Fundacion Elche", EUR 14 million). In all three cases, purpose of the loans was to finance the acquisition of shares of, respectively, Valencia Club de Fútbol Sociedad Anónima Deportiva ("Valencia CF"), Hércules Club de Fútbol Sociedad Anónima Deportiva ("Hercules CF") and Elche Club de Fútbol Sociedad Anónima Deportiva ("Elche CF"). IVF is a public financing institution under the control of the Generalitat Valenciana (the latter's representatives also participate in IVF's General Council). The above foundations are non-profit organisations, which do not exercise economic activities, established with the mission of promoting and developing sports projects. The guarantees covered 100% of the loan's principal + interest + costs of the guaranteed transaction. There were annual guarantee premiums of 0.5%-1% for the State. As counter guarantees, IVF received pledges on shares of the three football clubs, owned by the respective foundations. The durations of the underlying loans were 5-6 years, with grace periods of 4-5 years. The interest rates of the underlying loans were equal to Euribor 1 year + margins of 1%-3.5% + commitment fees of 0.5%-1%. In November 2010 and in February 2013, IVF increased its guarantee in favour of Valencia CF by EUR 6 million and EUR 5 million, respectively. Purpose of the guarantee increases was to cover overdue capital, interest and costs, stemming from defaulted payments of the guaranteed loan.

2. **Assessment of the aid**

Firstly, it should be noted that all of the football clubs in question are active in professional football, which must be qualified as an economic activity in line with the jurisprudence of the Court of Justice [1] in this regard. Regardless of their legal forms, those football clubs must be deemed to constitute undertakings in the meaning of Article 107(1) TFEU.

As regards the criterion of advantage, according to the *Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees* ("Guarantee Notice"), [2] sections 2.2 and 3.2, when the borrower does not pay a risk-carrying price for the guarantee, it obtains an advantage. In some cases, the borrower, as a firm in financial difficulty, would not find a financial institution prepared to lend on any terms, without a State guarantee. In addition, the Guarantee Notice stipulates that the fulfilment of certain conditions could be sufficient for the Commission to rule out the presence of state aid, such as that the borrower is not in financial difficulty and that the guarantee does not cover more than 80% of the outstanding loan or other financial obligation. In the case at hand, the annual guarantee premiums of 0.5%-1% do not *prima facie* appear to reflect the risk of default for the

[1] Case C-415/93 *Bosman*, paragraph 73, Case C-519/04 P *Meca-Medina and Majcen* v *Commission*, paragraph 22 and C-325/08 *Olympique Lyonnais*, paragraph 23.

[2] OJ C 155, 20.6.2008, p. 10.

guaranteed loans, given the fact that the beneficiaries seem to have been in difficulties at the time of the granting of the guarantees in question; indeed, based on the information available to the Commission, it appears that the capital injections in question took place in order to restore the beneficiaries' lack of liquidity and resources, in view of negative economic results. Furthermore, the guarantees exceeded 80% coverage of the guaranteed amounts and were granted to firms in difficulty. Thus, the Commission doubts whether a market economy guarantor would provide the beneficiaries with guarantees for that price and whether any financial institution would be prepared to lend to the beneficiaries on any terms in the absence of the State guarantees.

As regards the criterion of State resources, all measures under scrutiny were subscribed in their entirety by IVF. According to the institutional information provided in IVF's website, IVF was created by Law 7/1990 (28 December 1990), as a public law entity subject to the Government, and is intended to act as the main instrument of public credit policy and contribute to the exercise of the powers of the Spanish government on the financial system. At present, IVF is attached to the Ministry of Finance and Public Administration. ([1]) On the basis of the above, it appears that the very objective of this entity is closely linked to the public administration and to the implementation of public authority decisions. The public nature of the undertaking's activities is an essential indicator of the imputability of an undertaking's conduct to the State, ([2]) in particular in so far as the undertaking is used by the State as a vehicle for the implementation of a policy ([3]) rather than for the pursuit of a purely commercial purpose. ([4]) Therefore, the Spanish State had a clear and direct influence on IVF. In this sense, it is noted that representatives of the Generalitat Valenciana participate in IVF's General Council and Investment Committee.

As regards the criterion of selectivity, the State measures are selective as they are for the benefit of single undertakings of one sector. Indeed, the State measures in question allowed Fundacion Valencia, Fundacion Hercules and Fundacion Elche to receive loans and thus finance the acquisition of Valencia CF, Hercules CF and Elche CF, through capital injections.

Finally, as regards the criterion of effect on competition and trade between Member States, it is noted that the advantage for a club playing in the national first league may have an effect on competition and trade between Member States. The beneficiary clubs compete for presence in European competitions and are active on the markets for merchandising and TV rights. Broadcasting rights, merchandising and sponsoring are sources of revenue for which first league clubs compete with other clubs within and outside their home country. The more money clubs have available for top players the more success they may have in sport competitions, which promises more revenue from the activities mentioned.

On the basis of the above, financial State support to the professional sport clubs Valencia CF, Hercules CF and Elche CF would constitute State aid in the meaning of Article 107(1) TFEU.

3. **Compatibility of the aid**

The Commission has not adopted guidelines on the application of the State aid rules to commercial sport activities. An assessment has therefore to be based directly on Article 107(3)(c) TFEU. According to that provision, aid may be considered compatible with the internal market if it facilitates, in the common interest, the development of certain economic activities or of certain economic areas.

The Commission is also not able to identify an objective of common interest which could justify, under Article 107(3)(c) TFEU, selective operating support to single very strong actors in a highly competitive economic sector.

The Commission considers that Valencia CF, Hercules CF and Elche CF could be deemed to be firms in difficulty in the sense of the Rescue and Restructuring Guidelines ([5]) at the time when the measures were granted. Therefore, in relation to compatibility with the TFEU, the only relevant criteria appear to be those concerning aid for rescuing and restructuring firms in difficulty under these guidelines. However, the conditions laid down in the Rescue and Restructuring Guidelines do not seem to be met, since the Spanish authorities have not notified a restructuring plan, and in particular the conditions relating to the restoration of long- term viability, avoidance of undue distortions of competition and aid limited to the minimum: real contribution, free of aid. Finally, the measures have not been terminated. In addition, the repeated granting of State aid measures to a firm in difficulty, in particular Valencia CF in 2009 and 2013, would be in breach of the "one time, last time" condition. The Commission also highlights the fact that the Spanish authorities have not provided arguments as to the possible compatibility of the measures under scrutiny as restructuring aid.

([1]) http://www.ivf.gva.es/p.aspx?pag=InformacionInstitucional.
([2]) *Stardust Marine*, § 56; *Air France*, § 58.
([3]) *Steinlike & Weinlig v. Germany*, 78/76, judgment of 22 March 1977, §§ 17-18.
([4]) *Pearle BV et al. v. Hoofdbedrijfschap Ambachten*, C-345/02, judgment of 15 July 2004, § 37.
([5]) Community guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 244, 1.10.2004, p. 2.

4. **Statement of the Commission's doubts**

Accordingly, the Commission finds that Spain grants operating aid to the three sport clubs Valencia CF, Hercules CF and Elche CF, which cannot be justified under Article 107(3)(c) TFEU. The Commission also doubts that Fundacion Valencia, Fundacion Hercules and Fundacion Elche may have also benefitted from the identified measures rather than being pure intermediaries, between the State and the beneficiaries, for the granting of the aid. The Commission therefore has doubts about the compatibility of this aid measure with the internal market.

In accordance with Article 14 of Council Regulation (EC) No 659/1999, all unlawful aid can be subject to recovery from the recipient.

TEXT OF LETTER

'Por la presente, la Comisión tiene el honor de comunicar a España que, tras haber examinado la información facilitada por sus autoridades sobre la presunta ayuda arriba indicada, ha decidido incoar el procedimiento previsto en el artículo 108, apartado 2, del Tratado de Funcionamiento de la Unión Europea (en lo sucesivo, TFUE).

1. **PROCEDIMIENTO**

(1) En abril de 2011, la Comisión archivó una investigación preliminar [1] relativa a un posible aval en favor del Valencia CF con respecto a un préstamo bancario de 75 millones EUR. Las autoridades españolas aseguraron a la Comisión que el Gobierno de la Comunidad Valenciana no había concedido dicho aval.

(2) El 1 de octubre de 2012, la Comisión envió una carta a todos los Estados miembros con el fin obtener una visión de conjunto de la financiación del fútbol profesional en la UE y el posible impacto de la aplicación de las normas sobre ayudas estatales del TFUE sobre dicha financiación. En su carta, la Comisión subrayaba que los clubes de fútbol profesional no debían recibir un trato excepcional en comparación con otras empresas en cuanto a sus relaciones financieras con el Estado. Las autoridades españolas respondieron a esta carta el 5 de diciembre de 2012. España aseguró a la Comisión que no tenía conocimiento de ninguna ayuda estatal en favor del fútbol profesional en España.

(3) No obstante, artículos aparecidos en la prensa e información enviada por los ciudadanos en 2012-2013 llamaron la atención de la Comisión sobre alegaciones de que la Generalitat Valenciana había concedido ayudas estatales consistentes en avales para préstamos bancarios en favor de tres clubes de fútbol de la Comunidad Valenciana: *Valencia Club de Fútbol Sociedad Anónima Deportiva* («Valencia CF»), *Hércules Club de Fútbol Sociedad Anónima Deportiva* («Hércules CF») y *Elche Club de Fútbol Sociedad Anónima Deportiva* («Elche CF»). Según dicha información, el aval en favor del Valencia CF posteriormente se incrementó al menos en dos ocasiones para atender el pago del principal, intereses y gastos vencidos. El 8 de abril de 2013, se pidió a España que formulara observaciones sobre esta información. España envió información a la Comisión el 27 de mayo y el 3 de junio de 2013.

2. **BENEFICIARIOS**

(4) El Valencia CF es un club de fútbol profesional español con sede en Valencia, fundado en 1919. El club juega en la primera división de la liga española («la Liga») y es uno de los mayores clubes del fútbol español y europeo. El Valencia ha ganado seis títulos de Liga y siete trofeos de la Copa del Rey. En la clasificación histórica de la Liga, el Valencia ocupa el tercer puesto detrás del Real Madrid y el FC Barcelona. También ha llegado siete veces a las grandes finales europeas y ha ganado cuatro de ellas. El Valencia, además, ha sido miembro del grupo G-14 de los clubes de fútbol más poderosos de Europa. Es el tercer club de fútbol de España por número de simpatizantes. Es también uno de los mayores clubes del mundo por número de socios (abonados), con más de 50 000 con carné y otros 20 000 en lista de espera, y disputa los encuentros como local en el Estadio de Mestalla, cuya capacidad es de 55 000 espectadores. [2]

(5) El cuadro 1 incluye los datos sobre los resultados financieros del Valencia CF y muestra que se deterioraron considerablemente en el periodo 2008-2012.

Cuadro 1

Datos financieros clave del Valencia CF 2007 – junio de 2012 (millones EUR)

	2007	2008	2009	2010	2011	Junio de 2012
Volumen de negocios	107,6	99,4	82,4	101,3	116,8	119,6
BAI	– 26,1	12,4	– 59,2	17,9	0,1	8,3
margen BAI (ratio)	– 0,24	0,12	– 0,72	0,18	0,00	0,07
Capital suscrito	9,2	9,2	9,2	101,7	101,7	101,7
Capital propio	– 26,3	5,9	– 33,3	57,3	55,4	57,6
Deuda/ Capital (ratio)	– 11,1	73,5	– 16,5	8,0	6,9	6,6

**BAI*

(6) El Hércules CF es un club de fútbol profesional español de la ciudad de Alicante, en la Comunidad Valenciana. Fundado en 1922, actualmente juega en la Segunda División española, y disputa los encuentros como local en el Estadio José Rico Pérez, cuya capacidad es de 30 000 espectadores. [3] Según los datos financieros de 2011 disponibles en relación con el Hércules CF, en 2011 tenía un BAI (beneficios antes de impuestos) negativo (-17,6 millones EUR) y un patrimonio negativo (-29,4 millones EUR).

(7) El Elche CF es un club de fútbol profesional español de la ciudad de Elche, provincia de Alicante, en la Comunidad Valenciana. Fundado en 1923, actualmente juega en La Liga, y disputa los encuentros como local en el Estadio Manuel Martínez Valero, cuya capacidad es de 38 750 espectadores. [4] La Comisión carece de datos financieros fiables de este club en esta fase.

(8) Los tres clubes están constituidos como sociedades anónimas deportivas. Los socios mayoritarios parecen ser sus respectivas Fundaciones. En estos momentos, la Comisión tiene razones para creer que los socios mayoritarios de los tres clubes son sus respectivas Fundaciones.

[1] SA.29494 (CP 288/09) – Valencia Club de Fútbol

[2] Wikipedia, http://en.wikipedia.org/wiki/Valencia_CF.

[3] Wikipedia, http://en.wikipedia.org/wiki/H%C3%A9rcules_CF.

[4] Wikipedia, http://en.wikipedia.org/wiki/Elche_CF.

3. DESCRIPCIÓN DE LAS MEDIDAS

3.1. Medida 1: Aval público de 2009 en favor del Valencia CF

(9) En 2009, el *Instituto Valenciano de Finanzas* («IVF») otorgó un aval para un préstamo bancario de 75 millones EUR concedido por Bancaja (ahora Bankia) a la *Fundación Valencia Club de Fútbol* («Fundación Valencia»). El IVF es una entidad financiera de Derecho público sujeta a la Generalitat Valenciana; en su Consejo General y en su Comisión de Inversiones también participan representantes de la Generalitat. La Fundación Valencia es una entidad sin ánimo de lucro de la Comunidad Valenciana, fundada en 1996, cuya misión consiste en desarrollar proyectos deportivos que no participa en actividades económicas. La finalidad del préstamo era la adquisición de acciones del Valencia CF por la Fundación Valencia en una ampliación de capital decidida por el Valencia CF. El aval cubría el 100% del principal + intereses ÷ gastos de la operación avalada. Había una comisión de aval del 0,50 % anual para el Estado, que debía pagar la Fundación Valencia. Como contragarantía, el IVF recibió la prenda sobre las acciones del Valencia CF, propiedad de la Fundación Valencia. La duración del préstamo subyacente era de 6 años, con un plazo de carencia de 4 años. El tipo de interés del préstamo subyacente era Euribor a un año + un margen del 3,5 % y una comisión de apertura del 1 %.

3.2. Medida 2: Aval público de 2010 en favor del Hércules CF

(10) En 2010, el IVF otorgó un aval para un préstamo bancario de 18 millones EUR concedido por la *Caja de Ahorros del Mediterráneo* («CAM») a la *Fundación Hércules de Alicante* («Fundación Hércules»), una entidad cuya misión consiste en desarrollar el bienestar social y cuestiones relacionadas con el Hércules CF, que no participa en actividades económicas. La finalidad del préstamo era la adquisición de acciones del Hércules CF por la Fundación Hércules en una ampliación de capital decidida por el Hércules CF, mediante una inyección de capital. El aval cubría el 100% del principal + intereses ÷ gastos de la operación avalada. Había una comisión de aval del 1 % anual para el Estado, que debía pagar la Fundación Hércules. Como contragarantía, el IVF recibió la prenda sobre las acciones del Hércules CF, propiedad de la Fundación Hércules. La duración del préstamo subyacente era de 5 años, con un plazo de carencia de 5 años. El tipo de interés del préstamo subyacente era Euribor a un año + un margen del 1 % y una comisión de apertura del 0,5 %.

3.3. Medida 3: Aval público de 2013 en favor del Elche CF

(11) En 2013, el IVF otorgó un aval para dos préstamos bancarios por un total de 14 millones EUR, concedidos por la CAM (9 millones EUR) y por el Banco de Valencia (5 millones EUR), a la *Fundación Elche Club de Fútbol* («Fundación Elche»), entidad sin ánimo de lucro de la Comunidad Valenciana, cuya misión consiste en desarrollar actividades relacionadas con el deporte, que no participa en actividades económicas. La finalidad de ambos préstamos era la adquisición de acciones del Elche CF por la Fundación Elche en una ampliación de capital decidida por el Elche CF, mediante una inyección de capital. El aval cubría el 100% del principal + intereses ÷ gastos de la operación avalada. Había una comisión de aval del 1 % anual para el Estado, que debía pagar la Fundación Elche. Como contragarantía, el IVF recibió la prenda sobre las acciones del Elche CF, propiedad de la Fundación Elche. La duración del préstamo subyacente era de 5 años, con un plazo de carencia de 5 años. El tipo de interés del préstamo subyacente era Euribor a un año + un margen del 3,5 % y una comisión de apertura del 0,5 %.

3.4. Medida 4: Incrementos en 2010 y 2013 del aval público de 2009 en favor del Valencia CF

(12) En noviembre de 2010 y febrero de 2013, el IVF incrementó su aval en favor de la Fundación Valencia en 6 millones EUR y 5 millones EUR, respectivamente. La finalidad de estos incrementos del aval era atender el pago del principal, intereses y gastos vencidos, derivados de los impagos del préstamo avalado.

4. OBSERVACIONES DE LAS AUTORIDADES ESPAÑOLAS

(13) Las autoridades españolas han presentado la información expuesta en los considerandos (9)-(12). No han formulado observaciones sobre si las medidas en cuestión se consideran ayuda estatal y cualquier posible compatibilidad con el TFUE.

5. EVALUACIÓN DE LA AYUDA

5.1. Existencia de ayuda a efectos del artículo 107, apartado 1, del TFUE

(14) Según el artículo 107, apartado 1, del TFUE, «salvo que los Tratados dispongan otra cosa, serán incompatibles con el mercado interior, en la medida en que afecten a los intercambios comerciales entre Estados miembros, las ayudas otorgadas por los Estados o mediante fondos estatales, bajo cualquier forma, que falseen o amenacen falsear la competencia, favoreciendo a determinadas empresas o producciones».

(15) Para ser calificado de ayuda estatal, el proyecto notificado debe reunir las siguientes condiciones acumulativas: 1) la medida debe ser concedida con fondos estatales; 2) la medida debe otorgar una ventaja económica a empresas; 3) esta ventaja debe ser selectiva y falsear o amenazar falsear la competencia, y 4) la medida debe afectar el comercio intracomunitario.

5.1.1. *Apoyo para una actividad económica*

(16) En primer lugar, hay que señalar que todos los clubes de fútbol en cuestión se dedican al fútbol profesional, que debe ser calificado de actividad económica de acuerdo con la jurisprudencia del Tribunal de Justicia [1] a este respecto. Independientemente de su forma jurídica, debe considerarse que estos clubes de fútbol constituyen empresas a tenor del artículo 107, apartado 1, del TFUE.

[1] Asunto C-415/93 Bosman, apartado 73, asunto C-519/04 P Meca-Medina y Majcen/Comisión, apartado 22 y C-325/08 Olympique Lyonnais, apartado 23.

5.1.2. *Problemas del Valencia CF, el Hércules CF y el Elche CF*

(17) La Comisión señala que, como figura en el cuadro 1, los resultados financieros del Valencia CF se deterioraron considerablemente en el periodo 2008-2012.

(18) El punto 10 a) de las Directrices comunitarias sobre ayudas estatales de salvamento y de reestructuración de empresas en crisis («las Directrices») ([1]) dispone que una empresa está en crisis cuando «ha desaparecido más de la mitad de su capital suscrito y se ha perdido más de una cuarta parte del mismo en los últimos 12 meses.». Dicha disposición refleja el supuesto de que una empresa que sufre una pérdida masiva de su capital suscrito sea incapaz de enjugar pérdidas que la conducirán a su desaparición económica casi segura a corto o medio plazo (como dispone el punto 9 de las Directrices).

(19) En el caso del Valencia CF, como figura en sus declaraciones financieras, durante el periodo 2007-2009 (que, en el caso que nos ocupa es el decisivo, puesto que la primera medida de ayuda estatal examinada se concedió en 2009), su capital suscrito no desapareció, sino que se mantuvo estable. Sin embargo, la Comisión señala que durante el mismo periodo el patrimonio de la empresa era fundamentalmente negativo. En ocasiones anteriores ([2]), la Comisión concluyó que, cuando una empresa tiene un patrimonio negativo, se supone *a priori* que se cumplen los criterios del punto 10 a). El Tribunal General también dictaminó en una sentencia reciente ([3]) que una empresa con capital propio negativo puede considerarse empresa en crisis a tenor de las Directrices de salvamento y reestructuración.

(20) La Comisión señala por último que el Valencia CF ha incurrido en pérdidas considerables desde 2007, que aumentaron de 26,1 millones EUR en 2007 a 59,2 millones EUR en 2009. El volumen de negocios también disminuyó de 2008 a 2009. Además, el Valencia CF tenía unos elevados niveles de deuda, como puede verse en su ratio de deuda/capital propio (que alcanzó, por ejemplo, un 73,5 en 2008).

(21) Por otra parte, en 2011 y hasta junio de 2012, el Valencia CF había incrementado su volumen de negocios y presentaba ganancias. No obstante, no eran suficientes para permitir el restablecimiento financiero de la empresa: de hecho, durante el mismo periodo, el nivel de beneficios de la empresa se mantuvo muy bajo, como se puede comprobar por sus márgenes de beneficios, y su deuda se mantuvo en niveles considerables.

(22) Los elementos anteriores sugieren que también podría considerarse que el Valencia CF estaba en crisis a tenor del punto 11 de las Directrices, que establece que se podrá considerar que una empresa está en crisis «cuando estén presentes los síntomas habituales […] como el nivel creciente de pérdidas, la disminución del volumen de negocios, el incremento de las existencias, el exceso de capacidad, la disminución del margen bruto de autofinanciación, el endeudamiento creciente, el aumento de los gastos financieros y el debilitamiento o desaparición de su activo neto».

(23) En consecuencia, la Comisión opina que podía considerarse que el Valencia CF era una empresa en crisis en el momento en que se concedieron las medidas en cuestión.

(24) Según los datos financieros de 2011 disponibles en relación con el Hércules CF (véase el considerando 7), en 2011 tenía un BAI negativo (-17,6 millones EUR) y patrimonio negativo (-29,4 millones EUR). Estos elementos sugieren que se podía considerar que el Hércules CF estaba en crisis a tenor de los puntos 10 a) y 11 de las Directrices, según el mismo análisis que se aplica al Valencia CF en los considerandos (19)-(23), en el momento en que se le concedió la medida de 2011.

(25) En cuanto al Elche CF, la Comisión carece de sus datos financieros, sin embargo, la información de que dispone procedente de artículos de prensa indica que el Elche CF presenta dificultades financieras, puesto que, al parecer, la Generalitat Valenciana tiene dudas en cuanto a la viabilidad de este club, y también que este último está negociando un calendario de pagos del préstamo avalado por el IVF. En consecuencia, la Comisión no puede descartar en esta fase que también el Elche CF pueda ser considerado empresa en crisis.

5.1.3. *Existencia de una ventaja en las medidas 1, 2, 3 y 4*

(26) Puesto que todas las medidas implican avales públicos, la Comisión tiene en cuenta la *Comunicación de la Comisión relativa a la aplicación de los artículos 87 y 88 del Tratado CE a las ayudas estatales otorgadas en forma de garantía* («Comunicación sobre la garantía») ([4]), secciones 2.2 y 3.2. La Comunicación sobre la garantía establece que el cumplimiento de ciertas condiciones puede ser suficiente para que la Comisión descarte la presencia de ayuda estatal, como que el prestatario no se encuentre en una situación financiera difícil y que la garantía no cubra más del 80 % del préstamo u otra obligación financiera pendiente. No obstante, cuando el prestatario no paga un precio por la garantía que compense la asunción de riesgo, obtiene una ventaja. Además, cuando el prestatario es una empresa con dificultades económicas, sin la garantía del Estado no hubiera encontrado ninguna entidad financiera dispuesta a concederle un préstamo del tipo que fuera.

(27) En el asunto que nos ocupa, la Comisión ignora cuál es el valor de referencia para la comisión de aval correspondiente que podría encontrarse en el mercado financiero para avales similares a los concedidos por el IVF. No obstante, la comisión de aval anual del 0,5 % para la adquisición de acciones del Valencia FC y del 1 % para la adquisición de acciones del Hércules CF y el Elche CF no

([1]) DO C 244 de 1.10.2004, p. 2.
([2]) Decisión de la Comisión en el asunto C 38/2007, Arbel Fauvet Rail, DO L 238 de 5.9.2008, p. 27.
([3]) Asuntos acumulados T-102/07 Freistaat Sachsen/Comisión y T-120/07 MB Immobilien y MB System/Comisión, Rec. 2010, p. II-585.
([4]) DO C 155 de 20.6.2008, p. 10.

parecen, *prima facie*, reflejar el riesgo de impago de los préstamos avalados, pues da la impresión de que el Valencia FC, el Hércules CF y el Elche CF estaban en crisis en el momento de la concesión de los avales en cuestión. De hecho, aparte de los resultados económicos negativos del Valencia CF, según la información de que dispone la Comisión, facilitada por las autoridades españolas y los artículos de prensa, al parecer también las ampliaciones de capital al Hércules CF y al Elche CF se efectuaron para solventar la falta de liquidez y de recursos de los beneficiarios, visto que no pudieron atender el pago de sus deudas debido a sus resultados económicos negativos.

(28) Además de haberse concedido a empresas aparentemente en crisis, la Comisión señala también que los avales cubren el 100 % de los importes avalados. Esto sugiere que los operadores del mercado no están dispuestos a correr con el riesgo de insolvencia de los beneficiarios. Por tanto, la Comisión duda de si los beneficiarios podrían obtener los avales en cuestión a ese precio y con esas condiciones en el mercado. Por otra parte, sin el aval público, la Comisión duda de que alguna entidad financiera estuviera dispuesta a conceder a los beneficiarios un préstamo del tipo que fuera.

(29) Así pues, habida cuenta de lo anterior, la Comisión considera en esta fase que los avales concedidos por el Estado en 2008, 2010 y 2011 otorgaron una ventaja a las entidades beneficiarias de los préstamos. En esta fase, la Comisión considera que las entidades que se beneficiaron económicamente en última instancia de los préstamos avalados por el Estado fueron los clubes de fútbol Valencia CF, Hércules CF y Elche CF, puesto que los préstamos y los avales se concedieron para adquirir las acciones recién emitidas por los clubes para incrementar su capital propio. Puesto que las Fundaciones no parecen tener actividad económica y son las accionistas mayoritarias de los clubes, la decisión de invertir en esas acciones no parece una clásica decisión de inversión para generar ingresos sino más bien un medio para financiar el incremento de su capital propio. No obstante, dada la limitada información que ha recibido la Comisión hasta la fecha, en esta fase no puede descartarse que la Fundación Valencia, la Fundación Hércules y la Fundación Elche también se beneficiaran de las medidas identificadas en lugar de ser meras intermediarias, entre el Estado y los beneficiarios, de la concesión de la ayuda.

5.1.4. *Otras condiciones del artículo 107, apartado 1, del TFUE*

(30) Para que una medida se considere ayuda a tenor del artículo 107, apartado 1, del TFUE, debe ser concedida directa o indirectamente con fondos estatales y debe ser imputable al Estado. Según la jurisprudencia, los recursos de una empresa pueden considerarse fondos estatales si, mediante el ejercicio de su influencia dominante sobre dicha empresa, el Estado puede orientar la utilización de los recursos de esta ([1])

([1]) Asunto C-482/99 República Francesa/Comisión (Stardust Marine) Rec. 2002, p. I-4397.

(31) La Comisión señala, en primer lugar, que todas las medidas examinadas fueron suscritas en su totalidad por el IVF. Según la información institucional que figura en el sitio internet del IVF ([2]), el Instituto Valenciano de Finanzas fue creado por la Ley de la Generalitat 7/1990, de 28 de diciembre, como una entidad de Derecho público sujeta a la Generalitat, y tiene como finalidad actuar como principal instrumento de la política de crédito público, así como contribuir al ejercicio de las competencias de la Generalitat sobre el sistema financiero. El IVF es una entidad financiera de Derecho público sujeta a la Generalitat Valenciana y en el Consejo General y en la Comisión de Inversiones del IVF también participan representantes de la Generalitat. En la actualidad el IVF se encuentra adscrito a la Conselleria de Hacienda y Administración Pública ([3]).

(32) Sobre la base de cuanto antecede, la Comisión observa que el objetivo mismo de esta entidad está estrechamente vinculado a la Administración Pública y a la ejecución de las decisiones de los poderes públicos. La naturaleza pública de las actividades de la empresa es un indicador esencial de la imputabilidad al Estado de la conducta de una empresa ([4]), en particular en la medida en que el Estado la utilice como vehículo para la ejecución de una política ([5]) en lugar de para la consecución de un objetivo puramente comercial ([6]). España no ha presentado argumentos con respecto a este indicador. Además, cabe señalar que en el Consejo General del IVF hay representantes de la Generalitat Valenciana (véase el considerando 9). Por consiguiente, sobre la base de lo anterior, la Comisión considera en esta fase que el Estado español tenía una influencia clara y directa sobre el IVF.

(33) Sobre la base de las consideraciones anteriores, la Comisión estima en esta fase que el Estado español tenía una influencia clara y directa sobre el IVF. Aparte del hecho de que el Estado español es el único accionista del IVF, se constata además que en su Consejo General y en su Comisión de Inversiones también participan representantes de la Generalitat Valenciana.

(34) Además de lo anterior, la información publicada en la prensa a la que ha tenido acceso la Comisión también indica que la operación en favor del Valencia CF, el Hércules CF y el Elche CF tiene el apoyo de la Generalitat Valenciana a través del IVF, para aliviar a estos tres clubes de sus problemas y garantizar que sigan siendo de propiedad local.

(35) Habida cuenta de todo lo anterior, la Comisión opina que las medidas concedidas por el IVF consisten en fondos estatales y son imputables a España.

([2]) http://www.ivf.gva.es/
([3]) http://www.ivf.gva.es/p.aspx?pag=InformacionInstitucional.
([4]) Stardust Marine, apartado 56; Air France, apartado 58.
([5]) Steinlike & Weinlig/Alemania, 78/76, sentencia de 22 de marzo de 1977, apartados 17-18.
([6]) Mearle BV y otros/Hoofdbedrijfschap Ambachten, C-345/02, sentencia de 15 de julio de 2004, apartado 37.

(36) Por otra parte, las medidas estatales son selectivas, puesto que benefician a empresas concretas de un sector. De hecho, las medidas estatales en cuestión permitieron a la Fundación Valencia, la Fundación Hércules y la Fundación Elche obtener préstamos y financiar así la adquisición del Valencia CF, del Hércules CF y del Elche CF, mediante ampliaciones de capital.

(37) Por último, la ventaja para un club que juega en primera división de su liga nacional puede además afectar a la competencia y el comercio entre Estados miembros. Estos clubes luchan por estar en las competiciones europeas y participan en los mercados de comercialización y derechos televisivos. Los derechos de radiodifusión, la comercialización y los patrocinios son fuentes de ingresos por los que los clubes de primera división compiten con otros clubes dentro y fuera de su propio país. Cuanto más dinero tienen los clubes para fichar jugadores estrella, más éxitos pueden conseguir en las competiciones deportivas, lo que promete más ingresos de las actividades mencionadas. Por otra parte, la estructura de propiedad de los clubes es internacional.

(38) Por consiguiente, la Comisión considera en esta fase que el apoyo financiero estatal que otorgó una ventaja a los clubes deportivos profesionales, Valencia CF, Hércules CF y Elche CF, constituye ayuda estatal a tenor del artículo 107, apartado 1, del TFUE.

5.2. **Legalidad**

(39) La medidas identificadas se concedieron infringiendo las obligaciones de notificación y de suspensión establecidas en el artículo 108, apartado 3, del TFUE. Por tanto, la Comisión considera en esta fase que las medidas que benefician en última instancia al Valencia CF, al Hércules CF y al Elche CF constituyen ayuda estatal ilegal.

5.3. **Compatibilidad de la ayuda**

(40) La Comisión debe evaluar si las medidas de ayuda antes identificadas pueden considerarse compatibles con el mercado interior. Según la jurisprudencia del Tribunal, corresponde al Estado miembro alegar posibles motivos de compatibilidad y demostrar que se reúnen las condiciones de dicha compatibilidad ([1]).

(41) La Comisión evaluará si las medidas de ayuda pueden considerarse compatibles con arreglo al artículo 107, apartado 3, letra c), del TFUE, que permite las ayudas destinadas a facilitar el desarrollo de determinadas actividades, siempre que no alteren las condiciones de los intercambios en forma contraria al interés común.

(42) En su evaluación del concepto de «desarrollo de actividades económicas» en el sector del deporte, la Comisión toma debidamente en cuenta el artículo 165, apartados 1 y 2, del TFUE, que disponen que la Unión contribuirá a fomentar los aspectos europeos del deporte, teniendo en cuenta sus características específicas, sus estructuras basadas en el voluntariado y su función social y educativa.

(43) Para su evaluación de las medidas de ayuda con arreglo al artículo 107, apartado 3, letra c), del TFUE, la Comisión ha emitido diversos reglamentos, marcos, directrices y comunicaciones relativas a las formas de ayuda y a las finalidades horizontales o sectoriales para las que se concede la ayuda. Habida cuenta de la naturaleza de estas medidas y de que los clubes de fútbol en cuestión parecían atravesar dificultades financieras y de que la ayuda se concedió con el objetivo de resolver esas dificultades, la Comisión cree que procede evaluar si pueden ser de aplicación los criterios establecidos en las Directrices de salvamento y reestructuración de empresas en crisis. En esta fase, la Comisión no ve ningún otro objetivo que pueda justificar la ayuda con arreglo al artículo 107, apartado 3, letra c), del TFUE.

(44) En esta fase, sin embargo, la Comisión duda de que las medidas de ayuda en cuestión puedan declararse compatibles con las Directrices de salvamento y reestructuración, ya que, según parece, no cumplen varias de las condiciones y principios de dichas Directrices.

(45) La Comisión señala, en primer lugar, que las condiciones de las ayudas de salvamento y reestructuración establecidas en las secciones 3.1 y 3.2 de las Directrices no parecen cumplirse. En particular, la sección 3.1.1 de dichas Directrices establece las condiciones para la prestación de ayuda de salvamento, entre otras «*cuando se trate de una ayuda no notificada, el Estado miembro debe transmitir a la Comisión, en el plazo de seis meses a partir de la primera ejecución de la ayuda, un plan de reestructuración, un plan de liquidación o la prueba de que se ha reembolsado íntegramente el préstamo y/o de que se ha puesto fin a la garantía.*». No obstante, las autoridades españolas no han facilitado información sobre si alguna de las medidas ha concluido. Tampoco se ha comunicado a la Comisión un plan de reestructuración o de liquidación, ni parecen haberse cumplido las condiciones para la autorización de ayuda de reestructuración con arreglo a la sección 3.2.2 de las Directrices, con respecto, en particular, al restablecimiento de la viabilidad a largo plazo (puntos 34 y ss.), prevención de falseamientos indebidos de la competencia (puntos 38 y ss.) y ayuda circunscrita al mínimo: contribución real exenta de ayuda (puntos 43 y ss.). Además, la Comisión señala que el Estado parece haber concedido medidas reiteradas en favor del Valencia CF (en 2009 y 2013), cuando el club estaba en crisis. Por tanto, la condición establecida en la sección 3.3 de las Directrices («ayuda única») tampoco parece cumplirse, al menos en el caso del Valencia CF.

(46) Por último, la Comisión subraya el hecho de que las autoridades españolas no han aportado argumentos en cuanto a la posible compatibilidad de las medidas examinadas como ayuda de reestructuración o en virtud de cualquier otra excepción al artículo 107, apartados 2 y 3, del TFUE.

(47) Sobre la base de lo anterior, en esta fase la Comisión alberga dudas sobre la compatibilidad de las diferentes medidas con el mercado interior.

([1]) C-364/90, Italia/Comisión, apartado 20.

6. **DECLARACIÓN DE LAS DUDAS DE LA COMISIÓN**

(48) En consecuencia, la Comisión no puede descartar que los avales de 2009 y 2013, concedidos para garantizar préstamos a la Fundación Valencia, la Fundación Hércules y la Fundación Elche para la adquisición de acciones en una ampliación de capital del Valencia FC, del Hércules FC y del Elche FC mediante inyecciones de capital, así como los incrementos de 2010 y 2013 del aval de 2009 que garantizaba el préstamo a la Fundación Valencia, contengan un elemento de ayuda estatal incompatible con el artículo 107, apartado 3, letra c), del TFUE. Esto se basa en las siguientes dudas sobre las que la Comisión solicita a España que facilite información relevante y concisa.

(49) La Comisión duda de que el Valencia FC, el Hércules FC y el Elche FC no fueran empresas en crisis cuando se concedieron las medidas examinadas. Según la información de que dispone la Comisión, al parecer las ampliaciones de capital en cuestión se efectuaron para solventar la falta de liquidez y de recursos de los beneficiarios, vistos sus resultados económicos negativos.

(50) La Comisión duda de que la comisión de aval anual del 0,5 % para el Valencia FC y del 1 % para el Hércules CF y el Elche CF reflejen el riesgo de impago de los préstamos avalados, dado que los beneficiarios parece que estaban en crisis en el momento de la concesión de los avales en cuestión.

(51) La Comisión duda de que el IVF concediera los avales en cuestión conforme a criterios de mercado, en particular tras examinar la situación financiera y las perspectivas de viabilidad de las entidades que en última instancia se beneficiaron de los préstamos. Esas entidades eran el Valencia CF, el Hércules CF y el Elche CF, ya que los préstamos avalados se emitieron y, de hecho se utilizaron, para financiar las ampliaciones de capital del Valencia CF, el Hércules CF y el Elche CF.

(52) La Comisión duda de que las decisiones del IVF de conceder los avales en cuestión no estuvieran decisivamente influenciadas por las autoridades españolas, puesto que el IVF resulta ser parte integrante del Estado español y además, en su Consejo General hay representantes de la Generalitat Valenciana.

(53) La Comisión tiene dudas sobre si la Fundación Valencia, la Fundación Hércules y la Fundación Elche pueden haberse beneficiado también de las medidas identificadas en lugar de ser meras intermediarias, entre el Estado y los beneficiarios, de la concesión de la ayuda.

(54) La Comisión duda de que las medidas de ayuda examinadas puedan declararse compatibles con las Directrices, ya que, según parece, no cumplen varias de las condiciones y principios de las mismas (véase el considerando 45).

Habida cuenta de las consideraciones expuestas, la Comisión, en el marco del procedimiento del artículo 108, apartado 2, del Tratado de Funcionamiento de la Unión Europea, insta a España para que presente sus observaciones y facilite toda la información pertinente para la evaluación de la ayuda en un plazo de un mes a partir de la fecha de recepción de la presente. La Comisión insta a sus autoridades para que transmitan inmediatamente una copia de la presente carta a los beneficiarios potenciales de la ayuda.

La Comisión desea recordar a España el efecto suspensivo del artículo 108, apartado 3, del Tratado de Funcionamiento de la Unión Europea y llama su atención sobre el artículo 14 del Reglamento (CE) nº 659/1999 del Consejo, que prevé que toda ayuda concedida ilegalmente podrá recuperarse de su beneficiario.

Por la presente, la Comisión comunica a España que informará a los interesados mediante la publicación de la presente carta y de un resumen significativo en el *Diario Oficial de la Unión Europea*. Asimismo, informará a los interesados en los Estados miembros de la AELC signatarios del Acuerdo EEE mediante la publicación de una comunicación en el suplemento EEE del citado Diario Oficial y al Órgano de Vigilancia de la AELC mediante copia de la presente. Se invitará a todos los interesados mencionados a presentar sus observaciones en un plazo de un mes a partir de la fecha de publicación de la presente.'

STATE AID — SPAIN

State aid SA.33754 (2013/C) (ex 2013/NN) — Real Madrid Club de Futbol

Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union

(Text with EEA relevance)

(2014/C 69/08)

By means of the letter dated 18 December 2013, reproduced in the authentic language on the pages following this summary, the Commission notified Spain of its decision to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union concerning the above-mentioned aid/measure.

Interested parties may submit their comments within one month of the date of publication of this summary and the following letter, to:

European Commission
Directorate-General for Competition
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Fax No: +32 2 2961242
E-mail: stateaidgreffe@ec.europa.eu

These comments will be communicated to Spain. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

1. DESCRIPTION OF THE AID

State aid may have been granted by the Council of Madrid to Real Madrid CF through an agreement between them of 29 July 2011 (2011 Agreement). This agreement aims, among other things, to solve an open legal issue between these parties relating to a real property swap which was the objective of agreements between them in 1996 and 1998.

On 29 November 1996, Real Madrid concluded an agreement with the Council of Madrid. Real Madrid agreed to transfer a plot of land located in the Ciudad Deportiva area, and, in exchange, the Council of Madrid undertook to provide Real Madrid with some pieces of land which should be determined at a later occasion.

On 29 May 1998, Real Madrid and the Council of Madrid concluded a new agreement (1998 Agreement) with the aim to implement the Agreement of 1996. The Council of Madrid undertook to provide Real Madrid CF with several plots of land, among them the plot B-32, called "Las Tablas". The value of "Las Tablas" was estimated in 1998 at EUR 595,194. The valuation was done by the administration of Madrid itself.

However, the plot of land of "Las Tablas" was not yet transferred because by the time of the agreement the Council of Madrid was not yet holding its legal property. The agreement stipulated therefore that the transfer should be effectuated seven days after the registration of the Council of Madrid as owner in the Spanish Property Registry (*Registro de la Propiedad del Proyecto de Compensacion*). This registration took place on February 11, 2003. But the agreed transfer to Real Madrid did not take place. Under town planning rules, "Las Tablas" was designated in 1997 for basic sport use. The parties to the 1998 Agreement were aware of this classification but were of the opinion that it would not exclude a transfer to private ownership if the sport use was assured by Real Madrid. However, by 2003 the Council of Madrid had changed its interpretation of the law and considered that "Las Tablas" had to be qualified as public good and to be owned compulsorily by a public entity and could therefore not be transferred to Real Madrid.

The 2011 Agreement addresses this impossibility to transfer the "Las Tablas" property to the club. The Council of Madrid assumed that it has to compensate Real Madrid for this impossibility with an amount which represents the 2011 value of the non-transferred land. The value of the "Las Tablas" estate in 2011 was established by the administration of Madrid to be EUR 22 693 054,44. To compensate Real Madrid, the Council of Madrid agreed, among other commitments, to transfer several pieces of the "Mercedes Arteaga, Jacinto Verdaguer" areas in the neighbourhood of Carabanchel. The land evaluation was done by the City of Madrid.

The Mercedes Arteaga/Jacinto Verdaguer properties were three months later transferred back to the Council of Madrid. In exchange for this, another plot, and a payment of EUR €6.6m, Real Madrid received an area in front of its Bernabeu Stadium on which it will construct a shopping mall and a hotel. The Commission has no information how the evaluation of that area was made.

2. ASSESSMENT OF THE AID

2.1. Existence of aid within the meaning of Article 107 (1) of the TFEU

The described specific situation constitutes in all likelihood State aid within the meaning of Article 107(1) TFEU. Real Madrid FC, as professional sport club pursuing an economic activity, appears to enjoy an economic advantage from the fact that a plot of land, which at the time of its acquisition was valued at EUR 595,194 and kept in the books with a value of EUR 488,000, appears 13 years later, in an operation to offset mutual debts, with a value of more than EUR 22 million.

According to Spain, due to the legal impossibility of fulfilling its obligation from the 1998 Agreement to transfer the plot of land of "Las Tablas" to Real Madrid, the City of Madrid was obliged to compensate Real Madrid for this non-fulfilment with the current value of the plot of land in question. In this context the Commission is not convinced whether it was indeed not possible to transfer the land to Real Madrid, also in view of a possibility to revise the urban planning classification. It is also open whether the impossibility already existed at the time of the conclusion of the 1998 agreement or not. This would lead to different legal consequences under national law.

In any case, the remarkable increase of the alleged value of the land raises serious doubts. The Spanish real estate market rose considerably after 1998. But real estate started going down sharply already in 2008. The classification of the area had not changed in the meantime.

Furthermore, in case of a real estate transfer between a public authority and a private party it should be ensured that the underlying value of the land is the market value. In the absence of a bidding procedure, an independent expert evaluation of the land value would serve this purpose. However, neither the 1998 agreement nor the 2011 agreement were accompanied by an independent evaluation.

It is therefore possible that the supposed value of the property was either far too low in 1998 or far too high in 2011. In both cases Real Madrid would have obtained an economic advantage from this transaction which would not be justified under market terms. The Commission considers finally the possibility that the evaluation of the plots of land transferred to Real Madrid by the 2011 agreement and of the area in front of its stadium could led to an economic advantage for the club.

As a result, Real Madrid may have enjoyed an advantage which derives from State resources. This advantage for a club playing in the national first league may furthermore have an effect on competition and trade between Member States. This support to the professional sport club Real Madrid CF would constitute State aid in the meaning of Article 107(1) TFEU.

2.2. Compatibility of the aid

The Commission has not adopted guidelines on the application of the State aid rules of the Treaty to commercial sport activities. Spain does also not claim any public service mission of the professional sport clubs which could be assessed under Article 106(2) TFEU. An assessment has therefore to be based directly under Article 107(3)c TFEU. According to that provision, aid may be considered compatible with the internal market if it facilitates, in the common interest or the development of certain economic activities.

However, the Commission is not able to identify an objective of common interest which could justify selective support to a very strong actor in a highly competitive economic sector. Accordingly, the Commission cannot exclude that the agreement of July 2011 between the Council of Madrid and Real Madrid comprises State aid which is not compatible with Article 107(3)c TFEU.

3. STATEMENT OF THE COMMISSION'S DOUBTS

The Commission doubts whether it was indeed impossible for the Council of Madrid to transfer the "Las Tablas" property to Real Madrid. This concerns the alleged legal impossibility on the basis of the land classification for this plot; if the impossibility existed in 1998 already, it is doubtful that the impossibility is imputable to the Council of Madrid. This concerns also the impossibility for the Council to amend this classification.

The Commission doubts that a market value of the "Las Tablas" plot of land has been determined. Neither in 1998 nor in 2011 did an independent evaluation take place. It has also doubts with regard to the market conformity of the value of the properties which were transferred to Real Madrid by the 2011 Agreement and at the occasion of the subsequent further exchange of land around the Bernabeu Stadium.

In accordance with Article 14 of Council Regulation (EC) No 659/1999, all unlawful aid can be subject to recovery from the recipient.

TEXT OF LETTER

'Por la presente, la Comisión tiene el honor de comunicar a España que, tras haber examinado la información facilitada por sus autoridades sobre la ayuda arriba indicada, ha decidido incoar el procedimiento previsto en el artículo 108, apartado 2, del Tratado de Funcionamiento de la Unión Europea.

1. **PROCEDIMIENTO**

(1) En octubre y noviembre de 2011, artículos aparecidos en la prensa e información detallada enviada por ciudadanos llamaron la atención de la Comisión sobre una presunta ayuda estatal en favor del Real Madrid Club de Fútbol (Real Madrid), consistente en una ventajosa transmisión inmobiliaria. El 20 décembre 2011, se pidió a España que formulara observaciones sobre la denuncia. España envió información el 23 décembre 2011 y el 20 février 2012. Tras otra solicitud de información de 2 avril 2012, España envió información adicional el 18 juin 2012.

2. **DESCRIPCIÓN DE LA MEDIDA**

(2) Según la información de que dispone la Comisión, al parecer el Ayuntamiento de Madrid concedió ayuda estatal al Real Madrid mediante un Convenio firmado por las partes el 29 juillet 2011 (Convenio de 2011) ([1]). El Convenio pretende resolver una cuestión jurídica pendiente entre las partes relativa a un Convenio de 1991 y una permuta de bienes inmobiliarios, objeto de convenios entre ellas en 1996 y 1998.

(3) El Real Madrid Club de Fútbol es uno de los principales clubes españoles de fútbol y baloncesto profesional. Es el primer club de fútbol del mundo por ingresos, con un volumen de negocios anual de 513 millones EUR ([2]). Es uno de los pocos clubes que nunca ha descendido de la máxima categoría del fútbol español y que participa habitualmente en la Liga Europea de Campeones *(Champions League)*.

(4) Con fecha de 20 décembre 1991, se firmó un Convenio entre el Ayuntamiento de Madrid, la Gerencia Municipal de Urbanismo del Ayuntamiento (en adelante, «GMU») y el Real Madrid, para la remodelación del Estadio Santiago Bernabéu. En dicho Convenio, el Real Madrid se comprometió, entre otras cosas, a construir un aparcamiento subterráneo. El Real Madrid incumplió esta obligación.

(5) El 29 novembre 1996, el Real Madrid suscribió otro Convenio con la Gerencia Municipal de Urbanismo («GMU») y con el Ayuntamiento de Madrid. El Real Madrid aceptó la permuta de una parcela de 30 000 m^2 en la Ciudad Deportiva y, a cambio, el Ayuntamiento de Madrid se comprometió a entregar al Real Madrid diversos terrenos y derechos de concesión de suelo público que se determinarían en un momento posterior.

(6) El 29 mai 1998, el Real Madrid y el Ayuntamiento de Madrid suscribieron otro Convenio ([3]) (Convenio de 1998) con el fin de ejecutar la permuta prevista en el Convenio de 1996. El Real Madrid cedió efectivamente las parcelas ubicadas en la Ciudad Deportiva, como se había acordado en el Convenio de 1996, y, como contraprestación, el Ayuntamiento de Madrid se comprometía a entregar al Real Madrid CF terrenos por el equivalente a sus obligaciones con el club: las parcelas nº 33 y 34, ubicadas en la zona Julián Camarillo Sur, y B-32, denominada «Las Tablas», de una superficie de 70 815 m^2.

(7) A efectos de esta permuta, en 1998 el valor de «Las Tablas» se estimó en 595 194 EUR. La valoración la efectuó la administración municipal, sobre la base del Real Decreto 1020/1993, que proporciona una técnica para determinar el valor de las propiedades urbanas. En la contabilidad anual del Real Madrid, la propiedad se contabilizó con un valor de 488 000 EUR. Según las autoridades españolas, en 1998 la valoración de «Las Tablas» tuvo en cuenta el nivel de desarrollo de la zona, en particular, el hecho de que solo se había concluido la ordenación urbana pero no la urbanización de la zona y tampoco se había comenzado a edificar.

(8) Posteriormente, el Ayuntamiento de Madrid entregó las parcelas nº 33 y 34 de Julián Camarillo. La parcela B-32 de «Las Tablas» no se entregó todavía porque, en el momento del Convenio, el Ayuntamiento de Madrid aún no tenía la titularidad legal. Al parecer, la parcela estaba pendiente de un procedimiento de expropiación. Sin embargo, el Convenio estipulaba que la transmisión debía efectuarse dentro de los siete días siguientes a la inscripción en el Registro de la Propiedad del Proyecto de Compensación. El 28 juillet 2000, el Ayuntamiento de Madrid adquirió la titularidad legal de «Las Tablas». Posteriormente, el 11 février 2003, «Las Tablas» quedó inscrita en el Registro de la Propiedad a nombre del Ayuntamiento de Madrid. En principio, desde ese momento, el Ayuntamiento de Madrid estaba en condiciones de ceder efectivamente los derechos de propiedad de esta parcela al Real Madrid, pero no lo hizo.

(9) Según las Normas Urbanísticas, «Las Tablas» está afectada para uso deportivo y calificada como «equipamiento deportivo básico». Esta restricción deriva de la calificación del Plan Parcial del territorio «UZI 0.08 Las Tablas» de 28 juillet 1995 y posteriormente del Plan General de Ordenación Urbana de Madrid, que fue aprobado el 17 avril 1997 por el Ayuntamiento y la Comunidad de Madrid. Aunque el Ayuntamiento modificó el Plan en 2001, la calificación de esta parcela siguió siendo la misma. La Ley 9/2001, de 17 juillet 2001, del Suelo de la Comunidad de Madrid, adoptada por dicha Comunidad, establece en su artículo 64 que, desde el momento en que se aprobó el Plan General, todos los terrenos, las instalaciones, las construcciones y las edificaciones se vincularán al destino que resulte de su clasificación y calificación y al régimen urbanístico que consecuentemente les sea de aplicación.

(10) Las partes del Convenio de 1998 conocían la calificación de «Las Tablas». Según las autoridades españolas, las partes consideraban que la calificación para uso deportivo de «Las Tablas» no excluiría su cesión a manos privadas. En 1998, el Real Madrid tenía la intención de construir infraestructuras deportivas en estas instalaciones. El Ayuntamiento de Madrid supuso que podría enajenarlas si el Real Madrid garantizaba y respetaba la calificación para uso deportivo de la parcela.

([1]) *«Convenio de regularización de los compromisos derivados de los convenios suscritos entre el Ayuntamiento de Madrid y el Real Madrid Club de Fútbol de fechas 29 mai 1998 y 20 décembre 1991».*

([2]) Deloitte Football Money League 2013. Deloitte UK, 30 janvier 2013.

([3]) «Convenio de Ejecución de la Permuta».

(11) Sin embargo, en 2003, cuando el Ayuntamiento de Madrid ya se había registrado como propietario y, por tanto, estaba obligado a entregar la parcela, había cambiado su interpretación de la ley y consideraba que «Las Tablas» debía tener calificación de bien público y ser propiedad forzosamente de una entidad pública y, por lo tanto, no se podía ceder al Real Madrid.

(12) Según las autoridades españolas, la Ley 9/2001, de 17 juillet 2001, del Suelo de la Comunidad de Madrid, que establecía que a todos los terrenos deberá dárseles un uso en función de su calificación, exige también la obligatoriedad de la propiedad pública para un terreno calificado como deportivo de carácter básico. La cesión a una entidad privada quedaría descartada porque la naturaleza pública de la parcela (*bien de naturaleza demanial*) impediría su enajenación. Esto llevó al Ayuntamiento de Madrid a considerar que, al introducir la naturaleza demanial de la parcela, la Ley de 2001 originó una imposibilidad jurídica de cederla en 2003, lo que no podía haberse previsto cuando se suscribió el Convenio en 1998.

(13) No obstante, los elementos de la Ley a los que remiten las autoridades españolas no dicen nada sobre la cuestión de la posible propiedad pública o privada de los terrenos calificados. Por tanto la propia Ley aparentemente no motiva un cambio de la situación jurídica en cuanto a la posibilidad de ceder la parcela en cuestión. Según la información facilitada por España, parece más probable que la jurisprudencia motivara un cambio en la interpretación de la situación jurídica. En 2004, un tribunal administrativo aclaró que la calificación establecida en los planes urbanísticos, como el Plan General de Ordenación Urbana de Madrid de 1997, impiden que una entidad privada sea la propietaria legal de un terreno con la calificación de «Las Tablas» ([1]). Al parecer, esta jurisprudencia no cambia una situación jurídica sino que aclara la ya existente.

(14) En cualquier caso, cuando el Real Madrid y el Ayuntamiento de Madrid suscribieron el Convenio de 1998, suponían que el terreno en cuestión podía cederse. Luego resultó que esta interpretación de la ley era cuando menos controvertida y terminó por ser declarada errónea por la jurisprudencia. Como consecuencia, «Las Tablas» no se entregó al Real Madrid. Ni el club ni nadie más hizo nunca uso del terreno.

(15) El Convenio de 2011, en primer lugar, determinó que, como compensación por el incumplimiento de su obligación contractual de 1991, el Real Madrid adeudaría al Ayuntamiento de Madrid una cantidad de 2 812 735,03 EUR. En segundo lugar, aborda la cuestión de la imposibilidad de ceder la parcela «Las Tablas» al club. El Ayuntamiento de Madrid asume que tiene que resarcir al Real Madrid por esta imposibilidad con una cantidad que represente el valor actual (2011) del terreno no cedido. Por tanto, las partes acordaron en el Convenio sustituir la cesión de la parcela B-32 «Las Tablas» por la de otras parcelas. Éstas consisten en una manzana delimitada por la calle Rafael Salgado, el Paseo de la Castellana y Concha Espina de 3 600 m^2, varios terrenos en la zona «Mercedes Arteaga», «Jacinto Verdaguer», en el barrio de Carabanchel, de 7 966 m^2 en total, y 3 035 m^2 en la Ciudad Aeroportuaria Parque de Valdebebas. La superficie conjunta se valoró en 19 972 348,96 EUR. La valoración la hizo el Ayuntamiento de Madrid, aparentemente sin una tasación de un perito independiente.

(16) El valor del terreno de «Las Tablas» en 2011 lo tasó la administración de Madrid en 22 693 054,44 EUR, según los mismos criterios generales para determinar el valor del patrimonio municipal del suelo que ya se aplicaban en 1998, teniendo en cuenta la idéntica calificación del terreno y la situación actual de esta parcela ([2]).

(17) Sobre la base de los valores de los terrenos así determinados, el Convenio de 2011 pretendía liquidar las deudas mutuas. Las partes añadieron a la supuesta deuda para con el Real Madrid de 22 693 054,44 EUR una cantidad de 92 037,59 EUR en concepto de impuesto de bienes inmuebles que el Real Madrid llevaba pagando desde 2002 por «Las Tablas». Además, dedujeron los 2 812 735,03 EUR de deudas pendientes del Real Madrid descritas en el considerando 15. Esto daba un saldo a favor del Real Madrid de 19 972 357,00 EUR, que se liquidaba con el valor de las propiedades que compensaban por «Las Tablas» de 19 972 348,96 EUR. El resultado era saldo neto restante en favor del Real Madrid de 8,04 EUR.

(18) Las propiedades Mercedes Arteaga/Jacinto Verdaguer, que formaban parte de los activos inmobiliarios entregados al Real Madrid CF por el Convenio de julio de 2011, fueron objeto tres meses después de otra transacción inmobiliaria entre el Real Madrid y el Ayuntamiento. Esta transacción implica su devolución, un pago de 6,6 millones EUR y la cesión de un centro comercial al Ayuntamiento de Madrid. Como contraprestación, el Real Madrid recibirá una superficie de 5 216 m^2 frente a su estadio en la que el club construirá un centro comercial mayor y un hotel, lo que casi duplicaría su capacidad de edificar total en la zona. La Comisión carece de datos sobre cómo se hizo la valoración de los terrenos frente al Estadio Bernabéu. Tampoco ha recibido explicaciones sobre las razones de por qué unos terrenos que se habían entregado al Real Madrid se devuelven pocos meses después. La Comisión toma nota de que, según la prensa, el Ayuntamiento de Madrid modificó el Plan General de Ordenación Urbana para permitir el uso comercial de la zona frente al Estadio por el Real Madrid.

3. EVALUACIÓN DE LA AYUDA

3.1. Existencia de ayuda a efectos del artículo 107, apartado 1, del TFUE

(19) La situación específica descrita constituye ayuda estatal a tenor del artículo 107, apartado 1, del TFUE, si apoya, mediante fondos estatales, una determinada actividad económica, que obtiene así una ventaja selectiva que podría afectar a la competencia y el comercio entre Estados miembros. El concepto de ayuda estatal abarca tanto el gasto financiero como los ingresos no percibidos por una autoridad pública en favor de las empresas.

([1]) Sentencia de la Sala de lo Contencioso-Administrativo del Tribunal Superior de Justicia de Madrid (Sección 2a) de 6 octobre 2004.

([2]) El Ministerio de Economía y Hacienda considera que el valor de mercado de Las Tablas es incluso de 25 776 296 EUR.

3.1.1. *Los clubes deportivos pueden estar sujetos a las normas de competencia*

(20) En primer lugar, las actividades que reciben ayuda tienen que ser de naturaleza mercantil. Los clubes deportivos profesionales pueden considerarse sociedades mercantiles. Habida cuenta de los objetivos de la Unión Europea, el deporte está sujeto a la legislación de competencia de ésta en la medida en que constituye una actividad económica ([1]), y este es, sin duda, el caso del fútbol o el baloncesto profesional, que en particular participan y realizan actividades de comercialización a nivel internacional, como es el caso del Real Madrid FC.

3.1.2. *Existencia de una ventaja*

(21) Para determinar si el Real Madrid ha obtenido una ventaja que no habría podido obtener en condiciones de mercado, es necesario examinar si las diversas permutas de bienes inmuebles descritas han aportado una ventaja económica al club. *Prima facie*, el Real Madrid parece disfrutar de una ventaja económica por el hecho de que, una parcela, que en el momento de su adquisición se valoró en 595 194 EUR y se consignó en la contabilidad con un valor de 488 000 EUR, trece años más tarde, en una operación para liquidar deudas mutuas, aparece con un valor de más de 22 millones EUR.

(22) Según las autoridades españolas, debido a la imposibilidad jurídica de cumplir su obligación con arreglo al Convenio de 1998 de entregar la parcela de «Las Tablas» al Real Madrid, el Ayuntamiento tuvo que compensar al club por este incumplimiento con el valor real de la parcela en cuestión. No está claro si las condiciones en las que el Real Madrid adquirió los terrenos frente al Estadio Bernabéu reflejan las condiciones de mercado.

(23) Esto plantea varias preguntas: i) ¿Verdaderamente no era posible entregar el terreno al Real Madrid? ¿Existía esa imposibilidad cuando se suscribió el Convenio de 1998 o se produjo posteriormente? ii) De existir esa imposibilidad ¿impone la Ley española una obligación de compensación (esto incluye la cuestión de si la imposibilidad es imputable a una de las partes)? ¿Qué momento es relevante para determinar el valor del bien? iii) En cualquier caso, ¿se ha calculado correctamente el valor de «Las Tablas» y de las otras parcelas en cuestión?

3.1.2.1. Imposibilidad de ceder los terrenos

(24) Al parecer, en 1998 las partes supusieron que los terrenos calificados como deportivos de carácter básico podrían cederse. Pero, como máximo a raíz de la sentencia de 2004, citada en el considerando 13, las autoridades españolas supusieron que, por razones jurídicas, «Las Tablas» no pueden cederse a una persona o entidad privada. Esta imposibilidad jurídica derivaría de la calificación del terreno por la ordenación urbana como afectado a uso deportivo de carácter básico. Esta calificación la hicieron los organismos responsables de la Comunidad de Madrid, el Ayuntamiento y el Consejo de Gobierno.

(25) Cabría preguntarse si verdaderamente existe esa imposibilidad, considerando que estos organismos probablemente tienen la capacidad de revisar la calificación de los planes de urbanismo. Según la prensa, esta capacidad se demostró al modificar en noviembre de 2011 el Plan General de Ordenación Urbana de Madrid para permitir la recalificación de la zona entre el Bernabéu y el Paseo de la Castellana. Las autoridades españolas no explican por qué no contemplaron modificar la calificación de «Las Tablas», dado que podría haber eximido al Ayuntamiento de obligaciones por valor de 22 millones EUR y que el terreno seguía vacío.

(26) Suponiendo que la cesión fuera imposible, bien podría ser que ya existiera esa imposibilidad cuando se suscribió el Convenio de 1998. La calificación del terreno era ya definitiva en 1997. Las autoridades españolas alegan que, en 1998, supusieron que la cesión de los terrenos calificados a manos privadas sería posible - siempre y cuando se destinaran a actividades deportivas. No se aclaró que no sería posible hasta una sentencia judicial posterior. La información facilitada por España no aclara si la imposibilidad es el resultado de un cambio real de la ley después de 1998 o si, como parece más probable, el tribunal se limitó a interpretar las normas jurídicas que ya eran de aplicación en 1998. En ese caso, las partes solo erraron en la interpretación de la ley, lo que significa que ya en 1998 una parcela calificada para uso deportivo de carácter básico no podía pasar de propiedad pública a privada, sin que esto fuera imputable a alguna de las partes. Lo que sugeriría que el cumplimiento del Convenio de 1998 por lo que se refiere a «Las Tablas» era ya imposible cuando se suscribió el Convenio.

3.1.2.2. Posibles consecuencias de la imposibilidad de ceder «Las Tablas»

(27) Esta imposibilidad original, por un error desconocido para las partes, evidentemente no es imputable a ninguna de las partes. La información facilitada por las autoridades españolas sugiere que, en tal caso, las disposiciones de nulidad del contrato en el Código Civil (artículos 1300 a 1314) no establecen una compensación por daños y perjuicios sino más bien una situación en la que no surgieran las obligaciones mutuas, incluida la restitución de lo ya entregado como contraprestación del contrato. Por lo que se refiere a la parte separable del Convenio de 1998 relativa a «Las Tablas», el Ayuntamiento de Madrid todavía no ha cumplido nada que pueda ser devuelto ([2]). Por tanto, seguiría existiendo la deuda original para con el Real Madrid a cambio de la cual habría que haber entregado la parcela. A esta deuda original lógicamente habría que asignar un valor que reflejara el valor que se atribuía a esta parcela en 1998. Es sorprendente que las autoridades españolas no utilizaran este argumento para intentar evitar una deuda de más de 22 millones EUR.

(28) Suponiendo que la imposibilidad de ceder el terreno no se produjera hasta después de 1998, podría alegarse que sería imputable al Ayuntamiento de Madrid, que es el responsable de sus normas urbanísticas. Según las autoridades españolas, esto podría dar derecho a la parte del contrato a la que debía entregarse el terreno a compensación y daños

([1]) Asunto C-415/93 *Bosman*, apartado 73, asunto C-519/04 P *Meca-Medina y Majcen*/Comisión, apartado 22 y C-325/08 *Olympique Lyonnais*, apartado 23.

([2]) Restitución de las prestaciones mismas es imposible porque el Ayuntamiento ha vendido los terrenos obtenidos de Real Madrid.

y perjuicios. La compensación consistiría en el valor «actual» del terreno. El Convenio de 2011 estableció el valor de «Las Tablas» en 2011. Sin embargo, no queda claro si la deuda con arreglo al Derecho Civil español debía basarse en el valor en el momento en que debía hacerse la transmisión– dentro de los siete días siguientes a la inscripción en el Registro de la Propiedad en 2003 – o en el momento en que el acreedor decide a su discreción reclamar daños y perjuicios. También parecería razonable que el momento decisivo sea cuando se origina la obligación. Según las condiciones del Convenio de 1998 esto ocurrió en 2003 ([1]).

3.1.2.3. Valor de «Las Tablas» y otras propiedades

(29) Sea cual fuere el momento decisivo para determinar el valor de «Las Tablas», el notable aumento del supuesto valor del terreno suscita serias dudas. Es cierto que el mercado inmobiliario español subió considerablemente después de 1998. Pero los bienes inmuebles cayeron en picado ya en 2008. La calificación de la zona no ha cambiado entretanto. Aunque estaba situada en una zona poco desarrollada en 1998, el plan urbanístico ya se había aprobado y esto ya se habría reflejado en una valoración.

(30) Una transmisión inmobiliaria entre una autoridad pública y una parte privada, o cualquier contrato que se base en el valor de terrenos implicados en el contrato, puede suponer una ventaja financiera para la parte privada. Para descartar este riesgo, hay que garantizar que el valor subyacente de los terrenos sea el valor de mercado. En cuanto a la venta de terrenos por parte de las autoridades públicas, así figura explícitamente en la Comunicación de la Comisión relativa a los elementos de ayuda en las ventas de terrenos y construcciones por parte de los poderes públicos ([2]). Una venta sin licitación incondicional requeriría una tasación del valor de los terrenos por un perito independiente.

(31) Como se describe en los considerandos 6 y 7, el Convenio de 1998 de transferencia de «Las Tablas» al Real Madrid no iba acompañado de una tasación independiente. Tampoco con motivo del Convenio de 2011 hubo una tasación independiente que pueda demostrar de manera convincente que el valor subyacente al Convenio reflejara un precio de mercado. Para demostrar que el precio de «Las Tablas» en 2011 es realista, las autoridades españolas presentaron informes de evaluación de una tasación inmobiliaria, con el elevado precio de parcelas supuestamente comparables, afectadas por ejemplo a uso mixto y (también privado) servicios sanitarios y fines educativos. Sin embargo, la comparabilidad no es tal porque en estas zonas había ya edificios o parecía al menos que podían transmitirse a manos privadas y, por tanto, eran comercializables.

(32) Para la determinación de ambos valores en 1998 y 2011, el Ayuntamiento de Madrid utilizó el mismo sistema de valoración y consideró las mismas restricciones del plan de urbanismo para el terreno. La restricción al uso deportivo de carácter básico probablemente sea una razón para reducir las expectativas en su explotación comercial. De hecho, la circunstancia de que al menos en 2011 el terreno ya no se podía ceder implicaría más bien un valor muy inferior del mismo. En cualquier caso, no permite la comparación con parcelas con otra calificación y que se pueden ceder. Un denunciante sugiere que en el caso de terrenos sin estas restricciones en la zona de «Las Tablas» los precios de los bienes inmuebles aumentaron aproximadamente un 250 % entre 1998 y 2011. Suponiendo que el valor alegado de «Las Tablas» en 1998 era de 595 194 EUR, como explican las autoridades españolas, el incremento de valor hasta 2011 sería de aproximadamente un 3 700 %.

(33) Esto parece indicar que el supuesto valor del terreno es demasiado alto en 2011, a menos que se pueda acreditar que el supuesto valor del terreno era demasiado bajo en 1998. En ambos casos, el Real Madrid habría obtenido una ventaja económica de la transacción que no estaría justificada en condiciones de mercado. La ventaja real dependería de la diferencia entre el valor supuesto por las partes y el precio de mercado que todavía está por determinar.

(34) Podría alegarse que, suponiendo que la ventaja para el Real Madrid se originara en 1998, porque el terreno fue infravalorado en aquel momento, la ayuda entraría en el plazo de prescripción de diez años con arreglo al artículo 15, apartado 1, del Reglamento del Consejo nº 659/1999 por el que se establecen disposiciones de aplicación del artículo 108 del Tratado de Funcionamiento de la Unión Europea (Reglamento de procedimiento) ([3]). Sin embargo, según el artículo 15, apartado 2, de dicho Reglamento, el plazo de prescripción se contará a partir de la fecha en que se haya concedido la ayuda ilegal al beneficiario, y esa concesión no se completó hasta que las partes acordaron en 2011 aplicar o complementar finalmente los elementos del Convenio de 1998. En cualquier caso, el Real Madrid no se benefició del valor del terreno hasta 2011.

(35) La Comisión considera, por último, la posibilidad de que la valoración de las parcelas entregadas al Real Madrid conforme al Convenio de 2011 y en la zona frente a su Estadio pudieran dar lugar a una ventaja económica para el club.

3.1.3. *La ayuda cumple también las restantes condiciones del artículo 107, apartado 1, del TFUE*

(36) Por otra parte, la medida estatal es selectiva puesto que beneficia a una empresa concreta. Como resultado, el Real Madrid disfrutó de una ventaja que deriva de fondos estatales, puesto que el Estado deja de percibir posibles ingresos. La ventaja para un club que juega en primera división de su liga nacional puede además afectar a la competencia y al comercio entre Estados miembros. Estos clubes compiten por estar en las competiciones europeas y participan en los mercados de comercialización y derechos televisivos. Los derechos de radiodifusión, la comercialización y los patrocinios son fuentes de ingresos por las que los clubes de las ligas de primera división compiten con otros clubes dentro y fuera de su propio país. Cuanto más dinero tienen los clubes para fichar jugadores estrella, más éxito pueden conseguir en las competiciones deportivas, lo que promete más ingresos de las actividades mencionadas. Por otra parte, la estructura de propiedad de los clubes es internacional.

([1]) Según el artículo 1100 del Código Civil, en las obligaciones recíprocas, desde que uno de los obligados cumple su obligación, empieza la mora para el otro.

([2]) DO C 209 de 10.7.1997, p. 3.

([3]) DO L 83 de 27.03.1999, p. 1.

(37) Por tanto, el apoyo financiero estatal que otorga una ventaja al club deportivo profesional Real Madrid CF constituye ayuda estatal a tenor del artículo 107, apartado 1, del TFUE.

3.2. **Compatibilidad de la ayuda**

(38) El artículo 165 del TFUE destaca las características específicas del deporte que debe tener en cuenta la Comisión al abordar asuntos en este sector, ya que el deporte cumple una función educativa, de salud pública, cultural y recreativa. Por otra parte, la importancia económica del deporte no deja de crecer.

(39) La Comisión no ha adoptado directrices sobre la aplicación de las normas sobre ayudas estatales del Tratado a las actividades deportivas mercantiles. España tampoco alega una misión de servicio público de los clubes deportivos profesionales que pudiera evaluarse con arreglo al artículo 106, apartado 2, del TFUE. Por consiguiente, la evaluación debe estar basada directamente en el artículo 107, apartado 3, letra c), del TFUE. Según dicha disposición, una ayuda puede considerarse compatible con el mercado interior si facilita, con arreglo al interés común, el desarrollo de determinadas actividades o de determinadas regiones económicas.

(40) No obstante, la Comisión en este momento duda de que haya un objetivo de interés común que pudiera justificar una ayuda selectiva a un participante muy poderoso en un sector económico extremadamente competitivo. España tampoco aduce argumentos que respalden la compatibilidad de la ayuda con arreglo al artículo 107, apartado 3, letra c), del TFUE.

4. **DECLARACIÓN DE LAS DUDAS DE LA COMISIÓN**

(41) En consecuencia, la Comisión no puede descartar que el Convenio de julio de 2011 de regularización por no haber entregado el Ayuntamiento de Madrid la parcela de las «Las Tablas» al Real Madrid comprenda un elemento de ayuda estatal que no es compatible con el artículo 107, apartado 3, letra c), del TFUE. Esto se basa en las siguientes dudas sobre las que la Comisión solicita a España que facilite información relevante y concisa.

(42) La Comisión duda de si realmente era imposible que el Ayuntamiento de Madrid entregara la parcela de «Las Tablas» al Real Madrid. Esto se refiere a la presunta imposibilidad jurídica sobre la base de la calificación del suelo de dicha parcela; si la imposibilidad ya existía en 1998, es dudoso que sea imputable al Ayuntamiento de Madrid. Además se refiere a la imposibilidad de que el Ayuntamiento modificara dicha calificación, con el fin también de evitar la presunta elevada deuda para con el Real Madrid.

(43) La Comisión duda de que se haya determinado un valor de mercado de la parcela «Las Tablas». Ni en 1998 ni en 2011 se efectuó una tasación independiente. La Comisión también tiene dudas en cuanto a que sea conforme a mercado el valor de los terrenos que se entregaron al Real Madrid por el Convenio de 2011 y con motivo de la posterior permuta de terrenos en las inmediaciones del Estadio Bernabéu.

Habida cuenta de las consideraciones expuestas, la Comisión, en el marco del procedimiento del artículo 108, apartado 2, del Tratado de Funcionamiento de la Unión Europea, insta a España para que presente sus observaciones y facilite toda la información pertinente para la evaluación de la ayuda en un plazo de un mes a partir de la fecha de recepción de la presente carta. La Comisión insta a las autoridades españolas para que transmitan inmediatamente una copia de la presente carta al beneficiario potencial de la ayuda.

La Comisión desea llamar la atención de España sobre el artículo 14 del Reglamento (CE) nº 659/1999 del Consejo, que prevé que toda ayuda concedida ilegalmente podrá recuperarse de su beneficiario.

Por la presente, la Comisión comunica a España que informará a los interesados mediante la publicación de la presente carta y de un resumen significativo en el *Diario Oficial de la Unión Europea*. Asimismo, informará a los interesados en los Estados miembros de la AELC signatarios del Acuerdo EEE mediante la publicación de una comunicación en el suplemento EEE del citado Diario Oficial y al Órgano de Vigilancia de la AELC mediante copia de la presente carta. Se invitará a todos los interesados mencionados a presentar sus observaciones en un plazo de un mes a partir de la fecha de publicación de la presente carta.'

STATE AID — SPAIN

State aid SA.29769 (2013/C) (ex 2013/NN) — State aid to certain Spanish professional sport clubs

Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union

(Text with EEA relevance)

(2014/C 69/09)

By means of the letter dated 18 December 2013 reproduced in the authentic language on the pages following this summary, the Commission notified Spain of its decision to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union concerning the above-mentioned aid/measure.

Interested parties may submit their comments within one month of the date of publication of this summary and the following letter, to:

European Commission
Directorate-General for Competition
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Fax No: +32 2 2961242
E-mail: stateaidgreffe@ec.europa.eu

These comments will be communicated to Spain. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

1. DESCRIPTION OF THE AID

The "ley del deporte" of 1990 [1] obliged all Spanish professional sport clubs to convert into sport limited companies. The purpose was to establish with the new sport limited company a model of economic and legal responsibility for clubs which perform professional activities. The "Seventh Additional Disposition" of this law exempted those football clubs from this obligation which had had a positive balance in the preceding 4-5 years. No specific clubs were mentioned, but only the four clubs Real Madrid CF, Athletic Club Bilbao, Club Atlético Osasuna (Navarra) and FC Barcelona benefited from this exemption and did not convert into a sport limited company. No other commercially viable team may reconvert to club status.

The fiscal treatment of sports clubs deviates from the fiscal regime applicable to sports public limited companies. Sports clubs qualify, as non-profit entities, for a partial corporate tax exemption according to Article 9(3)a) of the Spanish Corporate Tax Law (*Ley del Impuesto sobre Sociedades*). Article 28(2) of that law provides that the exempted entities shall pay corporate tax for their commercial income at a reduced rate of 25% instead of the current general rate of 30%.

Although by law the four clubs are considered to be non-profit entities, they conduct, as premier league clubs, profit oriented professional activities in competition with the other large European professional football clubs.

[1] Ley 10/1990, de 15 de octubre, del Deporte, BOE de 17 de Octubre de 1990.

2. ASSESSMENT OF THE AID

2.1. Existence of aid within the meaning of Article 107 (1) of the TFEU

The Commission is of the view that the described specific situation of the clubs constitutes State aid within the meaning of Article 107(1) TFEU. The supported activities of professional sport clubs are of a commercial nature and are, although they are sport, subject to European Union competition law.

The lower taxation rate constitutes an advantage in the form of foregone income on the part of the State. It is selectively favouring certain undertakings in comparison with other undertakings which are in a comparable legal and factual situation. Differential taxation amounts to a selective advantage if it constitutes a departure from the general or reference taxation system and if it cannot be justified by the logic of the tax system.

The common reference taxation system for both clubs and limited companies is the amount of net profit earned by the undertaking at the end of the tax year. The Commission compared the taxation of profits of football clubs engaged in the activity of professional premier league football with the taxation of other undertakings which are subject to the normal corporation tax rate. It found that, by way of derogation from the normal tax rates applicable to legal persons, the taxable income of the clubs is taxed with a lower rate than that of limited companies. The clubs therefore are treated

differently as they enjoy a reduced tax rate to which other undertakings subject to corporate tax, such as sport limited companies, are not entitled.

However, clubs and limited companies pursue an identical economic activity and are in a comparable market situation. The preferential tax rate for the four sport entities in question does not seem to be justified by the nature and overall structure of the tax system ([1]). Accordingly, clubs and limited companies are treated in a different way without an apparent justification.

The advantage for clubs playing in their national first league may furthermore have an effect on competition and trade between Member States. Therefore, the financial State support to the professional sport clubs Real Madrid CF, Athletic Club Bilbao, Club Atlético Osasuna (Navarra) and FC Barcelona constitutes State aid in the meaning of Article 107(1) TFEU.

3.2. **Compatibility of the aid**

The Commission has not adopted guidelines on the application of the State aid rules to commercial sport activities. An assessment has therefore to be based directly on Article 107(3)c TFEU. According to that provision, aid may be considered compatible with the internal market if it facilitates, in the common interest or the development of certain economic activities.

The Commission is not able to identify an objective of common interest which could justify, under Article 107(3)c TFEU, selective operating support to single very strong actors in a highly competitive economic sector.

3.3. **Statement of the Commission's doubts**

Accordingly, the Commission finds that Spain grants operating aid to the four sport clubs Real Madrid CF, Athletic Club Bilbao, Club Atlético Osasuna (Navarra) and FC Barcelona which cannot be justified under Article 107(3)c TFEU. The Commission therefore has doubts about the compatibility of this aid measure with the internal market.

In accordance with Article 14 of Council Regulation (EC) No 659/1999, all unlawful aid can be subject to recovery from the recipient.

([1]) Cf. paragraph 25 of the Commission notice on the application of State aid rules to measures relating to direct business taxation, OJ C 384, 10.12.1998, p. 3.

TEXT OF LETTER

'Por la presente, la Comisión tiene el honor de comunicar a España que, tras haber examinado la información facilitada por sus autoridades sobre la ayuda arriba indicada, ha decidido incoar el procedimiento previsto en el artículo 108, apartado 2, del Tratado de Funcionamiento de la Unión Europea.

1. **PROCEDIMIENTO**

(1) En noviembre de 2009, la Comisión recibió una denuncia sobre un posible trato preferente en lo referente al impuesto de sociedades a cuatro clubes deportivos españoles: Real Madrid CF, Athletic Club Bilbao, Club Atlético Osasuna (Navarra) y FC Barcelona, con respecto a las sociedades anónimas deportivas. El 15 de febrero, 12 de abril y 28 de septiembre de 2010, se pidió a España que presentara sus observaciones sobre la denuncia. Dichas observaciones se recibieron el 23 de marzo y el 15 de diciembre de 2010.

(2) El 3 de mayo de 2010 y el 14 de marzo de 2011, el denunciante presentó sus comentarios sobre las observaciones formuladas por España.

(3) El 1 de octubre de 2012, la Comisión envió una carta a todos los Estados miembros con el fin obtener una visión de conjunto de la financiación del fútbol profesional en la UE y el posible impacto de las normas sobre ayudas estatales del Tratado sobre dicha financiación. La Comisión se remitió a las denuncias que había recibido de ciudadanos de varios Estados miembros sobre presuntas medidas de ayuda en favor de los clubes de fútbol profesional. Algunas de estas medidas estarían relacionadas con un trato fiscal especial a ciertos clubes de fútbol profesional. En su carta, la Comisión subrayaba que los clubes de fútbol profesional no debían recibir un trato excepcional en comparación con otras empresas en lo referente a tributación y pagos a la Seguridad Social. Las autoridades españolas respondieron a esta carta el 5 de diciembre de 2012. En su respuesta, abordaban en particular la cuestión del trato fiscal a los clubes deportivos y las sociedades anónimas deportivas.

2. **DESCRIPCIÓN DE LA AYUDA**

(4) La «Ley del Deporte» de 1990 ([1]) obligó a todos los clubes deportivos profesionales españoles a reconvertirse en sociedades anónimas deportivas. La justificación de la medida era que muchos clubes habían estado mal gestionados porque ni socios ni administradores asumían responsabilidad patrimonial alguna por las pérdidas que pudieran generarse. El objetivo era establecer con la nueva sociedad anónima deportiva un modelo de responsabilidad económica y jurídica para los clubes que desempeñan actividades profesionales, para aumentar sus posibilidades de buena gestión.

(5) El posible trato fiscal presuntamente preferente a los cuatro clubes deportivos españoles, Real Madrid, Athletic Club Bilbao, Club Atlético Osasuna (Navarra) y FC Barcelona, que podría constituir ayuda estatal, se basaba en la «disposición adicional séptima» de la Ley del Deporte de 1990. Dicha disposición exime de la reconversión obligatoria a aquellos clubes de fútbol que habían tenido un saldo positivo en los 4-5 ejercicios anteriores. Según la exposición de motivos de la Ley, la exención está basada en el hecho de que estos clubes han demostrado «una buena gestión con el régimen asociativo» y no necesitaban el cambio. En la ley y su exposición de motivos no se dan otras justificaciones. Podrán mantener su actual estructura jurídica de club, salvo acuerdo contrario de sus asambleas ([2]).

(6) La ley no cita explícitamente por su nombre a los cuatro clubes que se beneficiaron de la exención, pero resultan ser los únicos que encajan en la descripción. Estos clubes no se reconvirtieron en sociedad anónima deportiva aunque podrían haberlo hecho. La Ley española del Deporte no incluye un plazo para una posible reevaluación de este trato específico. Así pues, solo los cuatro equipos que cumplían las condiciones en un principio tendrán la opción de beneficiarse de la condición fiscalmente favorable de «club deportivo», independientemente de cómo evolucione el estado financiero de los demás equipos. Los equipos comercialmente viables tampoco pueden pasar a la categoría de clubes.

(7) El trato fiscal a los clubes deportivos difiere del régimen fiscal aplicable a las sociedades anónimas deportivas. Los clubes deportivos se consideran entidades sin ánimo de lucro, por lo que están parcialmente exentos del impuesto sobre sociedades con arreglo al artículo 9(3)a) de la Ley española del Impuesto sobre Sociedades. Como resultado de esta exención parcial, el artículo 28(2) de la Ley del Impuesto sobre Sociedades dispone que los clubes exentos, en su calidad de entidades sin fines lucrativos, tributarán por sus ingresos comerciales a un tipo reducido del 25 % en lugar de al tipo general del 30 % (que era del 35 % hasta 2006 y del 32,5 % en 2007).

(8) Aunque por ley los cuatro clubes se consideran entidades sin ánimo de lucro, en realidad la mayoría de las actividades profesionales que desempeñan son lucrativas. El Real Madrid CF, por ejemplo, obtuvo de sus actividades unos ingresos de más de 512 millones EUR en la temporada 2011/2012. De estos ingresos, el 38 % procedía de la venta de derechos de radiodifusión, mientras que el 36 % estaba constituido por ingresos comerciales procedentes de patrocinios y comercialización (venta de artículos relacionados con el club, como camisetas o bufandas) y licencias. El 26 % restante son los denominados ingresos obtenidos el día del partido (venta de entradas y otros ingresos generados en el estadio, cuotas de socios). De igual manera, los ingresos de 483 millones EUR del FC Barcelona en

([1]) Ley 10/1990, de 15 de octubre, del Deporte, BOE de 17 de octubre de 1990.

([2]) «Los clubes que, a la entrada en vigor de la presente Ley, participen en competiciones oficiales de carácter profesional en la modalidad deportiva del fútbol, y que en las auditorías realizadas por encargo de la Liga de Fútbol Profesional, desde la temporada 1985-1986 hubiesen obtenido en todas ellas un saldo patrimonial neto de carácter positivo, podrán mantener su actual estructura jurídica, salvo acuerdo contrario de sus Asambleas....».

2011/2012 proceden de actividades deportivas profesionales: los derechos de radiodifusión, los ingresos comerciales y los ingresos obtenidos el día del partido representan el 41 %, el 34 % y el 25 %, respectivamente. Ambos clubes llevan varios años liderando la relación de clubes que militan en las primeras divisiones europeas en cuanto a ingresos, seguidos del Manchester United y el Bayern de Munich ([1]). De los demás clubes españoles, los únicos que están a veces entre los 20 primeros son el Atlético de Madrid en 2010 (124 millones EUR) o el Valencia en 2011 (116 millones EUR).

(9) Estas actividades generadoras de ingresos son de naturaleza económica y se realizan en dura competición con los demás grandes clubes europeos de fútbol profesional. Las fuentes de ingresos están íntimamente vinculadas y dependen del éxito de los equipos en las competiciones deportivas. A su vez, el éxito depende en gran medida de los fondos de que disponen los clubes para fichar a los mejores jugadores y entrenadores.

(10) España comunicó que […] (*). No obstante, según sus informes anuales, las ganancias antes de impuestos del Real Madrid fueron de 25 millones EUR en la temporada 2008/2009 y de 31 millones EUR en la temporada 2009/2010. En la temporada 2010/2011, según la prensa, el club tuvo unos beneficios netos de 30 millones EUR, y en el último ejercicio financiero unos beneficios netos de 36,9 millones EUR ([2]). El FC Barcelona había anunciado unas ganancias de 8 millones EUR en el ejercicio financiero 2008/2009 pero para 2009/2010 anunció una pérdidas de 79,6 millones EUR. Estas cifras sugieren unos ingresos imponibles considerables para 2009 y 2010, al menos en el caso del Real Madrid. […].

(11) Según las autoridades españolas, el Athletic Club Bilbao y el Club Atlético Osasuna […].

3. EVALUACIÓN DE LA AYUDA

3.1. Existencia de ayuda a efectos del artículo 107, apartado 1, del TFUE

(12) La situación específica de los clubes descrita constituye ayuda estatal a tenor del artículo 107, apartado 1, del TFUE, si apoya, mediante fondos estatales, una determinada actividad económica, que obtiene así una ventaja selectiva que podría afectar a la competencia y el comercio entre Estados miembros. El concepto de ayuda estatal abarca tanto el gasto financiero como los ingresos no percibidos por una autoridad pública en favor de las empresas.

(13) Las actividades que reciben ayuda tienen que ser de naturaleza mercantil. Los clubes deportivos profesionales pueden considerarse sociedades mercantiles. Habida cuenta de los objetivos de la Unión Europea, el deporte está sujeto a la legislación de competencia de ésta en la medida en que constituye una actividad económica ([3]), y este es, indudablemente, el caso del fútbol profesional.

(14) El artículo 107, apartado 1, del TFUE, requiere que se examine si una medida estatal cumple la condición de selectividad al favorecer a determinadas empresas en relación con otras que se encuentren en una situación fáctica y jurídica comparable, habida cuenta del objetivo perseguido por el régimen en cuestión. En cuanto a los ingresos posiblemente no percibidos en forma de medidas fiscales, el Tribunal de Justicia ha desarrollado una serie de criterios para la aplicación del artículo 107, apartado 1, del TFUE, y en particular en lo que se refiere a la cuestión de si conceden una ventaja selectiva ([4]).

(15) Una imposición diferenciada sería *prima facie* selectiva si constituyera una desviación del sistema fiscal general o de referencia. Una vez identificado el sistema fiscal de referencia, debe evaluarse si la medida favorece a determinadas empresas en relación con otras que se encuentren en una situación fáctica y jurídica comparable, habida cuenta del objetivo perseguido por el referido régimen, es decir, si constituye una excepción al sistema fiscal de referencia. Si constituye una excepción al sistema de referencia y favorece a determinadas empresas, puede concluirse que la medida es *prima facie* selectiva. Aunque una medida así puede estar justificada por la lógica del sistema, solo pueden tenerse en cuenta razones inherentes al propio sistema fiscal y no razones ajenas. Si la diferenciación no puede justificarse por la lógica del sistema fiscal, equivaldría a una ventaja selectiva.

(16) En consecuencia, en primer lugar debe determinarse un sistema fiscal de referencia común a los clubes y las sociedades anónimas. Efectivamente, se encuentran en una situación fáctica y jurídica comparable, habida cuenta del objetivo perseguido por el referido régimen: obtener ingresos sobre la base de los beneficios de la sociedad. Esto permite determinar si hay una desviación selectiva con respecto al régimen fiscal «normal». La base imponible es un elemento crucial para determinar el sistema fiscal. En el presente asunto, es el importe de los beneficios netos obtenidos por la empresa a finales del ejercicio fiscal. Por tanto, el régimen de sociedades español es el sistema de referencia relevante a efectos de determinar si el régimen fiscal es selectivo. Por consiguiente, es conveniente comparar la tributación de los clubes de fútbol que juegan en la primera división de la liga de fútbol profesional con la tributación de otras empresas sujetas al tipo normal del impuesto sobre sociedades.

([1]) Todas las cifras proceden de «Deloitte Football Money League», 15ª Edición, 2012.

(*) Información amparada por el secreto profesional, de conformidad con la Comunicación de la Comisión relativa al secreto profesional en las decisiones sobre ayuda estatal, DO nº C 297 de 09.12.2003, p. 6.

([2]) El más reciente en el *Financial Times* de 7 de septiembre de 2013.

([3]) Asunto C-415/93 Bosman, apartado 73, asunto C-519/04 P Meca-Medina y Majcen/Comisión, apartado 22 y C-325/08 Olympique Lyonnais, apartado 23.

([4]) El más reciente en su sentencia de 8 de septiembre de 2011 en los asuntos C-78 y C-80/08, Ventajas fiscales para las cooperativas italianas.

(17) En segundo lugar, hay que determinar si existe una diferencia de trato entre ambas formas de sociedades. Mediante excepción de los tipos impositivos normales aplicables a las personas jurídicas, los ingresos imponibles de los clubes tributan a un tipo inferior al de las sociedades anónimas. Por consiguiente, los clubes reciben un trato diferente, puesto que disfrutan de un tipo impositivo reducido al que no tienen derecho otras empresas sujetas al impuesto de sociedades, como las sociedades anónimas deportivas.

(18) Así pues, es necesario determinar si las exenciones fiscales pueden favorecer a determinadas empresas en relación con otras comparables, habida cuenta del objetivo perseguido por el régimen del impuesto sobre sociedades, es decir, obtener ingresos sobre la base de los beneficios de la sociedad. Los clubes, aunque estén considerados entidades sin ánimo de lucro, y las sociedades anónimas, que realizan una actividad económica idéntica, están en una situación comparable: existe un mercado para la actividad en cuestión, la actividad está organizada según los principios de mercado y debe ser considerada económica ([1]). Los cuatro clubes participan en actividades económicas de la misma manera que las sociedades anónimas que son sus competidores. A efectos de la evaluación de la ayuda estatal, lo decisivo no es si una determinada actividad está organizada por unos como actividad «lucrativa» y por otros como actividad «sin ánimo de lucro». El factor determinante es si el apoyo se refiere a una actividad que está sujeta a la competencia en el mercado. Cualquier entidad que ejerza una actividad económica debe considerarse empresa, con independencia del estatuto jurídico de dicha entidad, sea o no sea una organización con ánimo de lucro, o de su modo de financiación ([2]). En cualquier caso, los clubes de fútbol no tienen prohibido legalmente obtener beneficios y, de hecho, los obtienen. En consecuencia, los clubes y las sociedades anónimas reciben un trato diferente sin justificación aparente.

(19) Este trato diferente puede estar justificado por la naturaleza y la estructura general del sistema fiscal ([3]). No obstante, corresponde al Estado miembro que ha introducido tal diferenciación entre empresas en materia de cargas impositivas demostrar que está efectivamente justificada por la naturaleza y la estructura del sistema de que se trate ([4]).

(20) España alega que tales diferencias fiscales pueden estar justificadas por la naturaleza y la estructura general del sistema fiscal, con arreglo al punto 25 de la Comunicación relativa a la aplicación de las normas sobre ayudas estatales a las medidas relacionadas con la fiscalidad directa de las empresas. El tipo impositivo menor estaría justificado, ya que los clubes beneficiarios son entidades sin ánimo de lucro que no generan ni pueden generar beneficios.

(21) No obstante, este argumento se resiente por el hecho de que los clubes sí obtienen beneficios. Por otra parte, el objetivo perseguido por el régimen general es la imposición de los beneficios de la empresa. Hasta el momento, España no ha podido demostrar que la diferencia en cuanto a la imposición de los beneficios pueda ser coherente con este objetivo del sistema de referencia.

(22) España alega, además, que la diferencia está justificada ya que los clubes, a diferencia de las sociedades anónimas en relación con sus accionistas, no tienen por objetivo distribuir beneficios a los miembros del club. No obstante, si el sistema impositivo de los beneficios de la empresa permitiera distinguir dicha imposición en función de si estos beneficios se distribuyen a los propietarios o se mantienen en la entidad, abogaría por un tipo impositivo sobre los beneficios menor porque los beneficios distribuidos estarán sujetos a imposición otra vez a nivel de los accionistas beneficiarios ([5]). En otras palabras, si así fuera, estaría justificado un tipo impositivo superior para los clubes. En consecuencia, una diferenciación como la del presente asunto se basa en objetivos que no son los perseguidos por el régimen general, y la medida en cuestión debe considerarse selectiva.

(23) En cualquier caso, un elemento agravante en el asunto que nos ocupa es que la Ley del Deporte de 1990 señalaba un número limitado de beneficiarios. La ley introdujo una distinción permanente basada en los resultados económicos de los clubes en 1990, sin dar opción a que se pudieran incorporar otros clubes que no fueran esos cuatro, y sin ninguna revisión posible de esa situación que admita con el tiempo también a otros clubes que gozan de una buena gestión. Los cuatro clubes pudieron beneficiarse de esta distinción hace décadas, en un momento determinado. Si España considerara que la entidad jurídica de club no era adecuada para las competiciones profesionales, se habría cambiado el sistema para todos los clubes, o se habría permitido revisar periódicamente la situación. Si el éxito económico durante cuatro temporadas consecutivas justificaba conservar la forma jurídica de club, sería razonable que las sociedades anónimas deportivas pudieran volver a ser clubes tras cuatro temporadas con éxito.

(24) Por otra parte, en cuanto a los motivos de esta diferencia de trato, las diferencias en los resultados económicos no pueden justificar distinto trato por lo que se refiere a la forma obligatoria de organización o la falta de opciones al respecto. Las pérdidas no son intrínsecas a una forma

([1]) Conclusiones del Abogado General en el asunto C-205/03, Federación Española de Empresas de Tecnología Sanitaria (FENIN)/Comisión, apartados 13 y 31.

([2]) Asunto C-41/90, Höfner y Elser/Macrotron GmbH, Rec. 1991, p. I-1979, apartado 21.

([3]) Véase el punto 25 de la Comunicación de la Comisión relativa a la aplicación de las normas sobre ayudas estatales a las medidas relacionadas con la fiscalidad directa de las empresas (DO C 384 de 10.12.1998, p. 3).

([4]) Sentencia del Tribunal General de 4.9.2009 en el asunto T-211/05, *República Italiana/Comisión,* apartado 125.

([5]) Esto es acorde con la lógica expuesta en la tercera frase del punto 25 de la Comunicación de la Comisión relativa a la aplicación de las normas sobre ayudas estatales a las medidas relacionadas con la fiscalidad directa de las empresas (véase la nota a pie de página 6), a la que remite España: «Además, por la naturaleza del sistema fiscal también se puede justificar el hecho de que en el caso de ciertas cooperativas que distribuyen a sus miembros todos sus beneficios (el subrayado es nuestro) estos no estén gravados como tales, si se exige el pago del impuesto a sus miembros».

determinada de organización. Así pues, los resultados profesionales no son un criterio objetivo que justifique diferentes bases imponibles o que impongan determinadas formas de sociedad por un periodo indefinido.

(25) Por consiguiente, negar la libre elección en cuanto a la forma de sociedad a todos los demás clubes, que por la razón que fuera no reunían las condiciones en un determinado momento, y sin posibilidad alguna de revisar o revertir la situación, no forma parte de la lógica de ningún sistema fiscal y equivale a una ventaja selectiva para determinados clubes ([1]).

(26) Un vistazo rápido a las formas de sociedad de los equipos deportivos en otros Estados miembros muestra que en la UE los clubes de fútbol no están estructurados en modo alguno de manera uniforme o similar. Algunos ordenamientos jurídicos no prevén estructuras específicas relevantes para los clubes deportivos. Como consecuencia, los clubes de fútbol que juegan en alguna de esas jurisdicciones pueden adoptar cualquier estructura existente con arreglo a su legislación (Austria, Bélgica, Bulgaria, Chipre, República Checa, Estonia, Alemania, Hungría, Irlanda, Lituania, Letonia, Países Bajos, Polonia, Eslovaquia, Eslovenia, y Reino Unido). Otros países establecen estructuras jurídicas específicas para el deporte y hacen obligatoria la adopción de las mismas, al menos para quienes quieran participar en la primera división del campeonato de liga de fútbol (Dinamarca, Finlandia, Francia, Grecia, Italia, Portugal, Rumanía, y Suecia). Sin embargo, en general los clubes pueden elegir entre diferentes formas específicas de sociedad deportiva (club o sociedad anónima), o si no (Finlandia, Francia, Italia), constituirse en sociedad anónima es obligatorio para todos sin excepción ([2]).

(27) En cuanto a Navarra y el País Vasco, España señala la autonomía de estas regiones en materia fiscal. Ahora bien, la Ley del Deporte fue adoptada para toda España. Lo que se está examinando no son las distintas competencias regionales en materia de legislación fiscal, o el carácter selectivo de un régimen fiscal regional, sino el carácter selectivo de disposiciones nacionales del Derecho de sociedades en lo referente a las entidades de fútbol profesional.

(28) Como resultado, las cuatro entidades deportivas en cuestión disfrutan de un tipo impositivo preferente que no está justificado por la naturaleza del sistema fiscal. Esta ventaja deriva de fondos estatales, puesto que el Estado deja de percibir posibles ingresos fiscales. La ventaja para un club que juega en la primera división de su liga nacional puede además afectar a la competencia y al comercio entre Estados miembros y constituye ayuda de funcionamiento. Estos clubes compiten por estar en las competiciones europeas y participan en los mercados por la comercialización y los derechos televisivos. Los derechos de radiodifusión, la comercialización y los patrocinios son fuentes de ingresos por las que los clubes de la liga de primera división compiten con otros clubes dentro y fuera de su propio país. Cuanto más dinero tienen los clubes para fichar jugadores estrella, más éxito pueden conseguir en las competiciones deportivas, lo que promete más ingresos derivados de las actividades mencionadas. Por otra parte, la estructura de propiedad de los clubes es internacional.

(29) Por tanto, el apoyo financiero estatal que otorga una ventaja a los clubes deportivos profesionales Real Madrid CF, Athletic Club Bilbao, Club Atlético Osasuna (Navarra) y FC Barcelona tendrá con toda probabilidad la capacidad de falsear la competencia y afectar al comercio. Por consiguiente, constituye ayuda estatal a tenor del artículo 107, apartado 1, del TFUE.

3.2. **Compatibilidad de la ayuda**

(30) El artículo 165 del TFUE destaca las características específicas del deporte que debe tener en cuenta la Comisión al abordar asuntos en este sector, ya que el deporte cumple una función educativa, de salud pública, cultural y recreativa. Por otra parte, la importancia económica del deporte no deja de crecer.

(31) La Comisión no ha adoptado directrices sobre la aplicación de las normas sobre ayudas estatales del Tratado a las actividades deportivas mercantiles. España tampoco alega una misión de servicio público de los clubes deportivos profesionales que pudiera evaluarse con arreglo al artículo 106, apartado 2, del TFUE. Por consiguiente, la evaluación debe estar basada directamente en el artículo 107, apartado 3, letra c), del TFUE. Según dicha disposición, una ayuda puede considerarse compatible con el mercado interior si facilita, con arreglo al interés común, el desarrollo de determinadas actividades o de determinadas regiones económicas.

(32) No obstante, la Comisión en este momento duda de que haya un objetivo de interés común que pudiera justificar una ayuda de funcionamiento selectiva a participantes muy poderosos en un sector económico extremadamente competitivo. España tampoco aduce argumentos que respalden la compatibilidad de la ayuda en virtud del artículo 107, apartado 3, letra c), del TFUE.

4. **DECLARACIÓN DE LAS DUDAS DE LA COMISIÓN**

(33) Por consiguiente, la Comisión considera en este momento que España otorga ayuda de funcionamiento mediante un tipo impositivo preferente a los cuatro clubes deportivos (Real Madrid CF, Athletic Club Bilbao, Club Atlético Osasuna (Navarra) y FC Barcelona), que no puede justificarse con arreglo al artículo 107, apartado 3, letra c), ni a ninguna de las normas de aplicación de dicho artículo.

([1]) Este razonamiento es similar al del Tribunal General en su sentencia de 4.9.2009 en el asunto T-211/05, República Italiana/Comisión, apartado 120, que consideró selectiva una ventaja fiscal que únicamente se reconocía a las empresas admitidas a cotización oficial en un mercado regulado durante un breve período, mientras que cualquier otra empresa quedaba excluida de los beneficios de ese régimen ya que no podían cumplir los requisitos para cotizar durante el período cubierto por el régimen de ayudas.

([2]) Fuente: Swiss Institute of Comparative Law, Comparative Study of the legal structures of football clubs and supporter's organisations in 45 European jurisdictions, Lausanne, 2008, encargado por la UEFA.

(34) El importe real de la ayuda desde el año 2001 hasta la fecha todavía está por determinar.

(35) Así pues, la Comisión expresa sus dudas sobre la compatibilidad de esta medida de ayuda con el mercado interior.

Habida cuenta de las consideraciones expuestas, la Comisión, en el marco del procedimiento del artículo 108, apartado 2, del Tratado de Funcionamiento de la Unión Europea, insta a España para que presente sus observaciones y facilite toda la información pertinente para la evaluación de la ayuda en un plazo de un mes a partir de la fecha de recepción de la presente carta. Esto incluye, en particular, información sobre el importe del impuesto sobre sociedades que pagaron o debían pagar los cuatro clubes en cuestión entre los años 2001 y 2012. La Comisión insta a las autoridades españolas para que transmitan inmediatamente una copia de la presente carta al beneficiario potencial de la ayuda.

La Comisión desea recordar a España el efecto suspensivo del artículo 108, apartado 3, del Tratado de Funcionamiento de la Unión Europea y llamar su atención sobre el artículo 14 del Reglamento (CE) nº 659/1999 del Consejo, que prevé que toda ayuda concedida ilegalmente podrá recuperarse de su beneficiario.

Por la presente, la Comisión comunica a España que informará a los interesados mediante la publicación de la presente carta y de un resumen significativo en el *Diario Oficial de la Unión Europea*. Asimismo, informará a los interesados en los Estados miembros de la AELC signatarios del Acuerdo EEE mediante la publicación de una comunicación en el suplemento EEE del citado Diario Oficial y al Órgano de Vigilancia de la AELC mediante copia de la presente carta. Se invitará a todos los interesados mencionados a presentar sus observaciones en un plazo de un mes a partir de la fecha de publicación de la presente carta.'

STATE AID — BELGIUM

State aid SA.20326 (2013/C) (ex 2012/NN) — Payroll tax partial exemption measures for R&D

Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union

(Text with EEA relevance)

(2014/C 69/10)

By means of the letter dated 4 December 2013 reproduced in the authentic language on the pages following this summary, the Commission notified the Kingdom of Belgium of its decision to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union concerning the above-mentioned measure.

Interested parties may submit their comments on the measure in respect of which the Commission is initiating the procedure within one month of the date of publication of this summary and the following letter, to:

European Commission
Directorate-General for Competition
Directorate for State Aid
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Fax (+32 2) 296 12 42

These comments will be communicated to the Kingdom of Belgium. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

PROCEDURE

On 7 October 2011 the Commission began a screening exercise to look into scheme N 649/2005 'Payroll tax partial exemption measures for R&D' (SA.20326 (2011/MX)). The exercise covered both the legal basis and implementation of the scheme. Three beneficiary companies (Movetis NV, Actogenix NV and Zappware NV) were selected for an in-depth investigation. In the light of the Belgian authorities' failure to respond in full to the Commission's inquiries, it was decided on 26 October 2012 to initiate an unlawful aid investigation procedure (SA.20326 (2012/NN)).

DESCRIPTION

The scheme introduces a tax exemption for Young Innovative Companies (YIC). The measure provided for a 50 % exemption from payroll tax (tax deducted at source by an employer from the salaries paid to its employees which is then paid to the state) for businesses that were categorised as YIC and employed scientific personnel.

ASSESSMENT

Examination of the file showed that the legal basis of the scheme did not contain any reference to the eligible categories of research as laid down by Regulation 364/2004. By not adopting the necessary measures to bring the scheme into line with the provisions of the new GBER relating to the size, age and innovative character of the beneficiary companies and by failing to notify either the amendment to the scheme as of March 2009 (the Belgian authorities increased the exemption rate from 50 % to 75 % in March 2009, but did not notify the new rate to the Commission), or its extension as of July 2011, i.e. the date on which the Commission's authorisation decision expired, the Belgian authorities have implemented unlawful aid.

The Commission has found that the Belgian legislation defining the research categories was not amended to include the research categories defined in the European legislation until 2013 [1].

A preliminary investigation into the compatibility of the aid measures was conducted as part of the screening exercise but the information provided by the Belgian authorities was not sufficient to remove the doubts as to their compatibility. These doubts relate to four specific criteria: the relevant legal basis, and the size, the age and the amounts of aid paid to the beneficiary companies.

[1] That amendment was introduced by the Tax and Financial Measures and Measures on Sustainable Development Act adopted on 17 June 2013 and published in the *Moniteur belge* on 28 June 2013.

Regarding the legal basis, as part of the screening exercise the Commission questioned the Belgian authorities about the R&D projects carried out under the scheme and, in particular, about the research category in which they were classified within the meaning of the R&D&I framework. The Belgian authorities were unable to provide a reply confirming that the projects implemented under the scheme belonged to the research categories defined in the R&D&I framework.

The Commission therefore calls on the Belgian authorities in the context of this procedure to submit any information that would indicate the research category to which the projects belong and also information regarding the calculation of the aid intensities following the amendment of the scheme. The Commission calls on the Belgian authorities to confirm that the aid granted did not exceed the individual notification thresholds and that the aid was granted in accordance with the rules on cumulation.

Since the scheme granted aid to Young Innovative Companies, an examination of its compatibility according to point 5.4 of the R&D&I framework on aid to young innovative enterprises was also undertaken. The Commission carried out a preliminary investigation into the scheme in the light of the criteria laid down in the R&D&I framework.

Regarding the size of the eligible companies, during the screening exercise the Commission expressed doubts about the definition of 'small' enterprise applied by the Belgian authorities for the purposes of the scheme. Their definition did not correspond to the definition of 'small' enterprise given in Article 2(2) of Annex I to the GBER. The Commission asked the Belgian authorities in particular about the application of the threshold of 100 persons above which the conditions for qualifying as a small enterprise were not met; this threshold does not exist in the Community legislation. The Commission therefore calls on the Belgian authorities to provide information on the size of the beneficiary companies and, in particular, on any aid granted to companies employing more than 50 staff.

Regarding the criterion of the age of companies, during the screening exercise the Commission expressed doubts as to the Belgian authorities' compliance under the scheme with the criterion of the age of the company in order to qualify as a young innovative enterprise within the meaning of the R&D&I framework. The Commission therefore calls on the Belgian authorities to provide information on the age of the beneficiary companies and, in particular, on any aid granted to companies that were more than six years old (and less than ten).

Regarding the amount of the aid, during the screening exercise the Belgian authorities sent a list of the companies that received more than EUR 200 000 in aid in 2009 and 2010. During screening the Commission expressed doubts as to the Belgian authorities' compliance under the scheme with the aid ceiling laid down in the R&D&I framework, as two of the three companies, Movetis and Actogenix, had exceeded the threshold of one million euros over this two-year period. Moreover, the increase in the rate of the exemption granted to the companies by the 2009 legislative amendment resulted in an increase in the amount of aid available to companies qualifying for the scheme.

The Commission therefore calls on the Belgian authorities to check the amounts of aid paid to all beneficiary companies under the scheme and, in particular, any aid in excess of one million euros granted to other beneficiary companies under the scheme, and to send it all the necessary information that will enable it to assess compliance with the thresholds laid down by the R&D&I framework.

In accordance with Article 14 of Council Regulation (EC) No 659/1999, any unlawful aid may be subject to recovery from the beneficiary.

TEXT OF LETTER

'Par la présente, la Commission a l'honneur d'informer le Royaume de Belgique qu'après avoir examiné les informations fournies par vos autorités sur la mesure citée en objet, elle a décidé d'ouvrir la procédure prévue à l'article 108, paragraphe 2, du traité sur le fonctionnement de l'Union européenne (ci-après «TFUE»).

1. **PROCÉDURE**

(1) Par lettre du 7 octobre 2011, la Commission européenne a informé les autorités belges de l'ouverture d'un exercice de contrôle du Régime N 649/2005 – Mesures de dispense partielle de précompte professionnel en faveur de la R&D (ci-après «le Régime»). Cet exercice, effectué annuellement par les services de la Commission a pour objectif de vérifier la base juridique et la mise en œuvre effective par les Etats membres d'un échantillon de mesures d'aides.

(2) Par courriers des 7 octobre 2011, 2 février 2012 et 6 janvier 2013, la Commission a demandé des informations sur la mise en œuvre du Régime susmentionné. Elle a notamment invité les autorités belges à leur communiquer la liste des entreprises ayant bénéficié d'une aide de plus de 200 000 euros en 2009 et 2010. Dans son courrier du 2 février 2012, la Commission a informé les autorités belges de la sélection de trois bénéficiaires, sur les douze mentionnés, pour un examen approfondi des montants d'aides octroyés. Ces entreprises sont:

(a) Movetis NV, Veedijk, 2300, Turnhout, Belgique

(b) Actogenix NV, Technologiepark 4, 9052 Zwijnaarde, Belgique

(c) Zappware NV, Via Media 4, 3500 Hasselt, Belgique

(3) Les autorités belges ont répondu par courriers des 17 novembre 2011, 2 mai, 4 juin 2012 et 23 mai 2013.

(4) Une réunion a également été organisée entre les services de la Commission et les autorités belges le 13 juin 2013.

2. **DESCRIPTION DE LA MESURE**

2.1. **Objectif de la mesure**

(5) Le Régime N 649/2005 – Mesures de dispense partielle de précompte professionnel en faveur de la R&D a été approuvé par la décision de la Commission du 4 juillet 2006 (ci-après «la Décision»).

(6) Le Régime autorisé prévoyait la mise en place de trois types de mesures:

(a) La Mesure 1, intitulée «*dispense pour l'emploi de chercheurs affectés à des projets de recherche menés en partenariat avec des universités ou hautes écoles*», prévoyait une dispense de précompte professionnel de 50 % en faveur des entreprises payant les rémunérations des chercheurs affectés à des projets de recherche menés en exécution de conventions de partenariat conclues avec des universités ou hautes écoles établies dans l'Espace économique européen ([1]). Le budget de la mesure était estimé à 34 millions d'euros.

(b) La Mesure 2, intitulée «*dispense pour l'emploi de chercheurs détenant certains diplômes*», prévoyait une dispense de précompte professionnel de 25 % en faveur des entreprises payant les rémunérations des chercheurs détenant certains diplômes scientifiques ([2]). Le budget de la mesure était estimé à 62 millions d'euros.

(c) La Mesure 3, intitulée «*dispense en faveur des Young Innovative Companies*», prévoyait une dispense de 50 % de précompte professionnel en faveur des entreprises relevant de la catégorie des «*Young Innovative Companies (YIC)*» ([3]) et payant les rémunérations de leur personnel scientifique. Le budget de la mesure était estimé à 20 millions d'euros.

(7) Le précompte professionnel est un impôt, retenu à la source par tout employeur sur les revenus qu'il attribue à ses employés, et reversé à l'État. Les trois mesures dispensent les entreprises en cause de reverser une partie du précompte professionnel retenu sur certaines rémunérations des chercheurs identifiés aux points (**6a**) et (**6b**) et du personnel scientifique identifié au point (**6c**) ci-dessus.

(8) La Commission a considéré, dans sa Décision du 4 juillet 2006, que les mesures 1 et 2 étaient des mesures générales et ne constituaient donc pas des aides d'État au sens de l'article 107, paragraphe 1, du TFUE.

(9) En revanche, la Mesure 3 en faveur des *Young Innovative Companies* a été qualifiée d'aide d'État au sens de cet article, et, après examen, considérée comme compatible avec le marché intérieur, à la lumière des critères du Règlement (CE) n° 70/2001, tel que modifié par le Règlement (CE) n°364/2004 ([4]).

(10) L'article 5 bis de ce règlement précise les règles applicables aux aides à la recherche et au développement. La Mesure 3 a été qualifiée d'aide à des projets de R&D, dont les coûts éligibles sont les dépenses de personnel employé pour un projet de recherche ([5]). Le seuil d'intensité d'aide retenu, 35 %, est celui applicable aux projets de développement préconcurrentiel ([6]).

2.2. **La mise en œuvre de la mesure et le résultat de l'exercice de contrôle**

(11) L'instruction menée a mis en lumière des irrégularités concernant les dispositions du droit national portant sur la mesure et la mise en œuvre de la mesure.

([1]) Voir le point 5 de la Décision du 4 juillet 2006.

([2]) Voir le point 8 de la Décision du 4 juillet 2006.

([3]) Voir le point 12 de la Décision du 4 juillet 2006.

([4]) Règlement (CE) n°701/2001 de la Commission du 12 janvier 2001 concernant l'application des articles 87 et 88 du Traité CE aux aides d'Etat en faveur des petites et moyennes entreprises, JO L 10 du 10.1.2001

([5]) Voir point 26 de la Décision du 4 juillet 2006.

([6]) Voir point 3(c) de l'article 5 bis du règlement n°364/2004 susmentionné

2.2.1. *Examen des dispositions du droit national*

(12) Au cours de l'exercice de contrôle, les autorités belges ont été invitées à communiquer une copie des dispositions portant sur le Régime, ainsi qu'une copie des textes de droit dérivé mettant en œuvre ce Régime.

(13) Les autorités belges ont indiqué que le Régime est compris dans les articles 95/1, 275/3 et des Annexes III bis et III ter du Code des impôts sur les revenus de 1992.

(14) L'Annexe III ter du CIR 1992 prévoit, à fins de vérification du respect des coûts éligibles, que les entreprises concernées doivent apporter «*la preuve que la personne concernée est bien, selon le cas, soit un chercheur, soit un technicien de recherche, soit un gestionnaire de projets de recherche et de développement*» (Point III (e)).

(i) Absence d'adoption des modalités de vérification des catégories de personnels bénéficiant de l'exemption

(15) Comme indiqué au point (28) de la Décision de la Commission, il était prévu, en termes de contrôle, que les bénéficiaires devaient notamment tenir à la disposition du service public fédéral des finances la preuve que les travailleurs concernés sont bien selon le cas soit un chercheur, soit un technicien de recherche, soit un gestionnaire de projet de R&D, et sont bien affectés à la réalisation d'un projet de recherche.

(16) L'examen des dispositions de droit national au cours de l'exercice de contrôle a permis de constater qu'elles font mention aux catégories de personnel pouvant bénéficier de l'exemption, mais ne précisent pas les modalités de vérification, par l'administration fiscale, de l'affectation des personnels pouvant bénéficier de l'exemption de précompte, à un programme de R&D.

(ii) Absence de mention des catégories de recherche

(17) La Commission a, au cours de l'exercice de contrôle, souhaité vérifier que les projets aidés au titre de la mesure respectaient bien les catégories de recherches prévues par la réglementation communautaire.

(18) En effet, comme mentionné au point (25) de la Décision de la Commission, les autorités belges s'étaient engagées à faire mention explicite dans les documents administratifs mettant en œuvre le Régime d'une référence aux définitions des catégories de recherche décrites à l'article 2, points h), i) et j) du Règlement (CE) N° 364/2004 et ce, afin de garantir la conformité des programmes aidés avec les stades de R&D définis dans ce texte ([1]).

(19) L'examen des dispositions du droit national, au cours de l'exercice de contrôle, a permis de constater que celles-ci n'ont fait aucune référence aux catégories de recherches telles que prévues par la réglementation communautaire.

(20) En effet, la législation belge en matière de définition des catégories de recherche, à savoir les articles 95/1, 275/3 et des Annexes III bis et III ter du Code des impôts, n'a été modifiée qu'en 2013, afin de reprendre les définitions des catégories de recherche de la règlementation européenne ([2]).

(21) La Commission constate que la législation belge est actuellement alignée à la réglementation européenne en matière de catégorisation des types de recherche. Toute de même, la Commission note que pour la période entre la date de l'approbation du Régime le 4 juillet 2006 et l'adoption de la législation en 2013, la catégorisation des types de recherches n'avait pas été prévue.

(iii) Absence de modification du Régime pour le mettre en conformité avec les mesures utiles proposés par la Commission

(22) Suite à l'entrée en vigueur de l'Encadrement communautaire des aides d'Etat à la recherche, au développement et à l'innovation (ci-après« Encadrement R&D&I») ([3]), la Belgique a accepté les mesures utiles proposées par la Commission, et s'est engagée à mettre ses régimes existants d'aide à la R&D en conformité avec cet encadrement avant 1 janvier 2008 ([4]).

(23) Il semble que la Belgique n'a pas respecté son engagement de mettre le Régime en conformité avec l'encadrement R&D&I avant 1 janvier 2008.

(iv) Absence de notification de la modification du taux d'exemption de précompte professionnel

(24) L'examen des textes a également révélé que la loi du 27 mars 2009 de relance économique, entrée en vigueur le 17 avril 2009, a procédé à une augmentation de 50 à 75 % de la réduction fiscale applicable au précompte professionnel en faveur des *Young Innovative Companies*. De la même manière, la loi 17 juin 2013 portant des dispositions fiscales et financières et des dispositions relatives au développement durable, a procédé à une augmentation de 75 à 80 % de ladite réduction fiscale.

(25) Cette modification du Régime n'a pas été notifiée à la Commission.

2.2.2. *Durée du Régime*

(26) Le paragraphe 16 de la Décision de la Commission précise que «l'arrêté royal d'exécution limitera la durée initiale du régime à cinq ans. Il prévoira une évaluation à cette échéance qui, en cas d'impact positif, permettra de reconduire la mesure pour un terme identique de cinq ans». La Mesure en faveur des *Young Innovative Companies* aurait dû arriver à échéance le 4 juillet 2011.

(27) Les autorités belges ont indiqué que l'arrêté royal mettant fin au Régime n'avait pas été adopté. Le Régime est donc toujours en vigueur. Sa reconduction à compter du 4 juillet 2011 n'a pas été notifiée à la Commission.

([1]) Les autorités belges s'étaient, notamment, particulièrement engagées à mentionner le fait que les prototypes développés dans le cadre des programmes de recherche aidés n'avaient pas vocation à être commercialisés (Courrier du 16 mai 2006 enregistré le 22 mai 2006).

([2]) Cette modification a eu lieu par la Loi portant des dispositions fiscales et financières et des dispositions relatives au développement durable, adoptée le 17 juin 2013 et publiée au Moniteur belge du 28 juin 2013.

([3]) JO C 323 du 30.12.2006, p. 1

([4]) Lettre du Gouvernement de la Région Bruxelles-Capitale du 22 février 2008, lettre du Gouvernement de la Région wallonne 17 mars 2008 et lettre du Gouvernement de la Région flamande 3 juillet 2007.

3. POSITION DES AUTORITÉS BELGES

(28) Au cours de la procédure, les autorités belges ont reconnu n'avoir, ni modifié la base juridique pour y inclure une référence aux catégories de recherche, ni notifié la modification du Régime, considérant que celle-ci avait été effectuée dans l'esprit de la Décision du 4 juillet 2006, ni sa prolongation à compter du 4 juillet 2011.

(29) En outre, si les autorités belges ont bien produit des informations relatives aux entreprises sélectionnées dans l'échantillon soumis à un examen approfondi, elles n'ont en revanche pas apporté d'explications convaincantes sur la mise en œuvre de la base juridique du Régime, ainsi que sur sa conformité aux dispositions du nouveau règlement n°800/2008 du 6 août 2008 déclarant certaines catégories d'aides compatibles avec le marché commun en application des articles 87 et 88 du traité («Règlement général d'exemption par catégories ou RGEC)» ([1]).

4. ANALYSE

4.1. Existence d'une aide d'État au sens de l'article 107, paragraphe 1, du TFUE

(30) Selon l'article 107, paragraphe 1, du TFUE, sont «*incompatibles avec le marché intérieur, dans la mesure où elles affectent les échanges entre États membres, les aides accordées par les États ou au moyen de ressources d'État, sous quelque forme que ce soit, qui faussent ou menacent de fausser la concurrence en favorisant certaines entreprises ou certaines productions*».

(31) La qualification d'une mesure nationale en tant qu'aide d'État suppose donc que les conditions cumulatives suivantes soient remplies, à savoir: (i) que la mesure en question confère un avantage économique à son bénéficiaire (ii) que cet avantage ait une origine étatique (iii) que cet avantage soit sélectif et (iv) que la mesure en cause fausse ou menace de fausser la concurrence et soit susceptible d'affecter les échanges entre États membres.

(32) La dispense en faveur des *Young Innovative Companies* constitue un avantage sélectif dans la mesure où elle ne vise que les entreprises répondant à la définition de *Young Innovative Company*. Cet avantage sélectif étant fiancé au moyen des ressources de l'Etat, a potentiellement un impact sur la concurrence et sur les échanges commerciaux entre Etats membres.

(33) Il convient de noter que la qualification d'aide du Régime en faveur des *Young Innovative Companies* a été reconnue dans la Décision de la Commission du 4 juillet 2006. ([2]) Cette qualification d'aide du Régime en faveur des *Young Innovative Companies* n'a pas été contestée par les autorités belges dans le cadre de l'exercice de contrôle.

4.2. Légalité de l'aide

(34) A la lumière des éléments développés aux points (**15**) à (**29**) ci-dessus, la Commission considère la Belgique a mis en œuvre des aides illégales.

4.3. Analyse de compatibilité

4.3.1. *Base de l'analyse de la compatibilité de l'aide*

(35) Dans un premier temps, il convient d'analyser la compatibilité du Régime avec le marché intérieur à la lumière du Règlement (CE) n° 70/2001.

(36) Étant donné qu'il s'agit d'un régime existant d'aide à la R&D et que la Belgique s'est engagée à mettre de tels régimes en conformité avec l'encadrement communautaire des aides d'état à la recherche, au développement et à l'innovation à partir du 1 janvier 2008, il est nécessaire de apprécier la compatibilité du Régime à partir de cette date à la lumière de cet encadrement.

(37) En outre, comme le Règlement (CE) n° 70/2001 a été remplacé par le Règlement (CE) n° 800/2008, il convient encore de vérifier si le Régime remplit les conditions pour l'exemption par catégories sur base de ce dernier règlement. Ceci est pertinent tant pour la période d'après l'entrée en vigueur du Règlement (CE) n° 800/2008 le 29 aout 2008, aussi comme pour la période d'auparavant, étant donné que l'article 44, paragraphe 1, prévoit que le règlement s'applique aux aides individuelles accordées avant son entrée en vigueur, si elles remplissent toutes les conditions qu'il prévoit, à l'exception de l'article 9.

4.3.2. *Compatibilité de l'aide sur base du Règlement (CE) n° 70/2001*

(38) Tel qu'indiqué aux les points **(20)** et **(21)**, les autorités belges n'ont pas adopté pour la période d'entre l'adoption du Régime par la Décision du 4 juillet 2006 et la date d'expiration du Règlement (CE) n° 70/2001, à savoir le 31 décembre 2008, des mesures afin d'adapter la législation nationale aux définitions des catégories de recherches prévues dans le Règlement (CE) n° 70/2001.

(39) Vu ces éléments, la Commission a des doutes sur la compatibilité du Régime avec le marché intérieur sur base du Règlement (CE) n° 70/2001.

4.3.3. *Compatibilité sur base de l'encadrement R&D&I*

(40) Il convient d'examiner donc la compatibilité du Régime sur le fondement des dispositions relatives aux aides en faveur des projets de R&D (point 5.1 de l'Encadrement R&D&I) et sur le fondement des dispositions relatives aux aides aux jeunes entreprises innovantes (point 5.4 de l'Encadrement R&D&I), le Régime semblant s'adresser à cette catégorie spécifique d'entreprises.

A. *Aides en faveur des projets de R&D (point 5.1 de l'Encadrement R&D&I)*

(41) Le Régime ayant été approuvé sur la base des critères du Règlement n°70/2001 relatifs aux aides à la recherche et au développement, la Commission a procédé à un examen préliminaire de compatibilité du Régime sur le fondement des dispositions du point 5.1 de l'Encadrement R&D&I relatives aux aides en faveur des projets de R&D.

(42) Le point 5.1 de l'Encadrement R&D&I énonce les critères à respecter afin que les aides en faveur des projets de R&D puissent être déclarées compatibles avec le marché intérieur.

([1]) JO L 214 du 9 août 2008, p. 3
([2]) Voir point 21 de la Décision du 4 juillet 2006

(a) Le point 5.1.1 précise que «*le volet subventionné du projet de recherche doit relever intégralement d'une ou plusieurs catégories de recherche suivantes: recherche fondamentale, recherche industrielle, développement expérimental*»;

(b) Le point 5.1.2 présente les montants d'intensité de base des aides (25 % pour le développement expérimental), montants qui peuvent être majorés dans certains cas, notamment lorsque l'aide est destinée à des PME (point 5.1.3 (a));

(c) Le point 5.1.4 détaille les coûts admissibles;

(d) Le point 5.1.6 contient des dispositions spécifiques relatives aux mesures fiscales;

(e) Les points 7.1 et 8 contiennent des dispositions relatives aux seuils de notification individuels et au respect des règles de cumul.

(43) Au cours de l'exercice de contrôle, la Commission a interrogé les autorités belges sur les projets de R&D effectués dans le cadre du Régime et plus particulièrement sur la catégorie de recherche au sens de l'Encadrement R&D&I dans laquelle ils s'inscrivent. Les autorités belges n'ont pas apporté de réponse permettant de confirmer que les projets mis en œuvre dans le cadre du Régime s'inscrivent bien dans les catégories de recherches prévues par l'Encadrement.

(44) La Commission a également émis des doutes sur le respect du plafond d'intensité d'aide prévu par l'Encadrement R&D&I à la suite de la modification du taux de dispense en 2009. Elle a donc interrogé les autorités belges sur les modalités de calcul des intensités d'aides. Ces dernières n'ont pas apporté de réponse permettant de confirmer que l'augmentation du taux de dispense de précompte professionnel respecte les plafonds d'intensité d'aide prévus dans l'encadrement R&D&I.

(45) La Commission invite donc les autorités belges, dans le cadre de la présente procédure, à transmettre toute information permettant d'indiquer dans quelle catégorie de recherche s'inscrivent les projets ainsi que toute information sur le calcul des intensités d'aides à la suite de la modification du Régime. Enfin, la Commission invite les autorités belges à confirmer qu'aucune aide accordée n'excédait les seuils de notification individuelle et que les aides ont été accordées dans le respect des règles de cumul.

B. *Aides en faveur des jeunes entreprises innovantes (point 5.4 de l'Encadrement R&D&I)*

(46) Le Régime mettant en œuvre des aides en faveur des *Young Innovative Companies*, l'examen de sa compatibilité a aussi été envisagé plus particulièrement sur le fondement du point 5.4 de l'Encadrement R&D&I relatif aux aides en faveur des jeunes entreprises innovantes. La Commission a procédé à un examen préliminaire du Régime à la lumière des critères prévus par l'Encadrement.

(47) La Décision du 4 juillet 2006, reprenant les dispositions de l'article 275/3 du Code des Impôts 1992, définit, en son point (12), la *Young Innovative Company*. Elle doit remplir simultanément les conditions suivantes:

(a) elle est une petite société (au sens de l'article 15, paragraphe 1, du code des sociétés);

(b) elle est constituée depuis moins de dix ans, au 1er janvier de l'année d'attribution de la dispense de versement de précompte professionnel;

(c) elle n'est pas constituée dans le cadre d'une concentration, d'une restructuration, d'une extension d'activité préexistante ou d'une reprise de telles activités;

(d) elle a effectué des dépenses de R&D représentant au moins 15 % du montant total des frais de la période imposable précédente.

(i) La qualification de «petite entreprise»

(48) Le point 5.4 (a) de l'Encadrement R&D&I dispose que «*le bénéficiaire est une petite entreprise (…)*».

(49) L'article 15, paragraphe 1, du Code des sociétés définit les petites sociétés comme «*les sociétés dotées de la personnalité juridique qui, pour le dernier {et l'avant-dernier} exercice clôturé, ne dépassent pas plus d'une des limites suivantes:*

— nombre de travailleurs occupés, en moyenne annuelle: 50

— chiffre d'affaires annuel, hors taxe sur la valeur ajoutée: 7 300 000 euros

— total du bilan: 3 650 000 sauf si le nombre de travailleurs occupés, en moyenne annuelle dépasse 100'.

(50) Les autorités belges ont confirmé que, pour pouvoir prétendre à la qualification de «petite société», les entreprises doivent remplir deux des trois critères mentionnés *supra*.

(51) Lors de l'exercice de contrôle, la Commission a émis des doutes sur la qualification de «petite» entreprise retenue par les autorités belges dans l'application du Régime. En effet, celle-ci ne correspond pas à la définition de «petite entreprise» qui figure à l'article 2, paragraphe de 2 de l'annexe I du RGEC [1]. La Commission a plus particulièrement interrogé les autorités belges sur la mise en œuvre du seuil de 100 personnes au-delà duquel les conditions fixées pour la qualification de petite société ne seraient plus remplies, ce seuil n'étant pas prévu par les textes communautaires.

(52) La Commission invite donc les autorités belges à produire des informations sur la taille des entreprises bénéficiaires et plus particulièrement sur l'octroi d'aides à des entreprises qui emploieraient plus de 50 personnes.

(ii) La condition d'âge

(53) Le point 5.4 (a) de l'Encadrement précise que «*le bénéficiaire est une petite entreprise dont la création remonte à moins de six ans avant l'octroi de l'aide*».

(54) Pour pouvoir prétendre à la qualification de *Young Innovative Company*, la Décision du 4 juillet 2006 précise que les entreprises concernées doivent être créées depuis moins de dix ans.

[1] «*Dans la catégorie des PME, une petite entreprise est définie comme une entreprise qui occupe moins de 50 personnes et dont le chiffre d'affaires annuel ou le total du bilan annuel n'excède pas 10 millions d'euros*»

(55) Dans le cadre de l'exercice de contrôle, Commission a émis des doutes sur le respect, par les autorités belges, dans l'application du Régime, de la condition d'âge pour bénéficier de la qualification de jeune entreprise innovante au sens des dispositions de l'Encadrement R&D&I.

(56) La Commission invite donc les autorités belges à produire des informations sur l'âge des entreprises bénéficiaires et plus particulièrement sur l'octroi d'aides à des entreprises qui seraient âgées de plus de six ans (et de moins de dix ans).

(iii) Le montant d'aide

(57) Le point 5.4 (c) de l'Encadrement R&D&I précise que «*l'aide n'excède pas un million d'euros*».

(58) Dans le cadre de l'exercice de contrôle, les autorités belges ont communiqué la liste des entreprises ayant bénéficié d'une aide supérieure à 200 000 euros en 2009 et 2010. Comme indiqué aux point (**2**) parmi les douze entreprises mentionnées, la Commission a sélectionné, à fins d'examen approfondi trois entreprises (Movetis, Actogenix et Zappware). L'examen de ces documents a montré que deux des trois entreprises sélectionnées, Movetis et Actogenix, ont dépassé le seuil d'un million d'euros sur ces deux exercices.

(59) En outre, l'augmentation du taux d'exemption accordé aux entreprises, par la modification législative de 2009, a pour conséquence une augmentation du montant d'aide en faveur des entreprises éligibles au dispositif.

(60) Dans le cadre de l'exercice de contrôle, la Commission a émis des doutes sur le respect, par les autorités belges dans l'application du Régime, du plafond d'aide prévu par l'Encadrement R&D&I.

(61) La Commission invite donc les autorités belges à procéder à une vérification des montants d'aides versés à l'ensemble des entreprises bénéficiaires du régime, plus particulièrement sur l'octroi d'aides supérieures à un million d'euros à d'autres entreprises bénéficiaires au titre de la mise en œuvre du Régime et à lui fournir toutes les informations utiles lui permettant d'apprécier le respect des seuils prévus par l'Encadrement R&D&I.

(62) Sur base des éléments dont dispose la Commission actuellement, les aides versées par la Belgique dans le cadre du Régime semblent incompatible avec le TFUE à la lumière du encadrement R&D&I.

4.3.4. *Compatibilité sur base du Règlement n° 800/2008*

(63) Il convient finalement de déterminer si, à compter du 1er janvier 2009, les aides octroyées étaient en conformité avec les dispositions du nouveau RGEC.

(64) Or l'exercice de contrôle mené par les services de la Commission a révélé que le Régime n'a pas été modifié à fins de mise en conformité avec le nouveau RGEC. Plus précisément, les autorités belges n'ont pas intégré, dans la base juridique du Régime, de référence aux catégories de recherches définies à l'article 30, paragraphes 2, 3 et 4 du RGEC.

4.3.5. *Conclusion sur la compatibilité des aides*

(65) Les mesures nationales constituent un régime d'aides au sens de l'article 107 du TFUE. Toutes, ou au moins une partie des aides octroyées sur bas du Régime ont été octroyées en violation de l'article 108, paragraphe 3, du traité. Les aides semblent incompatibles avec le marché intérieur à la lumière du Règlement (CE) n° 70/2001, du encadrement R&D&I, et du Règlement (CE) n° 800/2008.

4.4. **Quantification et récupération**

(66) Dans la mesure où les doutes de la Commission sur l'existence d'une aide d'Etat incompatible avec le marché intérieur ne seraient pas écartés, en vertu de l'article 14, paragraphe 1, du règlement de procédure, la Commission doit exiger, dans sa décision finale, que la Belgique récupère les aides incompatibles, à moins que la récupération ne soit à l'encontre d'un principe général de droit communautaire.

(67) L'article 15 du règlement de procédure dispose que les pouvoirs de la Commission en matière de récupération de l'aide sont soumis à un délai de prescription de dix ans. Le délai de prescription commence le jour où l'aide illégale est accordée au bénéficiaire, à titre d'aide individuelle ou dans le cadre d'un régime d'aide. Le Régime d'aide ayant été autorisé à compter du 4 juillet 2006, le délai de prescription ne s'applique pas dans le cas présent.

(68) Pour mettre en application une décision de récupération, il est nécessaire de quantifier l'avantage. La Commission ne dispose pas d'informations précises concernant les entreprises ayant bénéficié d'aides potentiellement incompatibles.

(69) Dans le cadre de la présente procédure, la Commission invite les autorités belges à leur fournir les informations relatives aux catégories de recherches dans lesquelles s'inscrivent les projets menés, au calcul des taux d'intensité d'aide tels que prévus au point 5.1 de l'Encadrement R&D&I, ainsi qu'à la taille, l'âge et les montants d'aides perçus par l'ensemble des entreprises bénéficiaires (voir points (**45**), (**52**), (**56**) et (**61**)).

(70) La Commission invite également les parties intéressées à soumettre des observations sur les aspects susmentionnés, dans le contexte de l'ouverture de la procédure formelle d'examen.

5. **CONCLUSION**

(71) Sur la base des éléments mentionnés supra, la Commission a des doutes sur la compatibilité des aides versées dans le cadre du Régime. Pour ce motif, elle a décidé d'ouvrir la procédure formelle d'investigation, conformément à l'article 108, paragraphe 2, du TFUE. La Commission invite les autorités belges à présenter leurs observations et à fournir l'information nécessaire pour l'évaluation de l'aide, et notamment celle demandée aux points (**45**), (**52**), (**56**) et (**61**) dans un délai d'un mois à compter de la date de réception de la présente. A défaut, la Commission adoptera une décision sur la base des éléments dont elle dispose.

La Commission invite les autorités belges à transmettre immédiatement une copie de cette lettre aux bénéficiaires potentiels de l'aide.

La Commission rappelle à la Belgique l'effet suspensif de l'article 108, paragraphe 3, du traité sur le fonctionnement de l'Union européenne et se réfère à l'article 14 du règlement (CE) n° 659/1999 du Conseil qui prévoit que toute aide illégale pourra faire l'objet d'une récupération auprès de son bénéficiaire.

Par la présente, la Commission avise le Royaume de Belgique qu'elle informera les intéressés par la publication de la présente lettre et d'un résumé de celle-ci au *Journal officiel de l'Union européenne*. Elle informera également les intéressés dans les pays de l'AELE signataires de l'accord EEE par la publication d'une communication dans le supplément EEE du Journal officiel, ainsi que l'autorité de surveillance de l'AELE en leur envoyant une copie de la présente. Tous les intéressés susmentionnés seront invités à présenter leurs observations dans un délai d'un mois à compter de la date de cette publication.'

'Met dit schrijven stelt de Commissie het Koninkrijk België ervan in kennis dat zij, na onderzoek van de door uw autoriteiten met betrekking tot de bovengenoemde steunmaatregel verstrekte inlichtingen, heeft besloten de procedure van artikel 108, lid 2, van het Verdrag betreffende de werking van de Europese Unie (hierna "VWEU" genoemd) in te leiden.

1. **PROCEDURE**

(1) Bij brief van 7 oktober 2011 heeft de Europese Commissie de Belgische autoriteiten ervan in kennis gesteld dat een aanvang was gemaakt met een monitoringexercitie van steunmaatregel N 649/2005 – Maatregelen houdende gedeeltelijke vrijstelling van bedrijfsvoorheffing voor O&O (hierna "de regeling" genoemd). Deze exercitie, die elk jaar door de diensten van de Commissie wordt uitgevoerd, heeft ten doel de rechtsgrondslag en de doelmatige tenuitvoerlegging door de lidstaten van een steekproef van steunmaatregelen te toetsen.

(2) Bij brieven van 7 oktober 2011, 2 februari 2012 en 6 januari 2013 heeft de Commissie om inlichtingen verzocht over de tenuitvoerlegging van bovengenoemde regeling. Zij heeft de Belgische autoriteiten met name verzocht haar de lijst mee te delen van de ondernemingen die in 2009 en 2010 meer dan 200 000 EUR aan steun hebben genoten. In haar brief van 2 februari 2012 heeft de Commissie de Belgische autoriteiten ervan in kennis gesteld dat van de twaalf vermelde begunstigden er drie waren geselecteerd voor een grondig onderzoek van de toegekende steunbedragen. Het betrof de volgende ondernemingen:

(a) Movetis NV, Veedijk, 2300, Turnhout, België;

(b) Actogenix NV, Technologiepark 4, 9052 Zwijnaarde, België;

(c) Zappware NV, Via Media 4, 3500 Hasselt, België.

(3) De Belgische autoriteiten hebben geantwoord bij brieven van 17 november 2011, 2 mei 2012, 4 juni 2012 en 23 mei 2013.

(4) Op 13 juni 2013 heeft ook een vergadering plaatsgevonden tussen de diensten van de Commissie en de Belgische autoriteiten.

2. **BESCHRIJVING VAN DE MAATREGEL**

2.1. **Doel van de maatregel**

(5) Steunmaatregel N 649/2005 – Maatregelen houdende gedeeltelijke vrijstelling van bedrijfsvoorheffing voor O&O is goedgekeurd bij besluit van de Commissie van 4 juli 2006 (hierna "het besluit" genoemd).

(6) De goedgekeurde regeling voorzag in de invoering van drie soorten maatregelen:

(a) bij maatregel 1 "*Vrijstelling voor het tewerkstellen van onderzoekers die in samenwerking met universiteiten of hogescholen aan onderzoeksprojecten werken*" werd een vrijstelling van 50 % van de bedrijfsvoorheffing verleend aan ondernemingen die bezoldigingen uitbetalen aan onderzoekers die aan onderzoeksprojecten werken ter uitvoering van samenwerkingsovereenkomsten afgesloten met in de Europese Economische Ruimte gevestigde universiteiten of hogescholen [1]. Het budget van de maatregel was op 34 miljoen EUR geraamd;

(b) bij maatregel 2 "*Vrijstelling voor het tewerkstellen van onderzoekers met bepaalde diploma's*" werd een vrijstelling van 25 % van de bedrijfsvoorheffing verleend aan ondernemingen die bezoldigingen uitbetalen aan onderzoekers die bepaalde wetenschappelijke diploma's hebben [2]. Het budget van de maatregel was op 62 miljoen EUR geraamd;

(c) bij maatregel 3 "*Vrijstelling voor Young Innovative Companies*" werd een vrijstelling van 50 % van de bedrijfsvoorheffing verleend aan vennootschappen die onder de definitie van "*Young Innovative Company (YIC)*" [3] vallen en die bezoldigingen aan hun wetenschappelijk personeel uitbetalen. Het budget van de maatregel was op 20 miljoen EUR geraamd.

(7) De bedrijfsvoorheffing is een belasting die door de werkgever aan de bron wordt ingehouden op de inkomsten die hij aan zijn werknemers toekent en die in de Schatkist wordt gestort. Overeenkomstig de drie bovenvermelde maatregelen zijn de betrokken ondernemingen vrijgesteld van doorstorting van een deel van de bedrijfsvoorheffing welke zij inhouden op bepaalde bezoldigingen van de in de punten 6, onder a) en b), bedoelde onderzoekers en van het in punt 6, onder c), bedoelde wetenschappelijk personeel.

(8) In haar besluit van 4 juli 2006 was de Commissie van oordeel dat de maatregelen 1 en 2 algemene maatregelen waren en dus geen staatssteun in de zin van artikel 107, lid 1, VWEU vormden

(9) Maatregel 3 ten gunste van *Young Innovative Companies* werd daarentegen wel als staatssteun in de zin van bovengenoemde Verdragsbepaling beschouwd, maar werd, na onderzoek, als verenigbaar met de interne markt aangemerkt op basis van de criteria van Verordening (EG) nr. 70/2001, als gewijzigd bij Verordening (EG) nr. 364/2004 [4].

(10) In artikel 5 bis van deze verordening zijn de op de steun voor onderzoek en ontwikkeling toepasselijke voorschriften vastgesteld. Maatregel 3 is bestempeld als steun voor O&O-projecten waarvan de subsidiabele kosten de kosten zijn voor personeel dat zich met een onderzoeksproject bezighoudt [5]. Het in aanmerking genomen steunintensiteitsplafond (35 %) is het plafond dat op preconcurrentiële ontwikkelingsprojecten van toepassing is [6].

[1] Zie punt 5 van het besluit van 4 juli 2006.
[2] Zie punt 8 van het besluit van 4 juli 2006.
[3] Zie punt 12 van het besluit van 4 juli 2006.
[4] Verordening (EG) nr. 701/2001 van de Commissie van 12 januari 2001 betreffende de toepassing van de artikelen 87 en 88 van het EG-Verdrag op staatssteun voor kleine en middelgrote ondernemingen, PB L 10 van 10.1.2001, blz. 33.
[5] Zie punt 26 van het besluit van 4 juli 2006.
[6] Zie artikel 5 bis, lid 3, onder c), van Verordening (EG) nr. 364/2004.

2.2. **Tenuitvoerlegging van de maatregel en uitkomst van de monitoringexercitie**

(11) Het onderzoek heeft onregelmatigheden aan het licht gebracht wat de op de maatregel betrekking hebbende bepalingen van nationaal recht en de tenuitvoerlegging van de maatregel betreft.

2.2.1. *Onderzoek van de bepalingen van nationaal recht*

(12) Tijdens de monitoringexercitie is de Belgische autoriteiten gevraagd een afschrift van de op de regeling betrekking hebbende bepalingen toe te zenden, alsook een afschrift van de teksten van het afgeleide recht waarbij deze regeling ten uitvoer is gelegd.

(13) De Belgische autoriteiten hebben meegedeeld dat de regeling is opgenomen in de artikelen 95/1 en 275/3 en de bijlagen III bis en III ter van het Wetboek van de inkomstenbelastingen 1992 (hierna het "WIB 1992" genoemd).

(14) Overeenkomstig bijlage III ter van het WIB 1992 moeten de betrokken ondernemingen met het oog op de verificatie van de inachtneming van de subsidiabele kosten "*het bewijs* [leveren] *dat de betrokken werknemer, naargelang het geval, onderzoeker, onderzoekstechnicus of projectbeheerder inzake onderzoek en ontwikkeling is*" (punt III (e)).

(i) Ontbreken van procedures en regels voor de controle van personeelscategorieën die vrijstelling genieten

(15) Zoals in punt 28 van het besluit van de Commissie is aangegeven, is, wat de controles betreft, bepaald dat de begunstigden aan de federale overheidsdienst financiën met name het bewijs moeten kunnen overleggen dat de betrokken werknemer al naar gelang het geval een onderzoeker, een onderzoekstechnicus of een projectbeheerder inzake onderzoek en ontwikkeling is en dat hij zich wel degelijk met de verwezenlijking van een onderzoeksproject bezighoudt.

(16) Het in het kader van de monitoringexercitie verrichte onderzoek van de bepalingen van nationaal recht heeft uitgewezen dat daarin weliswaar melding wordt gemaakt van de personeelscategorieën die vrijstelling kunnen genieten, maar dat daarin niet wordt verwezen naar de onderzoekscategorieën, en evenmin wordt gepreciseerd hoe de belastingdiensten nagaan of de personeelsleden die van de vrijstelling van de bedrijfsvoorheffing kunnen profiteren, zich wel degelijk met een O&O-project bezighouden.

(ii) Ontbreken van de vermelding van de onderzoekscategorieën

(17) In het kader van de monitoringexercitie wilde de Commissie nagaan of de met de maatregel ondersteunde projecten wel degelijk onder de in de EU-regelgeving vastgelegde onderzoekscategorieën vielen.

(18) Zoals in punt 25 van het besluit van de Commissie is vermeld, hadden de Belgische autoriteiten zich er immers toe verbonden in de administratieve documenten met betrekking tot de uitvoering van de regeling een uitdrukkelijke verwijzing op te nemen naar de definities van de onderzoekscategorieën zoals die in artikel 2, onder h), i) en j), van Verordening (EG) nr. 364/2004 zijn omschreven om te garanderen dat de gesteunde programma's met de in deze wetgevingstekst gedefinieerde O&O-fasen in overeenstemming zijn [1].

(19) Uit het in het kader van de monitoringexercitie verrichte onderzoek van de bepalingen van nationaal recht is gebleken dat daarin niet wordt verwezen naar de onderzoekscategorieën zoals die in de EU-regelgeving zijn vastgelegd.

(20) De Belgische wetgeving waarin de onderzoekscategorieën worden gedefinieerd, namelijk de artikelen 95/1 en 275/3 en de bijlagen III bis en III ter van het WIB 1992, is immers pas in 2013 gewijzigd om er de definities van de onderzoekscategorieën vervat in de Europese regelgeving in op te nemen [2].

(21) De Commissie stelt vast dat de Belgische wetgeving thans met de Europese regelgeving in overeenstemming is gebracht wat de indeling in onderzoekscategorieën betreft. Zij merkt evenwel op dat er in de periode tussen de goedkeuring van de regeling op 4 juli 2006 en de aanneming van de wetgeving in 2013 geen indeling in onderzoekscategorieën bestond.

(iii) Geen wijziging van de regeling om deze met de door de Commissie voorgestelde dienstige maatregelen in overeenstemming te brengen

(22) Na de inwerkingtreding van de communautaire kaderregeling inzake staatssteun voor onderzoek, ontwikkeling en innovatie (hierna "het O&O&I-steunkader" genoemd) [3] heeft België met de door de Commissie voorgestelde dienstige maatregelen ingestemd en zich ertoe verbonden zijn bestaande O&O-steunregelingen uiterlijk op 1 januari 2008 met dit steunkader in overeenstemming te brengen [4].

(23) Het lijkt erop dat België zijn verbintenis om de regeling vóór 1 januari 2008 met het O&O&I-steunkader in overeenstemming te brengen, niet is nagekomen.

(iv) Niet-kennisgeving van de wijziging van het percentage van de vrijstelling van de bedrijfsvoorheffing

(24) Uit onderzoek van de teksten is tevens gebleken dat het voor *Young Innovative Companies* geldende percentage van de vrijstelling van de bedrijfsvoorheffing krachtens de economische herstelwet van 27 maart 2009, die op 17 april 2009 in werking is getreden, is verhoogd van 50 tot 75 %. Dit percentage is vervolgens verder opgetrokken van 75 tot 80 % bij de wet van 17 juni 2013 houdende fiscale en financiële bepalingen en bepalingen betreffende de duurzame ontwikkeling.

(25) Deze wijziging van de regeling is niet bij de Commissie aangemeld.

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[1] De Belgische autoriteiten hadden meer in het bijzonder toegezegd te zullen vermelden dat de in het kader van de ondersteunde onderzoeksprogramma's ontwikkelde prototypes niet voor commerciële doeleinden mochten worden gebruikt (brief van 16 mei 2006, geregistreerd op 22 mei 2006).

[2] Deze wijziging is aangebracht bij de wet houdende fiscale en financiële bepalingen en bepalingen betreffende de duurzame ontwikkeling, aangenomen op 17 juni 2013 en bekendgemaakt in het Belgisch Staatsblad van 28 juni 2013.

[3] PB C 323 van 30.12.2006, blz. 1.

[4] Brief van de Brusselse Hoofdstedelijke Regering van 22 februari 2008, brief van de Waalse Regering van 17 maart 2008 en brief van de Vlaamse Regering van 3 juli 2007.

2.2.2. *Looptijd van de regeling*

(26) In punt 16 van het besluit van de Commissie is het volgende gepreciseerd: "De aanvankelijke duur van de regeling zal krachtens het koninklijk besluit tot uitvoering ervan worden beperkt tot 5 jaar. Na afloop van die periode zal de regeling worden geëvalueerd en ingeval de maatregel positieve gevolgen heeft, kan hij worden verlengd met een nieuwe termijn van 5 jaar". De maatregel ten voordele van *Young Innovative Companies* had op 4 juli 2011 moeten aflopen.

(27) De Belgische autoriteiten hebben aangestipt dat het koninklijk besluit dat aan de regeling een einde maakt, niet is vastgesteld. De regeling is derhalve nog steeds van kracht. De verlenging ervan vanaf 4 juli 2011 is niet bij de Commissie aangemeld.

3. STANDPUNT VAN DE BELGISCHE AUTORITEITEN

(28) In de loop van de procedure hebben de Belgische autoriteiten erkend noch de rechtsgrondslag te hebben gewijzigd om er een verwijzing naar de onderzoekscategorieën in op te nemen, noch de wijziging in de regeling te hebben aangemeld (omdat zij ervan uitgingen dat deze spoorde met de geest van het besluit van 4 juli 2006), noch de verlenging ervan vanaf 4 juli 2011 te hebben meegedeeld.

(29) Bovendien hebben de Belgische autoriteiten weliswaar informatie verstrekt over de geselecteerde ondernemingen die deel uitmaakten van de steekproef die aan een grondig onderzoek is onderworpen, maar daartegenover staat dat zij geen overtuigende uitleg hebben gegeven over de tenuitvoerlegging van de rechtsgrondslag van de regeling, en evenmin over de overeenstemming ervan met de bepalingen van de nieuwe Verordening (EG) nr. 800/2008 van 6 augustus 2008 waarbij bepaalde categorieën steun op grond van de artikelen 87 en 88 van het Verdrag met de gemeenschappelijke markt verenigbaar worden verklaard (hierna "de algemene groepsvrijstellingsverordening" genoemd) ([1]).

4. ANALYSE

4.1. Bestaan van staatssteun in de zin van artikel 107, lid 1, VWEU

(30) Volgens artikel 107, lid 1, VWEU zijn "*steunmaatregelen van de staten of in welke vorm ook met staatsmiddelen bekostigd, die de mededinging door begunstiging van bepaalde ondernemingen of bepaalde producties vervalsen of dreigen te vervalsen, onverenigbaar met de interne markt, voor zover deze steun het handelsverkeer tussen de lidstaten ongunstig beïnvloedt*".

(31) Om een nationale maatregel als staatssteun aan te kunnen merken, moet dus aan elk van de volgende voorwaarden zijn voldaan: i) met de betrokken maatregel wordt een economisch voordeel aan de begunstigde ervan verleend, ii) dit voordeel wordt door de overheid verleend, iii) dit voordeel is selectief, en iv) de betrokken maatregel vervalst de mededinging of dreigt deze te vervalsen en kan het handelsverkeer tussen de lidstaten ongunstig beïnvloeden.

(32) De vrijstelling voor *Young Innovative Companies* is een selectief voordeel omdat zij alleen geldt voor ondernemingen die onder de definitie van *Young Innovative Company* vallen. Dit selectieve voordeel wordt met staatsmiddelen bekostigd en zou gevolgen kunnen hebben voor de mededinging en het handelsverkeer tussen lidstaten.

(33) Er zij op gewezen dat in het besluit van de Commissie van 4 juli 2006 reeds is gesteld dat de regeling ten gunste van de *Young Innovative Companies* als steun moet worden aangemerkt ([2]). Tijdens de monitoringexercitie hebben de Belgische autoriteiten geen bezwaren geuit tegen de stelling dat de regeling ten gunste van de *Young Innovative Companies* als steun moet worden beschouwd.

4.2. Rechtmatigheid van de steun

(34) In het licht van de argumentatie in de punten 15 tot en met 29 is de Commissie de mening toegedaan dat België onrechtmatige steun heeft verleend.

4.3. Onderzoek naar de verenigbaarheid

4.3.1. *Uitgangspunten van het onderzoek naar de verenigbaarheid van de steun*

(35) In een eerste fase moet de verenigbaarheid van de regeling met de interne markt worden onderzocht uit het oogpunt van Verordening (EG) nr. 70/2001.

(36) Aangezien het om een bestaande O&O-steunregeling gaat en België heeft toegezegd om dergelijke regelingen vanaf 1 januari 2008 met de communautaire kaderregeling inzake staatssteun voor onderzoek, ontwikkeling en innovatie in overeenstemming te brengen, moet worden nagegaan of de regeling vanaf die datum uit het oogpunt van genoemd steunkader met de interne markt verenigbaar is.

(37) Daar Verordening (EG) nr. 70/2001 door Verordening (EG) nr. 800/2008 is vervangen, moet bovendien op grond van laatstgenoemde verordening nog worden geverifieerd of de regeling voldoet aan de voorwaarden om voor een groepsvrijstelling in aanmerking te komen. Dat is niet alleen relevant voor de periode na de inwerkingtreding van Verordening (EG) nr. 800/2008 op 29 augustus 2008, maar ook voor de aan die datum voorafgaande periode, aangezien in artikel 44, lid 1, is bepaald dat de verordening van toepassing is op individuele steun die vóór de inwerkingtreding ervan is verleend, indien de steun voldoet aan de in de verordening vastgestelde voorwaarden, met uitzondering van artikel 9.

4.3.2. *Verenigbaarheid van de steun uit het oogpunt van Verordening (EG) nr. 70/2001*

(38) Zoals in de punten 20 en 21 is vermeld, hebben de Belgische autoriteiten nagelaten om voor de periode tussen de goedkeuring van de regeling bij besluit van 4 juli 2006 en de datum van het verstrijken van de geldigheidsduur van Verordening (EG) nr. 70/2001, namelijk 31 december 2008, maatregelen te nemen teneinde de nationale wetgeving aan te passen aan de definities van de onderzoekscategorieën zoals die in Verordening (EG) nr. 70/2001 zijn vastgelegd

([1]) PB L 214 van 9.8.2008, blz. 3.

([2]) Zie punt 21 van het besluit van 4 juli 2006.

(39) In het licht van het bovenstaande betwijfelt de Commissie of de regeling uit het oogpunt van Verordening (EG) nr. 70/2001 verenigbaar is met de interne markt.

4.3.3. *Verenigbaarheid uit het oogpunt van het O&O&I-steunkader*

(40) De verenigbaarheid van de regeling dient derhalve te worden getoetst aan de bepalingen betreffende steun voor O&O-projecten (punt 5.1 van het O&O&I-steunkader) en aan de bepalingen betreffende steun voor innovatieve starters (punt 5.4 van het O&O&I-steunkader), omdat de regeling voor deze specifieke categorie ondernemingen lijkt bedoeld.

A. *Steun voor O&O-projecten (punt 5.1 van het O&O&I-steunkader)*

(41) Daar de regeling op basis van de criteria van Verordening (EG) nr. 70/2001 met betrekking tot steun voor onderzoek en ontwikkeling is goedgekeurd, heeft de Commissie op grond van punt 5.1 "Steun voor O&O-projecten" van het O&O&I-steunkader een vooronderzoek ingesteld naar de verenigbaarheid van de regeling.

(42) In punt 5.1 van het O&O&I-steunkader worden de criteria opgesomd waaraan moet worden voldaan opdat steun voor O&O-projecten als verenigbaar met de interne markt kan worden aangemerkt:

(a) in punt 5.1.1 is het volgende gepreciseerd: "*Het gesteunde deel van het onderzoeksproject moet volledig binnen één of meer van de volgende onderzoekscategorieën vallen: fundamenteel onderzoek, industrieel onderzoek, experimentele ontwikkeling*";

(b) in punt 5.1.2 zijn de basissteunintensiteiten vermeld (25 % voor experimentele ontwikkeling); deze kunnen in sommige gevallen worden verhoogd, met name wanneer de steun voor kmo's is bestemd (punt 5.1.3, onder a));

(c) in punt 5.1.4 worden de in aanmerking komende kosten nader omschreven;

(d) punt 5.1.6 bevat specifieke bepalingen met betrekking tot fiscale maatregelen;

(e) de punten 7.1 en 8 bevatten bepalingen betreffende respectievelijk de individuele aanmeldingsdrempels en de inachtneming van de cumulatieregels.

(43) Tijdens de monitoringexercitie heeft de Commissie de Belgische autoriteiten gevraagd welke O&O-projecten in het kader van de regeling zijn uitgevoerd, en meer in het bijzonder onder welke onderzoekscategorie in de zin van het O&O&I-steunkader deze projecten vallen. In de antwoorden van de Belgische autoriteiten wordt niet bevestigd of de in het kader van de regeling uitgevoerde projecten wel degelijk onder de onderzoekscategorieën vallen die in het O&O&I-steunkader zijn vermeld.

(44) De Commissie heeft ook twijfels geuit ten aanzien van de inachtneming van het in het O&O&I-steunkader vastgelegde steunintensiteitsplafond na de wijziging van het vrijstellingspercentage in 2009. Zij heeft de Belgische autoriteiten dan ook gevraagd hoe de steunintensiteiten worden berekend. In de antwoorden van de Belgische autoriteiten wordt niet bevestigd of de in het O&O&I-steunkader vastgelegde steunintensiteitsplafonds na de verhoging van het percentage van de vrijstelling van de bedrijfsvoorheffing nog in acht worden genomen.

(45) In het kader van deze procedure verzoekt de Commissie de Belgische autoriteiten dan ook alle gegevens te verschaffen op grond waarvan kan worden uitgemaakt onder welke onderzoekscategorie de projecten vallen, en tevens alle inlichtingen te verstrekken over de berekening van de steunintensiteiten na de wijziging van de regeling. Ten slotte verzoekt de Commissie de Belgische autoriteiten te bevestigen dat geen enkel steunbedrag hoger lag dan de individuele aanmeldingsdrempels en dat de cumulatieregels in acht zijn genomen bij de toekenning van de steun.

B. *Steun voor innovatieve starters (punt 5.4 van het O&O&I-steunkader)*

(46) Ook het onderzoek naar de verenigbaarheid van de steunregeling ten behoeve van *Young Innovative Companies* is meer specifiek uitgevoerd op grond van punt 5.4 van het O&O&I-steunkader, dat betrekking heeft op steun voor innovatieve starters. De Commissie heeft een vooronderzoek naar de regeling ingesteld op basis van de criteria die in het steunkader zijn vastgesteld.

(47) In punt 12 van het besluit van 4 juli 2006 zijn de bepalingen van artikel 275/3 van het WIB 1992 overgenomen; daarin wordt het begrip *Young Innovative Company* gedefinieerd. Een *Young Innovative Company* moet aan alle volgende voorwaarden voldoen:

(a) het gaat om een kleine vennootschap (in de zin van artikel 15, lid 1, van het wetboek van vennootschappen);

(b) ze bestaat sinds minder dan 10 jaar vóór 1 januari van het jaar waarin de vrijstelling van doorstorting van bedrijfsvoorheffing wordt toegekend;

(c) ze is niet opgericht in het kader van een concentratie, een herstructurering, een uitbreiding van een vroegere activiteit of een overname van dergelijke activiteiten;

(d) ze heeft uitgaven gedaan op het vlak van onderzoek en ontwikkeling die minstens 15 % van de totale kosten van het voorgaande belastbaar tijdperk vertegenwoordigen.

(i) Kwalificatie als "kleine onderneming"

(48) In punt 5.4, onder a), van het O&O&I-steunkader is het volgende bepaald: "*de begunstigde onderneming is een kleine onderneming […]*".

(49) In artikel 15, lid 1, van het wetboek van vennootschappen worden kleine vennootschappen als volgt gedefinieerd: "*vennootschappen met rechtspersoonlijkheid die voor het laatst (en het voorlaatst) afgesloten boekjaar, niet meer dan één der volgende criteria overschrijden:*

— jaargemiddelde van het personeelsbestand: 50;

— jaaromzet, exclusief de belasting over de toegevoegde waarde: 7 300 000 euro;

— balanstotaal: 3 650 000 euro tenzij het jaargemiddelde van het personeelsbestand meer dan 100 bedraagt".

(50) De Belgische autoriteiten hebben bevestigd dat ondernemingen pas op de kwalificatie als "kleine vennootschap" aanspraak kunnen maken als zij aan twee van de drie bovenvermelde criteria voldoen.

(51) Tijdens de monitoringexercitie heeft de Commissie twijfels geuit ten aanzien van de kwalificatie als "kleine" onderneming die de Belgische autoriteiten in het kader van de toepassing van de regeling hebben gehanteerd. Deze stemt immers niet overeen met de definitie van "kleine onderneming" die in artikel 2, lid 2, van bijlage I bij de algemene groepsvrijstellingsverordening ([1]) voorkomt. De Commissie heeft de Belgische autoriteiten meer in het bijzonder gevraagd waarom boven een drempel van 100 personen niet meer aan de voorwaarden voor kwalificatie als kleine vennootschap wordt voldaan, aangezien een dergelijke drempel niet in de EU-teksten voorkomt.

(52) De Commissie verzoekt de Belgische autoriteiten dan ook informatie over de omvang van de begunstigde ondernemingen te verschaffen, en meer in het bijzonder over steun die is toegekend aan ondernemingen die meer dan 50 personen in dienst hebben.

(ii) Voorwaarde van de bestaansduur

(53) In punt 5.4, onder a), van het steunkader wordt het volgende gepreciseerd: "*de begunstigde onderneming is een kleine onderneming die minder dan zes jaar bestaat op het tijdstip dat de steun wordt toegekend*".

(54) In het besluit van 4 juli 2006 is bepaald dat de betrokken ondernemingen minder dan tien jaar moeten bestaan om op de kwalificatie als *Young Innovative Company* aanspraak te kunnen maken.

(55) In het kader van de monitoringexercitie heeft de Commissie twijfels geuit over het feit of de Belgische autoriteiten zich bij de toepassing van de regeling hebben gehouden aan de voorwaarde van de bestaansduur om voor de kwalificatie als innovatieve starter in de zin van het O&O&I-steunkader in aanmerking te komen.

(56) De Commissie verzoekt de Belgische autoriteiten dan ook informatie over de bestaansduur van de begunstigde ondernemingen te verschaffen, en meer in het bijzonder over steun die is toegekend aan ondernemingen die meer dan zes jaar (en minder dan tien jaar) bestaan.

(iii) Steunbedrag

(57) In punt 5.4, onder c), van het O&O&I-steunkader is het volgende bepaald: "*de steun bedraagt niet meer dan 1 miljoen EUR*".

(58) In het kader van de monitoringexercitie hebben de Belgische autoriteiten de lijst meegedeeld van ondernemingen die in 2009 en 2010 meer dan 200 000 EUR aan steun hebben genoten. Zoals in punt 2 is aangegeven, heeft de Commissie uit de twaalf vermelde ondernemingen er drie (Movetis, Actogenix en Zappware) geselecteerd om aan een grondig onderzoek te onderwerpen. Het onderzoek van de desbetreffende documenten heeft uitgewezen dat twee van de drie geselecteerde ondernemingen (Movetis en Actogenix) over die beide boekjaren meer dan 1 miljoen EUR aan steun hebben ontvangen.

(59) Bovendien heeft de verhoging van het percentage van de aan de ondernemingen verleende vrijstelling als gevolg van de wetswijziging van 2009 tot een toename geleid van het steunbedrag voor ondernemingen die voor de regeling in aanmerking komen.

(60) In het kader van de monitoringexercitie heeft de Commissie twijfels geuit over het feit of de Belgische autoriteiten zich bij de toepassing van de regeling hebben gehouden aan het in het O&O&I-steunkader vastgelegde steunplafond.

(61) De Commissie verzoekt de Belgische autoriteiten dan ook over te gaan tot een verificatie van de steunbedragen die aan alle begunstigde ondernemingen zijn gestort, en met name van de steunbedragen van meer dan 1 miljoen EUR die uit hoofde van de regeling aan andere begunstigde ondernemingen zijn toegekend, en haar tevens alle dienstige inlichtingen te verstrekken, zodat zij kan beoordelen of de in het O&O&I-steunkader vastgelegde steunplafonds in acht zijn genomen.

(62) Op grond van de informatie waarover de Commissie momenteel beschikt, lijken de steunbedragen die België in het kader van de regeling heeft uitgekeerd, uit het oogpunt van het O&O&I-steunkader onverenigbaar met het VWEU.

4.3.4. *Verenigbaarheid uit het oogpunt van Verordening (EG) nr. 800/2008*

(63) Tot slot moet worden uitgemaakt of de vanaf 1 januari 2009 verleende steun in overeenstemming was met de bepalingen van de nieuwe algemene groepsvrijstellingsverordening.

(64) Tijdens de monitoringexercitie van de diensten van de Commissie is evenwel gebleken dat de regeling niet is aangepast om deze met de nieuwe algemene groepsvrijstellingsverordening in overeenstemming te brengen. De Belgische autoriteiten hebben meer in het bijzonder nagelaten om in de rechtsgrondslag van de regeling een verwijzing naar de in artikel 30, leden 2, 3 en 4, van de algemene groepsvrijstellingsverordening omschreven onderzoekscategorieën op te nemen.

4.3.5. *Conclusie ten aanzien van de verenigbaarheid van de steun*

(65) De nationale maatregelen moeten worden aangemerkt als een steunregeling in de zin van artikel 107 VWEU. Alle, of althans een deel van de op basis van de regeling toegekende steun is verleend in strijd met artikel 108, lid 3, van het Verdrag. De steun lijkt onverenigbaar met de interne markt uit het oogpunt van Verordening (EG) nr. 70/2001, het O&O&I-steunkader en Verordening (EG) nr. 800/2008.

([1]) "*Binnen de categorie kmo's is een "kleine onderneming" een onderneming waar minder dan 50 personen werkzaam zijn en waarvan de jaaromzet of het jaarlijkse balanstotaal 10 miljoen EUR niet overschrijdt.*"

4.4. **Kwantificering en terugvordering**

(66) Indien de twijfels van de Commissie ten aanzien van het feit of er al dan niet van met de interne markt onverenigbare staatssteun sprake is geweest, niet worden weggenomen, moet de Commissie krachtens artikel 14, lid 1, van de procedureverordening in haar eindbesluit verlangen dat België de onverenigbare steun terugvordert, tenzij de terugvordering in strijd is met een algemeen beginsel van het Gemeenschapsrecht.

(67) In artikel 15 van de procedureverordening is bepaald dat de bevoegdheden van de Commissie om steun terug te vorderen na een termijn van tien jaar verjaren (de zogenoemde "verjaringstermijn"). Deze termijn gaat in op de dag waarop de onrechtmatige steun als afzonderlijke steun of in het kader van een steunregeling aan de begunstigde is verleend. Aangezien de steunregeling vanaf 4 juli 2006 is toegestaan, is de verjaringstermijn in het onderhavige geval niet van toepassing.

(68) Om een terugvorderingsbesluit ten uitvoer te kunnen leggen, moet het voordeel worden gekwantificeerd. De Commissie beschikt niet over nauwkeurige gegevens met betrekking tot de ondernemingen die mogelijk onverenigbare steun hebben genoten.

(69) In het kader van deze procedure verzoekt de Commissie de Belgische autoriteiten haar informatie te verschaffen over de onderzoekscategorieën waaronder de uitgevoerde projecten vallen, over de berekening van de steunintensiteitspercentages waarin punt 5.1 van het O&O&I-steunkader voorziet, alsook over de omvang, de bestaansduur en de ontvangen steunbedragen van alle begunstigde ondernemingen (zie de punten 45, 52, 56 en 61).

(70) De Commissie verzoekt tevens de belanghebbenden hun opmerkingen over de bovengenoemde aspecten te maken in de context van de inleiding van de formele onderzoeksprocedure.

5. **CONCLUSIE**

(71) In het licht van de bovenvermelde elementen heeft de Commissie twijfels ten aanzien van de verenigbaarheid van de in het kader van de regeling toegekende steun. Om die reden heeft zij besloten tot inleiding van de formele onderzoeksprocedure van artikel 108, lid 2, VWEU. De Commissie verzoekt de Belgische autoriteiten binnen één maand vanaf de datum van ontvangst van dit schrijven hun opmerkingen kenbaar te maken en alle voor de beoordeling van de steun benodigde informatie, en met name de in de punten 45, 52, 56 en 61 gevraagde inlichtingen, te verstrekken. Bij uitblijven van een reactie zal de Commissie een besluit nemen aan de hand van de gegevens waarover zij beschikt.

De Commissie verzoekt de Belgische autoriteiten de potentiële begunstigde ondernemingen onverwijld een afschrift van dit schrijven te doen toekomen.

De Commissie wijst België op de schorsende werking van artikel 108, lid 3, van het Verdrag betreffende de werking van de Europese Unie. Zij verwijst naar artikel 14 van Verordening (EG) nr. 659/1999 van de Raad, volgens hetwelk elke onrechtmatige steun van de begunstigde kan worden teruggevorderd.

Voorts deelt de Commissie het Koninkrijk België mee dat zij de belanghebbenden door de bekendmaking van dit schrijven en van een samenvatting ervan in het *Publicatieblad van de Europese Unie* in kennis zal stellen. Tevens zal zij de belanghebbenden in de lidstaten van de EVA die partij zijn bij de EER-Overeenkomst, door de bekendmaking van een mededeling in het EER-Supplement van het Publicatieblad in kennis stellen, alsmede de Toezichthoudende Autoriteit van de EVA door haar een afschrift van dit schrijven toe te zenden. Alle bovengenoemde belanghebbenden zal worden verzocht hun opmerkingen te maken binnen één maand vanaf de datum van deze bekendmaking.'

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